

Germany

Policies of anti-discrimination and integration in Germany: The German Government Commissioner for Migration, Refugees And Integration

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In 2006 German Chancellor Angela Merkel appointed Maria Böhmer, in her capacity as the German Federal Government's Commissioner for Migration, Refugees and Integration issues, to supervise and coordinate the National Integration Plan (NIP). Even though several other institutions have been involved in setting up and moderating the NIP, the **Commissioner for Integration** – as she is referred to in public discourse – is the key actor in the realisation of this project. Therefore, the role and aims of the Commissioner will be described below.

The Office of the Commissioner for Integration, which was first established in **1978** under Helmut Schmidt's social-liberal coalition government, has undergone tremendous changes in the past few decades. Even though as early as 1970 a member of the German Parliament from the Conservative Party CDU demanded a "Commissioner for Foreigners" in order to deal with the new wave of foreign workers into Germany from a specific labor market perspective, it was only during the social-liberal coalition government (1978-1982) that Heinz Kühn was appointed as the first "**Commissioner for Foreigners**" in 1978. In 1979 Kühn published a very controversial policy paper that came to be known as the "Kühn Memorandum" in the following years. On the basis of data on foreigners in Germany at the time, Kühn not only analyzed their situation but also put forward some concrete recommendations for sustainable integration policies. To the surprise of almost all political and societal actors at the time, Kühn soberly stated that the presence of the 'guest workers' in Germany was an irreversible development and that Germany had to accept the fact of immigration.

Therefore, Kühn concluded that a sustainable and long-term integration strategy would be absolutely necessary. As early as 30 years ago Kühn recommended that the government focus on the children of immigrants by creating or expanding policies in the field of kindergarten, school, vocational training and religious education. He also put the topics of naturalisation and political participation of migrants on the agenda (BMFI 2009:12). Back then, nobody – neither politicians nor other civil society actors – took the “Kühn Memorandum” seriously. It is therefore all the more interesting to observe that in the current controversial integration discourses, politicians, experts and civil society actors seem to be repeating Kühn’s demands without noticing it.

In 1980 Ms Liselotte Funke was designated as Kühn’s successor. In the almost 30-year history of the Commissioner for Integration she not only had the longest mandate, but she was also the one who made the Commissioner popular and visible and thus gave it a public profile. In the early 1980s, as paradoxical as it may sound, Ms Funke had not only the task to develop integration measures for Germany’s increasing foreign population, but at the same time she was supposed **to encourage and support their voluntary return to their countries of origin**. She openly and repeatedly criticised the conservative-liberal governments’¹ ignorance towards sustainable and effective integration measures and eventually resigned from her office in 1991 as a result of frustration and the feeling that she was not being taken seriously (BMFI 2009:14).

The term of Ms Cornelia Schmalz-Jacobsen (1991-1998) has been described as the most difficult because she had to deal with new unexpected challenges posed by the consequences of the Fall of the Wall (1989). At the beginning of the 1990s Germany was confronted with the highest rate of immigration which went hand in hand with violent xenophobic attacks in Germany (BMFI 2009: 25). In 1998, towards the end of her mandate she introduced a memorandum entitled “*Integration – Grundvoraussetzung ohne Alternative*” (Integration – Basic Requirement without Alternative), where she stated that there is no alternative but integration. Language courses, naturalisation, citizenship, dealing with refugees and asylum seekers, and combating xenophobia were the main topics of Ms. Schmalz-Jacobsen’s mandate.

During the coalition government between the Social Democrats and the Green Party from **1998** until **2005**, Ms Marieluise Beck was the Commissioner for Integration. In the coalition agreement between these two parties **it was recognized that Germany had become a country of immigration and that immigrants had become an integral part of Germany**. Already during this time first strategies of approaching

¹ 1982-1998

the issue of integration as a “cross-functional task” (*Querschnittsaufgabe*) for all levels were developed but back then the issue of integration was considered as a difficult issue among many. Beck’s term was also characterized by the question of how to deal with cultural, linguistic and religious diversity in the integration society. Modernising German nationality law (2000), reforming the status of refugees and asylum seekers, and enforcing the Immigration Act (2005) are among the milestone achievements of her mandate (BMFI 2009:27).

While the first Commissioner Kühn had only two staff members and fairly limited set of functions within the German Federal Government, today the Commissioner’s team consists of more than 30 people who play a pivotal role in the German government’s policies on integration. Along with the extension of the Commissioner’s remit over the course of three decades, the office’s name also underwent several changes – in the beginning it was dubbed “**Commissioner for the Integration of Foreign Employers and their Family Members**” then renamed to “**Commissioner for the Issues of Foreigners**” and eventually became the “**Commissioner for Migration, Refugees and Integration**” in 2005. These name changes indicate the different focus areas in different times, which go hand in hand with the transforming perception of challenges concerning migration and integration in Germany.

In 2005, at the beginning of her mandate, German Chancellor Angela Merkel moved the Office of the Commissioner for Migration, Refugees and Integration directly to the Chancellery and thus ‘upgraded’ the new Commissioner Maria Böhmer to the rank of a **Minister of State**. In July 2006, not too long after this ‘upgrade’, the German Chancellor also initiated the so-called “Integration Summit,” where for the first time in German history representatives from immigrant civil society organizations sat around a table with high-ranking German officials to discuss the issue of integration. These two developments were considered a symbolic signal to the public that integration had now become Merkel’s *Chefsache* (“matter for the boss”).

According to § 93 of the “German Residence Act” (*Aufenthaltsgesetz*), which legally defines the functions of the Commissioner of Integration, the Commissioner has the following tasks:

1. Support the integration of (permanent) migrants
2. Create appropriate prerequisites so that foreigners and Germans can **coexist** well
3. Promote mutual understanding
4. **Counteract xenophobia as well as unequal treatment of foreigners**

5. Assist foreigners so that their concerns are adequately considered
6. Inform about the legal possibilities for naturalisation
7. Be vigilant about the right of free movement of EU citizens who live in Germany
8. Stimulate and support integration initiatives on a federal-state (*Bundesland*) and community/local level, as well as among societal groups
9. Observe immigration to (the territories of) Germany and the European Union
10. Cooperate with local communities, federal-states, EU member states and the EU
11. Inform the public about its work

Every other year the Commissioner reports to the German Parliament about the situation of foreigners in Germany.²

1. The National Integration Plan

In this section, I will first give some basic background information about the emergence of the NIP in order to contextualize it into Germany's integration debate, on the one hand, and to highlight the significance of this document, on the other. Second, I will briefly present the main content of the NIP and then move on to an analysis of the key social / political problems and the target population addressed in this document. The ramifications of the NIP on different political and social levels, will also be taken into consideration.

1.1. Germany's long path to the NIP

Most immigrants arrived in Germany in the 1960s as so-called '**guest-workers**' (*Gastarbeiter*). There was an assumption that they would stay in Germany for a limited period of time and that, after saving some money, they would return to their respective countries of origin. Accordingly, the receiving society did not take any measures to support the integration of the guest-workers into German society because **it was assumed that their stay would only be temporary**. This phenomenon is splendidly described by Max Frisch's famous quote: "*Man hat Arbeitskräfte gerufen, und es kamen Menschen*" ("**We asked for a workforce, and human beings came**"). Over the course of time, an increasingly defensive attitude developed in the reluctant

² Although the report not only includes foreigners in legal terms but also people with a migration background the document is still named "Report about the situation of foreigners in Germany."

immigration country of Germany: more and more, immigration came to be regarded less a source of support from the outside but rather a **social burden** from inside (Bade 2007:33). With the arrival of about 3 million ethnic German repatriates and refugees, a second significant wave of immigration took place after the fall of the Wall in the late 1980s and lasted for almost a decade. During the conservative-liberal coalition government between 1982 and 1998 the integration policy of the federal government was exclusionist; immigrants were framed and **outsiders** or guest-workers. Thus a systematic approach to integration was lacking and reactions to problems were *ad hoc* (Boswick/Heckmann 2006: 21, cited in Bürgil 2010). This government also vehemently rejected recognizing Germany as an immigrant country and adhered to **the notion of Germany as a homogeneous entity**.

After the *red-green* government took over in 1998³ it was only at the turn of the 21st century that German society and authorities slowly began to realize that Germany's demographic landscape had gradually changed and that it had become a country of immigration.⁴ It was this new self-perception of Germany plus some other crucial incidents which took place in Germany in which immigrants were involved – such as the results of the PISA studies, reports of honor killings, forced marriages and youth violence – that made it inescapable for the German authorities to develop a long-term and sustainable integration strategy. The issue of integration and migration has traditionally been considered the exclusive domain of the Social Democrats and the Greens. The red-green government attempted to break new ground in terms of migration and integration policy but in the end was not very successful. Integration was an issue, but it was just one among many. Therefore, the German public was surprised all the more when the Chancellor Angela Merkel from the conservative party put the issue of integration at the top of her agenda and made the issue of integration a “*Chefsache*” (“matter for the boss”).

1.2. The National Integration Plan

In July 2006, Chancellor Angela Merkel convened a so-called “Integration Summit” in the German capital Berlin, where high-level representatives of the German Federal Government, the federal-states, and local authorities met with representatives of civil

³ The red-green government attempted to break new ground by reforming the citizenship law and passing an immigration act but many compromises needed to be done as the approval of the opposition parties was needed in order to pass these laws.

⁴ Referring to his personal experiences in the late 1980s with the Federal Ministry of the Interior, Klaus Bade, policy advisor and one of the most prominent German researchers in the field of migration and integration, points out, that it was not possible to even mention the cue “immigration”, not to speak of negotiating about it (2007:34).

society and migrant communities in order to discuss the question of migration and integration in Germany. The most unique dimension of this summit was not only that it took place at all, and that the different parties sat around one table in this constellation to discuss the delicate issue of integration, but that the Chancellor had a more ambitious goal, namely, to come out of this summit with a concrete action plan in the field of integration. The outcome of this process is a document entitled the “**National Integration Plan. New paths – new opportunities**” (NIP).

The NIP comprises four main chapters. Chapter one contains the principles of the German government’s integration policy and points out the main measures within its bailiwick. The chapter concludes by suggesting a variety of governmental measures. While chapter two documents the common standpoint shared by all 16 federal-states, the third chapter contains a contribution by the Local Authority Associations to the NIP. With nearly 170 pages, the results of the working groups are compiled in chapter four. Between October 2006 and March 2007, six working groups, which consisted of almost 400 representatives from the Federal Government, federal-states, local authorities and migrant and non-migrant NGO actors, held meetings and covered the following ten thematic fields:

1. Improvement of **integration courses**
2. Early child education: promotion of **German language** right from the start
3. Securing of good **education** and **vocational training** to improve **employment** market opportunities
4. Improvement of circumstances for **women** and girls and the achievement of **gender equality**
5. **Community** support for integration
6. Strengthening of integration through **civil commitment** and **equal participation**
7. Living in cultural diversity – strengthening of **intercultural competence**
8. Integration through **sports** – utilising potential, increasing activities, extension of networks
9. **Media** – utilise diversity
10. **Sciences** – open to the world.

In July 2007, at the second integration summit in Berlin, the NIP was presented to the German public, a 200-page long document which includes about 400 (voluntary) measures and self-commitments, which are expected to contribute to the better

integration of immigrants in Germany.⁵ The NGO actors have been represented to varying extents in the working groups. Among them were representatives of welfare and migrant organizations, unions, trade associations, foundations, but also individual figures.⁶ It is important to point out that the present form of the NIP is not a plan in the sense of a coordinated concept, but rather it has the character of a brainstorming, a compilation of recommendations, aims, and pledges by the various actors. Nor is there mention of a strategic plan or any indicators and procedures for an evaluation of the aimed-at integration goals (Gaitanides 2009:34). Considering the shortage of time and the opposing points of view in the working groups, this was very unlikely to happen.

Throughout the NIP as well as in various statements by Merkel and Böhmer there is a reiteration that, from now on, integration is considered a “*Querschnittsaufgabe*” (“a cross-departmental and transversal task”) – this emphasis is a new approach in this discourse. Even though the NIP is ambitiously aiming to develop a master strategy for integration policy in Germany, **at no point does it define the term ‘integration’**. The entire process of the development of this document would have been a unique opportunity to fill the contested term ‘integration’ with substance and content. The fact that a definition of the term ‘integration’ is *de facto* absent in the NIP implies that there is still no common understanding and strategy in terms of integration (policy) in Germany. This is significant because a report submitted by the “Independent Commission on Immigration” in 2001 provides a common definition which was supported by the majority of political parties and societal actors. According to the Independent Commission, integration is aiming at **enabling immigrants to equally participate in social, economic, cultural, and political life by respecting cultural diversity** (Unabhängige Kommission “Zuwanderung” 2001:200). In a wider sense

⁵ Just shortly before the second integration summit convened in Berlin the new residence-and asylum law according to the EU guidelines became applicable. According to this law persons arriving in Germany to join their spouses need to prove proficiency in German to at least the A1 level on the Common European Framework of References prior to leaving their home countries. However, this law contains a discriminatory element as it exempts certain groups of people, namely, EU citizens and citizens from the USA, Australia, Japan, Israel, Canada, New Zealand, or the Republic of Korea. According to some civil society organizations, e.g. the Turkish Union or the German Trade Unions, this new law restricted residence and citizenship rights and, therefore, led many organizations to boycott the integration summit. The main point of critique from these groups was that the German government was “playing a double game by pursuing and demanding integration on the one hand and implementing discriminatory legislation on the other.” (ENAR 2008: 34) They argued that integration could not be possible when there is no legal equality.

⁶ In official statements it is always pointed out that immigrants have been an integral part of this document and that they have been fully involved in the process but a closer look at the list of the participants of the working groups shows that this is not reflected numerically. In some groups, very few people with an immigrant background have been present, e.g. the working group “Integration through sports” had 27 members but only two with an immigrant background, and “Culture and Integration” had 24 members but only two had an immigrant background. In the working group “Science and Scholarship” only two out of 23 members had a migration background.

integration also refers to the maintenance and further development of social and political **cohesion** (Schulte et al 2010:74).

1.3. Target group of the NIP

The evolution of the NIP makes clear that, as a policy concern, integration certainly has gradually moved to a central position in Germany; no longer left primarily to market and civil society processes, integration is now considered a practice that ought to be steered by political intervention (Heckmann 2010:3).

Who is the target group that these new integration policies intend to reach? Previously, different integration policies existed for different groups of migrants:

- former guest-workers and their families, generally referred to as **foreigners** (*Ausländer*)
- **ethnic German migrants from Eastern Europe** (*Spätaussiedler*)
- Jewish people from the former Soviet Union, EU citizens, and Refugees.

Since the turn of the 21st century, however, integration policies in Germany have been aiming at migrants altogether, all people with a migration *background* or *history*. Unlike the old way which looked at undifferentiated data on citizenship, this new approach has proven to be more useful and practical in shedding light on integration and migration processes in Germany (Heckmann 2010:4). Today, the concept of a 'person with a migration background' has proven to be more practical and useful than the concept of a person who is 'foreign-born.' According to the Federal Office of Statistics (Statistische Bundesamt 2010:6)⁷ this new concept includes the following groups:

- persons who migrated to the Federal Republic after 1949
- foreigners born in Germany
- naturalised Germans
- "(Spät)aussiedler"
- Germans with at least one immigrant parent.

Thus, those with an immigrant background do not necessarily have had the experience of migration. In 2010, The Federal Office of Statistics reported that the population with a *migration background* in Germany exceeded 16 million for the first time. The figure was a little over 15 million in 2005. Accordingly, the share of the population with a

⁷ The Federal Office of Statistics started to collect data on people with an immigrant background in 2005.

migration background in Germany rose from 18.6% to 19.6%.⁸ While almost two-thirds of non-citizens currently living in Germany have been residing there for more than ten years, more than 20 percent have been resident in Germany for over thirty years. Official figures demonstrate that about seven million people, which is about nine % of Germany's population, have a foreign passport (Statistisches Bundesamt 2010:7). Nowadays, the use of the term 'foreigner' ('*Ausländer*') is considered politically incorrect, as it has an exclusivist touch, implying that those people are not (a permanent) part of Germany. Therefore, throughout the NIP, the term 'foreigner' is solely used as a technical and legal term, describing non-German citizens. Nevertheless it is noticeable that **the term is gradually returning to the German public discourse to describe people with a migration background/history**. This reflects a fundamental change in the mentality and approach to the issue.

At no point in the NIP does the document clearly define its target group. Nonetheless, at various points, the document mentions that a successful integration process requires the active contribution and commitment of all members of German society, meaning people with a migration background as well as members of the 'majority society'. This is clearly expressed in the second guideline of the introductory part of the NIP: "to urge each and everyone to undertake the commitment within his or her personal area of responsibility, as we can all make a contribution to the success of integration in Germany" (Bundesregierung 2007:10).

Although the NIP speaks about people with a migration background who "need to be integrated" into German society, it fails to define who belongs in this category. However, from the topics chosen and the language used, one can derive that the actual social group that is targeted in the NIP are **the cultural 'others'**, the *problematic* Turks and Arabs who supposedly challenge the values and legal system of Germany and seem to be *resistant* to integration. So the real problem in the integration discourse in Germany is not people with a migration background belonging to Western civilization and who seem to share the same set of Western values. The challenge is posed by the group belonging to the 'other' Side – non-European, non-Western. It is quite striking that **the word "racism" appears only once in the entire NIP**, a document which deals with integration in Germany and comprises about 200 pages. Even this single mentioning of the word racism does not problematise this phenomenon in the German context – in the NIP it solely appears as a reference to a model project by the *Deutsche*

⁸ That increase is due to two developments: From 2005 to 2009, the population with a migration background grew by 715,000 through arrivals and births, while the population without a migration background decreased by 1.3 million as a result of mortality (Statistisches Bundesamt 2010:7).

Sportjugend (“German Sport Youth”) entitled “Stick with the ball – Football against racism and discrimination” (Bundesregierung, 2007:145). **The word “race” is not used even once in the whole document.** Considering the fact that several migrant and non-migrant NGOs were involved in the formation process of the NIP it is hard to imagine that they did not insist on including this crucial dimension in the NIP. However, to conclude from this that racism does not appear in the NIP and thus, that racism is not an issue in Germany, would be a naïve fallacy. The absence of racism would also imply the absence of discrimination in Germany and thus, no need for anti-discrimination measures.

Another remarkable finding of the analysis of the NIP document is the *de facto* **absence of a European dimension.** In the entire document only two references to European directives can be found. The first reference is related to national integration courses in Germany whose evaluation “views the language level B1 of the *Common European Framework of Reference for Languages* [CEFR] as being the minimum requirement for the successful continuation of the integration process.” (Bundesregierung 2007:16).⁹ The NIP document points out that for the “first time (...) learning targets were established and standardised (...) tests introduced in adherence to European standards in order to optimise and test the achievement of learning targets” (Bundesregierung 2007:37) and it proudly claims that in “comparison with the integration efforts of other European countries, Germany takes up a leading position thanks to its integration courses, both from the aspect of course hours per participant and the linguistic learning target level B1 of the CEFR” (Bundesregierung 2007:38). The second reference to European directives was made in the second section on the “Promotion of the German language right from the start” where federal-states and local authorities commit to “the improvement of nursery teacher training in a practice-oriented modular system; in view of the European harmonization of qualifications, a training course at bachelor standard must be targeted – initially for head teachers” (Bundesregierung 2007:54). The word “Europe” or “European” appears several times in the document, however, mostly in the context of financial support for integration

⁹ A similar reference is made in the topical area 1 “Improvement of integration courses” in chapter 4 where the following is stated:“(…) the integration course includes a 600-hour language course (...) providing sufficient knowledge of the German language equivalent to the level B1 of the Common European Framework of Reference for Languages (CEFR) – and a 30-hour orientation course providing instruction on fundamental knowledge of the legal system, culture and history of Germany (...) For the first time, intermediate and final learning targets were established and standardized entry-level, intermediate and final tests introduced in adherence to European standards in order to optimise and test the achievement of learning targets.” (NIP 2007:37)

projects in Germany, such as the European Social Fund, or by referring to Germany's important cultural and political role in Europe.

2. Debating integration in Germany

On November 8, 2007, a key debate about the NIP took place in the German Parliament. In the debate, which lasted for about one and a half hours, all five political parties of the then German parliament had the chance to put forward their respective stance on the NIP.¹⁰ After opening statements by the Commissioner for Integration Maria Böhmer, a total of twelve members of the German Parliament took to the floor in order to debate the NIP. It might not be too surprising that in this political debate the 'black-red'¹¹ coalition government – as the initiators of the NIP – defended the NIP and the opposition parties criticized it. Maria Böhmer proudly announced “July 14, 2006, as a historic day”¹² for Germany by pointing out that the NIP is a “great collective work” of all societal actors, “spreading a spirit of optimism in our country,” and that a “paradigm shift was accomplished” (Deutscher Bundestag 2007:12735). Except for politicians from the conservative party CDU/CSU, all other speakers expressed self-criticism by acknowledging **the failure of German politicians and society to realise the fact that Germany had become a country of immigration a long time ago** and that appropriate integration policies were missing in the past. This debate makes clear that the coalition partners could not overcome their fundamental differences on the issue of naturalisation which is a central issue of integration policies and debates in Germany. In this context, the social democrat Rudolf Körper argued that

naturalisation is (...) not the finalisation of integration but an important precondition for its success. Only naturalisation makes full social and political participation possible. Therefore, we should reconsider the conditions for naturalisation and grant facilities in practice. (Deutscher Bundestag 2007:12739)

In answer to this position and demand, Reinhard Grindel from the CDU stated that

coexistence in Germany is possible only if naturalisation stands at the end of a successful integration process, if we come to an understanding of common values. The whole issue must not be at the beginning of an integration process – as a big hope or an entrance ticket, as it were – which only at the end will make itself apparent as difficult and mostly unsuccessful. (Deutscher Bundestag 2007: 12753)

¹⁰ At that time following parties were represented in the German parliament: Christian Democrats (CDU/CSU), Social Democrats (SPD), Liberals (FDP), The Greens, and the Left Party.

¹¹ Black, the colour of the centre-right Christian Democrats (CDU/CSU), led by Chancellor Angela Merkel, and red their traditional rivals the centre left Social Democrats (SPD).

¹² On that day the first Integration Summit convened in Berlin.

The statements above highlight the general problem of German naturalisation policy. While the conservative approach states that citizenship should be at the end of the integration process, the liberal approach claims that integration must start with citizenship and only then can integration successfully take place (ENAR, 2009: 39). It is quite remarkable that only Sevim Dagdelen of the Left party criticised the NIP for not mentioning at all the **institutional and structural racism** and discriminatory practices towards migrants in Germany. Dagdelen pointed out that the

[NIP's] non-binding memoranda of understanding are not appropriate to eliminate the many disadvantages and forms of discrimination in social and education policy and in the job market under which migrants especially suffer

and explained further that

disadvantages and discriminations are not the cause of deficient integration on the part of [immigrants]. The opposite is the case: The disadvantages and discrimination make integration harder for the [immigrants] on a daily basis. (Deutscher Bundestag, 2007:12740)¹³

3. Why the NIP is not enough and AGG is needed?

It is common sense in Germany that integration problems do exist and that effective, long-term and sustainable strategies are needed in order to overcome them. However, there seem to be two different attempts to explain the real causes of immigrants' 'incomplete' or 'partial' integration into German society. The '**deficit thesis**' regards characteristics, features, and behaviours of certain individuals and groups as problematic, deficient, and a hindrance to integration (Schulte et al 2010:112). The deficits usually referred to include the linguistic, educational and professional

13 Dagdelen further elaborates: "Wie kann es sein, dass wir in Ihrer Analyse der Rahmenbedingungen für die Integrationspolitik kein Wort über diese Diskriminierungen lesen? Wir finden kein Wort über Rassismus und Diskriminierungen in allen Bereichen der Gesellschaft wie Beruf, Schule, Politik und Privatleben, kein Wort über diskriminierende, ausgrenzende Gesetze und Regelungen wie das Asylbewerberleistungsgesetz, die sogenannte Residenzpflicht, faktische Ausbildungs- und Arbeitsverbote, kein Wort über den weitgehenden Ausschluss von der Teilnahme an Wahlen und der damit verweigerten politischen Teilhabe in einem zentralen Demokratiebereich, kein Wort über die erschwerten Einbürgerungsregelungen, die Migranten sehr lange im Zustand der grundlegenden Ungleichbehandlung und minderer Rechte belassen, und kein Wort über ein sozial höchst selektives und Ungleichheiten verfestigendes dreigliedriges Schulsystem. Bei Ihnen ergibt sich der Eindruck, als wurzele die unzureichende Integration im Unvermögen und im Unwillen der zu Integrierenden. Sie reduzieren das Problem weitgehend auf mangelnde Deutschkenntnisse von Migranten, denen eine Bringschuld unterstellt wird. Die Mehrheitsgesellschaft habe lediglich die Aufgabe, sie dabei zu fördern und zu fordern. Doch während beim Fordern im Rahmen der Novellierung des Zuwanderungsgesetzes knallharte gesetzliche Fakten geschaffen wurden, bleibt es beim Fördern im Nationalen Integrationsplan bei Handlungsempfehlungen und Absichtserklärungen. Wissen Sie, das erinnert mich irgendwie an Hartz IV und die Sozialpolitik der letzten Jahre. Beim Fordern – Zwang und Ausbeutung – war die Politik sehr effizient und erfolgreich, beim Fördern blieb es bei wohlfeilen Erklärungen." (Deutscher Bundestag 2007:12740).

qualifications of immigrants. This deficit approach can be found in the NIP when Chancellor Angela Merkel writes in her introductory remarks that

the majority of these people [immigrants] have already found their place in our society, but we are also aware of significant deficits in the integration of a regrettably substantial number of citizens. This concerns, for example, an insufficient command of the German language and weaknesses in the areas of education and professional training. These deficits express themselves for example in a relatively high unemployment rate and even social isolation (...) [Immigrants must recognize] the German legal system and the values protected by the constitution (...) [and] ensure that they acquire a sufficient command of the German language. (Bundesregierung 2007:7)

In sum, the immigrants themselves are the real cause of the integration problems. This approach is widespread in the prevailing integration discourse in Germany. In contrast to this approach, **the ‘discrimination thesis’** claims that different forms and mechanisms of discrimination on the part of the *host society* towards the immigrants are a very relevant, though not exclusive, cause for Germany’s integration problems (Schulte et al 2010:113). According to this thesis, the roots of integration problems can only partly be explained by economic deficits and cultural or other differences; equally important are the exclusionary effects of prejudice, stigmatization and discrimination. As demonstrated above, the NIP is not binding and includes no anti-discriminatory measures. This fact shows that the approach of governmental institutions towards the challenges posed by immigration is one-sided and also reveals something about the effectiveness and seriousness of Germany’s integration policy. If one wants to find a document that contains binding and anti-discriminatory measures, one needs to look into the **General Equal Treatment Act** (*Allgemeine Gleichbehandlungsgesetz, AGG*), which came into effect on August 18, **2006**, almost parallel to the NIP.

In terms of integration policy and anti-discrimination, the Commissioner for Integration occupies a key role, as it is responsible for combating discrimination against foreigners and immigrants, and has the duty and authority to deal with and assist in individual cases within the framework of the AGG. Besides her lead responsibility in coordinating the NIP, the Commissioner's key tasks include dealing with racial discrimination and discrimination on account of ethnic origin, and the elimination of structural forms of discrimination. (ECRI 2009:18).

4. The Federal Anti-Discrimination Agency

An essential element of the AGG was the creation of the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle, ADS*) which was placed within the **Federal Ministry for Family Affairs, Senior Citizens, Women and Youth** in Berlin. While the

ADS is functionally dependent on the Ministry and its director is appointed by the German Government, the AGG describes the ADS as “independent in the execution of its duties and only subject to the law.” (ADS 2009b:16). The main mandate of the ADS is to receive complaints from any person who believes he or she has been discriminated against on the grounds provided in the AGG. The ADS is then mandated to “give independent assistance” to such persons, in particular by

- providing information on claims and possible legal action
- arranging for advice to be provided by another authority
- endeavoring to achieve an out-of-court settlement

The ADS, therefore, does not work as a quasi-legal complaint mechanism, as it is not empowered to bring about formal discrimination complaints against persons or institutions thought to have engaged in discriminatory behavior. Contrary to similar bodies in other European countries, the ADS has more of an information and counseling mandate than one of providing legal support (Bambal 2009). The ADS is required to cooperate with the responsible Parliamentary Commissioners of the German *Bundestag* and the Commissioner for Integration, where their functions and duties overlap. In cases which fall within the remit of these Commissioners, the ADS is asked to forward the petitioner’s complaint to them in order to avoid duplication. From its inception in 2006 until the national elections in September 2009 the ADS was run by Dr. Martina Köppen. In February 2010 Ms. Christine Lüders was appointed by the German Government as the new director of the ADS where she heads 22 staff members and manages a budget of about three million Euros. The ADS is divided into three departments: public relations, research and advisory services. The ADS has dealt with **a limited number of cases of discrimination based on race or ethnicity**. From August 2006 to March 2010, 25.5% of cases addressed by the ADS were related to discrimination based on disability, 24.8% on discrimination on the basis of gender and 18.9% on discrimination based on age. Only 15.2% of cases involved discrimination on grounds of race or ethnicity and 3.6% on grounds of religion or belief (ADS 2010:24-25).

In its meeting with the UN Special Rapporteur, then-director of the ADS, Dr. Köppen, emphasized that **of the 14.4% of cases on racial discrimination, a large number are related to cases of bullying at the workplace, discrimination in admission to night clubs and discrimination in the rental of housing**. She informed the UN Special Rapporteur that the approach of the ADS is to rely on a

mediation role between the alleged victim and the perpetrator of discrimination in order to find a mutually acceptable settlement. Dr. Köppen expressed satisfaction with this mandate, which in her view facilitates a successful resolution to many of the conflicts brought to its attention (UN Special Rapporteur 2010:7).

Civil society organizations' evaluations of the ADS's work differ from Dr. Köppen's positive assessment. They underscore the fact that the ADS has a weak mandate, including the incapacity to take up cases, even for strategic litigation. Furthermore, the ADS lacks adequate human and financial resources to fully implement its mandate, employing around 20 full-time staff. The lack of regional or local structures, including field offices, is also seen as posing a major obstacle for victims of discrimination in relying on the ADS. **Many organizations have also pointed out that the ADS has not been proactive in fulfilling its role, such as by carrying out in-depth research on racism, collecting data or undertaking paired testing to assess discrimination in employment and housing.** The issue of independence of the ADS is also being addressed by many civil society actors, who expressed discomfort with the fact that the director of the ADS is appointed by a Ministry and that the ADS may be overly responsive to the majority in parliament (Bambal 2009).

Observers point out that the image and work of the ADS greatly suffered because of Dr. Köppen's inability and unwillingness to develop a positive public profile during her term between 2006 and 2009. The main focus of Dr. Köppen was to create a "Bündnis mit der Wirtschaft" (Alliance with the Economy) which is not among the designated tasks of the director of the ADS as stated in § 27 of the AGG. Paradoxically, on several occasions she characterized anti-discrimination measures as harmful to German businesses and the economy and, therefore, was sharply criticized by civil society actors for not fulfilling her real task as the director of ADS (Bambal 2009, Nickel 2009). However, within just a few months, Ms. Christine Lüders, who took over in February 2010, was able to develop a public profile for the ADS and, according to the liberal daily paper *Süddeutsche Zeitung*, has in just a few months time advanced the work of ADS more than her predecessor accomplished during her entire mandate (SZ 24.08.2010.). Her latest and very controversial initiative is the first pilot scheme for anonymised application procedures in Germany.

5. The General Equal Treatment Act

After years of controversy, the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz; German abbreviation: AGG) came into force on August 18th, 2006. Basically the AGG is the transposition of the following four EU anti-discrimination directives into German law¹⁴:

- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin¹⁵
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation¹⁶
- Directive 2002/73/EC of the European Parliament and of the Council amending Council Directive 76/207/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions¹⁷ and the
- Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The function of these directives is quite ambitious: to change the social reality in the EU member states by eliminating discrimination efficiently – not merely putting a ban on it. In their respective scopes, these directives provide definitions of the various kinds of discrimination and encompass, among other hallmarks, obligations to impose effective, proportionate and dissuasive sanctions in cases of infringement of the principle of equal treatment, as well as mechanisms for the purpose of facilitating the furnishing of proof by the persons affected (ADS Website).

As stated in § 1 of the AGG, its purpose is **“to prevent or to stop discrimination on grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation”** (ADS 2009b:4). Interestingly **the ADS refuses to use the term**

¹⁴ It is quite striking to see how long and vehemently Germany resisted implementing these EU directives. EU member states had to implement the following first two directives by the end of 2003. As Germany had not followed this procedure, it was charged for violation of the contract by the European Court of Justice.

¹⁵ The purpose of this directive, also referred to as the 'Anti-Racism Directive,' is to create a framework to combat all kinds of discrimination on grounds of racism or those which have occurred on grounds of ethnic origin.

¹⁶ With this directive, the EU intends to establish a general framework to combat all kinds of discrimination on grounds of religion or belief, disability, age or sexual orientation, and in employment and occupation.

¹⁷ This directive, also known as the EU Gender Directive, deals with putting the principle of equal treatment of men and women into effect, with regard to their access to employment, vocational training and promotion as well as with regard to working conditions.

“race” in its publications and website, using instead **“grounds of race” or discrimination**. ADS clarifies that it “conscientiously avoids the use of the term ‘race,’ which is included in the General Act on Equal Treatment. **It denies all theories that try to prove the existence of different human races**” (ADS Website).¹⁸

Contrary to the recommendations by the European Commission against Racism and Intolerance (ECRI), **the AGG does not include language and nationality as protected grounds** (ECRI 2009:15). However, the AGG still prohibits discrimination on the above-mentioned grounds in a broad field, such as employment, housing, education, vocational training, etc. In this respect, the AGG can be considered a significant milestone in

- a) offering particular protection to vulnerable communities in Germany,
- b) creating a particular set of rights that can be pursued through the courts and
- c) making more specific the general equal treatment provision contained in the German Constitution, especially § 3 (UN Special Report on Germany 2010:6).

Furthermore, the AGG addresses the question of ‘affirmative action’ in § 5 titled “Positive Action,” which provides that “unequal treatment shall only be permissible where suitable and appropriate measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under Section 1” (AGG 2009b:6). The AGG governs the claims and legal consequences in discrimination cases, both in the area of work and also for the field of civil law. The ADS follows a horizontal approach with its work, meaning that a hierarchy of grounds for discrimination and/or of groups of affected individuals does not exist and that the various grounds for discrimination deserve equal protection. (AGG Website)

5.1. The contested AGG

The enactment of the AGG was a long controversial process because of the concern that it would lead to increasing bureaucracy, especially in relation to employment discrimination. This concern was mainly expressed by societal actors (such as the conservative and liberal parties CDU/SCU and the FDP, and partly also from the Churches) and the private sector (Schulte et al 2010:131). While the fears raised concerning the implications of the AGG were not long sustained, there still remains a

¹⁸ The ADS even goes so far as to support the German Institute for Human Rights’ proposal to remove the term “race” from § 3 of the German Constitution and suggests to replace it by “prohibition of racist discrimination” (PM ADS 13.04.2010).

degree of reluctance on the part of many actors to fully accept the provisions of the AGG (Nickel 2009:2). The representative study "Discriminations in Everyday Life" carried out on behalf of the ADS, demonstrates that every third citizen in Germany has already experienced discrimination on grounds specified in the AGG. But the existence of the AGG is not yet widely known to any satisfactory extent. According to the study, only every third respondent had already heard about the AGG (ADSa 2009:13pp). German NGOs – who were very supportive of the AGG – call attention to the fact that currently there is little resort to the AGG by victims of discrimination which mainly can be ascribed to the lack of awareness of the law. Furthermore, **the lack of data collection on racial discrimination by most public agencies** contributes to the difficulties in providing solid evidence of structural discrimination as well. Many organisations also point out that because there is no tradition of strategic litigation in Germany, **only a limited number of racial discrimination cases reach the higher levels of the judiciary** (Bambal, 2009).

5.2. Critique of the AGG – shortcomings of the AGG in fighting discrimination

Although the passing of the AGG has been perceived positively by the majority of German civil society actors, the following concerns have been expressed regarding the law's scope.

Protection against discrimination under civil law

The Prohibition of Discrimination under Civil Law (§ 19 AGG) is conditioned in subparagraph 3 where it is stated that in

the case of housing rental, a difference in treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.

Civil society actors have objected to this provision, expressing their concern about the potential negative effects of this passage, which clearly permits differential treatment on the basis of all the respected grounds, including racial or ethnic origin. In their response to this critique authorities have pointed out that this is an affirmative action provision, aimed at supporting more integration in neighborhoods, and that it is solely applicable to landlords owning a minimum of 50 rental units. Furthermore, they claim that in reality no complaints have so far been lodged by people who have been rejected housing on the basis of this provision (ECRI 2009:16). In addition to this, critiques of the AGG highlight two main hindrances to the use of the AGG by victims of racial

discrimination. One source of criticism is that the public is largely unaware of the AGG's purpose and the scope, or even that the AGG exists at all. Another is concerned with the time limit of two months for initiating a complaint.

Even though racial discrimination still constitutes a serious problem in daily life in Germany, the existence, purpose and scope of the AGG is widely unknown, including among potential victims. According to a study conducted by the European Commission (Special Eurobarometer, 2009), 54% of people surveyed believed that discrimination on grounds of ethnic origin was widespread (compared with 30% who considered discrimination on grounds of gender to be widespread); in the same study, 16% of those surveyed reported having seen someone being discriminated against or harassed on the basis of their ethnic origin, and 8% on the basis of their religion or belief (compared with 5% reporting having witnessed someone being discriminated against or harassed on the basis of their gender). Yet only 26% of the people surveyed stated that they knew their rights if they were victims of discrimination or harassment, and only 29% were aware of the existence of a law prohibiting discrimination on the basis of ethnic origin by employers when hiring new employees.

Moreover, the ADS itself reports that only 15.2% of cases it dealt with between August 2006 and March 2010 concerned discrimination on grounds of ethnic origin, and a total of 3.6% on grounds of belief or religion – compared with 25.5% on the basis of **disability**, 24.8% on the basis of **gender** and 18.9% on the basis of **age**. Regarding court proceedings, the majority of case law to date concerns discrimination on grounds of age or disability; only two judgments were known to have been delivered in cases concerning discrimination on grounds of ethnic origin (ADS 2010). This discrepancy – between the proportion of observed instances of discrimination on grounds of ethnic origin, religion or belief and the proportion of actually reported cases of such discrimination – would seem to point to a lack of awareness amongst victims or potential victims of racial discrimination of the existence and scope of the AGG. Furthermore, NGOs frequently refer to the time limit of two months for initiating a complaint as another crucial hindrance. Given the fact that many victims, especially where discrimination on grounds of their ethnic origin is at stake, remain unaware of the existence of the AGG, this two-month time-limit seems to be counterproductive in fighting discrimination in Germany. Furthermore, victims will probably not be able to react within the time-frame as they do not immediately know where to look for advice and counseling, or may even be hesitant to bring up the issue (Bambal 2009).

In comparison, there are very few cases concerning ethnic background or religion. As mentioned above, disability, gender, and age are among the most common cases. In its publication about significant cases and decisions concerning the AGG, the ADS lists the following case related to religion.

The “deaconry case”

While § 9 AGG does provide a permissible difference of treatment on grounds of belief or religion, where such grounds constitute a justified occupational requirement for a particular belief or religion, this provision has so far been interpreted in a rather narrow way as the “deaconry case” illustrates (ECRI 2009:15). In 2007, a Muslim woman of Turkish origin applied for an advertised vacancy in a deaconry of the German Protestant Church which is active in integration work. The deaconry who was in search of an integration counsellor for immigration was interested in the woman’s application and approached her *via* telephone, asking her if she would be interested in joining a Christian church. The applicant refused to do so and eventually did not get the job. Interestingly, perhaps ironically, this position was **funded by the European Union’s “Equal Program” which specifically aims at the professional integration of disadvantaged groups** (Nickel 2009:16). The first court decision regarded this as religious discrimination and the victim was granted compensation in the amount of three monthly earnings (3,900 €). In its reasoning the court stated that the professed domain (*verkündungsnaher Bereich*) of the church was not affected and, therefore, no exception according to § 9 subparagraph 1 AGG could be made. However, the following court decision did not refer to the AGG at all, but simply mentioned that the prerequisites of the job was a university degree and as the applicant had no university degree, she was rejected based on her lack of qualification. In the meantime, the Federal Labor Court allowed the appeal, so a decision in principle concerning § 9 subparagraph 1 AGG will be taken soon (Nickel 2009:16).

Conclusion

Without a doubt the NIP and AGG have moved Germany forward in terms of a more comprehensive and sustainable approach towards integration policy and anti-discrimination. Through the enactment of the AGG and the establishment of the ADS the German Government has undertaken crucial steps in reforming the legal and institutional framework to combat all forms of discrimination. Furthermore, apart from

creating litigable rights, those two measures also have very symbolic functions, demonstrating to the public and society at large that discrimination and racism are against the law and that those practices will not remain unsanctioned. However, there is no reason for being overly optimistic that through these measures Germany will overcome its pressing integration problems and that discrimination based on ethnic or religious grounds will disappear any time soon. While the NIP and AGG constitute promising developments, various political occurrences and legal directives in Germany lead to relapses. Therefore, the critique that the German government is playing a double game by implementing discriminatory legislation on the one hand, and pursuing and demanding integration on the other, is not too far-fetched.

As the analysis of the AGG has demonstrated, just passing an anti-discrimination law will not suffice to combat discrimination in Germany. This is due in part to a general lack of awareness about the scope and importance of the AGG. But the law's insufficiency is to a certain extent the result of problematic passages in the AGG, passages that can be interpreted as providing room for discriminatory actions. Using the example of the exception contained in § 19 (3) of the AGG, which allows for discrimination in the rental of housing, it was illustrated that even the new anti-discriminatory measures may sometimes still include discriminatory elements. Also, § 9 of the AGG, which permits differential treatment on grounds of religion or belief, seems to be very problematic and will need to be revised in the future.

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