Human rights of migrants in transit

Preliminary remarks:

The general provisions in refugee law designed to protect these persons, in particular the principle of non-refoulement enshrined in Article 33 of the Geneva Convention on Refugees, also apply to migrants in transit.

A.b)

The EU Directive on Reception Conditions (2003/9/EC and its new version 2013/33/EU) seeks to ensure that migrants are protected from abuse and violence in accommodation centres.

A.c)

Section 42 of the Social Code Book VIII provides that youth welfare offices take care of unaccompanied minors. They check whether it is possible to reunite them with family members. Asylum procedures are conducted by specially trained and tasked adjudicators. The adjudicators make sure that families seeing asylum in Germany are not split up in distribution processes.

A.d)

Germany's Federal Police is authorized to take all measures to avert dangers to public safety and order (cf. the general clause in Section 14 (1) and (2) of the Act on the Federal Police (*Bundespolizeigesetz*)

On top of that, there are numerous special regulations in place to protect migrants at the borders. For instance, Section 18 (1) of the Asylum Procedure Act (*Asylverfahrensgesetz*) provides that foreigners who apply for asylum at the border must be sent to the nearest reception centre. As for the rest, there are the obligations derived from general international and European law to rescue persons in distress at sea.

A.e)

Persons may only be taken into custody to ensure deportation if there is a court order to that effect and if this measure is proportionate (cf. Section 62 (1) of the Residence Act (*Aufenthaltsgesetz*).

In order to assess whether custody is proportionate, the court has to verify if there are more lenient but adequate means to ensure that the person can be deported. If that is the case, custody may not be ordered. The General Administrative Regulation relating to the Residence Act (*Allgemeine Verwaltungsvorschrift zum AufenthG*) therefore describes various alternative measures, such as the payment of a financial guarantee.

A f)

The principle of non-refoulement applies in German law. Deportation bans are specifically mentioned in Section 60 (1), (2) and (7) of the Residence Act, where it says that persons must not be deported if they face concrete threats to life, limb or liberty.

B a)

Section 95 of the Residence Act makes the unauthorized stay in Germany a criminal offence. This does not, however, amount to a breach of human rights standards. Persons who are really in need of protection will not be punished. The criminal proceedings are based on the rule of law; specifically on the German Code of Criminal Procedure (*Strafprozessordnung*).

B.b)

The Federal Government pursues a holistic approach to fight racism, xenophobia and anti-Semitism, seeking to reach out to all sectors of society (including all migrants living in Germany and those in transit). The approach includes both prevention and law enforcement. It also includes having our domestic intelligence agencies monitor extremist organizations, and initiating exit programmes for right-wing extremists who wish to reform.

B.c)

Basic and advanced training for Federal Police officers in Germany also covers human rights aspects, making officers widely aware of these issues.

B d)

Responsibility for border controls rests with Germany's Federal Police. Federal Border Police officers use a special case management system to record all human rights cases, complying with all applicable data protection regulations.