



ENAR Shadow Report 2005

Racism in Germany

**Dr. Andreas Hieronymus
iMiR – Institut für Migrations- und
Rassismusforschung Hamburg, Germany**

**Assisted by Ines Fögen, Thomas Gondermann, Ana
Tenreiro and Till Telake
English proofreading by Rona Linde**

Contents Table

| | |
|--|----|
| I. Introduction | 3 |
| II. Political and Legislative Developments | 5 |
| II.i Anti discrimination | 6 |
| II.ii Migration, family reunion and asylum policies..... | 7 |
| II.iii Racism as a crime | 11 |
| II.iv Counter Terrorism..... | 12 |
| III. Communities vulnerable to racism | 14 |
| IV. Manifestations of racism and religious discrimination..... | 20 |
| IV.i Employment | 20 |
| IV.ii Housing | 22 |
| IV.iii Education..... | 23 |
| IV.iv Health | 24 |
| IV.v Policing and racial profiling..... | 25 |
| IV.vi Racist violence and crime..... | 26 |
| IV.vii Access to goods and services in the public and private sector..... | 28 |
| IV.viii Media, including the Internet..... | 29 |
| V. Assessing the response | 31 |
| V.i Anti discrimination | 31 |
| V.ii Racist violence and racist crime | 31 |
| V.iii Counter-terrorism and protection of human rights | 32 |
| V.iv Integration and social inclusion of ethnic and religious minorities | 33 |
| VI. Conclusion..... | 34 |
| VII. Bibliography..... | 36 |
| ANNEX I: Overall Assessment of Directive 2000/43/EC | 37 |
| ANNEX II: List of non-transposed EU Directives in 2005..... | 39 |

I. Introduction

With the rise of Europe as a unified political body, two traditions of racial conception and state formation influence the way "Europeaness" is being experienced. From the 17th to the 19th century a racial naturalism was dominant, superiority was legitimised through nature. Since the 1830's a "racial" historicism emerged, which legitimised superiority through the historical progress of civilisation.¹ This "Europeanisation", which manifests itself, according to Goldberg, in the "whitening" of Europe through asylum and restrictive migration policies, accompanied by the violence of bureaucracy and police, the reshaping of an enlightened religious identity by fighting Islam, the refusal to recognise racism as a European legacy and attributing racism to the fringes of society. The official denial of racial categorisation, although it is part of everyday culture, the foreignisation of the "racially" non-European and the struggle for legitimate languages, is contested.

When we compare this analytical approach of the post-colonial studies with the result of this year's shadow report, we can see "Europeanisation" at work within Germany. With the introduction of immigration legislation in January 2005, the closing up of Germany has been formalised and has increased the restrictive migration policies from earlier. The recognition of asylum seekers is at an all time low, while the revocation of asylum is at its peak. This formal policy is accompanied by the violence of bureaucracy and police in the areas of asylum, deportation and family reunion. The Islamophobic nature of the reshaping of an enlightened religious European identity by fighting Islam is at the centre when it comes to naturalisation, expatriation, counter-terrorism, policing, racial profiling and the labour market. Especially strong is the refusal to recognise racism as a European legacy in Germany. It is attributed to the fringes of society, to right-wing extremists and there is an official denial of racial categorisation, although it forms part of everyday life.

The practice of "redlining" is applied in the insurance and financial sectors to single out specific risk areas where migrants reside. This overt racism strongly impacts on the German social structure. Islamophobia advances the foreignisation of the "racially" non-European as it merges ethnicity and religion, thereby forming a new type of European supra-identity. This in turn enlarges the concept of an "ethnic" nation-state to a European dimension.

The struggle for legitimate languages is at the core of educational policies in Germany. Instead of applying a multilingual approach in this diverse society and respecting mother-tongue education as formulated in the convention on the rights of children Germany has instead openly promoted German as the only legitimate language.

¹ Goldberg, David Theo: Racial Rule. In: Goldberg, David Theo: Relocating Post colonialism, Blackwell 2002, p. 82-102.

This is already the fourth shadow report for Germany since ENAR started to investigate the issue of victims of racism in 2002. This year the structure has changed. We started with an investigation into the political and legislative developments in the fields of anti-discrimination, migration, family reunion, asylum policies, naturalisations, expatriation and racism as a crime and counter-terrorism. This is followed by a description of communities which are vulnerable to racism. Similar to previous reports, we provide a description of access to German citizenship, starting off with the least privileged groupings. These comprise: paperless migrants; asylum seekers; refugees; and continues with EU-citizens and third-country nationals with other legal status and ultimately ends with German citizens. The latter grouping includes the new minorities by naturalisation through the reform of Germany's citizenship law: Afro-Germans; Ethnic Germans; national minorities; German Sinti and Roma; and religious minorities.

We have looked at the manifestations of racism and religious discrimination in the fields of employment, housing, education, health, policing, racial profiling, racist violence and crime, access to goods and services in the public and private sector and the media, including the Internet. At the end of the report, we assess the social and governmental response to anti-discrimination, racist violence and racist crime. Additionally, we also evaluate counter-terrorism and the protection of human rights and the integration and social inclusion of ethnic and religious minorities. In the conclusion we look at important developments and explore the significance of the civil society response.

II. Political and Legislative Developments

With regards to the political and legislative developments in 2005 in Germany, two major events can be identified. Firstly, migration legislation came into effect on 1 January 2005, followed by the blockade between the Upper and the Lower house which culminated in new elections for the Bundestag (Lower house). The elections of 18 September 2005 brought a grand coalition into power with the SPD gaining 34,2% the CDU, 27,8% and the CSU, 7,4%, cumulatively representing 69,4% of the electorate in government. The opposition parties garnered 26,6% of the electorate (Liberals FDP) 9,8%; Green party (GRÜNE) 8,1% and the newly formed leftist party of the Social-democrats and communists (Die Linke) 8,7%.

At the beginning of the election campaign PRO ASYL, the intercultural council (Interkulturelle Rat) and the department of migration policy of the Federation of German Trade Unions (Referat Migrationspolitik DGB-Bundesvorstand) issued a statement on 22 July 2005, calling for all parties to renounce populist agitation against migrants and refugees during the election campaign.² Shortly before the start of the election campaign, Oskar Lafontaine of the Left Party started a demagogical rhetoric against "foreign labourers" from Eastern Europe. The Conservatives reinforced this threat by linking migration with accession talks with Turkey. After the London bombings there was once again the increasing danger of a rising suspicion against the Muslim community which could be used for mobilising and advancing the Islamophobic attitudes among the electorate. New research has shown that racist, xenophobic, anti-Semitic and Islamophobic attitudes are ever increasingly moving towards the centre of German society. A responsible policy has to take a perspective which views migrants and refugees as being positive and innovative and has to reject all perspectives related to sealing-off and exclusion as they do not constitute a solution but instead form part of the problem.

On 13 November 2005 PRO ASYL issued another statement evaluating the coalition treaty of the grand coalition. PRO ASYL concluded that there was a clear decision for dialogue and integration policy, however where political action was required only orders to review had been issued. At least such reviews for "illegal" migrants, the right of third country nationals for local elections and the issue of deportation of children being born and raised in Germany, had been agreed³ upon.

2 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news////neuwahlen_zum_bundestag/back/64/pS/1139470594/chash/7a400a6ca3/index.html, 09.02.2006.

3 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news////pro_asyl_zu_den_ergebnissen_der_koalitionsvereinbarungen_im_bereich_migration_und_fluchtlingsspoliti/back/64/pS/1139470594/chash/ee03fb1b39/index.html, 09.02.2006.

II.i Anti discrimination

The transposition of the EU Antidiscrimination directives has a long and painful history in Germany.

- December 2001: First draft of an antidiscrimination legislation for Civil law (2000/43/EC)
- April 2002: Before the election campaign, the draft was dropped
- July 2004: Plan of infringement proceedings of Commission
- December 2004: Second draft legislation covering 2000/43/EC, 2000/78/EC, 2000/73/EC and 2004/113/EC
- April 2005: European Court of Justice (ECJ) ruled that Germany had breached EU law by failing to transpose directive 2000/43/EC⁴
- June 2005: A majority of the Lower house (Bundestag) voted in favour of the legislation, but the mediation committee of the Federal Council (Bundesrat) could not find a compromise and election campaigning started
- November 2005: The Grand coalition neglected to mention anti-discrimination legislation in their coalition treaty
- January 2006: Same draft legislation was again introduced into the parliament (Lower house, Bundestag) and dropped

The transposition period of the directives 2000/43/EC and 2000/78/EC ended in 2003. Directive 2002/73/EC had to be transposed until 5 October 2005 and 2004/113/EG until 21 December 2007. The objective of the legislation was the transposition into one integrated law. The German national coordination of ENAR (Net against Racism) evaluated the second draft of the anti-discrimination legislation in the beginning of 2005 and reached the following conclusions⁵:

- The second draft covers ethnic background, gender, religion or worldview, disability, age and sexual identity.
- It includes a prohibition to discriminate in social, civil and industrial law and defines unequal treatment.
- Compensation for damages, eased legal protection for victims, support of victims by NGO's, establishment of an anti-discrimination body at the Ministry for Family, Seniors, Women and Youth is planned.
- The main part of the transposition law is Article 1, which includes the anti-discrimination law (ADG). Article 2 protects male and female soldiers against discrimination. Article 3 includes changes in existing laws, e.g. legislation concerning health and safety at work, industrial relations act, SGB I, SGB III, SGB IV, SGB IX and the Law for soldiers.
- Nationality as ground has not been introduced, although it is mentioned in existing anti-discrimination legislation for the labour market.

4 <http://phpnuke.imir.de/modules.php?name=News&file=article&sid=103&mode=&order=0&thold=0>, 06.02.2006.

5 <http://phpnuke.imir.de/modules.php?name=News&file=article&sid=93&mode=&order=0&thold=0>, 09.02.2006.

- For the public sector of education no concrete measures are mentioned, not fulfilling requirements of directives.
- No legal protection or sanctions in the public sector are mentioned.
- Contrary to legislation in Labour law, ascribed grounds of discrimination or appearance are not mentioned (If I discriminate because I think he is Turkish or she looks Turkish).
- Victimisation has to be forbidden in the labour market as well as in the public domain.
- Anti-discrimination bodies are not truly independent and are centralised.
- There is no clear call for qualified staff in the body.

In a press release dated 21 January 2005, PRO ASYL welcomes the draft because it introduces the shift of burden of proof for victims of racism, it fights indirect discrimination and moves beyond the minimal standards of the directives. The draft is criticised along the following topics⁶:

- Like the "Net against Racism", PRO ASYL advocates for the replacement of the term "Rasse" (race) with the term "ethnic background" in the legislation because the term is in itself discriminating and is not necessary for transposition.
- The federal anti-discrimination body is ill-equipped and needs branches on a state-level (Länderlevel) and in local municipalities.
- A civil anti-discrimination law does not automatically transcribe into an anti-discrimination policy. Such a policy should not restrict itself to the private sector but needs to abolish discriminating laws in general. Refugees and migrants are discriminated against and excluded by laws and administrative decisions. Deportation camps, residence laws, discrimination in social rights, exclusion through the asylum law (Asylbewerberleistungsgesetz) and refusal of work permits are some of these.

II.ii Migration, family reunion and asylum policies

The new immigration law called "Law for Control and Limitation of Immigration (Zuwanderungsgesetz)" is legally binding since 1 January 2005. During 2005, the Federal Ministry of the Interior submitted bills amending the immigration law twice already. It is said that a law change is necessary in order to follow the legal obligations of eleven directives of the European Union. It looks like the Federal Government used this opportunity to tighten asylum and residence legislation further.⁷

6 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news////antidiskriminierungsgesetzentwurf_im_bundestag/browse/1/back/64/pS/1139470594/chash/0a87e07c44/index.html, 09.02.2006.

7 <http://www.proasyl.de>, 09.02.2006.

During the negotiations for the Grand coalition, the working group "interior policy" agreed on measures prohibiting alleged abuses of paternity recognition to obtain a residence title and fighting forced marriages. With the introduction of an official contestation-right, the new government does not only take back previous achievements made in this field, but it discriminates against German children on the basis of the citizenship of their parents. This regulation is exclusively targeting bi-national couples as well as parents with a foreign passport. The parenthood of Germans is never questioned. No reliable data on the extent of forced marriages exist. Arranged marriages, where the potential bride can reject the selected partner, are very often equated with forced marriages. Here, however a clear differentiation should be made: arranged marriages are not forced marriages and the transition from a free to a forced decision is fluid. The problem of young women being socialized in Germany and then introduced to the country of origin of the parents in order to marry there remains completely unconsidered by these measures.

Since the final passing of the immigration law, several decisions have crucially intervened in the lives of bi-national families. They already partially intervene prior to the occurrence of legal claims.⁸

The Migration law of 2005 is to be evaluated by the Grand coalition, especially targeting the problem of chain tolerance of asylum seekers and refugees, which has not yet been resolved. On a daily basis individuals who have lived in Germany for several years are being deported to their countries of origin. Often, their children have neither experience nor knowledge of their parents' country. Others are merely tolerated and live with great uncertainty for many years. New regulations in the job market, providing access for these tolerated people, has not been agreed upon. For the affected people, the stigma of being dependant on social security benefits is a substantial barrier to stabilising their residence. The coalition instead focuses its priorities on the removal of practical obstacles for deportation. This enables them to continue deportation in nearly every state at war and crisis. Obstacles of deportation are simply defined away and people are rigidly and indiscriminately deported.

The progressive-sounding intention of the coalition parties of wanting to strengthen cooperation with those states which provide a steady supply of refugees to fight the causes of flight is contradictory to what has happened in the past years. In practical terms, it did not constitute a fight against the cause but rather developed into a battle against the refugee. It will be interesting to see how the new Federal Minister of the Interior interprets the topic. He rejected the idea of the former Minister to establish refugee camps in North Africa. Serious attempts to alleviate and eliminate the causes of migration requires a long-term development based on human rights. The coalition agreement contains a clear commitment to dialogue and integration politics. A consistent policy of refugee

⁸ <http://www.verband-binationaler.de/aktuelles/index.htm>, 09.02.2006.

protection and an agenda for future integration and non-discrimination politics are not included.⁹

After one year of practical experience, PRO ASYL concludes that the humanitarian needs of the immigration law are not being met. Of the 193,000 people being tolerated in Germany, approximately 140,000 have already resided in Germany for more than five years. Approximately 50,000 have lived in Germany for more than a decade. For those groups, who cannot leave the country for legal or other reasons, a right of residence (§25 paragraph 5, residence law) should be made available.¹⁰

In 1998, 577 refugees had their asylum claims revoked, in 2003 there were already more than 8,000. In 2004 this figure almost doubled. In almost 15,000 refugee cases, the approved asylum claim was been revoked. If revocations according to § 53 of the Aliens Act (Ausländergesetz) is added, the number amounts to almost 17,000 people. So far, refugees from Serbia and Montenegro, the majority among them being Kosovar, present the biggest group with more than 7,000 revocations. About as many refugees (almost 7,000) from Iraq had their approved asylum claims revoked.¹¹

A broad alliance of Welfare organisations, associations of Judges and lawyers and human rights organisations presented a joint "memorandum" on the present situation of the German asylum legislation. They criticised the German practice of dealing with asylum applications where the proceedings contradict constitutional and international law. The asylum legislation is in a steady process of purge, of particular concern is the quality of hearings and decisions on the asylum claims.¹²

The protection of family life is a human right (art. 6 Constitution, art. 8 European human right conventions, art. 12 and 16 of the general declaration on human rights). This right is not equally granted to all people in Germany. The restrictive German Aliens Act (Ausländergesetz) permits the separation of an individual from his/her relatives under certain circumstances. The weaker the residence permit is, the greater the legal protection of the family is restricted. If a family is torn apart because of deportation, the inhumanity of the official practice becomes obvious. On the other hand it shows clearly that the legal protection of migrant families is too weak. If it is possible for the authorities to deport partial families in order to compel the remaining family members to leave the country as well, then the law and the practice are no longer synchronised. In view of both the national

9 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news////pro_asyl_zu_den_ergebnissen_der_koalitionsvereinbarungen_im_bereich_migration_und_fluchtlingpolitik/back/64/pS/1139470594/chash/ee03fb1b39/index.html, 09.02.2006.

10 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news////bilanz_nach_einem_jahr_zuwanderungsgesetz/back/105/chash/2092da92f5/index.html, 09.02.2006.

11 <http://www.proasyl.de/en/index.html>, 09.02.2006.

12 <http://www.proasyl.de/de/informationen/aktuelles/memorandum/index.html>, 09.02.2006.

and international highly valued protection of marriage and family, the German authorities should reconsider their deportation decisions. This becomes especially significant when taking into consideration the effects of deportation on the family. Research by PRO ASYL showed¹³:

- The number of deportations where families are torn apart increased drastically in the last years.
- in some of the German states (Länder), deportation of individual relatives does not occur, in others it happens on a daily basis.
- The authorities in each of the states (Länder) deal differently with this question. It is continuously the same agencies which make headlines with the separate deportation of individual family members.

After the experience of National Socialism in Germany, it was not possible to deprive someone of German citizenship without very strong reasons. German citizenship offered at least some protection, although it did not necessarily give the guarantee of participation in German society. For 'newly naturalised' Germans, this is no longer the case. With the renewed Citizenship Law of 1 January 2000, German citizenship is automatically revoked if another citizenship is applied for. According to the "Bundesausländerbeirat" dual citizenship is not an exception in Germany. There are bilateral agreements with Italy, Greece, Portugal, Poland and others, which permits dual citizenship for those citizens (Press info Bundesausländerbeirat, 13.06.2005). The German Citizenship Law of 1998 was "adjusted" by the new Immigration Law (Law for Control and Limitation of Immigration and for Regulation of Residence and Integration of the EU-Citizens and 'Foreigners') on 5 August 2004.¹⁴ Until the "Aufenthaltsgesetz" (Residence Law) came into operation on 1 January 2005 there have been no regulations introduced regarding how those being affected by the criminalisation of dual citizenship should be treated.

To be able to claim residence a time limit from 1 January 2005 to 30 June 2005 was introduced (Presseinfo Bundesausländerbeirat, 13.06.2005). The practice of revoking citizenship because of other reasons was applied in at least five cases in Hessen in 2005. The reason for the withdrawal was the argument that the new citizens had affiliations to organizations which opposed the constitution. They were accused of gaining citizenship through trickery.¹⁵

Although ECRI has requested German authorities to review the practical application of the Citizenship Law (satisfactory knowledge of the German language, loyalty to the constitution, no previous conviction and being self-sufficient) and to look for possible problems in the arbitrariness of or discriminating nature of the application process, this was not done in 2005. It is

13 <http://www.proasyl.de/de/informationen/aktuelles/index.html>, 09.02.2006.

14 <http://www.agah-hessen.de/Themen/Recht/Staatsangehörigkeitsrecht/stag.ptn.pdf>

15 http://web.uni-bamberg.de/~ba6ef3/dokz05_d.htm, 06.03.2006.

also necessary that the German authorities collect reliable data on rejected applications of naturalisation and the reasons why those were rejected.¹⁶

A new Immigration test was prepared in the second half of 2005 in the Southern state of Baden-Württemberg. It came into effect on 1 January 2006 and is referred to in the media as the "Muslim test". This instrument aims to assess the beliefs of applicants from Arab countries who are seeking citizenship. It additionally tries to determine the attitudes applicants have towards the German constitution and to Western values. Questions such as: "Some people accuse the Jews of being responsible for all that's bad in the world. What do you think of such accusations?" and "Your daughter applies for a job in Germany but she gets a negative response. Later you find out that a black woman from Somalia got the job instead. What do you do?" are used to determine whether applicants should be further interviewed. Should subsequent behaviour of these citizens demonstrate that they lied during the test, the state reserves the right to withdraw their citizenship.¹⁷

II.iii Racism as a crime

Denying the holocaust is not only an opinion but a crime in Germany and this is a legacy of World War II. This is different to when it comes to considering racism as a crime, which has its foundation in the ICERD (International Convention on the Elimination of All Forms of Racial Discrimination, 1966), which all EU Member States signed and clearly engages the States to:

"Declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as actions of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof."¹⁸

In Germany the discourse and legal practice is not about racism but about right-wing extremism. E.g. paragraph 86a in the Penal Code of Germany prohibits use of symbols of anti-constitutional organisations. Incitement to hatred, to violence or to arbitrary measures against sections of society, impairment of the human dignity of others, agitation against another national, racial, religious or ethnic group (Criminal Code, Sec.130) is punishable. Therefore criminal statistics only count right-wing politically motivated crime, which is then equated with racism. Germany is considered by the EUMC as a country which has a good data collection system focusing on the activities of extreme right-wing groups/hate speech and associated acts that go against the constitution.

16 Third German ECRI-Report, I.5, I.8

17 <http://service.spiegel.de/cache/international/0,1518,397482,00.html>, 06.03.2006.

18 <http://www.enar-eu.org/en/info/ENARgy%204.pdf>, 08.03.2006.

From January to October 2004:

"6,474 'politically motivated criminality – right-wing' crimes have been recorded, of which 397 were classified as 'violent'. Of these 6,474 crimes – 1,208 were classified as motivated by xenophobia, of these 203 were classified as 'violent' (no breakdown of anti-Semitic crimes was given by the RAXEN NFP). According to official data on victims of xenophobic violence, around half of the victims are foreign nationals, of which almost 50% are asylum seekers. However, a large number of victims of xenophobic violence have German citizenship. According to the RAXEN reports, this group includes Aussiedler (ethnic German migrants) and naturalised migrants. A proportion of these incidents are also committed against Germans 'without a migration background, especially non-right wing people.'¹⁹

While there is poor official data on racism as a crime, the RAXEN national focus point for Germany sees a good range of unofficial data sources on racist crime and violence.

"Information is available from NGOs and academic researchers, of both a quantitative and qualitative nature, about non-nationals and other vulnerable minorities' experiences of racist victimisation."²⁰

II.iv Counter Terrorism

Racial profiling occurs when race is used by law enforcement or private security officials, to any degree, as a basis for criminal suspicion in non-suspect specific investigations. Discrimination based on race, ethnicity, religion, nationality or on any other particular identity undermines the basic human rights and freedoms to which every person is entitled.²¹

Due to current security concerns, Muslims are still under 'general suspicion', as in 2004. When applying for naturalisation, the authorities verify if the applicants can be 'deliberated' under the current security rules or not. This process seems to be arbitrary, non-transparent and conducted under the use of non-verifiable secret information. For example, in 2004 the "Verfassungsschutz" (office for the defence of the constitution) of Berlin ruled in ten cases of naturalisation. In 2005, this number was already reached in the first half-year. From January to July nine applications had already been considered as being problematic by the "Verfassungsschutz". Based on the total number of applications (5,385 in 2004, 3,875 in the first half of 2005) the number of persons who are naturalised is rather small.

19 <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-RV-main.pdf>, 08.03.2006.

20 <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-RV-main.pdf>, 08.03.2006.

21 http://www.amnestyusa.org/racial_profiling/index.do, 02.03.2006.

There is no hundred percent warranty that extremists before naturalisation are filtered. An officer of the "Verfassungsschutz" said: "What use is it to us in the long run to reject an application with reference to knowledge we have, when they are so vague that they never withstand an examination by a court?" In Berlin, officials became careful since the case of the Imam of Berlin-Kreuzberg Yakub Tasci was dismissed in 2004. The 59 year old is under the urgent suspicion to have held inflammatory speeches and glorified terrorist attacks. The senator of the interior immediately ordered the expulsion of Tasci. Although the decision was confirmed by the Administrative Courts in two instances, the Federal Constitutional Court decided that Tasci could remain in Germany.²²

The appointee for data protection in Hamburg issued in his interim report for 2005 a critical statement about the effects of the international fight against terrorism, the restructuring of the social systems and the administrative modernisation and privatisation on data protection, civil liberties and surveillance. All this puts pressure and regulatory stress on the government and the administration. Therefore, data protection is often seen as restraining effectiveness, disturbing and a cost factor, preventing meaningful solutions.²³

²² Berliner Morgenpost, 27.09.2005, <http://www.aufenthaltstitel.de/zuwg/1047.html>, 02.03.2006.

²³ <http://fhh.hamburg.de/stadt/Aktuell/pressemeldungen/2005/mai/31/2005-05-31-hmbdsb-zwischenbericht.html>.

III. Communities vulnerable to racism

We describe the victim groups according to their access to citizenship in Germany. The dichotomy of German - Foreigner marks the difference between full citizenship and a complex set of residence permits, dividing 'foreigners' into groups with different privileges and access to German institutional, economical and social systems. The paperless migrants (people without identification papers) are the most vulnerable group as they live outside any legal protection. Asylum seekers and refugees have some legal status which provides them with a certain protection, although some authorities practically deny them their rights. The legal status improves for third-country nationals and EU citizens. German citizens have full citizenship, which does not protect them from racist experiences if they are members of a victim group.

The German Federal Bureau of Statistics²⁴ recorded at the end of 2004 the following types of residence permits:

- Temporary residence permit (2001: 27,1%, 2003: 22,47%, 2004: 1,443,891 persons, 21,50%)
- Unlimited residence permit (2001: 32,46%, 2003: 27,22%, 2004: 1,986,968 persons, 29,58%)
- residence warranty (Aufenthaltsberechtigung) (2001: no calculation, 2003: 10,67%, 2004: 733,446 persons, 10,92%)
- Residence grant (Aufenthaltsbewilligung) (2001: 4,61%, 2003: 4,43%, 2004: 274,029 persons, 4,08%),
- Residence warrant (Aufenthaltsbefugnis) (2001: 3,99%, 2003: 3,6%, 2004: 254,454 persons, 3,79%)
- Temporary EU residence permit (2001: 6,76%, 2003: 5,77%, 2004: 456,098 persons, 6,79%)
- Unlimited EU residence permit (2001: 8,47%, 2003: 8,69%, 2004: 709,560 persons, 10,56%)
- Tolerance (Duldung) (2001: 3,76%, 2003: 3,09%, 2004: 202,929 persons, 3,02%)
- Others 2004: 858,669 persons, 12,78%. There is a difference of 570,824 persons between this statistic and other statistic on the total amount of 'foreigners'.

The emergence of illegal migrants is the effect of the European border regime, now widely referred to as 'Fortress Europe'. Paperless migrants constitute a heterogeneous group, consisting of those people who do not hold a valid residence permit and who live and work in Europe. They are representative of those who are refused asylum; who cannot or do not want to return to their country of origin; refugees who evade the Asylum Process Law

²⁴ <http://www.destatis.de/basis/d/bevoe/bevoetab9.php>; 13.02.2005.

(Asylverfahrensgesetz) and live 'underground'; and relatives of migrants living in Europe who do not have a valid residence permit and hide out with their families and people who legally entered the country and have expired visas.

There are some reports on the life circumstances of paperless migrants, but there is no systematic compilation. Research done does not work with concrete investigations but essentially with estimations.²⁵ The number of 'illegal people' already employed in the construction sector in Germany, partly originating from Portugal and Great Britain (according to IG Bau trade union), count 500,000²⁶ to 1 Million.²⁷ First experiences after the admission of the EU new members states show that there was no mass of 'illegal people' flocking to Western Europe.

28,914 people applied for asylum in 2005. That is a decrease of 18,8% in comparison to 2004 and the lowest number since 1983. Taking into account that war, political and ethnic persecution had not decreased, this means that Germany was not willing to take its share of refugees. Only 411 (of 48 102 applicants in total) had been granted asylum. 2 053 people (4,3%) had been granted the status of refugees (according to §60 Absatz 1 Aufenthaltsgesetz). This is a slight increase related to the new Immigration law, which grants this status to family members as well. Among the ten main countries from which the refugees originate, there is no reported African country. Those refugees end up in Southern European countries where the military walling-off of the southern EU borders is forced and refugees are illegally deported. In addition, they are denied the right to seek asylum, which is in violation of international law.²⁸

2,108,010 (28,92%) of all 'foreigners' registered at the end of 2004 (last available data) in Germany come from an EU country. The largest group are 548,194 from Italy (representing 26% of all 'EU-foreigners'), 315,989 from Greece (15%), 292.109 from Poland (14%), 174,047 from Austria (8,3%) and 108,276 from Spain (5,1%). People from other countries make up less than 5% of 'EU-foreigners'.

5,340,344 people, (79,5%) of all registered 'foreigners' have European nationality (including Turkey). 276,973 people come from the African continent (4,12%), 826,504 people come from Asia (12,3%), 202.925 come from the Americas (3%) and 9,801 persons come from Australia und Oceania (0,15%). The status of 60,568 (0,90%) are registered as either stateless or as unknown.²⁹ It is estimated

25 See e.g. <http://www.joerg-alt.de/Publikationen/Materialanlagen/materialanlagen.html>; 13.02.2005.

26 See: http://de.wikipedia.org/wiki/Illegale_Immigration; 13.02.2005.

27 See: Spiegel-Online, 8.3.05, <http://www.spiegel.de/politik/deutschland/0,1518,344560,00.html>, 14.02.2006.

28 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news/pro_asyl_zur_asylstatistik_2005/back/64/pS/1139470594/chash/34b3c0e719/index.html, 09.02.2006.

29 <http://www.destatis.de>, 14.02.2006.

that about half of all sex-workers in Germany are migrants, most of them coming from Eastern Europe.³⁰

The last available figures on naturalisation from the Federal Bureau of Statistics are from 2004 where 127,153 people had been naturalised. The demographic make-up consists of 49,2% females and 50,8% males. In terms of age, 20,5% were younger than 18, 43,3% were aged between 18 and 35 and 36,2% were older than 35. The practices of naturalisation differ from region to region. If we compare Hamburg, where 5% and Sachsen-Anhalt, where 0,3% of all naturalisations took place, we can see, that with 14,1% Hamburg has the highest ratio of registered 'foreigners' (244,401 'foreigner', 1,734,830 'Germans') and Sachsen-Anhalt has the lowest (1,9%, 47,123 'foreigners', 2,494,437 'Germans'). In Hamburg, 3.2% of 'foreigners' are naturalised, in Sachsen-Anhalt 1%.

Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Hessen, Bremen and Schleswig-Holstein have an above-average rate of naturalisation (Germany total 2.1 of 100) all others have a below-average naturalisation rate³¹. The figures on naturalization have continuously decreased since the introduction of the new Citizenship Law in 1998. Migrants applying for German citizenship lose their nationality statistically become German and all information about their ethnic background is destroyed. However, in everyday life, the category "German" becomes much more diverse.

Afro-German refers to the term adopted by Black people who were born or have lived in Germany for a long time and who were dissatisfied with the various labels attached to them by others. To date, no statistical data regarding the size of this group is available. This issue attained prominence in 2005 through the protests against an "African Village" being hosted by Augsburg zoo. This set off a wave of controversy that received widespread media coverage. A global protest developed, fuelled by the rapidity of e-mail communication, with concern voiced by Afro-German organisations, rights organisations, academic associations, a Nobel Prize winner, and concerned individuals from many countries. A report by the Max Planck Institute for Social Anthropology is based on interviews with the various participants who attended the four-day event from 9-12 June notes:³²

"It is necessary to remind the organisers that in the history of 'ethnographic shows' African and German-African individuals were used as objects for anthropometric tests and ethnological investigations of highly questionable scientific benefit. Many of the artists who performed in these shows in the 1920s and 1930s died from malnutrition and as a consequence of bad living conditions. The Nazis employed a policy of eugenic control, resulting in forced operations to limit the biological

30 <http://phpnuke.imir.de/modules.php?name=News&file=article&sid=136&mode=&order=0&thold=0>, 09.02.2006.

31 <http://www.destatis.de/basis/d/bevoe/bevoetab13.php>, 15.2.06, 16:30 and own calculations, 17.02.2006.

32 Full report at <http://www.eth.mpg.de/events/current/pdf/1120750934-01.pdf>, 17.02.2006.

reproduction of African-Germans or in downright incarceration in concentration camps. Survivors of this policy had to gain a living as performers in exotic shows. The Augsburg exhibit thus fails to acknowledge the political and social history of persecution in Nazi Germany."³³

The exhibition "Bilder verkehren" on postcards in the visual culture of German colonialism³⁴ focused on the imagination of the "African" at the time of German colonialism. This continued with a public representation of Black Germans in mainstream culture.

Ethnic-Germans have a long tradition in the East. After Stalinist persecutions during the Second World War they were dispersed across the Soviet Union and as far afield as Kazakhstan. Since the beginning of the 1950's, over two million ethnic Germans have settled in Germany. Often, the new start in the land of their ancestors was rough, as many came from impoverished backgrounds and had to find their way in a place and with a language that was foreign. Many have successfully made the transition, but there are those who have given up hope of ever integrating into German life and are returning home to places such as Russia, Kazakhstan or Ukraine, even though living conditions are worse there.³⁵

35,522 ethnic Germans from the former Soviet Union (Spätaussiedler) and their relatives arrived in 2005. 40% less than in 2004 (59,093 people). Reasons for this are that family reunions have come to an end and the economic situation in the home countries have improved due to governmental aid. Many applicants no longer fulfil the language requirements. Since the new migration law was introduced on 1 January 2005 all relatives are expected to show a basic knowledge of German.³⁶

National minorities and their languages are under special protection of the basic agreement of the European Council, which Germany signed. Sinti, Roma, Danes, Sorbs and Frisians are recognised as national minorities.

The Sinti people have traditionally lived in Germany since the 14th and 15th century, whereas the Roma arrived later. After being subjected to discrimination, persecution and holocausts, an estimated 70,000 German Sinti and Roma are today living in Germany. Contrary to all stereotypes, Sinti and Roma do not differ in their way of life and their professions from the majority of the population. The majority live in the capitals of the western German "Länder", including Berlin, and in the congested urban areas of Hamburg, Rhine-Main-Ruhr, Rhine-Neckar and Kiel. Sinti also live in smaller cities in Ostfriesland, Hessen, Pfalz, Baden and Bavaria. German Sinti and Roma grow up bilingually (Romany-German), attend

33 Norbert Finzsch at <http://www.utexas.edu/conferences/africa/ads/732.html>, 09.02.2006.

34 <http://www.bilder-verkehren.de>, 17.02.2006.

35 <http://www.dw-world.de/dw/article/0,2144,1782064,00.html>, 23.02.2006.

36 http://www.bmi.bund.de/cln_028/nn_122304/Internet/Content/Themen/Aussiedlerbeauftragter/Pressemittelungen__nur__BA__Seite/2005__Spaetaussiedlerzuzug.html, 17.02.2006, 12:26

primary and secondary schools and some also enrol at university like the children of the majority. They are active in sports clubs, in the fire brigade and welfare organisations.

The "European Centre for Antiziganism Research" EZAF founded in 2004, is a scientific institution with the aim of investigating with the means of systematic scientific analysis anti-gypsy attitudes and actions in those countries where members of the Sinti and Roma people live. Anti-gypsyism is a part of Europe's cultural heritage, fed for centuries by the fear of the Ottoman Empire (which existed until 1919) and the "dark Turks". The Roma and Sinti are faced with a European society that does not deal with them as humans, but only sees them within the "Gypsy" stereotype. This image is the basic problem of Anti-gypsyism - it explains the identity and actions of the Roma and Sinti to the majority population without recognising actual day to day realities.³⁷

The Danish minority lives in the north of Germany near the border with Denmark (Schleswig-Holstein) and numbers approximately 50,000 people. All the people belonging to this minority can speak German, they can understand Danish and most of them speak the language as well. The Sorbs, also called Wends, are a small population of Slavic origin who have lived in the Lusatia region of Germany since the 7th century. There are about 60,000 Sorbian people, two thirds of whom still live in Lusatia in East Saxony. All Sorbs speak German, but nowadays only two thirds of them speak the Sorbian language and only one third of the Sorbs use their language on a day-to-day basis. The Friesians live in the north of Germany in Schleswig-Holstein and in the north-west of Lower Saxony. The Friesians number 50,000-60,000, which is a third of all people living in that region.

A large variety of religious groups exist in Germany. The largest is Christians of different denominations (Catholic, Protestant). As a visible religious minority in the public space, Muslims, especially Muslim women with headscarves, are most vulnerable. Most other religious minorities are not as visible.

Muslims are by far the largest religious minority, with a total of 3,300,000 persons, of which 732,000 have a German passport. Within the Muslim communities the largest groups are the Sunni (2,200,000) and Alevi (340,000). Other groups are the Iranian Imamites and the Turkish Shiites (170,000) as well as a number of mosque associations with a total of 173,430 members. Last available figures are from 2003.³⁸

There are between 885,100 and 905, 100 people who are associated with Orthodox and Oriental Christian churches in Germany. The largest group (450,000) belong to the autocephalous and autonomous churches of the ecumenical patriarch of Constantinople. The next largest congregations are

37 <http://www.ezaf.org/en/ezaf/2.html>, 09.02.2006.

38 http://www.remid.de/remid_info_zahlen.htm#islam, 17.02.2006.

those of the Serbian Orthodox Church (150,000) and the Romanian Orthodox Church (80,000-100,000). The other 185,000 people belong to smaller orthodox churches and congregations. Last available figures between 1999 and 2003.³⁹

RE MID recorded approximately 189,000 Jews in Germany, 105,000 of whom belong to a Jewish congregation. The remaining 80,000 are without clear associations to a congregation. 80,000 Jews emigrated from Eastern Europe and their denomination is also unclear. 4,000 people belong to the Union of progressive Jews.⁴⁰

There are between 235,000 and 245,000 Buddhists living in Germany. The largest group of 130,000 persons are 'German Buddhists', followed by 60,000 Buddhists from Vietnam. This group came to Germany either as refugees during the Vietnam War in the mid-1970s ('Boat People') or have been recruited as contract-workers for the former GDR from 1976 until its collapse in 1989. The third largest group are Buddhists from Thailand (25,000). Buddhists from other Asian countries count between 20,000 and 30,000 persons.⁴¹

A small religious minority in Germany are Hindus with 92,500 to 97,500 people, a number that has not changed since last year. Most of them are Tamil Hindus from Sri Lanka (45,000) followed by Indian (35,000-40,000) and Afghan (5,000) Hindus. The remaining 7,500 are German Hindus. Only figures from 2003 are available.⁴²

39 http://www.remid.de/remid_info_zahlen.htm#orthodoxie, 17.02.2006.

40 http://www.remid.de/remid_info_zahlen.htm#judentumhttp://www.remid.de/remid_info_zahlen.htm#judentum, 10.3.06

41 http://www.remid.de/remid_info_zahlen.htm#buddhismus, 17.02.2006.

42 http://www.remid.de/remid_info_zahlen.htm#hinduismus, 17.02.2006.

IV. Manifestations of racism and religious discrimination

For the German situation, an overview of the key problem areas and relevant developments can be given, but statistics demonstrating discrimination during 2005 is barely available as the race-directive has not been transposed and so no anti-discrimination body has as yet been established to collect ethnic data. These factors account for why it is so rare that complaints and relevant legal cases are made public. NGOs are as yet unable to support discrimination cases as envisaged in the Race Directive.

One of the few official compilations available is the Report by the official representative of the federal government for Migration, refugees and Integration from August 2005 (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration (2005): Bericht der Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland, Bonn). The report covers different areas like education, labour market, housing, etc. The data the report is based on covers the period from the last report in 2002 until 2005, but current statistical data is from 2004.

The general public atmosphere can be illustrated by a high level meeting between the Protestant church and Muslim associations in January 2005. The objective of this meeting was to exchange viewpoints and criticism. The Protestant church highlighted topics such as equal rights for men and women, Islamic terror and the relationship between religion and state in Islam. The Muslim associations criticised the Protestant church because of her liberal approach to abortion, homosexuality, secularisation of western societies and the interpretation of the headscarf as a symbol of women's oppression. It was agreed to meet regularly once a year.⁴³

IV.i Employment

Access to the German labour market for different groups of migrants is nested and confusing. Along with official access to employment, precarious employment increases.⁴⁴

Germans, citizens of other EU-members states, Norway and Iceland have unlimited access. This is also true for migrants with a work permit (prerequisite: five years of compulsory insurance or six years of uninterrupted residence) or a residence permit (Aufenthaltsberechtigung). This group are "inländer" in the German labour market and have privileged access.

43 Die Welt 13.01.05, http://web.uni-bamberg.de/~ba6ef3/dokz05_d.htm, 23.02.2006.

44 http://www.migration-online.de/schlagwort._cGFnZS5zaWQ9MyZwaWQ9MQ_.html, 23.02.2006.

Third country nationals have a second order access to the labour market. They are only accepted, when no "inländer" is found for the job. This is checked each time the working permit expires. Refugees do not receive a work permit. Access to certain professions is closed for migrants. Most prominent is the civil service, where you need to have German citizenship.

The women's committee of SCHURA, the council of Islamic communities in Hamburg, reports an increase in discrimination of girls and women in the labour market. Reports include instances of dismissals, rejection of applications for interviews, training and work placements and unequal treatment by public administrations (iaf-informationen, edition 4/2005, Muslimische Frauen: Ausgegrenzt und chancenlos. Eine Stellungnahme vom Frauenausschuss der SCHURA, Rat der islamischen Gemeinschaften in Hamburg e.V., p.24/25). They propose anti-discrimination bodies in all German cities and in the countryside where a large migration population exists. The German Institute for Human Rights has made similar proposals.⁴⁵

In March 2005, two months after the new Immigration law became operative, people with toleration status became unemployed because the administration failed to issue additional working permits. An agreement to lift the prohibition to work for this group was already made in Autumn 2004. Members of parliament, employers and trade-unions intervened, according to PRO ASYL, when the minister of the interior wanted to impose a total prohibition to work.⁴⁶

Other forms of discrimination have been highlighted at the "Migration@work" congress in Autumn 2005. The migrant self-organisation "Unternehmer ohne Grenzen" (UoG, entrepreneurs without frontiers) invited migrants, politicians, scientists and local administration officials to discuss work and self-employment in Hamburg. The Congress tried to design new concepts which could improve the job opportunities for migrants in the labour market. Migrants made themselves the "subjects" of a political discussion about work and autonomy.⁴⁷

Culture was seen as an independent labour market for migrants but the majority makes it difficult for migrants to be seen as qualified artists instead of representatives of a stereotyped culture. Self-employment and entrepreneurship of migrants is often badly supported financially. Credits are often not approved, because the Bank employee is not familiar with the economic culture of migrant groups. The media fail to employ migrant journalists. The situation once again differs from region to region. While in North-Rhine Westfalia an ombudsman for discrimination has been established in the WDR, the North (NDR) failed to introduce similar provisions.

45 http://www.institut-fuer-menschenrechte.de/webcom/show_article.php/_c-419/_nr-75/_p-1/i.html, 23.02.2006.

46 http://www.proasyl.de/de/archiv/presseerklaerungen/presse-detail/news////zuwanderungsgesetz_zwei_monate_in_kraft_geduldete_auslaender_verlieren_ihre_jobs/ browse/1/back/64/pS/1139470594/chash/e5c63e7dfe/index.html, 09.02.2006.

47 <http://www.unternehmer-ohne-grenzen.de>, 17.02.2006.

IV.ii Housing

8,8% of the population in Germany had been registered as 'foreigners' at the end of 2004. Data for 2005 is not yet available. Looking at the regional distribution, there are regions which have an above-average migrant population: Hamburg (14,1%), Berlin (13,4%), Bremen (12,8%), Baden-Württemberg (12%), Hessen (11,4%), Northrhine-Westfalia (10,8%) and Bavaria (9,4%). Other regions in the West have an below-average distribution: Saarland (8,4%), Rheinland-Pfalz (7,7%), Lower Saxony (6,7%), Schleswig-Holstein (5,3%). The lowest share of migrant population can be found in the former GDR: Saxony (2,8%), Brandenburg (2,6%), Mecklenburg-Vorpommern (2,3%), Thüringen (2%), Sachsen-Anhalt (1,9%).⁴⁸

A "Planerladen" (Planner Shop) survey of the housing industry in North-Rhine Westfalia, which previously had been a non-profit or communal enterprise, showed that many responsible staff viewed migrants as frugal customers. They paid steadily and rarely exercised their rights as tenants. On the other hand, difficulties arose with alleged "culturally specific" noise and dirt and the non-compliance with rules of the house. To avoid conflicts, the majority of the enterprises have official and unofficial quotas, which varies substantially. The housing industry is helpless on the question of how to maintain the social peace in their housing estates. Some enterprises started to allocate tenants in houses or whole estates in an ethnically homogeneous way. Others do not check the nationality but payment history and behaviour. To achieve the objective of a "healthy" mix through quotas, a lot of applicants are rejected and discriminated against.⁴⁹ In the view of the Official representative of the Federal Government for Migration, Refugees and Integration, there is less need to fight the concentration of migrants in certain areas and a greater need to actively fight the concentration of poverty and social deprivation.⁵⁰

Migrants are discriminated against in housing in several ways⁵¹:

- Migrant households occupy on average 74m², whereas German households occupy 90m².
- A migrant household has on average 27m² per person, as opposed to the 43m² available to the German household.
- Migrant households are more often family households as opposed to a one-person households.
- 28,4% of migrant households pay more than 35% of their income for rent in comparison to 23,5% of German households.

48 <http://www.destatis.de>, 14.02.2006.

49 <http://www.isoplan.de/aid/index.htm?http://www.isoplan.de/aid/2005-4/wohnen.htm>, 23.02.2006.

50 (Das Parlament Nr. 34 - 35 / 22.08.2005.

51 Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration: Bericht der Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland, Bonn 2005, p. 113-128.

- The average quality of houses where migrants live is lower in comparison to the quality of houses inhabited by Germans.
- Houses of migrant home owners are 7% smaller than those of German home owners.

IV.iii Education

A study conducted by the German Institute for Human Rights⁵² investigated the situation of children/adolescents with migrant backgrounds within the German Education system. The criteria the investigation was based on were those of the human rights discourse: availability of education; access to education; acceptability and adaptability of education for everyone.

The study showed that for most of the children/adolescents from migrant backgrounds, access to education which is free of discrimination is guaranteed. Because access to education is attached to a residence permit, education is therefore not guaranteed for the group of young refugees and children/adolescents without a residence permit in all of the 16 federal states of the FRG.

Seven Federal states (Baden-Württemberg, Hessen, Rheinland-Pfalz, Saarland, Sachsen, Sachsen-Anhalt, and Thüringen) allow young refugees only partial access to education (Schulbesuchsrecht) in contrast to full access (Schulpflicht). This means that parents have to apply for their children to attend school, a situation which proves to be problematic as many parents do not speak nor understand German. This situation, coupled with their status as refugees, seriously limits the access of young refugees to education as a whole. There are two further restrictions connected to this weaker (partial) access (Schulbesuchsrecht): Firstly the children and adolescents do not have the right to participate in special incentive measures (Fördermaßnahmen) like language classes and secondly, schools are allowed to refuse children access to education due to a myriad of financial, personal or even factual reasons.

Only two Federal states, Bayern, Bremen and Nordrhein-Westfalen, plan to guarantee the full right of access to children/adolescents without residence permit in the future) and allow children and adolescents without residence permit the full right (Schulpflicht) to access the education system. But in all federal states this group is often unable to make use of neither the full right (Schulpflicht) nor the weaker right (Schulbesuchsrecht) because they fear being denounced to the foreign office because schools and the education authority are obliged to report children and adolescents without residence permits to the foreign office.

NGOs like Terre des Hommes and the National Coalition for the Right of Children, demand the realisation of the full right (Schulpflicht) to access of

⁵² Motakef, Mona, Deutsches Institut für Menschenrechte (Hrsg.): Bildung frei von Diskriminierung. Eine Studie über das Recht auf Bildung und den Schutz vor Diskriminierung in Deutschland. Berlin 2006.

education for all children and adolescents in Germany. They further demand that schools and the education authorities be exempted from reporting students, who do not have residence permits to the foreign office.

In dealing with multilingual pupils, German schools fail to adequately include native languages as incentive measures. The whole education system fails to accept, integrate and adapt itself to the needs of multi-lingual learners. In 1996, the Conference of Ministers, responsible for culture in the "Länder" (Kultusministerkonferenz), announced as an objective, the need to keep and develop the multilingual skills of learners. The PISA-Study 2000 identified the language skills of pupils as one of the most important factors for a successful education. As the most successful method of developing language skills, linguists promote long-term incentive measures that are aimed at developing both German and the native language in addition to integrating language learning in all other disciplines in school. But at the moment bilingual incentive measures that integrate the learning of a language in the teaching of each discipline can only be found in a few pilot projects. That means that only a small number of multilingual pupils in Germany get the benefit of developing their language skills.

The early selection mechanisms of the German education system led the PISA-Study to recommend an early teaching of the German language. Since then there has been a focus on corresponding measures. It can be foreseen that this will lead to an underestimation of the importance of a long-term teaching of both the German and the native language.

IV.iv Health

The report of the official representative of the Federal Government for Migration, Refugees and Integration noted in August 2005 that there remained barriers for the equal access of migrants to the health system. Insufficient language skills in the health sector; cultural difference in the understanding of health and illness, lack of qualified personnel with migrant backgrounds; and lack of active counselling services for migrants are just a few barriers. For those asylum seekers being subjected to the "Asylbewerberleistungsgesetz", medical care is restricted.

The report does not see any causal relation between migration and mental illness. However migrants with no stable residence, lack of social relations and earlier traumatic experiences are at risk. Those risk factors can be found especially in the group of asylum seekers, refugees, undocumented persons, persons traumatised war victims, persons who have been in deportation custody for an extended period of time and very young or older migrants.⁵³ In 2004, a study in Leipzig among the biggest migrant groups (Poles and Vietnamese) was

⁵³ Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration: Bericht der Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland, Bonn 2005, p.141-150.

implemented and published in 2005. The migrants had a higher disposition to fear and depressions than the German control group. It can be said that the psychological state of health of Polish migrants in Leipzig is worse than of Vietnamese, but the groups are not homogeneous. Among Polish migrants, people with more German friends feel less discriminated against and are in a better psychological state of health. Such an effect was not observed among the Vietnamese migrants.⁵⁴ The risk of false diagnosis, because of difficulties in communication, cultural misunderstandings, specific religious ideas, insufficient knowledge about the family structure or the conditions of the country of origin, is higher among migrants. Migrants in Germany belong over proportionally to lower strata of society; therefore in the coherence between social position and health, the migrant population shows a weaker health status than the majority. The ratio of migrant children entering school and suffering from adipositas (obesity) is 15,1% among children with Turkish nationality it is 22,7%, while among children with German background the ratio is only 11,3%. The same is true for the teeth with children of migrant background having a higher risk of cavities.⁵⁵

IV.v Policing and racial profiling

The Residential Restriction - Obligation Pass Law (Residenzpflichtgesetz) is an example of a law which encourages policing and racial profiling. It is the legal base for controlling mainly Black people in public places such as trains or stations. There are grassroots asylum seeker organisations fighting against this law. They see themselves as victims of an "Apartheid Residential Restriction" reminiscent of the apartheid era in South Africa which forbids freedom of movement and affects migrants through segregating controls based on phenomenal differences from the German white majority.

Freedom of movement is non-negotiable and should be protected by democratic societies as the foundation for the development of human personality. Article 13 of the Universal Declaration of Human Rights, which Germany is a signatory of, states that every human being has the right to freedom of movement and residence within the borders of each nation. They see the "Residenzpflichtgesetz" as racially motivated, which enables the police to select suspects based on race, colour, religion and nationality, which is unconstitutional. Such police controls are made criminal by the forceful fingerprinting and photography leading to the opening of a criminal file according to the German Aliens act (Ausländergesetz) article 36 and the German asylum law (AsylVFG) article 56, police brutality and sometimes even death in custody This legislation makes a refugee an open suspect without being a criminal. A repeated violation

54 <http://www.gesundheitswirtschaft.info/content/view/1460/97>, 07.03.2006.

55 Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration: Bericht der Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland, Bonn 2005, p.144/45.

exposes the refugee to a jail term of up to one year (Article 85 No.2, and Article 59 of AsylVG).⁵⁶

Another example of racial profiling related to the "war against terrorism" happened in the city of Hamburg. On the evening of 25 August, 1,071 police controlled traffic at 12 junctions in Hamburg, among them heavily armed policemen. The trigger for this large-scale operation was the statement of a witness of Egyptian descent who had heard a discussion in Arabian the night before at a bus stop in Hamburg. According to police data, among the words which the witness heard was the sentence: "We will stand tomorrow as a hero before Allah." The police published pictures of the suspects, which had been taken by a surveillance camera in the bus. The police arrested one of the men at home, the two others surrendered voluntarily. After interrogating the suspects, who turned out to be Chechens, for hours, the police released them from custody because no charge could be verified. The police searched the dwellings of the men and interrogated friends and acquaintances.⁵⁷

IV.vi Racist violence and crime

Victim advisory boards, which only exist in the former GDR, see a huge grey area related to racist crimes because police reports often declare them as normal fighting among groups. Victims such as foreigners, young people and the socially disadvantaged are reluctant to report racist crimes to the police because they fear that they will not be believed. Victims are often intimidated by neo-Nazis, who use controlled fear as an important weapon. This grey area of non-reporting of political and racist violent attacks is estimated at between 50% and 75%. The victim advisory boards in East Germany registered a total of 551 right-wing extremists attacks in 2004. Most of them occurred in Saxonia (146), followed by Brandenburg (136) and Saxonia-Anhalt (109). In those attacks, at least 805 persons were victims. 360 of those victims had been classified as victims of racism, 329 victims were anti-Nazi youth, 56 were political activists and 13 were handicapped people. There are no final figures for 2005, but the tendency is increasing. The Ministry of the interior for Brandenburg registered a rise of 29% in comparison to the same period last year. But in these figures graffiti and forbidden slogans are included. The victim advisory board of Saxony⁵⁸ had already documented 32 violent attacks at the end of July in the region of Sächsische Schweiz. In all of 2004 it had been 24.

134 deaths were reported from 1989 to 2004 due to racist violence in Germany. In 2005 at least two further deaths were counted. Beyond that, the statistics contain several attempted murders. Among them assaults and/or attempted arson attacks on asylum seekers' camps and houses in Essen, Freital und

⁵⁶ <http://www.noborder.org/item.php?id=191>, 09.02.2006.

⁵⁷ http://www1.ndr.de/ndr_pages_std/0,2570,OID1711298,00.html, 09.02.2006.

⁵⁸ <http://www.amal-sachsen.de>, 09.02.2006.

Neresheim and on youth clubs in Brandenburg particularly.⁵⁹ The victims of these physical and verbal attacks have mainly been Africans, Asians, Turks, Jews and ethnic Germans and anti-fascists youth. Most of the racist attacks are registered in the east of Germany, because of the existence of victim advisory boards, but they happen in the west as well. The perpetrators are mainly groups of young men, but also young women from the neo-Nazi scene and of other subcultures. They mostly attacked as a mob and chose smaller groups or individuals as victims. In many cases the perpetrators were drunk.

On 4 April a pupil was killed in Munich because he defended his Asian looking girlfriend against verbal racial attacks by a 19-year-old male who belonged to the "gothic" subculture. The victim was injured so badly that he died in hospital a few days later. Violent attacks are often aimed against small migrant businesses, asylum seeker or ethnic German camps. Another big problem is the constant verbal attacks against discriminated minorities. Jewish communities, migrants and ethnic Germans are victims of this type of verbal racism. Racist graffiti is a big problem also, with graffiti with racial and anti-Semitic content found all over Germany. At the end of 2005, anti-Semitic graffiti was spread around the whole of the city of Berlin. Two attacks on the newly opened memorial for the holocaust in Berlin failed. Many Jewish graves have been smeared or destroyed all over Germany.⁶⁰

Institutional discrimination against asylum seekers, refugees and migrants is a big threat in Germany. On 14 September 2005 several European states deported people to Togo, Benin and Nigeria in a joint effort. Involved in this mass deportation were Germany, Belgium, the Netherlands, France, Great Britain, Malta and Switzerland. The German constitutional court (Bundesverfassungsgericht) ruled that the practise of deportation in Baden-Württemberg violated German and European law. The constitutional court judged that only in the case of crimes which are a threat to public security could people be deported. In this case, Baden-Württemberg deported a Turkish man because he apparently dealt drugs. Hamburg has announced that it will deport 500 people to Afghanistan, although NGOs have criticized the initiative as Afghanistan is still not a secure country. Germany also deported people to Kosovo, although it is still considered a dangerous country for refugees.

The situation in the deportation prison in Berlin-Köpenick is also very fraught. Again in 2005 several people tried to commit suicide because of fear of deportation. A man from Ghana jumped out of a fourth floor window to escape policemen because he had no papers. He survived with very heavy injuries. A particularly bad example of brutal racist violence against migrants is the case of a student from Cameroon who had not signed his railway ticket. When the conductor told him to leave the train, the student insisted to clarify the

59 <http://www.mut-gegen-rechte-gewalt.de/druckartikel.php?id=5&kat=82&artikelid=1687>, 07.03.2006.

60 http://www.jungle-world.com/suche/search.php?search_query=deutsches+haus+2005&autor=&rubrik=-1&submit=Go%21, 07.03.2006.

misunderstanding he had with the signature. The conductor called the police and eyewitness told that he was maltreated by the policemen. Another case of institutional discrimination lies with the treatment of refugees when 300 asylum seekers were brought to a police area in Mühlheim am Rhein in the early morning. They did not have the chance to call a lawyer and the police did not tell them where they were being brought to. The aim was to accommodate the Vietnamese Ministry of the Interior in getting information about the refugees. The refugee organisation "Hessischer Flüchtlingsrat" judged this action as a crime against the rule of law.⁶¹

IV.vii Access to goods and services in the public and private sector

The GETIN project (Guide to equal treatment in the private sector) deals with discrimination in the area of public services and goods and is mostly active in the private economy. They try to create indicators to measure discriminating facts with respect to the pending "Antidiscrimination Law" and design manuals against discrimination. At the other end, the project tries to boost self-obligation on the part of providers. They published proceedings of their "Expertengespräch" workshop, containing a description of the pending law, new forms of consultation and an introduction to concrete case studies.⁶²

Although "redlining" is a new concept to Germany, the practise is not.

"Redlining is the practice of denying or increasing the cost of services, such as banking or insurance, to residents of certain areas. In the United States, the practice is illegal when the criteria are based on race, religion, gender, family status (if there are children in a family), disability, or ethnic origin. The US Government has imposed regulations that require all banks to provide a map to anyone who asks showing the locations of home loans they have made so that individuals can ensure that redlining is not taking place. The term "redlining" comes from the practice of marking red lines on a map, which banks would do in order to delineate areas they did not want to lend to."⁶³

Beside the Schufa, Germany's largest organisation dealing with the financial standing of people on the German market, smaller inquiry agencies and debt collecting agencies also deal with consumer data. For years they have registered a rising demand for "scoring systems". Those systems produce statistical indicators with which the probability of a credit being paid back is calculated. For many enterprises it is not sufficient to inquire into the past payment behaviour of their future customer. Data, which the customer is not responsible for, is contained in the score as well. This micro-geographical data can contain the

61 http://www.jungle-world.com/suche/search.php?search_query=deutsches+haus+2005&autor=&rubrik=1&submit=Go%21, 07.03.2006.

62 <http://www.getin-online.net>, 07.03.2006.

63 <http://en.wikipedia.org/wiki/Redlining>, 07.03.2006.

unemployment or divorce ratio, as well as the cost of living and the structure of the population at the residence of the applicant. This scoring practise or "redlining" might be discriminatory as poor residence areas and ethnic minorities often converge and can structurally block access to goods and services in the public and private sector for ethnic minorities.⁶⁴

IV.viii Media, including the Internet

Although no incidences of racist coverage have been recorded in Germany's mass media, it had been criticised for its partly stereotyped image of migrants and for a one-sided account of racism. Racism has frequently been associated with right-wing extremists, an account which distances racism from mainstream society. The dangers of normality are often not registered by the media.⁶⁵

The Council of German Sinti and Roma issued in a statement for the "Net against Racism" in June 2005, that there needs to be participation of minorities in the media. They propose a representative in the committee controlling public and private radio and television. The creation of own media also needs to be supported they say.

Towards the end of 2004 and early 2005, the computer-virus Sober.H infected computers and sent right-wing spam mails to all addresses from their outlook-directories.⁶⁶ Right-wing and racist propaganda thus reached countless households, yet public debates reflected predominantly the annoyance of the virus rather than its political content. Germany signed the Council of Europe' Convention Against Cyber crime in 2001. Correspondingly, it was the Bundesamt für Sicherheit und Informationstechnik (Security and Information-technology) and not the Bundesamt für Verfassungsschutz (Protection of the constitution), which informed the public on Sober.H.

Wikipedia, the open online encyclopaedia, has been criticised for the structural impossibility of guaranteeing any quality-standards of its articles. In 2005, the critique expanded to the political dimension of its content. Certain articles contained or reproduced racist stereotypes, willingly or through a lack of awareness. Wikipedia cannot prevent overtly racist articles from being published or prevent articles with keywords like 'Jews' ('Juden') or 'Negros' ('Neger') from being repeatedly exploited by users with a racist or anti-Semitic motivation.

The German right-wing movement profits from the internet as a tool for propaganda, internal communication and organisation. About 1,000 German-based homepages with right-wing content are currently available. Many of them aim explicitly to trigger the attention of children and adolescents.

64 http://www.wdr.de/tv/markt/service/berichte/20050418_1.phtml, 06.03.2006.

65 <http://www.presseportal.de/story.htx?nr=669295>, 07.03.2006.

66 http://www.xpedient.org/content/modules.php?name=News&new_topic=6, 07.03.2006.

In recent years, music has become another major element of right-wing propaganda. On Monday 12 September 2005, the right-wing party NPD launched a nationwide campaign centred on the free distribution of a CD containing right-wing music on playgrounds. The NPD had produced 200,000 copies of this CD. Like many right-wing homepages, right-wing music aims at broadening the acceptance of its political stance among youth and subcultures. The Minister for Education advised teachers to take action and to discuss the issue of right-wing music in their classes. Several local action groups offered alternative CDs in exchange for the NPD-CD.⁶⁷

Contemporary pop culture in Germany is focusing its discourse around "Volk" (peoples), "Heimat" (homeland) and nation and reflects the different nationalisms in Germany. While the popular "Mia" advocates for another better and new Germany, other singers like Peter Heppner and Paul van Dyk articulate in "We are we" the naturalistic unity of Germany. Some critics ask whether all self-restraint related to nationalism was given up and a new "relaxed" approach in relation to the own nation is becoming hegemonic.⁶⁸

⁶⁷ <http://www.xpedient.org/content/modules.php?name=News&file=article&sid=1066>, 07.03.2006.

⁶⁸ <http://www.icantrelaxin.de/texte/text-wirsindwir.html>, 07.03.2006.

V. Assessing the response

V.i Anti discrimination

The process of the transposition of the EU directives can be characterised as being very ambitious but practically delivering no results. This shows a parallel with the process of a National Action Plan for Germany, resulting from the World Conference against Racism (WCAR) in Durban 2001. In this case, the Ministries also started an ambitious process of involving the administration and NGO's in the creation of this plan, but until today no governmental draft has been published. While writing this report in March 2006, there were signs that there would be a new draft of antidiscrimination legislation in the first half of 2006. Supposedly there will be a 1:1 transposition, including disability and age, into the civil law, but sexual orientation seems to be left out. The coalition agreed not to further name it "anti-discrimination law" any further but "general equal treatment law". Citizen suits (Verbandsklagerecht), the liability of the employer independent of negligence (verschuldensunabhängige Haftung) and the right of anti-discrimination organisations to act on behalf of the victim will not be included.⁶⁹

V.ii Racist violence and racist crime

In 2005 we had the same situation as in the previous years. There are neither public databases with documented cases of discrimination, nor is there any other data available which is broken down into "ethnic" criteria. This becomes a problem considering the increase in naturalisations, which cause a significant difference in the databases already existing in Germany. Naturalised persons disappear from the statistical category of 'foreigner' and are statistically no longer visible, because they became statistically German. There is strong opposition to "ethnic" data collection from groups who have been targets of "ethnic" data collection during National Socialism and its consequences, like the Roma and Sinti.

Although there is no "ethnic" data collection, police operate with them when dealing with politically motivated crime. Since the introduction of a new system of definition and registration of politically motivated crime in 2001, all those criminal offences which are not extremist but are directed against a person because of her or his political views, nationality, ethnic origin, "race", skin colour, religion, worldview, descent, sexual orientation, disability, visual appearance or social status, are registered.

Between 2002 and 2004 there was one homicide committed, 24 attempted homicides and 2,000 assaults and batteries committed by right-wing extremists (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration

⁶⁹ <http://www.presseportal.de/story.htx?nr=795585&firmaid=42899>, 09.03.2006.

(2005): Bericht der Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland, Bonn, p. 261-263). Since the beginning of the 1990's there has been intercultural training in some police colleges in places like Hessen and Brandenburg.⁷⁰

V.iii Counter-terrorism and protection of human rights

Two cases related to the "war on terror", the undermining of human rights and the suspicion that the German government is biased in the protection of its own citizens when they have a migrant background shall be mentioned here. The first is the case of Khalid al-Masri, a lorry driver from Neu-Ulm who was kidnapped by the CIA. Investigations carried out by the public prosecutor's office confirmed his statements that he was detained on 31 December 2003 at the Serbian-Macedonian border while travelling by bus on a vacation from Neu-Ulm to Skopje. He was initially held for a period of three weeks in a hotel in the Macedonian capital. Three weeks later he was flown out to Afghanistan in the company of CIA agents and held for four months in a secret prison. On a number of occasions he was violently assaulted, kicked, humiliated and subjected to a series of interrogations. His wife and four children learned nothing of his whereabouts. After endless interrogations, a hunger strike and constant avowals of his innocence, he was finally flown back to Albania on 28 May, 2004. The CIA concluded that they had imprisoned a completely innocent person. On 29 May 2004 he was flown back home. In 2005 the legal and political ramifications of the case have assumed an international dimension following the lodging of legal proceedings in the name of al-Masri against the CIA and its director at that time, George Tenet, by the US human rights organisation, the American Civil Liberties Union (ACLU) on 6 December 2004. It is the first legal case that aims to denounce and condemn the practice of "renditions" as a violation of American and international law.⁷¹

Another case is that of 22-year-old Murat Kurnaz, who was born and raised in the city of Bremen but holds Turkish citizenship. He has been imprisoned in Guantanamo Bay since being turned over to US soldiers near the Pakistani-Afghani border in October 2001, charged as an enemy combatant despite contradicting evidence. In the beginning of December 2005 he celebrated at least a small legal victory in Germany. The Interior Minister for Bremen revoked his residency permit because Kurnaz was not around to register himself. An administrative court's decision ruled not to reject his residency permit and allowed him to re-enter the country once he is freed from Guantanamo Bay. German officials doubted the charges almost immediately after his capture. Though he visited a Bremen mosque on the watch list of local law enforcement for suspected extremist views, officials found no connection between Kurnaz and

70 Dialog Global, Heft 6, Faires Miteinander. Leitfaden für die interkulturell kompetente Kommune 2012. Bonn, August 2003, http://www.service-eine-welt.de/download/downloads/DG6_2004.78.pdf, 09.03.2006.

71 <http://www.wsws.org/articles/2005/dec2005/masr-d17.shtml>, 07.03.2006.

the Islamic fundamentalist scene. The Bremen prosecutor abandoned an investigation into Kurnaz and his friend Selcuk Bilgin, who accompanied him as far as Frankfurt airport, for lack of evidence in 2002.

Unlike France, Sweden and Britain in cases involving own nationals imprisoned in Guantanamo, the German government has so far involved itself minimally in Kurnaz's case because he holds Turkish citizenship.⁷²

V.iv Integration and social inclusion of ethnic and religious minorities

Until the beginning of 2005 forced marriages was a topic for specialised NGO's, ethnographers and other specialised experts. After the murder of Hatun Sürücü, who was killed by one of her brothers on 7 February 2005 in Berlin, forced marriages became the main topic of migration policies. Hatun Sürücü was a young Berlin girl of Kurdish background who liberated herself from a forced marriage and became a victim of a so called "honour homicide" (Ehrenmord). Since then public and political debate has centred on the patriarchal ideas of gender and honour in migrant communities and around the alleged authoritarian family structure of migrants. Besides the public, who showed increased interest in a book published on this topic, parliamentary and political parties used this topic to legitimise the increasing barriers for migration and naturalisation. Forced marriages were part of the election programmes of the SPD and the CDU/CSU for the election campaign in 2005. Shortly before the election, the Upper House (Bundesrat) introduced a bill fighting forced marriages.⁷³

⁷² <http://www.dw-world.de/dw/article/0,2144,1798220,00.html>, 07.03.2006.

⁷³ Bielefeldt, Heiner: Zwangsheirat und multikulturelle Gesellschaft. Anmerkungen zur aktuellen Debatte, Deutsches Institut für Menschenrechte, Berlin 2005.

VI. Conclusion

If we regard the recent decisions taken in Germany they all follow the same pattern: migration is in principle somehow a criminal act. This can be clearly seen in the so called "visa affair", which was about simplifying the visa procedure in Ukraine and was then publicly handled by the opposition as a trafficking system supported by the Red-Green government. Migration is connected with obligation, violence and oppression of others, as we have seen in the case of forced marriages. It invites nearly everybody to abuse the system and its regulations, as in the case of fictitious marriages or false paternities. The logical consequences are that migration, especially through marriage or family unification, should be controlled or even better, that it should be prevented. The whole notion of migration is viewed with deep mistrust. The Federal Government used the opportunity to transpose eleven directives of the European Union to tighten asylum and residence legislation further with the following consequences⁷⁴:

- Intensified bulk heading: in the future refugees can be regularly arrested when they are picked up close to the border.
- Incomplete transposition of directives: the bill transposing the directive for refugee protection and protection from deportation is incomplete.
- Family-hostile regulations: family reunion is made more difficult and violates the constitutional right to respect of family life.
- Gaps left unaddressed in immigration law: after one year of practical experience the new law proved incapable of dealing with the concept of "Kettendulung", whereby asylum seekers can spend many years waiting for a verdict on their status in a legally precarious situation and with the constant threat of deportation.

With regards to changes made in the labour market, it seems that the procedures and regulations put into place have a long term effect which contradict the officially announced policies in Germany. According to the German federation of trade unions this is exacerbated by the "Policy Plan on Legal Migration", which the European Commission adopted on 21 December 2005 and is based on the previously published green book which addresses the EU common legal migration policy. It defines actions in four fields⁷⁵:

- A legislative section to regulate the conditions of entry and residence of third-country nationals in employment;
- actions and policies to foster knowledge building and sharing of information in the immigration field;

⁷⁴ <http://www.proasyl.de>, 09.02.2006.

⁷⁵<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1664&format=HTML&aged=0&language=EN&guiLanguage=en>, 10.03.2006.

- policies and funding aimed at supporting and improving the integration of economic migrants and their dependants in the labour market and in the host society;
- measures aimed at a more efficient management of international immigration flows which need the cooperation and the support of the Countries of origin of the immigrants.

The trade unions fear a growing ethnised social structure through the connection of residency with the workplace. It involves the danger that discrimination on the basis of work and descent creates a new form of modern (inheritable) slavery. Fighting "Europeanisation" as a system producing ethnised social structure as described in the introduction therefore needs a European approach, German NGO's working in the field of anti-racism and anti-discrimination have to adjust to the new situation of having two thirds of the electorate as governmental supporters and a weak opposition. It seems necessary to develop a European approach and a Europe-wide opposition to those effects of policies stabilising an unjust international economic order. This policy does not fight the causes of unjust development, but instead fights those suffering due to this development.

VII. Bibliography

Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration: Bericht der Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland, Bonn 2005.

Bielefeldt, Heiner: Zwangsheirat und multikulturelle Gesellschaft. Anmerkungen zur aktuellen Debatte, Deutsches Institut für Menschenrechte, Berlin 2005.

Bundesamt für Migration und Flüchtlinge: Der Einfluss von Zuwanderung auf die Deutsche Gesellschaft. Deutscher Beitrag zur Pilotforschungsstudie "The Impact of Immigration on Europe's Societies" im Rahmen des Europäischen Migrationsnetzwerk, Forschungsbericht 1, Nürnberg 2005.

Diakonie: Ein Jahr Zuwanderungsgesetz. Anmerkungen und Empfehlungen des Diakonischen Werkes der EKD zur Umsetzung des Zuwanderungsgesetzes. Heft 10/05, Berlin 2005.

Diversity Hamburg (eds.): Diversity-Management als Chance für kleine und mittlere Betriebe. Hamburg 2005.

Goldberg, David Theo and Ato Quayson (eds.): Relocating Post colonialism, Blackwell 2002.

Unternehmer ohne Grenzen e.V. (eds.): Dokumentation: Migration@work. Kongress "Arbeit und Selbständigkeit" in Hamburg. Schauen Sie doch mal genau hin! Vielfalt erkennen. Potentiale nutzen. Perspektiven entwickeln. Arbeit und Selbständigkeit in der Hamburger Einwanderungsgesellschaft. Hamburg 2005.

Verband binationaler Familien und Partnerschaften (iaf): Informationen 4/2005, Frankfurt 2005.

ANNEX I: Overall Assessment of Directive 2000/43/EC

- ⊖ Not yet implemented
- Partial implementation
- Fully implemented

| Article | Provision | Implementation Status | Comment |
|---------|--|-----------------------|---------|
| 2 | <u>Concepts</u> | | |
| | Direct discrimination | ⊖ | |
| | Indirect discrimination | ⊖ | |
| | Harassment | ⊖ | |
| | Instruction to discrimination | ⊖ | |
| 3 | <u>Scope</u> | | |
| | Employment | ⊖ | |
| | Vocational training | ⊖ | |
| | Working conditions | ⊖ | |
| | Membership of organisations | ⊖ | |
| | Social protection | ⊖ | |
| | Social advantages | ⊖ | |
| | Education | ⊖ | |
| | Goods and Services | ⊖ | |
| 4 | Exceptions for genuine and determining occupation requirements | ⊖ | |
| 5 | Government led positive action measures | ⊖ | |
| 6 | Anti-discrimination goes beyond the provision of the Directive | ⊖ | |
| 7 | Remedies available | ⊖ | |
| | NGO participation in complaints procedures | ⊖ | |
| 8 | Application of the shift in the burden of proof | ⊖ | |
| 9 | Victimisation | ⊖ | |
| 10 | Government dissemination of information | ⊖ | |
| 11 | Social dialogue on anti-discrimination | ⊖ | |
| 12 | Government dialogue with NGOs | ⊖ | |
| 13 | <u>Functions of the Equality body</u> | | |
| | Provide assistance to victims | ⊖ | |
| | Conduct surveys concerning discrimination | ⊖ | |

| | | | |
|----|---|---|--|
| | Publish reports | ⊖ | |
| 14 | Review of existing law to ensure that they are compliant with the Directive | ⊖ | |
| 15 | Effective and dissuasive sanctions | ⊖ | |

ANNEX II: List of non-transposed EU Directives in 2005

This list was produced by the Coordination of DGB-Bundesvorstand, Referat Migration Policy

Equal Treatment and Nondiscrimination

- Transposition until 19.7.2003
 - Decision of ECJ 28.4.05 because of non-transposition
 - Preparation of a fine

Law passes lower house (Bundestag) at 17.06.2005, but does not come into force; new legislative procedure

No [overall assessment of Directive 2000/43/EC](#) for Germany therefore possible

- Directive 2000/78/EG, 27.11.2000
 - Transposition until 2.12.2003 (exception: Discrimination because of age, 2006)
 - Preparation of legal action at the ECJ by the commission.

Law passes lower house (Bundestag) at 17.06.2005, but does not come into force; new legislative procedure

- Directive 2002/73/EG changing directive 76/206/EWG
 - Transposition until 05.10.2005

Law passes lower house (Bundestag) at 17.06.2005, but does not come into force; new legislative procedure

- Directive 2004/113/EG, 13.12.2004
 - Transposition until 21.12.2007

Law passes lower house (Bundestag) at 17.06.2005, but does not come into force; new legislative procedure

Rights of Third Country Nationals

- Directive 2003/86/EG, 22.09.2003
 - Transposition until 03.10.2005

2. law changing the Immigration law

- Directive 2003/109/EG, 25.11.2003
 - Transposition until 31.01.2006

2. law changing the Immigration law

- Directive 2004/114/EG, 13.12.2004
 - Transposition until 12.01.2007

2. law changing the Immigration law

- Proposal of the commission COM 2004/178
 - Agreement on the objective, reservations in formulation

2. law changing the Immigration law

Flight and Asylum

- Directive 2003/9/EG, 27.01.2003
 - Transposition until 06.02.2005

2. law changing the Immigration law

- Directive 2004/83/EG, 29.04.2004
 - Transposition until 10.10.2006

2. law changing the Immigration law

- Proposal of the commission COM 2000/755

2. law changing the Immigration law

Illegal Immigration and Trafficking

- Directive 2002/90/EG, 28.11.2002
 - Transposition until 05.12.2004

2. law changing the Immigration law

- Directive 2003/110/EG, 25.11.2003

- Transposition until 06.12.2005

2. law changing the Immigration law

- Directive 2004/81/EG, 29.04.2004
 - Transposition until 06.08.2006

2. law changing the Immigration law

Free Movement and Social Security

- Directive 2004/38/EG, 29.04.2004
 - Transposition until 30.04.2006

2. law changing the Immigration law

- EU regulation No. 859/2003, 14.05.2003 about the extension of the regulation VO (EWG) No. 1408/71 and VO 574/72 to third country nationals

Special regulations for Germany: contributions are only made if third country nationals have a permanent residency.

Racism and Xenophobia

- Proposal for a statutory order on the European Monitoring Centre on Racism and Xenophobia

Proposal of the commission: COM 2003/483, withdrawn 06.08.2004

- Proposal for a framework decision combating racism and xenophobia

Proposal of the commission COM 2001/664 - Last discussion in the council 02.06.2005