



ENAR

SHADOW REPORT

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Message from the President

ENAR's 2004 European Shadow Reports cover a period of 12 months. They are not a scientific study of the state of racism or discriminatory practices in EU Member States, but a compilation of information and data collected and provided by a vast network of NGOs working with antiracism, protection of human rights and provision of legal help and moral support to victims of discrimination, unequal treatment and marginalisation in the European Union.

This commendable work is done by many dedicated individuals, groups and organisations, who every year put a lot of effort in piecing together vital information in preparing reports from each EU country. Since official reports often paint a rosier picture of the local situation by excluding what NGOs say or experience, ENAR's reports have the added value of providing an overall picture from the ground.

EU institutions can use this information to check the performance of Member States and ask them to live up to the letter and spirit of Directives and Guidelines. In 2003, many international organizations, journalists, institutions of higher learning, European and non-European students and sister NGO networks utilized these reports.

ENAR wishes to highlight the fact that a number of diverse groups who live in the EU do not enjoy the socio-economic rights, equal opportunities and even legal protection they are entitled to. This lack of equality is not only a strong barrier in the process of mutual integration of these communities in society, but is also a tremendous financial loss to local economies.

Situations vary from country to country. Some have a long tradition of living with ethnic minorities, while others have only a few years experience. Some countries have good and functional anti-discrimination legislation in place, while others are still hesitant to comply.

Populist political statements and distorted media coverage has not helped to better the situation. Politicians hide behind "freedom of speech" to get away with the most hateful propaganda against certain groups, while the media holds the microphone. Mainstream media not only indulge in the generalisation of minorities but are also

steadfast in denying any responsibility in creating an atmosphere in which racism thrives.

EU institutions have taken many important steps to rectify this situation through directives, information campaigns and even legal steps against some countries have been taken. ENAR is hopeful that by being a bridge between ethnic minorities, NGOs and EU institutions, it can help to create a Europe where all its inhabitants can live in harmony. Our expertise is there as well as our resolve. We are here to help because we believe in truth, justice and even-handedness.

I was pleasantly surprised when I was introduced to a prominent journalist from India at a conference in Brussels recently. When he was told that I was the Chair of ENAR, he smiled and said, “I wish we also had such an organisation in Asia that can bring civil society’s wishes to the decision makers.”

Bashy Quraishy
President – ENAR

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1. Introduction: Data sources and problems of “ethnic” data collection

In 2004 we have been confronted with the same situation as in 2003. There is a big variety of material about victim groups available in Germany, but unfortunately the material’s reliability is of varying quality and therefore access to reliable sources remains difficult. Furthermore, there are neither public databases, with document cases of discrimination, nor is there any other “ethnic” data. This becomes a problem considering the increase in naturalisations, which causes 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. This is one of the reasons why the appeal for ‘ethnic’ statistics to survey the dimensions of discrimination is growing in Europe.

In the second report of the “European Commission against Racism and Intolerance” (ECRI) on Germany, the need for data collection on ethnic background was exposed, as it would help the German authorities to gain an overview of the different minority groups’ situation. The German authorities refused this appeal. The third ECRI-Report on Germany again recommended to the German authorities to work with the categories of religion, language, citizenship and national or ethnical background in data collection¹. ECRI also mentioned that scientific research in Germany tended to be preoccupied with the perpetrators rather than the victims².

There is no widespread public and scientific discourse about these methods or the dangers and advantages of such an ‘ethnic’ data collection in Germany. This year we have solved the data collection problem by looking at a wide range of information, using the Internet and telephone interviews with grassroots organisations as the most important sources. In those areas, we referred to individual cases published in newspapers, booklets and Internet archives. The basis of the statistical evaluation in 2004, are published statistics of the German Federal Bureau of Statistics³, as well as our own calculations. Most statistics were updated in 2004 and describe the development of the German population in 2003.

According to the statistics, 500,000 less people than the year before lived in Germany in 2003, namely 82,531,700 people. 40,356,000 of them are males (48.9%), 42,175,700 females (51.1%). 91.1% are registered as ‘German’ and 8.9% as ‘foreigners’ (Ausländer). Finding statistical information to describe victim groups with various backgrounds is rather difficult as the central distinctions between the

1 Third ECRI-Report on Germany, http://www.coe.int/T/E/human_rights/Ecri/4-Publications, Point I.89

2 Ibidem, II.103

3 All data from: Statistisches Bundesamt Deutschland <http://www.destatis.de>

statistical categories are 'German' and 'Ausländer' (foreigners/aliens). The 'foreigner' category is defined through non-German nationality and has its own laws (Ausländergesetze). The category 'German' itself shows no distinctive information relating to an individual's background and is preconceived as meaning 'ethnic' German. Statistically speaking, to become German means losing your origin and being subsumed into the category 'ethnic German'.

2. Description of 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 the German institutional, economical and social system. 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 Statistics⁴ recorded an increase in those 'foreigners' who are not categorised under any type of residence permit - from 14.5% in 2003 to 16.24 % in 2004. This adds up to 1,191,125 more people in 2004. All others share the following types of residence permits: temporary residence permit (2001: 27.1%, 2003: 22.47%, 2004: 22.32%), unlimited residence permit (2001: 32.46%, 2003: 27.22%, 2004: 27.76%), residence warranty [Aufenthaltserlaubnis] (2001: no calculation, 2003: 10.67%, 2004: 10.50%), residence grant [Aufenthaltsbewilligung] (2001: 4.61%, 2003: 4.43%, 2004: 4.68), residence warrant [Aufenthaltsbefugnis] (2001: 3.99%, 2003: 3.6%, 2004: 3.6%), temporary EU residence permit (2001: 6.76%, 2003: 5.77%, 2004: 5.63%), unlimited EU residence permit (2001: 8.47%, 2003: 8.69%, 2004: 9.25%) and toleration [Duldung] (2001: 3.76%, 2003: 3.09%, 2004: 3.09%).

2.1 Paperless migrants

The emergence of illegal migrants is the effect of the European border regime, now widely referred to as 'Fortress Europe'. The paperless migrants are an heterogeneous group and comprise people without a valid residence permit who live and work in Europe; people with a refused claim of asylum who cannot or do not want to go back to their country of origin; refugees who evade the Asylum Process Law (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 about the life situation of paperless migrants, but there is no systematic compilation⁵ of information. Research done in this area barely works with concrete investigations but essentially with estimations. The main apprehension

4 Statistisches Bundesamt, Wiesbaden, 2004. Stand: 19.11.2004 / call on 31.1.04;16:35, <http://www.destatis.de/basis/d/bevoe/bevoetab9.php>

5 http://www.wz-berlin.de/zkd/aki/files/aki_illegalitaetsbericht.pdf, Stand 28.2.05, 14:21

after the EU admission of eastern European countries was that a mass of ‘illegal people’ would flock to Western Europe. This did not happen, or at least nobody can say something precise about it. The estimate for Germany was that at least three million people would come, most of them temporary workers who would return to their home countries after some months. The IG Bau trade union supposes that up to 300,000 ‘illegal people’ are already employed in the construction sector in Germany, partly originating from Portugal and Great Britain⁶. First experiences after the admission of the new EU member states shows that not only are the closed borders against the spirit of the European Union, but that they are also unnecessary.

2.2 Asylum seekers and refugees

In a press release from January 25 2005, the German Ministry for the Interior (Bundesministerium für Inneres, BMI) disclosed that the number of asylum claims in 2004 had declined again to around 29.6%⁷. By looking at the disclosed figures it can be verified that there is a slight increase of asylum claims from Azerbaijan and Nigeria and a drastic decline of over 50% of claims from Iraq and China. Claims from Iran, India and Turkey declined around 30%, and from Serbia, Montenegro, Russian Federation and Vietnam by around 20%. These numbers reflect only asylum seekers who have claimed asylum in Germany, so they have negligible validity for the real decline of this group of people. Rather, they reflect the success of the government and its asylum policy, which induce a toughening up of the formal criteria of entrance into the country and of the recognition of claims.

2.3 EU-Citizens or third-country nationals with other legal status

In 2003, 1,849,986 people (25.2% of all people recorded as ‘foreigners’) from the ‘old’ European Union lived in Germany, 77.4% of which were born abroad and 22.6% in Germany. Including the new EU member states, 31.8% of all recorded ‘foreigners’ are EU-citizens. But since the admission of the new member states (01.05.04), freedom of movement is no longer equal for all EU-citizens. Liberty of movement has been restricted for the Middle and Eastern European citizens especially. Bilateral agreements were ratified with these states, which bind workers’ freedom of movement for two years and can be extended to more than seven years. Since May 1 2004, not all EU-citizens enjoy freedom of movement. Their political and social participation is also restricted.

6 <http://www.aufenthaltstitel.de/zuwg/0474.html>, Stand 9.2.05, 16:03

7 http://www.bafli.de/template/service/presse/pressemitteilung_bmi/pressemitteilung_bmi_2005_01_23.htm, Stand 9.2.05, 14:48

2.3.1 Time of Residence and Settlement areas of migrant minorities

The Federal Bureau classifies ‘foreigners’ according to their time of residence in the country. So it is possible to calculate the size of the group according to the year of their arrival. Meanwhile, a lot of people have left Germany again. The largest group of 1,391,452 (19%) of people have already lived in Germany for over 30 years. They came to Germany as migrant workers during the period of ‘guest worker recruitment’ before 1973. The second largest group (1,349,898 persons, 18.4%) came to Germany between 1988 and 1993. At this time the unification of the Federal Republic of Germany and the German Democratic Republic took place and the Warsaw Pact was broken. The third largest group of 951,645 persons came between 1999 and 2003.

The percentage of women continuously increased, from 1980 (41.5%) until 1988 (45%). Only after unification did the percentage of women decline to a low of 42.7% in 1992 and increased to 47% again until 2003.

The majority of migrants live in urban centres (the federal city-states Bremen, Hamburg and Berlin average 13.6%) and in the South Western federal states (Bavaria, North Rhine-Westphalia, Hesse and Baden-Wurttemberg average 10.9%)⁸.

2.3.2 Second and third generation of migrants born in Germany

22.6% of all “old-EU-foreigners” or 18.8% of all “new-EU-foreigners” were born in Germany. 654,853 persons who are recorded as Turkish nationals were born in Germany. With 35%, they are the largest group of all migrants born in Germany. 32.3% of the persons whose status is undefined were born in Germany. 30.8% of persons registered as stateless were born in Germany. Looking at this data, it becomes obvious that the separation between ‘German’ and ‘foreigners’ no longer reflects the reality of those groups, when an ever-increasing number of them were born and socialised in Germany.

2.4 German citizens

2.4.1. Introduction

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

⁸ All data from: Statistisches Bundesamt, Wiesbaden, 2004. Latest update: 15.04.2004 and own calculations.

guarantee of participation in German society. For ‘newly naturalised’ Germans, this is no longer the case. The “International Centre for the Human Rights of Kurds”, IMK e.V. announced that with the renewed Citizenship Law of January 1 2000, German citizenship is automatically revoked if another citizenship is applied for⁹. The 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 August 5 2004¹⁰.

2.4.2 New minorities by naturalisation

The Federal Bureau of Statistics announced that naturalisations are decreasing (-8.9% between 2002 and 2003) in a press release dated May 24 2004. The figures have continuously decreased since the introduction of the new Citizenship Law. This decline shows that the new Citizenship Law does not consider the situation of migrants accurately and that the majority of migrants do not accept it. When migrants apply for German citizenship their background disappears statistically and the debate about the acceptance of German values also has to be factored into the increased pressure for assimilation.

2.4.3 Afro-Germans

Afro-German is the name that black people who were born or have lived in Germany for a long time gave themselves, after having been unsatisfied with the names that they were given by others. Again, there is no data available for this group. With the 120th anniversary of the Berlin Congo Conference in 1884/85 and the 100th anniversary of the Herero genocide in the former German colony of ‘German-Southwest’, today’s Namibia, a large number of activities took place. In Berlin, the third “Black Media Congress” took place in 2004. Afro-Germans’ presence in the media also increased.

2.4.4 Ethnic Germans

Between 1945 and 1949, nearly 12 million German refugees and people who had been expelled resettled on the territory of today’s Germany. In 2004, the number of ‘Aussiedler’ (ethnic Germans, as distinct from East Germans) declined by 19% in comparison to 2003. The ‘Aussiedler’-Commissary explains the decline in immigration with almost completed family reunions and with German remedial action in countries of origin, which provide a better future in those countries.

⁹ Circular email from Internationalen Zentrums für die Menschenrechte der Kurden, IMK e.V.

¹⁰ <http://www.agah-hessen.de/Themen/Recht/Staatsangehörigkeitsrecht/stag.ptn.pdf>

2.4.5 National minorities

In 1999, the Federal Republic of Germany (FRG) joined the “European Charter for Regional and Minority Languages”. On February 12 2004 the Federal Commissary for ‘Aussiedler’-Questions and national Minorities presented the second national report on the monitoring process to the Council of Europe. Germany was criticised once again. Deficits have been detected in schools, in the media and in the implementation of some legislative and administrative regulations.

2.4.6 German Sinti and Roma

The Sinti people have traditionally lived in Germany since the 14th/15th century. The Roma came to live in Germany later. Throughout their history, the Sinti and Roma had to deal with discrimination. They have been excluded from specific economic sectors and driven away from cities and regions in which they wanted to settle. Sinti, when trying to settle in their home regions, were driven away until the 19th century. During the Second World War, the Sinti and Roma of Germany and the occupied territories were subject to persecution and genocide. Hundreds of thousands were murdered and their cultural heritage was largely destroyed. Today, there are an estimated 70,000 German Sinti and Roma 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. However, they are victims of discrimination, exclusion and disadvantage in various areas of social life – threats and racist defamation by right-wing Extremists and Neo-Nazi-Groups are a regular occurrence¹¹. Children of German Sinti and Roma grow up bilingual, speaking Romani and German. No provision is made in the curriculum of the German school system for the teaching of Romani. Sinti and Roma however are also discriminated against in access to the education system. This shows in their over-representation in special schools (‘Sonderschulen’ are schools for children with extreme learning difficulties) and the high rate of school leavers. Roma and Sinti are also frequently the object of official crime prevention and social policy investigations.

Roma and Sinti groups notice that they are not equal partners and that they are not involved in decisions concerning their minority. There is also the lack of a basic approach for the protection of minorities which covers all spectrums of people and minority rights¹².

11 Fom: Statement of Zentralrats der Roma und Sinti zum Entwurf eines Gesetzes zur Umsetzung europäischer Antidiskriminierungsrichtlinien, BT-Drs. 15/4538.

12 <http://www.gfbv.it/2c-stampa/03-1/030124de.html>, Stand 17.2.05, 17:11

2.4.7 The Danish, Sorbian and Frisian Minority

The Danish minority lives in the north of Germany near the Danish border (Schleswig-Holstein) and numbers approximately 50,000 people. All people belonging to this minority can speak German, they can understand Danish and most of them speak the language as well. The Danish minority have their own newspaper, their own library system and their own schools and kindergartens. They organise themselves into clubs and associations as their status as a minority allows them to live independently from Germans¹³. The “Southschleswig Election Association” (Südschleswigscher Wählerverband, SSW) warns of an imbalance in German minority politics - Germany interprets its obligations towards minorities as fulfilled, because there are numerous Danish groups, organisations and associations. But the Danish Kingdom finances 50% of those activities¹⁴.

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. After unification, most Sorbs lost their jobs as farmers and started leaving Lusatia. Job and career prospects are particularly poor for young Sorbs in their home regions.¹⁵

The Friesians live in the north of Germany in Schleswig-Holstein and in the North West of Lower Saxony. The Friesians number 50,000 to 60,000, which is a third of all people living in that region.¹⁶

2.4.8 Religious minorities

2.4.8.1 Muslims

By far the largest religious minority have been Muslims in Germany. In 2003 they totalled 3,300,000, of which 732,000 have a German passport. Within the Muslim community, the largest group is Sunni (2,200,000) then Alevi (340,000). Other groups are Iranian Imamates and Turkish Shiites (170,000) as well as a number of mosque associations¹⁷ with a total of 173,430 members¹⁸.

13 Ibidem, p. 7-8

14 <http://www.ssw-landesverband.de/www/de/presseservice/pressemitteilungen/2004/02/04-02-12.php>, Stand 17.2.05, 15:58

15 Ibidem, p 8-9

16 Ibidem, p. 9-10

17 Türkisch-Islamische Union der Anstalt für Religion (DITIB), Islamische Gemeinschaft Milli Görüs (IGMG), Verband der

2.4.8.2 Orthodox Christians

There are between 885,100 and 905,100 people who are associated with Orthodox and Oriental Christian churches in Germany, this is 30,000 less than last year. The largest group (450,000) belong to the autocephalous and autonomous churches of the ecumenical patriarch of Constantinople. The next largest congregations are 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.¹⁹

2.4.8.3 Jews

We found different figures for this group on the website www.antirassismus.de, approximately 87,500 people are recorded, which means that the Jewish minority represent 0.1% of the population²⁰. In 2004, REMID recorded approximately 189,000 Jews in Germany, 105,000 of whom belong to a Jewish congregation. The remaining 80,000 are without association to a congregation. There are 9,000 members of the Jewish community more than last year. 80,000 of them are immigrants from Eastern Europe.²¹

2.4.8.4 Buddhists

There are between 205,000 and 215,000 Buddhists living in Germany, that is an increase of 100,000 in comparison to last year. The group of 'German Buddhists' has grown massively, the reason for this is not available from REMID. The second largest group is Buddhists from Vietnam. This group came to Germany either as refugees from the Vietnam War in the mid-1970s ('Boat People') or were recruited as contract-workers for the former GDR from 1976 until its collapse in 1989. The third largest group is Buddhists from Thailand (25,000) and from other Asian countries (20,000-30,000).²²

Islamischen Kulturzentren (VIKZ), Türkisch-islamische Untion (ATIB), Islamische Gemeinschaft Jama't un-Nur, Muslimbrüder, Kalifatsstaat

18 http://www.remid.de/remid_info_zahlen.htm, Stand 18.2.05, 13:21. REMID is the Scientific Religious Media and Information Service, at the Leipzig University.

19 "Altorientalische" Syrisch-Orthodoxe Kirche von Antiochien (Jakobiten / Westsyryer), Russisch-Orthodoxe Kirche, Armenisch-apostolische Kirche, Griechisch-Orthodoxes Patriarchat von Antiochien und ganz Asien: Exarchat Westeuropa der Griechisch-Orthodoxen Kirche von Antiochien, Äthiopisch-Orthodoxe Kirche, Heilige Apostolische Katholische Assyrische Kirche des gesamten Ostens (Assyrisch-Orthodoxe Kirche /Ostsyryer), Maronitische Kirche, Ukrainische autokephale Orthodoxe Kirche, Koptisch-Orthodoxe Kirche, Ukrainische Orthodoxe Kirche - Patriarchat Kiew, Orthodoxe Syrische Kirche des Ostens in Indien (Thomaschristen, heute westsyrischer Ritus) http://www.remid.de/remid_info_zahlen.htm, Stand 18.2.05, 14:18

20 <http://www.antisemitismus.net/2005/01/antisemitismus-2.htm>, Stand 28.02.2005, 17:45

21 http://www.remid.de/remid_info_zahlen.htm, Stand 18.2.05, 13:30

22 http://www.remid.de/remid_info_zahlen.htm, Stand 23.2.05, 11:26

2.4.8.5 Hindus

A small religious minority in Germany is Hindu, with approximately 97,500 people in 2004, 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.²³

²³ http://www.remid.de/remid_info_zahlen.htm, Stand 23.2.05, 11:35

3. Specific areas where racism is apparent

3.1 Security considerations and naturalisations

Due to current security concerns, a large group of people are under ‘general suspicion’. 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 (in 2002, 93 of 172 cases were deliberated, in 2003 146 of 235 cases, in 2004, 82 of 148 cases)²⁴. ECRI has requested German authorities review the practical application of the Citizenship Law (satisfactory knowledge of the German language, loyalty to the constitution, no previous conviction and being able to self-sustain) and to look for possible problems in the arbitrariness of or discriminating nature of the application process²⁵. It is also necessary that the German authorities collect reliable data on rejected applications of naturalisation and the reasons why those have been rejected²⁶.

3.2 Antidiscrimination legislation

The Anti-discrimination Bill was brought to the German Parliament (Bundestag) on December 16 2004. Germany is late in the transposition of the directives 2000/43/EC and 2000/78/EC. The legislation prevents or eliminates discrimination on grounds of ethnicity, gender, religion or belief, disability, age or sexual identity. The Ministry for Family, Seniors, Women and Youth will establish a federal anti-discrimination office. The essential elements are the anti-discrimination legislation (Antidiskriminierungsgesetz, ADG) with rules protecting soldiers and the revision of the Labour Laws, Industrial Relation Constitution Law, Social Code Law and the Soldiers Law. Decisive in the ADG is the change of perspective. The discriminated person should no longer feel a victim or a supplicant, but as one who can demand her/his rights with the help of the law.

The ‘Netz gegen Rassismus’ (NgR), the German national co-ordination of the European Network against Racism (ENAR), framed a provisory statement about the ADG. It includes some demands to the ADG like the deletion of the term ‘Rasse’ (race); nationality as a category should be included in the catalogue of attributes; the Antidiscrimination Federal Office should work independently; and local anti-

24 <http://www.mutlu.de/dokumente/parlament/62909.html>, Stand 9.2.04, 15:22

25 Third German ECRI-Report, I.5

26 Ibidem, I.8

discrimination offices should be established in all Federal States and their financing should be assured²⁷.

3.3 Law for Control and Limitation of Immigration: “Zuwanderungsgesetz”

The so-called “Immigration Law” was promulgated on the August 5 2004 and came into operation on January 1 2005. Illegal migration is excluded from the law. The new law provoked some changes:

- The old ‘Foreigners’ Law is substituted through the Residence Law;
- Persecution because one belongs to a political party, to an organisation or another non-governmental actor became relevant for asylum;
- The right to residence is broadened to include civil war situations;
- ‘Gender specific persecution’ became recognised, when a person is persecuted by members of her or his family for gender reasons.

3.3.1 Hardship Commission

New on the list of ‘foreigner’ rights is the possibility of the establishment of a Hardship Commission on a Federal State level. For the first time a commission covers residence permits. So far the new law provides an upgrade of competence for a Refugees Hardship Commission. This could be useful in deportation cases.

3.3.2 Disregard of gender specific aspects

The new Immigration Law recognises ‘gender specific persecution’, but not as the only reason for asylum. There are about 75,000 Afghani women who claim asylum because of gender persecution in Germany. This is a regress to the already restrictive German Immigration Laws.

3.4 Institutional racism

3.4.1 The Case of the ‘Cap Anamur’ and the EU-Border Regime

The case of ‘Cap Anamur’ is an example of a change in the German and European Refugee policies. The Cap Anamur²⁸ ship saved 37 Sudanese refugees in the Mediterranean Sea off Italy’s coast in July 2004. The Cap Anamur wanted to dock

27 Netz gegen Rassismus für gleiche Rechte: Bewertung des Entwurfs eines Gesetzes zur Umsetzung europäischer Antidiskriminierungsrichtlinien (Umsetzungsgesetz) BT Drs. 15/4538, Typoskript 2005

28 A German NGO, which saved Vietnamese Boat People after the end of the Vietnam war and is now active in the refugee movement.

the Sicilian Port Empodocle and was stopped by the Italian Coastguard and the Navy. When the situation escalated, the Italian authorities gave permission to enter the port. Thereupon the ship was confiscated, the manager of the relief organisation, the captain and the first officer of the vessel were arrested and accused of 'aiding and abetting illegal migration'. The refugees were brought to a refugee camp and their asylum claims were, for the purpose of deportation, dealt with through summary proceedings.

The German Minister for the Interior, O. Schily rejected any responsibility of the German authorities for the refugees, and signalled the possible handling of the case as 'suspects of trafficking'²⁹. Germany thereby takes a vanguard position in matters of restrictive EU refugee policies. The Minister for the Interior also had the idea of establishing EU refugee camps in North African states thereby simultaneously placing refugees outside the European asylum jurisdiction. This would mean that refugees could no longer reach Europe and that their claims would be handled by states that have not necessarily ratified the Geneva Refugees Convention³⁰. The EU Commission agreed to work on a Bill for the implementation of the refugee camps until June 2005, which would then be put into operation in December 2005³¹.

3.4.2 Dead refugees in Germany and at EU Borders

Since the toughening up of the asylum and refugee policies, a lot of people, especially Africans, risk their lives to flee. The EU put up a security net off the coasts of Spain, Italy and Greece, to prevent small boats from evading the radar, costing billions of Euros. Scientists speak of 2,000 people dying each year in the Mediterranean Sea on their way to Europe. The real number of victims should be assumed to be much higher, research from Plymouth University claims³². In its booklet 'German Federal refugees policies and their fatal results' (1993-2004), the Antiracist Initiative Berlin (Antirassistische Initiative Berlin, ARI) comes to the conclusion that in this period, 79 people died as a result of racist encroachments or house fires and 323 refugees died through the actions of authorities³³.

29 <http://www.wsws.org/de/2004/jul2004/capa-j17.shtml>, Stand 18.2.05, 12:46

30 <http://www.proasyl.de/presse04/sep22.htm>, Stand 18.2.05, 12:47

31 <http://www.wsws.org/de/2004/okt2004/lage-o12.shtml>, Stand 18.2.05, 12:50

32 Prof. Michael Pugh of Plymouth University, Drowning not Waving: Boat People and Humanitarianism at Sea, *Journal of Refugee Studies* 17/2004

33 Antirassistische Initiative Berlin (ARI): "Bundesdeutsche Flüchtlingspolitik und ihre tödlichen Folgen" 1993 bis 2004, 12. updated edition, <http://www.berlinet.de/ari/doku>, Stand 28.2.05, 15:44

3.4.3. Deportation

In 2004, a drastic deterioration in the framework of asylum procedures and deportation practices was noticed. Some of the common problems are that German authorities delay asylum claims, do not forward them or refuse claims arbitrarily, access to documents is being refused to lawyers and adjudication is not put into practice. Consequently, refugees stay in refugee camps or in deportation custody year after year, without full freedom of movement. Children and adolescents who fled without parents are often victims of asylum and refugee policies. This is especially true with highly dubious procedures like genital and dental examinations to determine the age of the refugees. When a refugee is estimated to be over 16, they will be treated as adults concerning asylum claims, deportation procedures and deportation arrests³⁴. In 2003, 23,944 refugees were deported to 127 different countries via German airports. Figures on cases of deportation against the will of the refugee are not available.³⁵

3.4.4 Suicide in custody

In January 2004, Amnesty International (AI) presented a report concerning police brutality against ‘foreigners’, asylum seekers and ethnic minorities. The organisation accused German security authorities of a large number of abuses and assaults. AI doubted that the courts avenged the offences with the necessary insistence. Essential problems are that there are no figures regarding charges against authorities available and that most inquiries are stopped. Convictions are also rare as the courts are more likely to believe authorities’ statements rather than the victims³⁶. According to statements by the ‘Department of Internal Investigations’ (Dezernat Interne Ermittlungen, DIE), approximately 90% of cases against the police have been dropped³⁷. ECRI, in its third report on Germany (I.87)³⁸ suggest necessary actions which counteract racist police assaults.

3.4.5 Exclusion from Health care

Reforms in the Health system from January 2004, increased medical fees and introduced additional payments. This excludes people with low income from the health care system. This is especially true for refugees, falling under Article 2 of the Asylum Seekers Benefit Law, as they have a very low income. Refugees living in

34 <http://www.uni-kassel.de/fb5/frieden/themen/Menschenrechte/kaufmanns3.html>, Stand 23.2.05, 11:57

35 <http://www.proasyl.de> ‚Presseerklärung im Jahresrückblick vom 29.12.2004, there: Februar. Stand: 17.05.2005, 17:10

36 Süddeutsche Zeitung “Am Pranger“ from 15.01.2004

37 taz-Hamburg „Ein Inder darf kein Franzose sein“ from 14.01.05

38 Dritter ECRI-Report über Deutschland, Empfehlung I.87

Community Homes are only allowed non-cash benefits³⁹ and a very small amount of ‘pocket money’⁴⁰. But they have to pay the new and increased medical fees like everyone else. Consequently, people avoid medical treatment. Refugees and people without residence permits are excluded from medical care because doctors are obliged to notify the police or ‘Foreigners’ Authorities⁴¹ if they turn up. This means that a visit to a doctor can lead to deportation.

3.4.6 Freedom of movement - Restriction of rights – Residence obligation

(Residenzpflicht)

The ‘Residence Obligation’, which has existed in Germany since 1982, is unique in European asylum legislation. According to this Law, refugees are not allowed to leave the district/county to which they had been assigned during their asylum claiming procedure. This procedure can take years until asylum claims might be accepted. This means that for a considerable amount of time, asylum seekers are deprived of their right of free movement and the right to choose their own living area⁴². This law is the basis for arbitrary controls, racist assaults and for the persecution of people who are already categorised as ‘foreigners’ because of their appearance⁴³.

3.4.7 Discrimination and Abuse in the Army

On December 16 2004 the Military Commissary asserted publicly that ‘Foreigner Policies’ also had to include the military⁴⁴. According to figures from 2001, there are 310,000 soldiers in the German Federal Armed Forces (Bundeswehr), 10,000 of which have a ‘foreign’ background⁴⁵. While in December 2004 the ‘Law for the Equally Treatment of Female and Male Soldiers’ was adopted⁴⁶, there remains no such law for the implementation of European Anti-discrimination Directives.

39 http://soziales-zentrum-goettingen.de/infos/info_gesundheit.html, Stand 28.2.05, 11:59

40 Ibidem

41 <http://www.aerzteblatt.de/v4/archiv/artikel.asp?id=43359>, Stand: 02.03.2005, 13:00

42 <http://www.thevoiceforum.org/sudnews>, Stand 02.03.2005, 15:15

43 <http://www.carava.net/article.php?story=20040307110933210>, 28.2.05, 18:28

44 http://www.bundestag.de/parlament/wehrbeauftragter/50_148rede.html, Stand 28.2.05, 14:29

45 Aus Politik und Zeitgeschichte, Nr.25-26/15./22. Juni 2001,

http://www.das-parlament.de/2001/25_26/Dokumentation/2001_25_26_037_5799.html

46 <http://www.deutsches-wehrrecht.de/WR-DGleiG.html>, Stand 28.2.05, 14:08

3.4.8. Selection mechanism in the educational system

A fifth of children in Germany grow up in families with migrant backgrounds⁴⁷. Those children and young adults are especially affected by the selection mechanisms of the German educational system. In the group of pupils with migration backgrounds, there is an over-proportional percentage of young people who are excluded from long term and sustainable education⁴⁸. Young people with migrant backgrounds have a high risk of ending up in a low-income profession, with unfavourable work conditions or bad career opportunities. Young German adults can avoid these jobs. Young people with migrant backgrounds are unemployed almost three times as often as young German adults and often resort to semi- or unskilled work⁴⁹.

3.5 Economic discrimination

3.5.1 Commodities

Over two thirds of refugees live in 'Collective Homes'. Their social benefits have been decreasing to below the legally defined level in the last years. Goods tokens and chip cards have been introduced to deprive refugees of cash. The 'Initiative Against the Chip Card System' published a booklet in 2004, where they inform about this exclusionary migration policy and give advice to refugees for their everyday life⁵⁰. The Asylum Seekers Benefits Law (AsylbLG) was last changed through the Immigration Law, Art. 8 from July 30 2004 (BGBl. I 2004, p. 1,950)⁵¹.

3.5.2 Labour market

Figures on working migrants liable to social insurance declined in 2004 once again to 1.86 million, this is a decrease of 12.3% in relation to 2003. Unemployment increased between 2000 and 2004 by 22% among migrants. The unemployment rate is 20.1%. 68% of all unemployed migrants are between the ages of 25 and 45 and 21% are between the ages of 45 and 55. 20% of unemployed migrants come from an EU member state and 80% from non-EU member states. In 2004, 38% of all unemployed 'foreigners' were long-term unemployed. It is these groups who were

47 Bos, Lanhes, Prenzel, Schwippert, Valtin, Walther: Erste Ergebnisse aus IGLU: Zusammenfassung ausgewählter Ergebnisse, S.33, <http://www.erzwiss.uni-hamburg.de/IGLU/home.htm>

48 Dritter ECRI-Report über Deutschland, p. 2

49 Ibidem, p. 9

50 <http://www.chipkartenini.squat.net/>, Stand 28.2.05, 16:16

51 http://www.aufenthaltstitel.de/asylblg_neu.html, Stand 28.2.05, 16:20

most affected by the Labour market reforms, the so-called Hartz IV reforms⁵² in 2005.

3.5.2.1 Consequences of the Hartz IV (Labour market Reforms) for migrants

The Hartz IV Law contains discriminatory rules for migrants, especially for the ones that are affected by the Asylum Seekers Benefits Law (AsylbLG) Article 7, Paragraph 4⁵³. Those migrants lose their right to the benefits job seekers are entitled to. Those migrants have a very low ranking when it comes to accessing the labour market⁵⁴. Because law limits their employability, they barely have a chance to find a job.

3.5.2.2 The situation of second and third generation migrants in the labour market

The situation of second-generation migrants of Turkish background can be classified as 'integration at the lowest level'. Turkish nationals are over-proportionally employed as unskilled workers and 22% are unemployed. They have the highest rate of unemployment among all migrant groups in Germany. In the second generation only a few migrants have school and professional qualifications, which plays a very relevant role in their integration into a secure labour market segment. Another cause is discrimination against these migrants⁵⁵.

3.5.2.3 The German Green Card

The Immigration Commission's first report on the October 19 2004, suggested a lack of 25,000 qualified employees in the health, engineering, finance and insurance sector in Germany. In 2004, 17,000 people have been employed because of a Green Card. Up to now it is unclear how many of them may stay under the new Immigration Law in Germany. Non-scientists, specialists or executive employees need to earn at least double the income of what is the limit for entering the health insurance system - in that case they do not need approval from the labour administration.

52 <http://www.isoplan.de/aid/index.htm?http://www.isoplan.de/aid/2004-3/statistik.htm>, Stand 28.2.05, 15:10

53 Classen, Georg; Die Auswirkungen der Zusammenlegung von Arbeitslosen- und Sozialhilfe auf Migranten und Flüchtlinge“. Source: <http://www.fluechtlingerat-berlin.de>

54 Ibidem

55 see: Walter Siebel, Norbert Gestring, Andrea Janßen, Ayça Polat: Zwischen Integration und Ausgrenzung. Lebensverhältnisse türkischer Migranten der Zweiten Generation. <http://www.uni-oldenburg.de/presse/mit/2004/329.html>, Stand 28.2.05, 14:28

3.5.3 Housing

For second-generation migrants, the housing sector situation has improved. There remains a substantial difference compared to Germans when it comes to living areas. Politics do not obstruct ethnic segregation, but rather explicitly allow it. Sinti and Roma are discriminated against as long as they do not keep their background secret. The 'Association of North German House Enterprises' criticises the planned Anti-discrimination Law as disproportional as they lose the control instrument to avoid the formation of 'ghettos'.

3.6 Everyday racism

3.6.1 Anti-Semitism

In the first nine months of 2004 there was an increase of anti-Semitic offences (2004 – 130; 2003 - 96), but the figures are almost unchanged. The offences were mostly anonymous letters and hate mail, but also graveyard defacement and violence of right-wing groups⁵⁶.

3.6.2 Islamophobia

The term 'Islamophobia' describes the fear and hate of Muslim people or Islamic Culture. Islamophobia is characterised through the belief that Muslims are religious fanatics who have an aggressive disposition against non-Muslims and see the idea of equality, tolerance and democracy in opposition to Islam⁵⁷. Carla Amina Baghajati from the Islamic Denomination (Austria) refers to this established concept of enemy construction: The image of "brutal, insidious and profane pagans" has already existed since the crusades of the middle-ages. With growing numbers of Muslims in Germany, the concept of 'Islam' as the enemy replaced the former enemy, the 'Eastern Block'. The media contributes through unilateral press coverage, through lack of information and comprehension of the daily stimulation of discrimination and racism against Islam.

3.6.2.1 The Headscarf

A debate on the wearing of a headscarf by a Muslim teacher in a German public school was launched at the end of the 1990s by political parties, courts, churches and other groups. Some of the German Federal States (Baden-Württemberg, Bavaria, Saarland, Hesse, Lower Saxony and Berlin) banned the headscarf in the middle of

56 <http://www.jewish-forum.de/showtopic.php?threadid=1959>, Stand 28.2.2005, 16:10

57 Source: <http://en.wikipedia.org/wiki/Islamophobia>

2004. The judgement of the Saarland court points out that the Headscarf Prohibition is regarded as protection and implementation of the democratic value system. The judgement of Baden-Württemberg makes the concurrence between the Christian-Occidental value system and the Islamic ideology, politics and religion visible. The judges did not privilege Christianity⁵⁸. The use of the Muslim Headscarf can be seen by no means solely as an explicit 'religious' or 'political' statement.

3.6.2.2 The Deportation of the Islamic leader Kaplan

The Islamic leader Metin Kaplan was, after the ruling of a Cologne Court but still during the revision proceedings, deported to Istanbul on October 12 2004. He tried to prevent his deportation with a claim revision because of Human Rights violations and unfair proceedings. The deportation was explained as a security procedure⁵⁹.

3.6.3 Anti-Gypsism

The Society for Anti-Gypsyism Research defines Anti-Gypsyism as:

“A hostile attitude, which reaches from taking distance, to open rejection, exclusion and expulsion, to killing and mass extermination.”⁶⁰

The Central Consistory of the Sinti and Roma handed in 52 complaints against press articles from 2004 to the German Press Consistory on December 7 2004. In those articles the descriptions of the accused unnecessarily include the fact that they are Sinti or Roma⁶¹. In some of the cases it was asserted, that the discriminatory descriptions had been taken from police reports. In the matter of the Sinti and Roma Holocaust Memorial there is a conflict between Sinti and Roma organisations and the Federal Government. The Sinti and Roma do not want to be referred as 'Gypsies' in the memorial inscription, as the Federal Government proposed⁶².

3.6.4 Homophobia and violence against gay, lesbian and transgender people

Homophobia is based mostly on an established conservative idea of gender roles, which is drastically challenged through the presence of homosexuals and leads to a basic insecurity of the affected person⁶³. Discrimination here comes under a civil

58 Frankfurter Rundschau from 26.06.2004

59 <http://www.123recht.net/printarticle.asp?a=10587>, Stand 28.2.05, 7:53

60 <http://www.antiziganismusforschung.de/home.html>, Stand 28.2.05, 16:23

61 <http://www.antiziganismusforschung.de/home.html>, Stand 28.2.05, 16:23

62 Ibidem

63 <http://de.wikipedia.org/wiki/Homophobie>, Stand 28.2.05, 17:11

law character⁶⁴. The Cologne Lesbian and Gay Day (KluST) reports an increase of assaults on gays in 2004⁶⁵. Women's and lesbian organisations criticised that there is insufficient support for homosexual migrants⁶⁶.

3.6.5 Discrimination of handicapped migrants

Handicapped migrants are confronted with multiple discrimination inside and outside of German society, which makes them experience double exclusion. Institutions for aid to the handicapped do not specifically collect data according to ethnicity. People of various cultural groups have low access to aid and there is also a lack of intercultural services⁶⁷. There is an increase of psychological disease among first-generation migrants. The experience of exclusion and discrimination over a long period of time leaves its marks.

3.7 Hegemonic culture (Leitkultur)

The term 'German Leitkultur' was inserted into public discourse by the CDU/CSU and relaunched for the election campaign in 2004. The concept of "Leitkultur" not only requires 'integration' of the so-called 'foreigner', but expects their 'assimilation'.

3.7.1 Right-wing radicalism

On September 19 2004 the Germany National Party (National Partei Deutschlands, NPD) obtained 9.2% of the vote in Saxony Federal State elections. This shows the change of strategy of right-wing radical groups. According to an analysis of the elections, the NPD electorate is of a young age and feels unsatisfied with social development and does not have any problems with right-wing radical ideology⁶⁸.

In a survey, 600 enterprises were asked how they evaluate right-wing violence as a disadvantage in their location. The results showed that 65% of enterprises found crime and right-wing violence a significant factor. Larger enterprises in particular condemned right-wing violence because of their high levels of multicultural and multinational personnel.

64 <http://www.aktion-einszueins.de/diskriminierung.htm>, Stand 28.2.05, 17:05

65 <http://www.taz.de/pt/2004/10/30/a0052.nf/text.ges,1>, Stand 28.2.05, 17:21

66 <http://www.jungewelt.de/2004/06-18/020.php>, Stand 28.2.05, 17:42

67 http://www.mgsff.nrw.de/gesundheit/material/entschl10_01.pdf, Stand 28.2.05, Stand 8:14

68 Friedemann Bringt, Kommentar zu den Wahlerfolgen rechtsextremer Wahlbündnisse und der NPD bei den sächsischen Kommunalwahlen 2004. Kulturbüro Sachsen, <http://www.kulturbuero-sachsen.de>

4. Victims' perception of racism and racist violence

4.1 Commemorations of the German colonial past

In 2004 a number of events remembering and commemorating the 120th anniversary of the Berlin Congo Conference in 1884/85 and the 100th anniversary of the Herero genocide in today's Namibia were held. A memorial for African background victims of national-socialist crimes and of colonial genocide was held on June 25 2004. Representatives of the Bundestag (Lower House of the German Parliament) reacted with mockery. After 100 years, Germany as an ex-colonial power is not prepared to consider any form of indemnity or restitution⁶⁹.

4.2 NAP Durban Follow-Up: a national action plan against racism for Germany in consultation with NGOs

Within the scope of the World Conference Against Racism (WCAR) in Durban in 2001, the German Federal Government agreed to elaborate a National Action Plan (NAP) against Racism in consultation with NGOs. Until today there is no available National Action Plan which NGOs can discuss, although appointments and commitment have been made on a regular basis.

⁶⁹ http://www.deutsche-schutzgebiete.de/schlacht_am_waterberg.htm, Stand 28.2.05, 11:15

5. Information on services for and from racism victims

5.1. www.clandestino-illegal.de

The Project 'clandestino-illegal' has made a multimedia exposition in a van about paperless migrants.

5.2. www.forum-illegalitaet.de

The catholic forum pleads for rights of paperless migrants in Germany.

5.3. www.hagalil.com

Hagalil is an online journal for Jewish life, which tries to combat Nazi propaganda and anti-Semitism on the Internet. The Ministry for Family, Seniors, Women and Youth is rejecting applications for further financial support so their existence is currently at risk.

5.4 African Diaspora in Germany

The website "Afrikanische Diaspora in Deutschland" of the Centre for Political Education⁷⁰ offers excellent information about the situation of people with African backgrounds in Germany. It includes materials and texts written by Afro-German authors. The website reflects on how black history is an integral part of Germany's past and present.

5.5 Kultur und Integrationszentrum Phoenix in Cologne

The Phoenix association has over 200 members. They have a Russian-language consultation service. They also consult and advise Russian speaking-prisoners at the JVA Köln-Ossendorf.⁷¹

5.6 Linklist of organisations of German minorities

The Südschleswigsche Wählerverband (SSW), the party of the Danish minority in the federal state Schleswig-Holstein, has a website with informative links to other organisations of German minorities⁷²:

70 http://www.bpb.de/themen/X5FI94,0,0,Afrikanische_Diaspora_in_Deutschland.html, Stand 28.2.05, 13:11

71 <http://www.isoplan.de/aid/2004-2/aussiedler.htm>, Stand 17.2.05, 15:21

72 <http://www.ssw-landesverband.de/www/de/links/links.php>, Stand 17.2.05, 16:03

6. Conclusion

By Spring 2005, an Anti-discrimination Law has yet to be passed. The Immigration Law became operative on January 1 2005. The consequences of September 11th and the 'war against terror' has had a big impact on European and German politics in 2004, but also on people of migrant background. The reductionist discourse about 'fundamentalist tendencies' in Islam, the connecting of terrorism with Islam and the dominance of this discourse in schools, has the effect of reinforcing experiences of exclusion in youths of migrant background in a society which is already structured in a discriminatory way. For this reason, developments in this area have to be followed-up very critically in the next years. Scientific research on the increase of anti-Semitism, anti-Gypsyism, Islamophobia, Homophobia and on minorities in general is yet to be conducted.