

Deportations, Room Checks and the Right to the Inviolability of the Home in Refugee Shelters

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Can we say that refugees who are accommodated in an initial reception or a follow-up accommodation dwell there? Are their rooms to be understood as housing? This question is at the center of current legal disputes in Germany. At issue is the extent to which the right to the inviolability of one's own home, enshrined in Article 13 of the German *Grundgesetz* (Basic Law), applies to refugee accommodations or individual rooms in accommodations. The question is not whether the accommodation adequately meets the housing needs of refugees. What is being negotiated is the legitimacy of uncontrolled access to the rooms of refugees by employees of shelters such as securities and social workers as well as state institutions such as the foreigners authority or the police. To this day, unannounced room checks, lack of opportunities to lock one's own room, bans on visitors and overnight stays even for close family members, and police searches of entire accommodations without a search warrant are common practice in many shelters (Cremer & Engelmann, 2018). But does this comply with a fundamental right to privacy and the inviolability of one's living spaces?

For refugees, such intrusions, for example in the form of unannounced room inspections, represent not only an invasion of their own living space and privacy, but also a deep incursion into their daily lives and needs for sleep or rest. This is often experienced as very humiliating (Gesellschaft für Freiheitsrechte, 2021).

The answer to the question of whether the inviolability of the home also applies to shelters thus encompasses a whole series of other aspects: Do refugees have a right not to have their bedrooms entered by strangers, social workers or police officers without their permission? Does such a right only apply once a certain immigration status has been achieved? Do you need structural requirements for this, such as accommodation in a single room or even an apartment or apartment-like unit? May rooms be entered or searched unannounced and without a judicial search warrant for the purpose of deportation? Can authorities enter or search rooms that are not assigned to the person in question?

How diverse these questions can be answered becomes apparent in the German federal state of Saxony. There, for example, the *Musterhausordnung* (model house regulations) issued by the Saxon Ministry of the Interior explicitly states that premises in shelters serve only "the temporary accommodation of asylum seekers" and therefore "do not constitute a dwelling within the meaning of Art. 13 para. 1 of the Basic Law," since they offer neither a "shielded private sphere" nor "the opportunity to develop freely in these [premises]"; rather, their main purpose is "the disposal of the occupants

for the ongoing asylum procedure or, after its negative outcome, for the repatriation from the federal territory" (Sächsisches Staatsministerium des Inneren, 2019, p. 6).

By contrast, a legal assessment commissioned by the Saxon Refugee Council, comes to the conclusion – similar to the German Institute for Human Rights in 2018 – that "the purpose of the accommodation (...) does not constitute an exception to the scope of protection of Article 13" (Wiesmann, 2021, p. 8). Similarly, recent court decisions from Baden-Württemberg, Berlin and Hamburg conclude that the right to inviolability of one's own living space also applies to shelters. Thus, it was decided that police searches without a search warrant are inadmissible and that interference with fundamental rights such as room inspections cannot simply be regulated by house rules (Mermania, 2021; Nowak, 2022; von Appen, 2022).

The German Institute for Human Rights has already conducted a comprehensive analysis of existing practices and house rules on this topic in 2018. Among other things, it proposes the following formulations for the human rights-compliant design of house rules:

- **“Regulations on entering rooms:** Bedrooms and living quarters in particular are subject to the protection of Article 13 of the Basic Law. They may not be entered without cause if the residents have not given their consent. House rules should therefore make it clear that bedrooms or living rooms may not be entered without cause, but only to avert or prevent danger.
- **Regulations on searching rooms:** House rules should clarify that searching rooms (for example, also cabinets) is generally only permitted with judicial authorization or only in cases of imminent danger by legally authorized authorities.
- **Visiting and accommodation rules:** Article 13 of the Basic Law guarantees the right of self-determination of the residents as to who should have access to the apartment, when and under what conditions. However, the right to receive visitors can be restricted in shared accommodation (...). Blanket bans on overnight stays are inadmissible, as they do not allow for any consideration of the rights and interests of the residents or visitors" (Cremer & Engelmann, 2018).

What does this mean in practice for shelter staff? Basically, all those who work in the field of accommodating refugees should be aware of the ambiguity of their mission. Accommodation – especially when there are housing obligations – is part of a system of migration administration in which access is always provided, if necessary for the purpose of deportation of persons. At the same time, accommodations fulfill a protection and care mandate. Insofar as social workers see themselves committed to the latter, professional advocacy for their clients, especially vis-à-vis state authorities, can be understood as part of their mission. In this sense, it is essential that employees of institutions know and defend their own rights as well as those of the residents. They are in no way obligated to cooperate with a deportation. An in-depth insight into this can be found, for example, in a handout by the Hessian welfare organization on how to deal with deportations from accommodation (Pelzer, 2021).

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