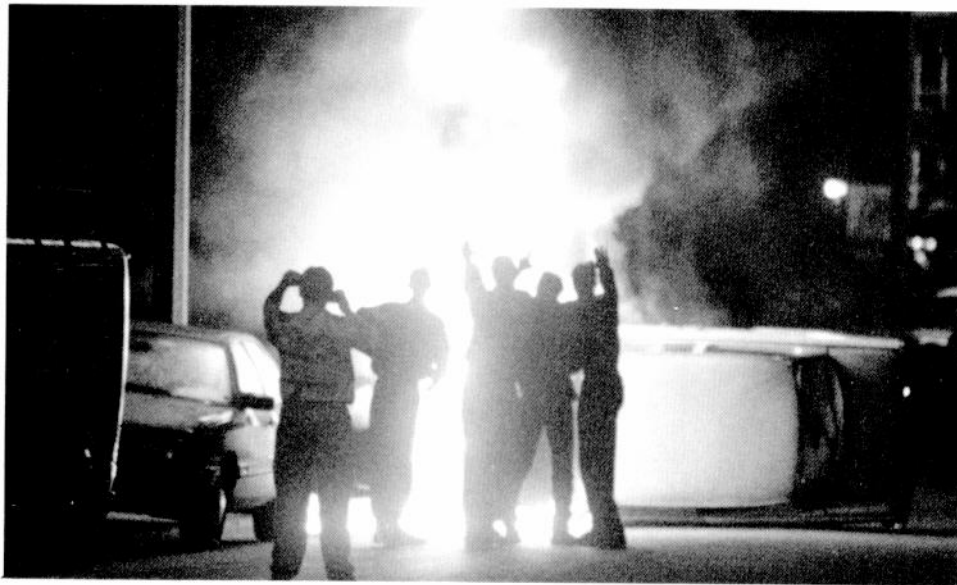


“GERMANY FOR GERMANS”



Xenophobia and Racist Violence in Germany

Human Rights Watch / Helsinki

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**XENOPHOBIA AND RACIST VIOLENCE IN
GERMANY**

Human Rights Watch/Helsinki

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Cover photo: Hooded neo-Nazis give the Hitler salute on August 26, 1992 in front of a burning Trabant car during heavy clashes between police and neo-Nazis in front of an asylum hostel in Rostock. Copyright © Reuters/Bettman.

Human Rights Watch/Helsinki

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Ann S. Johnson is the development director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Helsinki division was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Holly Cartner is acting executive director; Erika Dailey, Rachel Denber, Ivana Nizich and Christopher Panico are research associates; Anne Kuper, Ivan Lupis, Alexander Petrov and Lenec Simon are associates. Jonathan Fanton is the chair of the advisory committee and Alice Henkin is vice chair.

IX. GOVERNMENT MEASURES TO BAN RIGHT-WING GROUPS AND PROHIBIT HATE SPEECH

In the past two years, the German state and federal governments have cracked down on the activities of neo-Nazi organizations. In addition to banning several groups, the German government has also undertaken numerous large-scale raids of neo-Nazi headquarters, and confiscated weapons, propaganda and other materials that may be evidence of criminal activity. In addition, the government has begun more rigorously to enforce laws prohibiting racial incitement. It also treats any denial that the Holocaust occurred (otherwise known as the "Auschwitz Lie") as incitement under the criminal statutes. These steps were taken pursuant to laws that have been in effect since World War II.

Human Rights Watch/Helsinki acknowledges that the tragedy of the Holocaust is the historical context in which such laws were adopted. We also recognize that, by more rigorously enforcing these laws, the German government has underscored the seriousness with which it views the danger posed by right-wing extremists. Nevertheless, Human Rights Watch/Helsinki believes that such measures seriously restrict the protected right to freedom of expression, association and assembly. We are mindful of the fact that international human rights law provides different and conflicting standards in this area, and base our position on a strong commitment to freedom of expression as a core principle of human rights. We believe that freedom of speech and equal protection of the laws are not incompatible, but are, rather, mutually reinforcing rights.

Certainly those whose expressive activities constitute a direct and immediate incitement to violence can and should be prosecuted to the fullest extent of the law. But sweeping restrictions that affect entire parties, organizations or philosophies inevitably cast too broad a net; they can be used to suppress dissenting political movements of all sorts and often encourage gratuitous restrictions beyond those initially foreseen.

While such measures may be popular politically and may even appear to be effective in the short-run, Human Rights Watch/Helsinki is concerned that over the long run such measures are not only not effective to counter bigotry, but they may even be counterproductive. Draconian bans turn bigots into victims, driving them underground and creating a more attractive home for the unstable and insecure people who are drawn to such groups.

What is more, Human Rights Watch believes that there are other, more effective ways to counter expression that is hostile toward minorities, ways that do not jeopardize civil liberties. First and foremost, restrictive legislation on expression,

RESTRICTIONS ON ASSEMBLY

Public assemblies by right-wing extremists are now frequently prohibited. For example, in August 1994, state and federal officials prohibited all demonstrations for the seventh anniversary of the death of Rudolf Heß, Hitler's former representative. Over one hundred individuals, who nevertheless tried to demonstrate in several German cities, were arrested. During the week prior to the anniversary, state and federal government officials had coordinated their response to any neo-Nazi activities. The minister of the interior for the state of North Rhein-Westphalia, Herbert Schnoor, stated that "All measures have been coordinated. There will be no events anywhere in the Federal Republic. The brown spectre will not march through the Federal Republic."²¹⁵

Numerous concerts by right-wing rock groups have also been banned over the last years. In 1993 several concerts by the group Böhse Onkelz, a skinhead group whose lyrics are often anti-foreigner and anti-Semitic, were banned and restrictions were placed on sales of the group's records.

As discussed above, while viewing extremist violence with great concern, Human Rights Watch/Helsinki at the same time opposes laws that prohibit the expression of anti-foreigner or anti-Semitic sentiments, as well as laws that prohibit groups that hold such views from forming associations and holding public gatherings, so long as that speech, association or assembly does not rise to the level of incitement to or participation in violence.

We recognize that international law provides different and conflicting standards on this point, but we base our policy on our conviction that the protected rights of speech, association and assembly are fundamental rights that should be guaranteed. Our own research has shown that such restrictions are often misused by majoritarian governments against minorities. It is our view that it is inherently dangerous for governments to have the power to determine which political philosophies are "threatening"; power that invites abuse against political foes. What is more, we are concerned that although such restrictions may be effective in the short-term, they may be counterproductive over time. In fact, they may actually force right-wing groups to move underground and to establish organized links with each other that did not previously exist.

²¹⁵ "Behörden beugen Aufmarsch von Neonazis vor," *Süddeutsche Zeitung*, August 11, 1994; see also "Großeinsatz der Polizei verhindert Neonazi-Aufmärsche," *Süddeutsche Zeitung*, August 16, 1994.