



## Anti-Muslim Racism and Islamophobia in Germany

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Alternative Report on the 19th – 22nd State Report of  
the Federal Republic of Germany in accordance with Article 9 of  
the International Convention on the Elimination of All Forms of Racial  
Discrimination (ICERD)

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## **Anti-Muslim Racism and Islamophobia in Germany.**

### **1. Executive Summary of the Recommendations to the Federal Government:**

#### 1.1 Recommendations in Relation to Article 1

1. We urge the Committee on the Elimination of Racial Discrimination (CERD), to strongly remind the Federal Government of Germany to explicitly label anti-Muslim racism and Islamophobia as a specific characteristic of overall racism and to proactively make this fact a subject of public discussion. Only by proactively naming and explaining the range of meanings through governmental bodies on the federal and regional level and by explicitly and constantly condemning anti-Muslim racism and Islamophobia, an enhanced recognition and awareness of this characteristic of racism can be attained.
2. Intersectional issues of freedom of religion respectively multidimensional discrimination systematically need to be integrated in all gender and equal opportunities and anti-discrimination programs in due consideration of the inclusion of the multitude of Muslim women's voices.

#### 1.2 Recommendations in Relation to Article 2

With Regard to Lacking data on discrimination:

3. Encourage research and studies related to anti-Muslim racism and Islamophobia in the different societal sectors (mainly in education and employment).
4. Introduce on the national level systematic and standardized forms of collecting and documenting discrimination against Muslims and persons who are perceived as Muslims.

With Regard to Protection against anti-Muslim racist discrimination in the field of education through:

5. Furnishing neutral, easily accessible and acceptable contact and complaint centres, which also reach out to Muslim students/pupils and their parents; they need to be sensitive and must counsel not only with regard to general racism but also towards discriminatory attitudes and

acts on the ground of Islam respectively religion.

6. Closing the gaps in legal protection against discrimination in public education on federal as well as regional levels.
7. The Federal Anti-Discrimination Agency should employ social science studies and seek legal opinion to investigate on discriminatory effects of legislation restricting the wearing of headscarves; the Agency should also investigate on its compatibility with the current case-law of the Constitutional Court, the General Equal Treatment Act as well as the relevant human rights standards. The conformity of national legislation with Germany's international human rights obligations is to be examined, particularly to ensure that legislation does not discriminate on the basis of ethnicity, religion and gender.
8. Training of teachers and diversity oriented school development focussing on diversity of religion and belief, and in particular of anti-Muslim racism with special reference to anti-Muslim racism and islamophobia

With Regard to the Protection against anti-Muslim racist discrimination in employment through:

9. Annuling regional provisions of all *Laender* on religious symbols and clothing.
10. Furnishing local, decentralized and easy and inclusive accessible anti-discrimination facilities in close cooperation with Muslim organisations and institutions which reach Muslim target groups, inform them on their rights, counsel and give support in cases of discrimination.
11. Accommodating religiously adequate measures into German anti-discrimination law.
12. Promoting diversity initiatives in the economy (e.g. with reference to the Diversity Charter of Enterprises in German) in order to carry out diversity trainings with the focus on diversity of religion and belief and with particular emphasis on anti-Muslim racial discrimination, as well as promoting the religious dimension in diversity management of companies and business establishments (The Federal Anti-Discrimination Agency (ADS) could give an essential impulse by proclaiming a respective topic of the year 2016.)
13. Monitoring the implementation of effective complaint mechanisms in enterprises in accordance with the Anti-Discrimination Law by the Federal Anti-Discrimination Agency

### 1.3 Recommendations in Relation to Article 4

14. Monitoring und securing access of Muslims at all levels to recruitment and promotion procedures in justice and administration in accordance with legal protection against discrimination.
15. Introducing nation-wide anonymous application process
16. Establishment of non-racial discriminatory complaint-handling bodies within State and local authorities or public institutions.
17. Securing official clarification by State and official bodies or notification on the legal situation, for example, through and dissemination of all information, awareness campaigns and published circulars, in order to procure legal security and strengthen the access to law enforcement for vulnerable stakeholders in case of disclosed repeated unlawful discrimination within certain authorities or offices.

### 1.4 Recommendations in Relation to Article 5

- 18 Explicitly pointing out engendered anti-Muslim racism in trainings with police officers and law enforcement agencies.
- 19 Ensuring the inclusion of Muslims in measures of increased recruitment of officials with migration background.
- 20 Mandating the Federal Anti-Discrimination Agency to explore existing access barriers for Muslims with regard to law enforcement and to explore the influence of anti-Muslim racism and Islamophobe prejudices on the judiciary (Religious diversity and anti-discrimination shall be highlighted in the theme year 2017 by the Federal Anti-Discrimination Agency).
- 21 Diversity trainings in justice and attorneyship focusing on diversity of religion and belief with a special concern on awareness raising with regard to anti-Muslim racism and Islamophobia.
- 22 Implementing modules on Basic and Human Rights and Diversity in legal education with the focus on diversity of religion and belief, especially to raise awareness of anti-Muslim racism and Islamophobia especially against women of all ages.
- 23 Initiating research on yet unreported cases of Islamophobe hate crime especially against women of all ages.

- 24 Nationwide standardized and systematic registration and documentation of anti-Muslim hate crimes.
- 25 Separate recording of anti-Muslim and Islamophobe crime in the crime statistics by police and investigating authorities (politically motivated crime)
- 26 Monitoring the implementation of these recommendations on national and regional levels.

## 2. Introduction

Anti-Muslim and Islamophobe attitudes are widely spread in Germany, they have even strongly intensified in parts of the population. In recent years, latest with the PEGIDA-demonstrations<sup>1</sup> that have drawn attention Europe-wide, it has become quite clear, that anti-Muslim and Islam-hostile attitudes are far spread not only in extreme right wing circles, but are largely adopted by all strands of German society, notwithstanding social status and political background, threatening the cohesion of a multicultural and multi religious immigration society which Germany has become since long. Research and reports of Anti-Discrimination-bodies<sup>2</sup> prove that discrimination against Muslims and Islamophobe hate crime are no singled out incidents in Germany and that negative attitudes towards Muslims influence institutional practices, which are conducive to structural discrimination and far-reaching social exclusion and thus prevent the integration of the biggest religious minority<sup>3</sup> in Germany. Social exclusion of Muslim women, who can easily be

<sup>1</sup> PEGIDA stands for „Patriotic Europeans against the Islamisation of the occident“ (Patriotische Europäer gegen die Islamisierung des Abendlandes) and is the name of an organisation which succeeded to mobilise since october 2014 masses in weekly demonstrations mainly in Dresden but also in other German cities; see e.g.: The Times 08.04.2014; Thousands take to street when Europe wrestles with identity: <http://www.thetimes.co.uk/tto/news/world/europe/article4314799.ece> ; NY Times, 08.12.2014: In German City Rich With History and Tragedy, Tide Rises Against Immigration, <http://www.nytimes.com/2014/12/08/world/in-german-city-rich-with-history-and-tragedy-tide-rises-against-immigration.html>

<sup>2</sup> For instance: Bertelsmann-Stiftung (2015): Religionsmonitor. Verstehen was verbindet. Sonderauswertung Islam 2015. Die wichtigsten Ergebnisse im Überblick; Zick, Andreas/ Küpper, Beate/ Hövermann, Andreas (2011): Die Abwertung des Anderen. Eine europäische Zustandsbeschreibung zu Intoleranz, Vorurteilen und Diskriminierung, Berlin oder Decker, Oliver/ Johannes Kiess/ Elmar Brähler (2014): Die stabilisierte Mitte. Rechtsextreme Einstellungen in Deutschland 2014. Die „Mitte“—Studien der Universität Leipzig; Peucker, Mario (2010): Diskriminierung aufgrund der islamischen Religionszugehörigkeit im Kontext Arbeitsleben - Erkenntnisse, Fragen und Handlungsempfehlungen. Erkenntnisse der sozialwissenschaftlichen Forschung und Handlungsempfehlungen

<sup>3</sup> In Germany just few groups (e.g. the Sorbs, Danes and Sinti) are treated as minorities and thus granted minority rights. Religious minorities as Muslims as well as ethnic minorities as Kurds officially don't have a status as recognized minorities. With regard to the gurantee of minority rights according to human right standards this is a challenge for the legal system in Germany. See: Bundesministerium des Innern (2014): Nationale Minderheiten / Minderheiten- und Regionalsprachen in Deutschland, Berlin.

discerned when wearing a headscarf, is especially blatant and leads to situations, where these women are prevented from fully enjoying their human rights and participation when it comes to (professional) education and the right to work. Repeatedly international and national human rights bodies have advised Germany of the fact that the government does not sufficiently embrace its obligation of protection towards the Muslim population.<sup>4</sup> In 2012 the Commissioner for Human Rights of the Council of Europe (COE) rebuked the European countries including Germany of the dangerous effects of increasing anti-Muslim prejudices. He warned, that the European-wide discourse, in which Muslims are being constructed as the absolute „other“ is highly related with the increase of Muslim- and Islamophobe attitudes. He pointed out that as a consequence Muslim women and men have become victims of many discriminations and the target of restrictive legislation and policies which largely hinders integration on the European level.<sup>5</sup>

Recently the European Network Against Racism (ENAR) warned against alarming Islam-hostile tendencies particularly in Germany, Sweden and France.<sup>6</sup> Meanwhile premonitory voices have also been raised within Germany: Researchers on migration and racism have repeatedly pointed out the correlation between widespread anti-Islamic attitudes and an increasingly hostile climate towards Muslims living in Germany as well as the far-reaching impact in the lives and the negative effects on the overall social cohesion in Germany.<sup>7</sup> Former German Federal constitutional judge, Udo di Fabio, recently said: „It is unacceptable that devout Muslims in our country are generally suspected that their religion carries the dormant seeds of evil“.<sup>8</sup> The Network Against

<sup>4</sup> For example: by the Council of Europe; ECRI 2009: Report on Germany, fourth round of monitoring; <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Germany/DEU-CbC-IV-2009-019-ENG.pdf> and by the OSCE: <http://www.osce.org/odihr/90060> as well as the European Fundamental Rights Agency (FRA, formerly EUMC): EUMC (2006): Muslims in the European Union. Discrimination and Islamophobia, Vienna.

<sup>5</sup> COE -Commissioner for Human Rights (2012): press release - CommDH 034 (2012) Anti-Muslim Prejudice Hinders Integration

<sup>6</sup> European Network Against Racism (ENAR): Growing Islamophobia in Europe: Recent developments in Germany, Sweden and France, press release January 2015

<sup>7</sup> For example: Rat für Migration / Migration Council (2015): press release from January 05, 2015: On the discourse about the „Pegida“-demonstrations; Wolfgang Benz (2012): Die Feinde aus dem Morgenland. Wie die Angst vor den Muslimen unsere Demokratie gefährdet, München; Klaus J. Bade (2013): Kritik und Gewalt. Sarrazin-Debatte, `Islamkritik` und Terror in der Einwanderungsgesellschaft, Schwalbach/Ts.

<sup>8</sup> Islamiq: Islamfeindlichkeit: Verfassungsrichter warnt vor Generalverdacht gegen Muslime, refer to: <http://www.islamiq.de/2015/03/10/verfassungsrichter-warnt-vor-generalverdacht-gegen-muslime/> (16.03.2015).

Discrimination and Islamophobia (Inssan e.V.), located in Berlin since 2010<sup>9</sup>, is the first easy accessible local centre specifically reaching out to Muslims and offering systematic documentation and analysis of cases of discrimination against Muslims.<sup>10</sup> This network presents information and empowerment workshops in Islamic communities, thus informing Muslim people on their rights, enhancing sensitivity and awareness in recognizing and fighting discrimination and, most important, strengthening the potential of the targeted persons themselves.

### **3. On Article 1 ICERD (Application and Definition)**

#### **3.1. On Article 1.1. Anti-Muslim Racism and Islamophobia within the Scope of ICERD**

The antiracism convention aims at combatting all forms of racism and comprises the commitment to protect vulnerable groups by special measures thus ensuring that their members may exercise, on an equal footing, their human rights and fundamental freedoms. (ICERD Art. 1 section. 4). In its recommendation No 32 (Rz. 7) the committee has confirmed a broad understanding of racism.<sup>11</sup> The European Council declared as well that the term „racism“ should be applied in a broader sense and that religion should be included as possibly inciting racist discrimination.<sup>12</sup> Considering this background, the fact that the German governmental report cites Muslims in the same range as Jewish and Black people, as well as Sinti and Roma as groups deserving protection, is highly welcomed.

The federal government rightly indicates that Muslim people are not affected or threatened by discrimination because of their majoritarian migration backgrounds but that they face hostilities because of their religious affiliation.<sup>13</sup>

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<sup>9</sup> The project is financed by the Berlin Senate and closely cooperates with the Anti-Discrimination-Network of the Turkish Federation in Berlin-Brandenburg (ADNB of TBB).

<sup>10</sup> The Central Council of Muslims partly documents media coverage while the IGMG (Islamic Community Milli Görüs) also documents individual cases of discrimination, which have been reported to them by member associations. Not long ago the umbrella organization DITIB (Turkish Islamic Union of Institution for Religious Affairs) opened an anti-racism and anti-discrimination office in the city of Cologne, which according to their own information and in the first instance will focus on documenting incidents of hate crime. However, no coherent or systematical documentation has been implemented so far; <http://www.ditib-antidiskriminierungsstelle.de/>.

<sup>11</sup> CERD/ Seventy-fifth session, August 2009: General Recommendation No.32, p. 2f.

<sup>12</sup> ECRI (2003): General Political Recommendation No. 7: National Legislation Against Racism and Racist Discrimination; [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N7/REC7-2003-8-DEU.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/REC7-2003-8-DEU.pdf)

<sup>13</sup> Federal Ministry of Justice (2013): 19th-22nd State report ICERD, p. 10f.

Germany having signed ICERD, anti-Muslim racism and Islamophobia fall under the governmental scope of protection as stipulated by the UN-Convention on the Elimination of All Forms of Racism, apparently this form of racism construes racist 'otherness' and 'inferiority' from religious differential characteristics. Even if the UN-Convention on the Elimination of All Forms of Racism only lists „race, skin colour, descent, and national origin“ respectively ethnic and national provenance, (Art.1., par. 1), the racist exclusion of Muslim people falls under its scope: the construed category of a pretended “race”<sup>14</sup> is being created through alleged “otherness” and “inferiority”. After all, the fact that the Federal government clearly distanced themselves from such racist constructions in the ICERD State report can be taken as a positive highlight. At the same time it remains true that the government does not often pronounce that position equally clearly in public discourse nor do they actively promote such a public debate. On countless occasions government allows for racist acts not to be labelled as such in media or with state prosecutors or Federal and Laender Criminal Police reports and Statistic Offices, but are rather coined so called 'left wing' or 'right wing extremism'; even more often they are diminished by a softening terminology as an 'insult' or 'slander' not pertaining to politics and leaves the victim without any protection. Hence these deeds do not figure in the respective statistics and are not adequately covered by criminal law. There are no government comments, no proactive promotion of making ICERD known nor any promotion of participation in the ICERD dialogue process.

Cases of anti-Muslim racial discrimination and hate crimes, documented by INSSAN, are linked to religious or Islamic symbols or faith practices, such as wearing a 'headscarf' or the sites of ,mosques', as well as an alleged ,Muslim' appearance or a name, that sounds 'different' and seems to hint at a Muslim background. Victims of anti-Muslim racial discrimination are Muslims irrespective of their attitude towards faith or individual forms of religiosity and irrespective of their ethnic origin<sup>15</sup>; the wider target group comprises people with other religious affiliations,

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<sup>14</sup> On page 3 the State report addresses the practice of using quotation marks with the term "race"; yet within Germany the Federal government has not drawn any consequences, compare *ibidem*, even though the German Institute for Human Rights suggested to eliminate this term from the German constitution, and despite the debate referring to the constitution of Berlin.

<sup>15</sup> Muslim women of German background are equally affected as Muslim women with migration background, once they wear a headscarf. Sometimes they experience, that their being German is being denied by the interlocutor just because of their

such as Sikhs<sup>16</sup> and Syrian Christians, whose outer appearance make them prone to be stereotype as "Muslim". Muslims and persons perceived as such can be distinguished as one group being exposed to exclusion, discrimination and violence.<sup>17</sup> Cases of discrimination and hate crimes, decidedly directed against people or institutions, that supposedly 'represent Islam', more and more play an undeniable role in the everyday lives of those affected, as well as in the work of anti-discrimination bodies.<sup>18</sup> The increase in racist attacks on mosques in recent years also reflects the clear direction of hate on symbols of Islam. Due to the hitherto lack of recognition of anti-Muslim racism and Islamophobia as a specific expression of racism, which need to be perceived and tackled as a phenomenon of its own, so far no specific measures and strategies against anti-Muslim racism and Islamophobia have been designed nor implemented in Germany. Considering the year by year rising anti-Muslim climate in Germany, which is the breeding ground for far-reaching discrimination on the labour market, in the educational system, and for increasing anti-Muslim hate crime, the State report deals with this specific form of racism totally inadequately.

### 3.2. On 1.1.: Discussing Notions and Definitions

While the terms *Islamophobia* or *Discrimination and Intolerance against Muslims*<sup>19</sup> are largely used in the European and International context of human rights issues, in Germany the use of the 'correct' term is intensely being debated, yet we will not dive too far into details of this discussion at this point.<sup>20</sup> Just as in the State report, the Federal German Islam Conference has decided to use the term „Muslim-hostility“ (*Muslimfeindlichkeit*) reasoning, that thus ambiguities, „whether

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religious affiliation. Individual oral testimonials to the author indicate that non-Muslim young men, who are attributed with seemingly 'Mediterranean' appearance and whose origin are from Serbia or Macedonia, have been perceived as being Muslim.

<sup>16</sup> From Frankfurt am Main a case was reported to INSSAN, dating from February 2nd, 2015, when an elderly Sikh-man wearing a turban had been assaulted and kicked in the underground train by a group of drunken men, who also harassed him verbally as „Mohammad“, „Taliban“ and „Pakistan“.

<sup>17</sup> „(...) Evidence suggests that Muslims are confronted with the risk of being discriminated against not only "as migrants", i.e. because of their (attributed) ethnic origin, „(...) but also because of their (attributed) religious affiliation (...)“ Federal Anti-Discrimination Agency (2010): Discrimination on the grounds of Islamic religious affiliation within the context of labor market – insights, questions and recommendations for good practice, Berlin, p. :7.

<sup>18</sup> Confer chapter 3, with regard to data collection , chapter 3.2.

<sup>19</sup> European Council/ OSCE/ ODIHR/ UNESCA (2012): Guidelines for Educators on Countering Intolerance and Discrimination Against Muslims, Warsaw, p. 17ff.

<sup>20</sup> see also: Armin Pfahl-Traughber (2015): Feindschaft und Kritik gegenüber Islam und Muslimen. Definition und Unterschiede aus menschenrechtlicher Perspektive, in: Humanistischer Pressedienst (hpd) from January 9, 2015; Sabine Schiffer (2011): Islamophobie – Plädoyer für eine internationale Bezeichnung, in: inamo Heft 68; Wolfgang Benz (2012): Die Feinde aus dem Morgenland. Wie die Angst vor den Muslimen unsere Demokratie gefährdet, p. 39ff.

a hostile attitude is related to Islam as a religion or to Muslims as target persons“ can be eliminated.<sup>21</sup> This position has rightly been debated by respective scientists, since with this definition neither „the social majority’s partly massive negative attitude towards Muslims“ nor the structural dimension of racism are adequately reflected.<sup>22</sup> The often harsh debate, whether or not Islam and Muslim people are an integrational part of Germany, which followed former federal president Christian Wulff’s statement, proves the quite categorical dispute in Germany on exclusion versus inclusion. This dispute ignores that in everyday reality the recognition of Islam and the recognition of Muslims as belonging to Germany are closely interrelated, consequently Muslims are being devalued and discriminated against as they are perceived as representatives of Islam.

*„The separation of (legitimate) resentment against a religion and (illegitimate) resentment against the adherents of this religion seems artificial, unless in theological disputes. (...) Because "Islam" is not a social actor, actors are only people who by practicing this religion in one or the other way turn it into social reality.“<sup>23</sup>*

This perception seems to be more and more accepted by political stakeholders since the 'PEGIDA' demonstrations have emerged. Even Chancellor Angela Merkel recently repeated the statement that Islam belongs to Germany.<sup>24</sup> In addition to that, the terms "anti-Muslim racism"<sup>25</sup> and "Islamophobia"<sup>26</sup> are widely in use. The different terms emphasise different aspects and dimensions of the phenomenon, which are closely interwoven in social reality and therefore cannot be clearly distinguished. Resentments against Muslim citizens are pursued by using

<sup>21</sup> Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 9; Bundesministerium der Justiz (2013): pp 19th-22nd ICERD State report, p. 10f.

<sup>22</sup> Shooman, Yasemin (2011): Islamophobie, antimuslimischer Rassismus oder Muslimfeindlichkeit? Kommentar zu der Begriffsdebatte der Deutschen Islamkonferenz, in: <http://heimatkunde.boell.de/2011/07/01/islamophobie-antimuslimischer-rassismus-oder-muslimfeindlichkeit-kommentar-zu-der>

<sup>23</sup> idem.: p. 3; Heiner Bielefeldt confirms this line of argumentation, even if in the end he prefers the term `Muslimfeindlichkeit`, saying that with this term the focus remains on the persons, being the addressees of the protection of human rights. , confer: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 23ff.

<sup>24</sup> Die Zeit, January 1st, 2015: „Angela Merkel: Der Islam gehört zu Deutschland“; <http://www.zeit.de/politik/deutschland/2015-01/angela-merkel-islam-deutschland-wulff>

<sup>25</sup> Iman Ataya (2011): Antimuslimischer Rassismus in der Bundesrepublik, in: Netzwerk gegen Diskriminierung von Muslimen: Und Du?, Berlin, p. 3.

<sup>26</sup> Schneiders, Thorsten Gerald (Eds.) (2009): Islamfeindlichkeit: Wenn die Grenzen der Kritik verschwimmen, Vs Verlag.

religiously, culturally, and politically constructed 'arguments' justifying discrimination and exclusion.<sup>27</sup>

The term and the practice of "anti-Muslim racism" promotes the culturalization and 'ethnicization' of the phenomenon of religion and as a side effect the neglect of the advisable twofold human rights protection: on the one hand, general protection of Muslims from racist discrimination and on the other hand, the omission of the not yet realized equality of Muslim religious communities in Germany to protect free exercise of religion. Religion understood as cultural racism in the conceptual context of „anti-Muslim racism“, furthermore is blind to the overlapping of protection against discrimination and the exercise of religious and conscientious freedom with regard to exercising human rights. Hence many important measures recommended on behalf of human rights for combating religion-related prejudices and hatred as well as the promotion of dialogue between religions and ideologies or religious education<sup>28</sup> are left aside.

The term of Islamophobia, however, does not sufficiently reflect the fact, that the general phenomenon is closely interlinked with related mechanisms of racism, which may consequently lead to a domineering perception of the religious dimension. This impacts other facets and may lead to the non-consideration of general findings and recommendations from research in the field of anti-racism and prejudice. In our opinion it is essential and necessary to include all facets and levels of the phenomenon, which serve to devalue, exclude, implicitly or explicitly discriminate against Muslims as individuals or as a group, thus denying them the granting of access to their fundamental and human rights on an equal footing. In order to efficiently describe the violation of human rights of Muslims or assumed Muslims, which is closely linked to religious symbols or practices as well as to the perception of phenotypical traits in geographical combination with

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<sup>27</sup> Wolfgang Benz (2012): Die Feinde aus dem Morgenland. Wie die Angst vor den Muslimen unsere Demokratie gefährdet, p.41; also confer: Yasemin Shooman (2010): „... weil ihre Kultur so ist“ – der neorassistische Blick auf MuslimInnen; In: A. Pelinka (Eds.): Vorurteile: Ursprünge, Formen, Bedeutung, Berlin, pp. 101-111.

<sup>28</sup> Also refer to the recommendations against religious hate published in: Deutsches Institut für Menschenrechte (2014): Umgang mit kollektiven Erscheinungsformen religiösen Hasses (UN-Dok. A/HRC/25/58 vom 26. Dezember 2013). Zusammenfassende Information anlässlich des Berichts des Sonderberichterstatters der Vereinten Nationen über Religions- und Weltanschauungsfreiheit / Summary information on the report of the Special Rapporteur of the United Nations on freedom of religion and belief, Heiner Bielefeldt, Berlin.

largely Muslim countries, we shall use the following two terms: "anti-Muslim racism" and "Islamophobia".

### 3.3 Intersectionality and Multidimensional Discrimination

Anti-Muslim racism and Islamophobia mostly are related to other forms of discrimination or ideologies of inequality. This correlation is called intersectionality or multidimensional discrimination.<sup>29</sup> Muslims experience multiple discrimination mainly with regard to their religion or belief, their gender and their ethnicity.<sup>30</sup> The very broad objectives of the UN Convention on the Elimination of All Forms of Racism can only be met by an underlying understanding in accordance with the intersectional approach of the General Recommendation Number 32, indicating that different dimensions of discrimination are intertwined and therefore must be regarded correspondingly, such as for example the "discrimination on grounds of gender or religion. The Committee even emphasises the inclusion of multidimensional discrimination with regard to the characteristics of religion and gender."<sup>31</sup>

The UN Special Rapporteur on Freedom of Religion or Belief stresses the particular vulnerability of the intersection of religion and gender and points out, that women of religious minorities are strongly affected. The widely spread yet abstract notion of an antagonism between the human right to religious freedom and freedom of opinion against gender equality generates especially negative impacts. Therefore we strongly advocate the holistic approach to human rights, as it was formulated in 1993 at the Human Rights Conference in Vienna. It is necessary to systematically mainstream the freedom of religion and belief in all gender and equality respectively anti-discrimination programs. In addition, the multitude of female voices within religious minorities should always be represented.<sup>32</sup> Manifestations of anti-Muslim racism and Islamophobia in

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<sup>29</sup> European Council/ OSCE/ ODIHR/ UNESCO (2012): Guidelines for Educators on Countering Intolerance and Discrimination against Muslims, Warsaw, p. 17.

<sup>30</sup> Cases of multiple discrimination documented in schools often show a combination of traits linked to the characteristics of religion and ethnic origin.

<sup>31</sup> General Recommendation No.32: „(...) the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in Article 1 of the Convention.“; CERD/ Seventy-fifth session, August 2009: General Recommendation No.32, p. 2f.

<sup>32</sup> United Nations General Assembly (2014): Elimination of all forms of religious intolerance. Note by the Secretary-General, Sixty-eighth session August 7, 2013, A/68/290, pp. 5/22; 12/22 and 19/22f.

Germany also show, that ethnic and religious racist constructed so-called “knowledge content” are closely interlinked. Especially after „9/11”, German majority society replaced 'ethnicization' of perceived social issues with Islamization. Accordingly the people attacked in the prevailing discourses have shifted from previously 'foreigners' and 'Turks' to Muslim men and Muslim women. These categorizations are regularly mixed up and often mutually reinforce each other.<sup>33</sup>

### 3.4. Recommendations in Relation to Article 1

1. We implore the CERD Committee, to appeal to the Federal German Government to take up responsibility and explicitly label and actively address anti-Muslim racism and Islamophobia as a specific expression of racism. Only when the Federal and the *Laender* governments proactively name and explain the meanings and explicitly and regularly condemn such acts, greater social and political recognition and awareness for this form of racism can be achieved.

2. Intersectional issues related to freedom of religion and belief and/or multiple discrimination need to be mainstreamed in all programs for gender, equality respectively anti-discrimination. Furthermore the inclusion of the multitude of female Muslim voices needs to be promoted.

## **4. On Article 2 ICERD: General Obligations for Action (Obligations to Eliminate Racial Discrimination and Protect Sections of the Population)**

4.1. on Article 2.2. (Protection of sections of the population) Protection against anti-Muslim racism and discrimination of Muslim people in Germany

By signing the International Convention on the Elimination of All Forms of Racial Discrimination Germany has committed itself to „pursue by all appropriate means and without delay a policy of eliminating ‚racial‘ discrimination in all its forms“. With regard to anti-Muslim racism and Islamophobia in Germany we determine an insufficient protection of Muslims and persons being perceived as Muslims. The fact that anti-Muslim racism and Islamophobia „(...) will also constitute a severe social problem in the upcoming years, having blocked for many years integrational

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<sup>33</sup> Open Society Institute (2010): Muslime in Berlin, New York, London, Budapest, p.80.

willingness on the side of the social majority“ and that it leads to high costs of discrimination on the side of the victims, who are hindered from socially participating on an equal footing,<sup>34</sup> is being discussed wholly inadequately by Germany’s 19th-22nd State report. The only reported measure decidedly combating anti-Muslim racism is the reference that a working group has been established within the framework of the German Islam Conference. In addition measures taken within the framework of integration and dialogue policies by the Federal government are mentioned,<sup>35</sup> which are relevant with regard to integration of migrant people and to participation of Muslim associations and bodies on the institutional level (legal measures with regard to religious freedom) or rather the establishment of a German Islam, which do not directly contribute to the elimination of anti-Muslim and Islam hostile prejudices nor to the support of Muslims, who have been victimized by discrimination and disadvantage. Despite the shocking research results, showing a stabilization of anti-Muslim attitudes<sup>36</sup> at a high level since „9/11“, measures to address this situation in the majority population are rather missing. At the expert meeting of the Federal German Islam Conference the following was stated: “Compared to projects against general xenophobia and racism, there are, so far, hardly any specific projects and campaigns developed on a solid theoretical and evaluated base.”<sup>37</sup> A variety of studies and surveys prove that negative attitudes towards Muslims in Germany have solidified across all societal layers and that the limitation of Muslims’ human rights, as freedom of religion and conscience and also access to education and employment, increasingly are approved of.<sup>38</sup> In 2010 the so far largest European representative survey on religious diversity was conducted by the

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<sup>34</sup> Andreas Zick (2012): Islam- und muslimfeindliche Einstellungen in der Bevölkerung, in: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 45.

<sup>35</sup> However: even though the establishment of security partnerships with Muslim communities is principally welcome, to jointly counter the radicalization of adolescents and young adults, yet the mentioning of this in the context of combating racism in the framework of the ICERD State report is surprising and underpinning the notion of a prevailing general suspicion, in which Muslims axiomatically are seen in connection with terrorism and security issues.

<sup>36</sup> Also confer: Andreas Zick (2012): Islam- und muslimfeindliche Einstellungen in der Bevölkerung, in: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 41

<sup>37</sup> ibidem. p. 44.

<sup>38</sup> See for example: Heitmeyer, Wilhelm (2003- 2013): Deutsche Zustände, Frankfurt a.M.; Zick, Andreas/ Küpper, Beate/ Hövermann, Andreas (2011): Die Abwertung des Anderen. Eine europäische Zustandsbeschreibung zu Intoleranz, Vorurteilen und Diskriminierung, Berlin oder Decker, Oliver/ Johannes Kiess/ Elmar Brähler (2014): Die stabilisierte Mitte. Rechtsextreme Einstellungen in Deutschland 2014. Die „Mitte“—Studien der Universität Leipzig.

University of Muenster in five countries, it even notes that this defensive attitude is even more widely spread in Germany than in the European neighbour countries. The survey states, that 58% of Western Germans and 62% of Eastern Germans hold negative attitudes against Muslims, which is more than 20% above the European average.

People in Germany also express themselves significantly more often against new mosques and minarets than do French, Danish, Dutch or Portuguese people. Especially shocking are the results on attitudes towards equality of religions and beliefs: only 49% of the people in West Germany and 53% in East Germany think that all religious groups should enjoy the same rights. 42 % of the West German people and 55 % of the East Germans think it appropriate, if practices of Islam religion were strongly limited.<sup>39</sup>

First results of the representative research on post-migrant Germany, conducted by the Berlin Institute for Empirical Research on Integration and Migration, prove the existence of a broad range of negative attitudes against Muslims in parts of the German population. Although on an abstract level Islam is acknowledged, however when it comes to concrete demands, the recognition of participation rights is missing. 60% of the German people are ready to prohibit boys' circumcision, 49% would not allow Muslim women teachers to wear headscarves and 42% would like to limit the construction of mosques. Even if such negative attitudes do not necessarily lead to direct action, they constitute a sounding board and provide "a perceivable societal support for the recently increasing attacks on mosques and hate attacks on Muslim decision makers."<sup>40</sup>

The special evaluation 'Islam 2015' of the religion monitor comes to the conclusion that Muslims in Germany are closely aligned with State and society regardless of the intensity of their faith. Yet despite their openness, they find themselves confronted with an increasingly dismissive attitude by the majority of the population, for by now more than half of the population perceives Islam and its alleged representatives as a threat. An even higher proportion believes that Islam does

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<sup>39</sup> Results of the research on „Wahrnehmung und Akzeptanz religiöser Vielfalt“ by Westfälische Wilhelms Universität Münster: Pollack, Detlef; Müller; Olaf; Rosta, Gergely; Friedrichs, Nils; Yendell, Alexander (2014) Grenzen der Toleranz. Wahrnehmung und Akzeptanz religiöser Vielfalt in Europa., Wiesbaden. Also confer: [http://www.uni-muenster.de/Religion-und-Politik/aktuelles/2010/dez/Gastbeitrag\\_Pollack.html](http://www.uni-muenster.de/Religion-und-Politik/aktuelles/2010/dez/Gastbeitrag_Pollack.html), seen on 27.10.2012.

<sup>40</sup> Foroutan, Naika/ Coskun, Canan/ Arnold, Sina/ Schwarze, Benjamin/ Beigang, Steffen/ Kalkum, Dorina (2014): Deutschland postmigrantisch I. Gesellschaft, Religion, Identität. Erste Ergebnisse, Berliner Institut für empirische Integrations- und Migrationsforschung an der Humboldt-Universität zu Berlin, p. 7.

not fit into the Western world. This rejection of Islam has significantly increased in the last two years. The prevailing negative image of Islam spills over onto the image of Muslims: in the presence of Muslims, almost every second German feels „a foreigner in his/her own country". A quarter of the population goes as far to demand the prohibition of Muslim immigration. The discerned Islamophobia is no social marginal phenomenon; it is to be found in the middle of society. Neither education nor political orientation exerts a significant influence on the perception of Islam. Islamophobia, the study states, is a highly acceptable social tendency, which "can be used to legitimize discriminatory and excluding behaviour towards a minority".<sup>41</sup>

#### 4.2 Experiences of Discrimination by Muslims

Many Muslims who experience prejudices and depreciation as an integral part of their everyday realities with ensuing degradation and exclusion on a daily base and in almost all areas of life - from the educational system, the housing market, the labour market, to the recreational fields, are prone to accept these as a kind of experience of normality in order to cope with everyday life. The already available data give evidence of this everyday discriminatory reality, mainly confronted by Muslim women wearing a headscarf. Most of the discrimination cases reported to state and non-governmental anti-discrimination agencies and counselling centers are related to the fields of education and labour. The analysis of the registered cases within the Network against Discrimination and Islamophobia INSSAN in Berlin in the period between 2010 and 2012 revealed that 30% of the cases were related to the educational sector<sup>42</sup>, 22% to labour (job-seeking 41%, workplace 35%) followed by cases related to public space 19%. Among those 15% can be classified as cases of hate crime. There was a surge in hate crimes in the year 2012, with 46% of the documented cases. 42% of the persons affected by discrimination were of Turkish descent, while 18% had a so called 'Arab' background. Among the other people who mentioned their ethnicity, some were German and some were Bosnian men and women. 55% of the victims were under 27

<sup>41</sup> Bertelsmann-Stiftung (2015): Religionsmonitor. Verstehen was verbindet. Sonderauswertung Islam 2015. Die wichtigsten Ergebnisse im Überblick.

<sup>42</sup> Analysis of the total of discrimination cases reported and registered with the Network Against Discrimination and Islamophobia INSSAN, from 2010 to 2012.

years old, and 29% were between 27 and 50 years old. 55% cases were reported by women and 32% by men.<sup>43</sup> Strikingly a majority of the discrimination cases reported by women - 2011 there were 88% - was linked to the wearing of a headscarf. These findings show the enormous importance of the headscarf for Muslim women, when it comes to the possibility of experiencing discrimination.<sup>44</sup>

#### 4.3. Discrimination Data on Anti-Muslim Racism and Discrimination against Muslim Women and Men

Discrimination of Muslims in Europe is largely unfathomed, not the least because of the absence of structures for the collection, analysis, and documentation of cases of discrimination. According to a study by the European Union Agency for Fundamental Rights (FRA) each third Muslim in the EU has experienced discrimination over the past 12 months (in Germany these are 31%). Because the majority of Muslim people does not report any discrimination cases, it is however difficult to gain a realistic picture of the extent of racism alone from the existing data.<sup>45</sup> On average, 79% of Muslims surveyed by the FRA have not reported their experiences with discrimination. Of these, 59% indicated that a report would do no good or change anything anyway; 38% thought that it was normal and happens all the time and that they therefore do not care for any registration; and 33% did not know what to do or where to go in order to report the incident.<sup>46</sup> The results of the Network against Discrimination and Islamophobia in Berlin confirms these findings. Muslims seldom report on discrimination because they know neither their rights nor the range of possible aid and consultancy. Many are unaware of the fact that they encounter criminal offences and perceive discrimination as a 'normal' part of their everyday lives. Hence a very high number of unreported cases must be assumed. The qualitative data, collected in studies and advice centres,

<sup>43</sup> Non-published analysis of all cases reported with *INSSAN* in the period from August 1st, 2010 until December 31, 2012.

<sup>44</sup> Nuran Yigit (2012): Netzwerk gegen Diskriminierung von Muslimen, in: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 117.

<sup>45</sup> FRA – European Union Agency for Fundamental Rights (former EUMC) (2009): Data in Focus Report 2: Muslims, p. 5; see: <http://fra.europa.eu/eu-midis/>

<sup>46</sup> Interview with Henri Nickels (FRA): Islamfeindlichkeit: Viele Muslime melden Diskriminierung nicht; Islamiq from November 02, 2014; <http://www.islamiq.de/2014/11/02/islamfeindlichkeit-viele-muslime-melden-diskriminierung-nicht/>

provide an insight into everyday realities of Muslims in Germany as well as onto the manifestations of anti-Muslim racism and Islamophobia, which they face. Conclusions pertaining to the living conditions of Muslim people in Germany can be derived from the results of studies and surveys, in particular referring to people with a Turkish or Arab 'migrant background'. On the one hand it is true that a good portion of people with Turkish<sup>47</sup> or Arab immigrant background are Muslim, while on the other hand anti-Muslim racism also alludes to ethnic characteristics, as a result of which persons of Turkish or Arab descent who are not Muslims, adhere to another religion or no religion at all, are attributed with “Muslimness” and are confronted with anti-Muslim and Islam-hostile attitudes. Germany is among the countries that stand out in various studies on anti-Muslim settings with particularly high values.<sup>48</sup> In this respect reliable monitoring procedures<sup>49</sup> of manifestations of anti-Muslim racism are still missing, as well as research on the experience of discrimination by Muslims. Furthermore a convincing collection of discrimination incidents against Muslims is lacking, because so far German "advocacy centres in case of discrimination (...) rarely produce usable data on the discrimination of Muslim women and men, which is not only due to the lack of systematic and nationwide uniform documentation. Publicly available statistics do not specify any precise religious affiliation (...) and allow no statements on the number of registrations of the characteristic of religion or belief when it comes to the registration of discrimination cases in several areas of life."<sup>50</sup> The Federal German Government's Anti-Discrimination Agency also pointed out the lack of studies on discrimination on grounds of religion in the education sector, as well as on the labour market.<sup>51</sup>

In conclusion it can be stated, that secured, systematic knowledge of the effects of anti-Muslim racism and Islam-hostile attitudes with regard to the effects, institutional practices and social

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<sup>47</sup> Of the people of Turkish descent 65% are Muslims and 12 % are Alevites. See: Ulrich von Wilamowitz-Moellendorff, Konrad-Adenauer-Stiftung 2001, p.4.

<sup>48</sup> For example the study: „Wahrnehmung und Akzeptanz religiöser Vielfalt“ of the University of Muenster states: “The differences between Germany and the other Western European countries are downright dramatic when asked to list the personal attitude of people to members of other religious groups.”

<sup>49</sup> Andreas Zick (2012): Islam- und muslimfeindliche Einstellungen in der Bevölkerung, in: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 45.

<sup>50</sup> Federal Anti-Discrimination Agency (2010): Diskriminierung aufgrund der islamischen Religionszugehörigkeit im Kontext Arbeitsleben – Erkenntnisse, Fragen und Handlungsempfehlungen, Berlin, p. 39

<sup>51</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p.179.

structures is missing as well as significant quantitative data and an approach of documentation, in order to systematically collect data. For this purpose government must procure financial resources and allocations.

#### 4.4. On Article 2.1 (Obligation of State Parties to Refrain from ‚Racial‘ Discrimination)

##### Experiences of Muslim Discrimination Within the German Sector of Education

With reference to participation and partaking the State report stresses the eminent importance of education for integration. We welcome the fact that at the same time the prevention of objective disadvantages are deemed important. However only deficiencies on the migrants‘ side are targeted, as for example language deficits.<sup>52</sup> The significance of racist attitudes and discriminatory behaviour by members of the majority society, as well as structural and institutional racism are not addressed. Such a one-sided approach rather promotes racism than fighting it. Pointing out ‚deficiencies‘ in this respect virtually turns the potential victim into being the ‘offender‘ responsible for racist acts. This is a well-known and often used negative mechanism in discrimination contexts sending out wrong signals. In this case these even emanate from the State body, which in itself has been set up to guarantee and organize the protection of people potentially being affected by racism. The survey on local anti-discrimination bureaus by the Federal Anti-Discrimination Agency discloses that a large part of the queries for counselling at the local level are on grounds of discrimination in the field of education.<sup>53</sup> The Berlin network against discrimination and Islamophobia shares similar experiences. The cases reported to the network are mostly in relation to discrimination by state school teachers. For example these are derogatory and insulting remarks or discrimination towards girls, because they wear a headscarf. Sometimes, in such incidents a female student is exacted to remove her headscarf. It has also become clear, that the Muslim students are often not in a position to defend themselves against discrimination in school.<sup>54</sup> After all they depend on their teachers‘ assessment and appraisal.

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<sup>52</sup> Federal Ministry of Justice (2013): 19th-22nd ICERD State report , p. 28f

<sup>53</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p.52

<sup>54</sup> Nuran Yigit (2012): Netzwerk gegen Diskriminierung von Muslimen, in: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 117.

The Federal Government's Anti-Discrimination Agency reveals in its 2013 report that in schools there is mounting evidence of racist discrimination and incidents on grounds of characteristics such as ethnic origin and related features.<sup>55</sup> The report also points out that the approximately 700,000 students of Muslim faith<sup>56</sup> experience special disadvantage in schools in the exercise of their religion, including the frequent lack of acceptance of the wearing of headscarves.<sup>57</sup>

*“Although religious freedom, both regarding individuals and groups, is one of the strongest basic rights within the German constitution, religious expression often causes considerable conflict within the public school setting due to lack of mutual understanding, individual stereotypes and scepticism towards too much outwardly perceivable religious diversity.”<sup>58</sup>*

Muslims are most strongly affected, for the public debates focusing on integration problems and the supposed non-compatibility of Islam with Western standards has led major parts of the German population to reject Muslim lifestyle and Muslim daily practices thus reverberating in some teachers' attitudes and perception of Muslim students.<sup>59</sup> As a result, Muslim children and youths are requested to assimilate, implicitly or explicitly demanding that they abandon their religious identity or at least turn it invisible.<sup>60</sup> Hand in hand often come pejorative, exclusionary, or offensive remarks or practices infringing the individual dignity of Muslim students and their parents. They extent from subtle forms of animosity and exclusion and the feeling to have to work harder to reach the same assessment as others, to direct discrimination, exertion of pressure and attempts to take influence on their religious beliefs, to derogatory remarks and active obstruction and discrimination on their careers. Hence educational success, participation, and access within

<sup>55</sup> The answer to a topical enquiry to the Berlin Senate revealed that in the years 2013/14 in Berlin schools 34 racist incidents occurred. Confer: Abgeordnetenhaus Berlin Drucksache 17/14876.

<sup>56</sup> For 2001 the educational theorist Havva Engin assumes, there are 6% pupils of Muslim faith in German schools. Considering the changing ethnic composition of the student body, it can be assumed that in the meantime the number has significantly increased and also varies considerably depending on regional factors and location; confer: Nina Mühe (2011): (In-)Tolerance towards religious minorities in German schools. Religious diversity challenges in regard to Muslim religious practice and education, European University Institute, Florence, p. 11. ; According to the 2013 child migration report of the German Youth Institute by one third of the children under the age of 15 are of a migration background; confer: <http://dji.de/bibs/Kinder-Migrationsreport.pdf>.

<sup>57</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 16 [http://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2013/Bericht\\_Bundestag\\_20130813.html](http://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2013/Bericht_Bundestag_20130813.html)

<sup>58</sup> Nina Mühe (2011): Acceptance of religious diversity in German public schools. Policy Brief. European University Institute. Accept Pluralism. Tolerance, Pluralism and Social Cohesion: Responding to the Challenges of the 21st Century in Europe, p. 5.

<sup>59</sup> OSCE-ODIHR (2008): Addressing Intolerance and Discrimination against Muslims: Youth and Education, Report of OSCE-ODIHR roundtable, Vienna 2008. pp: 32; 39; <http://www.osce.org/odihr/39017>

<sup>60</sup> Ibidem, p. 23f.

the German educational system are significantly impeded for Muslim pupils and students.<sup>61</sup> In the TIES study, in which among others students with Turkish immigrant background in Germany were interviewed, almost 40% of these students interviewed stated to have experienced hostile or unfair treatment in school. 16% even stated to have experienced such treatment often or regularly. These figures are significantly higher in Germany as compared to the other European countries participating in this study.<sup>62</sup> Muslims of all ages, who in a study in Berlin were interviewed pertaining to their experiences in all fields of life, 60% stated to have the impression, that their religious practice was not sufficiently respected in the sector of education.<sup>63</sup> 11% of the Muslim respondents report of religious discrimination within the state school systems. They tell of a practice of low expectations and discouragement of Muslim students by teachers in German schools, which might be due to the prejudices against Muslim students. In one way or another it had been made clear to them, that they impossibly could go through the educational system and have success. Some had the feeling that they constantly needed to fight in order to prove their teachers' resentments and stereotypes wrong. Some of the school students told of incidents, when teachers tried to exert influence on their religious opinions and practices.<sup>64</sup> Counselling bureaus report racist remarks by teachers or fellow students going as far as mental, verbal and physical attacks and even bullying.<sup>65</sup> Reports of various NGOs highlight experiences made by Muslim students. Derogatory and discriminatory remarks and behaviours emanate from non-Muslim students as well as teaching staff. Muslim parents also report discrimination experiences and difficulties to defend themselves for fear of further disadvantages for their children (see as an example reports attached at the end). Especially girls, who wear a headscarf<sup>66</sup>,

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<sup>61</sup> Institut für Migrationsforschung und Interkulturelle Studien (IMIS) (2015): Policy Brief. Pathways to success. Erfolgreiche Einwandererkinder und ihre Aufstiegskarrieren im urbanen und internationalen Vergleich, p. 10.

<sup>62</sup> Crul, Maurice; Schneider, Jens (2009): Children of Turkish Immigrants in Germany and the Netherlands: The impact of Differences in Vocational and academic Tracking systems, Amsterdam, [http://www.tiesproject.eu/component/option,com\\_docman/task%2cdoc\\_download/gid%2c330/Itemid%2c142/index.html.pdf](http://www.tiesproject.eu/component/option,com_docman/task%2cdoc_download/gid%2c330/Itemid%2c142/index.html.pdf)

<sup>63</sup> Open Society Institute (2010): Muslime in Berlin, New York, London, Budapest, p.77

<sup>64</sup> ibidem, p.81ff

<sup>65</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 53

<sup>66</sup> In a survey 7% of the Muslim schoolgirls between 11 and 15 years of age declared to wear a headscarf at school. In the age group between 16 and 25 years 25% of the students affirmed to wear a headscarf. Confer: Haug, Sonja/ Müssig, Stephanie/ Stichs, Anja (2009): Muslimisches Leben in Deutschland im Auftrag der Deutschen Islam Konferenz, Berlin, p. 193ff.

experience that they are labelled as being oppressed and less intelligent. In the words of a 17-year old Muslim female student:

*„By my headscarf I was seen as immature by my skin colour as being 'different'“.*<sup>67</sup>

Counselling centres report that public opinion tends to impute, that parents of girls wearing headscarves do not sufficiently foster their children. Teachers tend to interpret the headscarf as a symbol of oppression and lacking willingness to integrate, which may lead to a situation, in which they withhold the recommendation for secondary education despite good performances and results or on the occasion of admittance interviews they give the feeling, not to be welcoming.<sup>68</sup> Prejudices and discrimination also play a major part in assessing the performances.<sup>69</sup>

Wearing a headscarf in schools repeatedly entails animosities towards Muslim female students, which may either emanate from school representatives or from parents of non-Muslim children, who often demand, that the wearing of a headscarf should be prohibited.<sup>70</sup> Contrary to constitutionally guaranteed fundamental and human rights<sup>71</sup>, cases in which the schools put Muslim pupils under pressure asking them to take off the headscarf, are not isolated. For instance a teacher may threaten to give worse marks, unless the girl removes her headscarf.<sup>72</sup> In singled-out instances even physical attacks were experienced (see attached reports).<sup>73</sup> School boards try to ban the wearing of a headscarf by house and school regulations. There are known cases, where headscarf wearing students have been expelled from the classroom. Often students and parents do not know that these bans are unlawful.<sup>74</sup> Lately several cases in Berlin were known where

<sup>67</sup> Netzwerk gegen Diskriminierung von Muslimen (2013): Erhebe Deine Stimme gegen Diskriminierung, Berlin, p. 17; <http://www.netzwerkdiskriminierung.de/>

<sup>68</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 109

<sup>69</sup> Ibidem, p. 53.

<sup>70</sup> Ibidem p. 53.

<sup>71</sup> Deutsche Islam Konferenz/ Federal Ministry of the Interior (2009): Religiös begründete schulpraktische Fragen – Handreichung für Schule und Elternhaus-, p. 3.; see also: Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 109.

<sup>72</sup> Also see: Fromm, Carolin (2014): Rassismus ist Alltag in der Schule, in: NDR.de, [www.ndr.de/regional/gegenrassismus101.html](http://www.ndr.de/regional/gegenrassismus101.html) (reading from March 1st, 2015) together with cases reported to the Netzwerk gegen Diskriminierung und Islamfeindlichkeit.

<sup>73</sup> Reach out (2012): „Ich möchte wie ein Mensch behandelt werden. Antimuslimischer Rassismus – Diskriminierungs- und Gewalterfahrungen von Menschen arabischer Herkunft, Berlin, p. 17.

<sup>74</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 109; Expelling from school, see also: Der Westen from February 2nd, 2010, <http://www.derwesten.de/staedte/oberhausen/Die-grosse-Kleiderfrage-id2535618.html> (reading from March 1st, 2015).

schools actively pursued strategies to either dissuade students to wear a headscarf or to prevent the admittance of girls wearing a headscarf. Despite clear malfeasance in an accumulation of known cases, education Senator of Berlin refused to give a clear instruction to all schools by a circular letter.<sup>75</sup>

It can be presumed that the reported cases only form the tip of the iceberg, as informally or within the Muslim community similar incidents of Muslim pupils are being reported again and again. However, they are seen as being a 'normal' part of experienced everyday racism and therefore they are never officially reported.<sup>76</sup> In most cases the affected persons prefer not to defend themselves and not to report on their experience, due to their fears of educational disadvantages and victimization. This assessment seems quite realistic, seen that counselling bodies confirm this and the Federal Anti-Discrimination Agency states that school boards and authorities partly are little open to complaints by persons affected and that often comprehension of racism and discrimination is missing. That's why such cases often are not taken seriously or even played down, which may go as far that those students, who complain and want to stand up against discrimination, are labelled 'problematic'.<sup>77</sup> In parts of the German state schools a segregate climate hostile to Islam has evolved, which leads to exclusion practices in the various areas of school organization, for example, preventing parents from providing Islamic (halal) food for their children when it comes to an excursion,<sup>78</sup> or termination of a work-contract or non-employment of women who wear a headscarf even in areas in which it is permitted, as in the school's student cafeteria with a low-salary-job of 1,50 Euro/hour or a boy's classification as "mentally retarded"

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<sup>75</sup> Netzwerk gegen Diskriminierung und Islamfeindlichkeit, Inssan e.V./ ADNB des TBB: Press release from January 30, 2015: Zum Halbjahreszeugnis: Note 6 in Rechtskunde für Schule in Wilmersdorf – Schule kennt Religionsfreiheit nicht!; Kopftuch-Streit in Wilmersdorf. Muslimische Schülerin sollte Tuch ablegen; Tagesspiegel from February 1st, 2015; Kopftuch-Streit an Grundschulen: Muslimischer Verband in Berlin pocht auf Religionsfreiheit, Tagesspiegel from February 4, 2015

<sup>76</sup> Kopftuch-Streit an Grundschule, Deutschlandfunk from February 5, 2015

<sup>77</sup> Federal Anti-Discrimination Agency (2013), p. 55 and 105; Life e.V. (2013): Diversität in Schulen: Diskriminierung thematisieren, Empowerment fördern und Partizipation stärken. Graswurzel-Engagement in der Bildung, Berlin, p. 33; see: [http://www.life-online.de/download/2013\\_broschuere\\_grassroot.pdf](http://www.life-online.de/download/2013_broschuere_grassroot.pdf) (reading from March 1st, 2015)

<sup>78</sup> Antidiskriminierungsverband Deutschlands (advd) (2012): Diskriminierungsfälle aus der Beratungspraxis nichtstaatlicher Antidiskriminierungsbüros des Antidiskriminierungsverband Deutschlands; <http://www.antidiskriminierung.org/files/Fallsammlung%20advd%202012.pdf>. / (Stand 01.03.2015). S. 15.

on the grounds of his allegedly most aggressive behaviour with him consequently being assigned to a special school for mentally handicapped children.<sup>79</sup>

Within such a set climate, the fear of extremism and Islamism lingers near. The need for the exercise of religious practices by Muslim girls and boys light-heartedly is considered a sign of proselytizing or of radicalization. In the conflict situation of performing the Islamic prayer in school, in 2011 the Higher Administrative Court ruled against a complaining Muslim student, which shows that meanwhile in Germany a stance appears to assert itself, interpreting visible signs of Islamic lifestyle as being a threat to school peace and religious diversity.<sup>80</sup> This is confirmed by statements made by heads of school at a meeting of the Protestant Academy in Berlin on May 15 and 16, 2014. One lady clearly put in her own words, what all the other heads of school at the meeting had expressed:

*„The ostentatious exercise of religion is contrary to religious peace.“<sup>81</sup>*

That's why some principals and teachers try to limit or prohibit, for example, the wearing of headscarves or the provision of a prayer room for students. This does not only ignore the students' fundamental and human rights, but it repeatedly leads to pejorative and racist remarks towards those students. Many pupils take it for granted that prayer in school is prohibited and are anxious not to be 'caught', if they pray secretly. This leads to a loss of confidence and Muslim students see school as an unsafe place where their needs are not respected.<sup>82</sup>

<sup>79</sup> Netzwerk gegen Diskriminierung von Muslimen (2012): Und Du?, Berlin. <http://netzwerkdiskriminierung.de/> (reading: March 1st, 2015), p. 36ff; the network has been told further cases, which the persons affected did not want to officially report. In some instances the teacher forcibly pulled down the pants of schoolboys, who – getting ready for swimming lessons - did not want to undress in the presence of the other boys or on a school trip a Muslim girl was put under pressure, to eat food including pork.

<sup>80</sup> Nina Mühe (2011a): (In-)Tolerance towards religious minorities in German schools. Religious diversity challenges in regard to Muslim religious practice and education; European University Institute. Accept Pluralism. Final Country Report, p. 18f.

<sup>81</sup> Contribution documented by the author at the meeting of the Protestant Academy in Berlin: Öffentlichkeit – Schule- Religion on May 15/16, 2014

<sup>82</sup> Asked, in the REVER survey, about their prayer practice in school, Muslim students between 14 and 18 years of age expressed, that prayer in school is unpleasant to them, that they do not want to be seen by those who make fun of them, and that they are scared 'to be caught'. That's why they usually pray secretly, so that the teachers cannot see them, e.g. outside in a corner of the sports field or in the wash room. When they ask teachers for assistance to find a protected space to do their prayers, they experience negative responses, and therefore they usually seek 'invisible' and individual solutions. Presentation by Studienleiter Joachim Willems at the meeting of the Protestant Academy in: Öffentlichkeit – Schule- Religion on May 15/16, 2014

The negative attitudes Muslim students partially are confronted with in German schools, can be explained by a reluctance to professionally handle religious and ideological diversity<sup>83</sup> in favour of excluding the 'other' religious identity and turning it invisible. In addition, the non-consideration of specific religious needs of students can lead to discrimination, because the German State's duty of neutrality does not preclude the applicability of freedom of religion in school. „Hence schools must be open to different ideological and religious contents and values, act quasi "religion-friendly" and create spaces of realization.“<sup>84</sup>

#### 4.5. Institutionalized Discrimination

In addition to direct discrimination, Muslim students in Germany have also structurally less educational opportunities. According to the series of PISA studies carried out since 2000, pupils with a migrant background in Germany obtain worse marks than the average. Even though it is true that in the PISA study of 2012 a positive trend can be discerned, it is still a fact, that in all rounds the competences of youths with migration backgrounds have been lower than the competences of youths without migration background.<sup>85</sup> Education researchers point out the manifold risks of structural discrimination in education, which pupils and students with a migration background, many of whom are Muslim, are exposed to. These include among others an increased number of certified special educational needs, ethnic segregation of classroom affiliations, and discriminatory practices in the allocation of recommendations to transit to secondary education. The saying goes, that the male "Hartz-IV-migrant-son" has replaced the "Catholic country-girl" as a symbol of those typically at loss within the German educative system.<sup>86</sup> We may presume that this 'migrant-son' is a Muslim of Turkish or Arab descent. A recently conducted comparison indicates that the qualifications obtained by the same group of Turkish migrant workers' descendants in all the West European neighbouring countries are much

<sup>83</sup> Nina Mühe (2011b): Acceptance of religious diversity in German public schools. Policy Brief. European University Institute. Accept Pluralism. Tolerance, Pluralism and Social Cohesion: Responding to the Challenges of the 21st Century in Europe, S. 1.

<sup>84</sup> Federal Antidiscrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben, pp. 104 and 109.

<sup>85</sup> Manfred Prenzel, Christine Sälzer, Eckhard Klieme, Olaf Köller (Eds.) Fortschritte und Herausforderungen in Deutschland PISA 2012 - Zusammenfassung, Münster; p. 10;  
[http://www.pisa.tum.de/fileadmin/w00bgi/www/Berichtband\\_und\\_Zusammenfassung\\_2012/PISA\\_Zusammenfassung\\_online.pdf](http://www.pisa.tum.de/fileadmin/w00bgi/www/Berichtband_und_Zusammenfassung_2012/PISA_Zusammenfassung_online.pdf)

<sup>86</sup> Federal Antidiscrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 85ff

higher than they are in Germany. Through this the forming of a relatively broad middle-class in the generation of the descendants of the so-called guest workers can already be determined in e.g. the Netherlands or Sweden.<sup>87</sup> Discrimination is so far a highly underrated obstruction to the rise of education; school in Germany being one of the social fields, which is most commonly reported to be discriminatory.<sup>88</sup> Apparently the government of the Federal Republic of Germany does not sufficiently pursue its obligation of protecting Muslim children and adolescents against anti-Muslim racism in public schools.

#### 4.6. On Article 2.1 (Prohibition and Termination of ‚Racial‘ Discrimination by State Parties) Muslims Being Discriminated Against on the Job Market and in Vocational Training

Muslims experience exclusion and have less chances, to establish a foothold on the vocational training and labour market in accordance with their qualifications. Especially Muslims who are discerned as such, or Muslim women wearing headscarves, are basically without any chances on the German training and labour market. They experience a massive exclusion from professional and business life. Government policies cited in the State report to enforce the migrants' integration into the labour market prove to be largely ineffective with regard to Muslims having better access onto the labour market, especially women wearing headscarves.<sup>89</sup>

##### 4.6.1 Discrimination While Seeking Placements for Internships and Vocational

The present studies and consultancy cases clearly show that after school, too, Muslims experience considerable disadvantages during their training history: When looking for an intern- or apprenticeship, during career counselling and placement by the employment agency, and partly also through independent educational institutions.<sup>90</sup> Despite equal qualifications and

<sup>87</sup> „Bildungserfolg von Migrantenkindern“, Deutschlandfunk from February 11, 2015; [http://www.deutschlandfunk.de/studie-bildungserfolg-von-migrantenkindern.680.de.html?dram%3Aarticle\\_id=311347](http://www.deutschlandfunk.de/studie-bildungserfolg-von-migrantenkindern.680.de.html?dram%3Aarticle_id=311347); Also confer: Open Society Justice Initiative (2013): Gleichberechtigung an deutschen Schulen fordern, <http://www.opensocietyfoundations.org/node/51055> (reading from March 1st, 2015).

<sup>88</sup> Institut für Migrationsforschung und Interkulturelle Studien (IMIS) (2015): Policy Brief. Pathways to success. Erfolgreiche Einwandererkinder und ihre Aufstiegskarrieren im urbanen und internationalen Vergleich, p. 10.

<sup>89</sup> Ministry of Justice (2013): 19th-22nd ICERD State report, p. 31f.

<sup>90</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben. p. 206, as well as, among others: Berliner Zeitung September 28, 2007: Mit Kopftuch gibt es keine Lehrstelle; taz September 9, 2007: Kinder, Küche

grades young people with migration background find a placement in vocational training less frequently than their peers without a migration background, mostly affected by discriminatory practices are candidates with Turkish or Arab background.<sup>91</sup>

Frankfurt Professor Christine Huth-Hildebrandt, holds that Muslim women in Germany experience massive exclusion from training and qualification processes.<sup>92</sup> A recent survey confirms this assessment: of the 700 respondents – small, medium and large companies –, 35.1% openly indicated that they would reject applicants with a headscarf; whereas 12.4% would reject Muslim candidates not only because of a headscarf, but even more so if they practiced their religion.<sup>93</sup> Deputy head teacher (Studienleiter) Prof. Scherr, sums up: „Companies frankly declare their willingness to discriminate, in particular, against Muslim youths.“<sup>94</sup>

A study that analysed the substantial correlation between religious affiliation and completed educational status in Germany, furnished evidence that Catholic young people are significantly better off in completing training than their Muslim peers. When it comes to attending a secondary grammar school after having completed secondary modern or basic schooling, all other religious groups have a better chance than Muslims do. It is evident that - regardless of the intensity of their religious beliefs - Muslim youths as compared to others have fewer opportunities to be placed in a vocational training or continue going to school. Accordingly, shortly after leaving school they run an increasing risk to drop into unemployment or stay without training or apprenticeships.<sup>95</sup> Following intensive counselling and networking a ground-breaking judgment of the Labour Court in Berlin clearly stated, that women are not to be disadvantaged because of

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Kopftuch; In a successful legal action at the Higher Regional Court in Celle 2014 against a private job placement agent, the latter had to pay compensation, because she had refused to offer her services on grounds of the client wearing a headscarf. (judgement from January 18, 2014, Az. 13 U 37/13) 2014.

<sup>91</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben., p. 212f

<sup>92</sup> Huth-Hildebrandt, Christine (2009): Krieg ICH (k)einen Job? Muslimische Studentinnen in Ausbildung und Beruf. Lecture at a meeting of the clearing project: Coexistence with Muslims on November 23, 2009 in Frankfurt on Main.

<sup>93</sup> Albert Scherr/ Caroline Janz/ Stefan Müller (2013): Diskriminierungsbereitschaft in der beruflichen Bildung: Ergebnisse und Folgerungen aus einer Betriebsbefragung, Soziale Probleme: Zeitschrift für soziale Probleme und soziale Kontrolle H.2, pp. 245-269; siehe auch: Migazin from August 15, 2013: Every third employer rejects women wearing headscarves.

<sup>94</sup> Albert Scherr (2013): Nichtmuslime bevorzugt. Warum Frauen mit Kopftuch oft keine Lehrstelle bekommen, see: [http://www.antidiskriminierungsstelle.de/SharedDocs/Kurzmeldungen/DE/2013/nl\\_03\\_2013/nl\\_03\\_gastkommentar.html?nn=4192188](http://www.antidiskriminierungsstelle.de/SharedDocs/Kurzmeldungen/DE/2013/nl_03_2013/nl_03_gastkommentar.html?nn=4192188) (reading March 1st, 2015).

<sup>95</sup> Granato, Mona; Jan Skrobanek (2007): Junge Muslime auf dem Weg in eine berufliche Ausbildung – Chancen und Risiken; in: Hans-Jürgen von Wensierski; Claudia Lübcke (eds): Junge Muslime in Deutschland. Lebenslagen, Aufwuchsprozesse und Jugendkulturen, Opladen & Farmington Hills, p. 244f

their religious beliefs. The Court found for the plaintiff, a young woman who had applied to be trained as a dental assistant. The dentist had turned down her application because of her refusal to remove the headscarf during work, and therefore now she received compensation. (Az.z.: 55 Ca 2426/12).<sup>96</sup>

#### 4.6.2 Discrimination Concerning Access to the Labour Market and in the Work Place

A large proportion of the cases received by the Network against Discrimination and Islamophobia, report on discrimination on the labour market.<sup>97</sup> Especially women with headscarves experience great barriers with regard to access to the training and labour market. Without any awareness of wrongdoing the women are told that because of their headscarf they cannot get the apprenticeship or workplace. Most people affected accept such answers as normal, only a few are aware of the law that may protect them from discrimination.<sup>98</sup> (Read more in the cases attached). Other counselling and anti-discrimination bodies also report that they receive requests from headscarf-wearing Muslim women especially in cases with regard to access to employment and that for these women regardless of their qualification there is a high risk of being discriminated against. Women are advised to remove the headscarf, in order to obtain a job placement.<sup>99</sup> A labour market expert speaks of a rate of 99% of women with headscarf being turned down; however, other reasons would always be given.<sup>100</sup> On their search for work these women often give in or they try to find work in the ethnic sector, in order to avoid the exclusion from work life.<sup>101</sup> Discrimination of headscarf-wearing women also occurs in the form of bullying at the workplace or by notice of termination of a work contract. Muslim (women) employees

<sup>96</sup> Diskriminierungsfälle aus der Beratungspraxis nichtstaatlicher Antidiskriminierungsbüros des Antidiskriminierungsverbandes (advd), August 2012, p. 5; also see: Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben., p. 221

<sup>97</sup> A number of institutions and human rights organizations already pointed out discrimination practices against Muslim women on the labour market, i.e.: Interkultureller Rat in Deutschland (2010): Starke Frauen, schwerer Weg! Zur Benachteiligung muslimischer Frauen in der Gesellschaft, Darmstadt; Senatsverwaltung für Integration, Arbeit und Soziales. Landesstelle für Gleichbehandlung gegen Diskriminierung (Eds.) (2008): Mit Kopftuch außen vor?, Berlin; Human Rights Watch (2009): Diskriminierung im Namen der Neutralität. Kopftuchverbote für Lehrkräfte und Beamtinnen in Deutschland, Berlin; confer: <http://www.hrw.org> (Stand 01.03.2015).

<sup>98</sup> Nuran Yigit (2012): Netzwerk gegen Diskriminierung von Muslimen, in: Deutsche Islam Konferenz (2012): Muslimfeindlichkeit – Phänomen und Gegenstrategien. Beiträge der Fachtagung der Deutschen Islamkonferenz am 4. und 5. Dezember 2012 in Berlin, p. 117.

<sup>99</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben., p.221

<sup>100</sup> Open Society Institute (OSI) (2010b): Muslims in Hamburg. At Home in Europe Project; New York/ London/ Budapest, p. 117

<sup>101</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben., p.193

report that they are ridiculed and prevented from exercising their religion or that they are dismissed or their contract is not renewed if they are unwilling to take off the headscarf.<sup>102</sup>

Muslim men are affected by anti-Muslim racism in the workplace and experience discrimination, too. For example, they are denied a workplace, after saying that they might want to pray at work.<sup>103</sup>

The majority of human resources managers explicitly state, that they are reluctant to hire Turkish-born candidates, in particular headscarf-wearing women, reasoning that these candidates are "not willing to integrate", they "segregate themselves", are "backward" and unpredictable in their "marriage behaviour".<sup>104</sup>

Muslim men and women, often with a migration background, also suffer from the effects of structural discrimination on the labour market: the unemployment rate of people with a migration background is twice as high as that of people without a migration background. In the same line the risk-of-poverty rate for persons with a migration background (13.5%) is twice as high as that of people without a migration background. The proportion of the marginally employed Muslim workers with very low income is 10.7% higher than that of German workforce.<sup>105</sup>

#### 4.6.3 Effects of the Prohibition of Headscarf-Wearing on the Level of *Laender* (regional) Legislation

Following a decision of the Constitutional Court dating from 2003, pertaining to the question of whether a teacher in State schools may wear a headscarf, eight *Laender* (States) adopted special prohibiting laws concerning religious motivated clothing of women teachers and other public female officers. The statutory prohibitions<sup>106</sup> have excluded women concerned not only in the

<sup>102</sup> *ibidem*, p.195f

<sup>103</sup> *ibidem*, p.222

<sup>104</sup> Norbert Gestring; Janßen, Andrea; Polat, Ayca (2006): Prozesse der Integration und Ausgrenzung. Türkische Migranten der zweiten Generation, Wiesbaden.

<sup>105</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben., pp. 200; 202; 204

<sup>106</sup> In one case in North Rhine-Westphalia a social worker employed in a public school, unsuccessfully took plaint against a written warning as disciplinary sanction because of her religiously motivated headdress; she then wore a beret, which consequently was also prohibited in a judgment of the Federal Labour Court, exemplifying that wearing the beret had to be interpreted as another form of „religious statement“. (Bundesarbeitsgericht/BAG, judgment from August 20, 2009 – 2AZR 499/08). In a case from 2014, a nurse working in a Bochum Protestant hospital was prohibited to wear the headscarf at her working place, she took legal action and offered to wear a cap, a hood, a nun's coif, or a white headdress instead, which was

areas covered by the legislation; they also have developed a far-reaching impact on the educational and general labour market.<sup>107</sup> This applies to highly qualified Muslim professionals, such as doctors or economic scientists as well as to young women looking for an internship or apprenticeship. The headscarf related Acts have created a climate in which employers deny access to internships or to work without even the slightest awareness of wrongdoing and contrary to the prevailing non-discrimination legislation.<sup>108</sup> These serious discriminatory effects on Muslims have been criticized by various scientists and human rights institutions, as the German Institute for Human Rights, the UN Committee on the Rights of the Child and the Human Rights Watch:<sup>109</sup> „The headscarf bans do not only have a drastic impact on the lives of the women affected, they are also violations of human rights and violations of Germany's obligations under international human rights treaties. (...) The politics of excluding headscarf-wearing women from certain professions infringes international standards such as article 11 of the International Convention on the Elimination of All Forms of Discrimination Against Women<sup>110</sup> and the International Covenant on Civil and Political Rights. A ban on headscarves in the workplace is undermining the individual self-determination and freedom of choice – a fundamental aspect of women's rights, which is equally violated by those countries, forcing women to wearing a

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also refused. Refer to: Deutscher Anwaltsspiegel, Ausgabe 23/ 19.11. 2014: Immer wieder Streit ums Kopftuch. Glaubensfreiheit versus Neutralitätspflicht im Arbeitsverhältnis – die BAG-Rechtsprechung im Überblick, pp. 15-17.

<sup>107</sup> Due to this far-reaching discrimination practice against women, which also covers the health sector and always led to headscarf-wearing Muslim women being rejected with reference to hygiene regulations, the Anti-Discrimination Network Berlin (ADNB) of the Turkish Federation TBB urged the Berlin Senate Department for Health and Social Affairs to publish a commentary on this issue addressing potential employers. The Berlin Senate Administration responded and in 2012 published a statement on the headscarf in relation to hospital hygiene. Antidiskriminierungsnetzwerk Berlin (ADNB) / TBB (2013): Antidiskriminierungsreport 2011-2013, Berlin, p. 20

<sup>108</sup> Netzwerk gegen Diskriminierung von Muslimen. Press release: 10 Jahre Kopftuchurteil: <http://www.inssan.de/Presseinformation%20Netzwerk%202010%20Jahre%20Kopftuchurteil1.pdf> (March 1st, 2015).

<sup>109</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben, p. 221; for further critical voices also refer to: Peucker, Mario (2010): Diskriminierung aufgrund der islamischen Religionszugehörigkeit im Kontext Arbeitsleben - Erkenntnisse, Fragen und Handlungsempfehlungen. Erkenntnisse der sozialwissenschaftlichen Forschung und Handlungsempfehlungen, Antidiskriminierungsstelle des Bundes (ADS): Berlin, p. 54.; Deutsches Institut für Menschenrechte (2004): Zur Aktuellen Kopftuchdebatte in Deutschland, Berlin; International Helsinki Federation for Human Rights (IHF) (2005): Intolerance and Discrimination against Muslims in Selected EU Member States, Wien, p. 83; United Nations General Assembly (2014): Elimination of all forms of religious intolerance. Note by the Secretary-General, Sixty-eighth session August 7, 2013, A/68/290, p. 14/22.

<sup>110</sup> The CEDAW Committee responded already 2004 in its 30.session to the verbal statement of the German Non-Governmental Organizations Delegation's statement on the first evidences of discriminations against women wearing the headscarf in Germany and the impact of the new legal Acts which banned the headscarf in the Laender verbally in the session with the Government and finalized their view and concern in the Concluding Observations to the German State report under CEDAW; see A/59/38 (Part I) of 18. March 2004, p. 68 f, Para 395 and 396.

headscarf. (...) In fact, the general exclusion of headscarf-wearing women from the classrooms of State schools constitutes a lifelong occupational ban in this professional career."<sup>111</sup>

With a judgment from 27 January 2015<sup>112</sup>, the Federal Constitutional Court has by now revised legislation, by deciding in favour of two plaintiff women teachers, who took action against their dismissal on grounds of the sweeping headscarf ban in North Rhine Westphalia (1 BvR 471/10. 1 BvR 1181/10). The current decision reads as follows: „The fundamental right to freedom of denomination and belief (art. 4 par. 1 and 2 Basic Law) also applies to teachers in the public service secular community school and ensures the freedom to meet religiously founded mandatory requirements of covering parts of the body.“ The judgment stipulates, that the assumption of an abstract danger to the neutrality of the State and school peace does not suffice to prohibit the religiously motivated wearing of headscarves and that in the future the evidence of a concrete threat or disturbance of school peace will be necessary if a teacher’s fundamental right to freedom of religion should be restricted. However, freedom of religion can still be restricted by banning outer demonstrations of religious affiliation, „if in certain schools or school districts the threshold to a sufficiently specific danger of school peace or of State neutrality is reached in a considerable number of cases due to a substantial conflict on proper religious behaviour.“ Although this judgment only applies to the two cases mentioned from North Rhine-Westphalia, still as a result, a new legal situation for all *Laender* has been created, and the subordinate courts will have to determine future decisions in the light of this judgment. The Network Against Discrimination and Islamophobia has welcomed the judgement:<sup>113</sup> We hope to see a signalling effect beyond the school sector, to other areas of training and labour market. Based on our experience with the reality of discrimination in schools, we deem it essential that the legislature does not only demand evidence of "threats to school peace and substantial conflictual situations“ but that they also differentiate and define in compliance with the human

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<sup>111</sup> Human Rights Watch (2009): Diskriminierung im Namen der Neutralität. Kopftuchverbote für Lehrkräfte und Beamtinnen in Deutschland, Berlin, p. 56f

<sup>112</sup> Confer: Press Release by the Federal Constitutional Court from March 13, 2015, [http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html;jsessionid=0E305D47FABDCAF5B754B7D06C516529.2\\_cid361](http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html;jsessionid=0E305D47FABDCAF5B754B7D06C516529.2_cid361)

<sup>113</sup> Confer: Press release from March 14, 2015, <http://www.netzwerkdiskriminierung.de/>

rights and constitutional protection in order to preclude further legitimization of discrimination with this judgment.

#### 4.7. Deficient Protection Through Existing Anti-Discrimination Measures and the General Equal Treatment Act (AGG)

Apparently through the measures outlined in the State report protection of Muslims against discrimination on the labour market has not been enhanced. In the contrary, the experiences of counselling and anti-discrimination bodies indicate even an increase in cases of discrimination on the basis of the headscarf.<sup>114</sup> The promising instrument of anonymized application procedures proves to be useless, when Muslim women stand no chances after the first personal invitation because of them wearing a headscarf. Intercultural trainings do not produce the results wished for, unless they explicitly also address the religious dimension and related needs and prejudices, as anti-Muslim racism and Islamophobia. In the field of diversity management in the private sector, the topic of religious and ideological diversity management<sup>115</sup> has completely been neglected.<sup>116</sup> In this respect the afore-mentioned "Diversity Charter" to promote diversity in companies has contributed little. Awareness about human rights and a true understanding of the legal bid for freedom from discrimination seem to be lacking. It has become evident that the General Equal Treatment Act (AGG) does not adequately cover the protection of Muslims against racial discrimination in education and jobs. This is due to lacking anti-discrimination structures and complaint-handling bodies, easily accessible for Muslims. Regarding the field of education, there is a protection void<sup>117</sup> due to the insufficient implementation of the EU directive, which foresees (public) education as one field of action for the anti-discrimination legislation (§ 2, par. 7).<sup>118</sup> Muslim women experience insufficient protection against discrimination, as multidimensional discrimination so far hardly has been taken into account in Germany's law

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<sup>114</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben.,p.221

<sup>115</sup> Petra Köppel (2012): Diversity Management in Deutschland 2012: Ein Benchmark unter den Dax 30-Unternehmen. Schwerpunkt Unternehmensstruktur, Köln, p. 7

<sup>116</sup> Federal Ministry of Justice (2013): 19th-22nd ICERD State report, p. 31f.

<sup>117</sup> Federal Anti-Discrimination Agency (ADS) (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben, p. 163

<sup>118</sup> Federal Anti-Discrimination Agency (ADS) (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben, p. 70.

courts, although according to AGG it has been foreseen to be taken into consideration (§ 4). The gender-discriminatory aspect of 'headscarf bans' and associated far-reaching discrimination practices against Muslim women so far has been ignored by court.<sup>119</sup> Due to the special circumstances of dependency that exist in education and on the labour market, there are special hurdles, which make it more difficult for the person affected to stand up against discrimination. Members of stigmatized minorities such as Muslims in Germany, try to assimilate, and refrain from critical comments or complaints. For fear of attracting negative attention and to avoid victimization, Muslims do not usually file complaints nor do they bring issues of discrimination to trial.<sup>120</sup>

With this in mind the Federal Anti-Discrimination Agency recommends the proactive taking into account of religious needs to avoid indirect discrimination, by heeding, for example, religious food or dress codes, providing prayer rooms and allowing for flexible vacation days in work structures and work regulations.<sup>121</sup> An even higher level of protection could be reached, by religious adjustment of legal appropriate measures already existing in the German Anti-Discrimination Act with regard to the provisions for differently abled people. Meanwhile, this is being recommended and promoted by the European Commission, national human rights institutions and scientists to combat indirect discrimination of religious minorities on the European labour market:<sup>122</sup>

*“The concept of reasonable accommodation expresses an important idea in the evolution of the principle of equality”<sup>123</sup> or “Policymakers, legislators and judges should treat claims of reasonable accommodation as an important part of combating indirect discrimination based on religion or*

<sup>119</sup> Frédérique Ast; Riem Spielhaus (2012): Tackling Double victimization of Muslim Women in Europe: An Intersectional Response, in: Mediterranean Journal of Human Rights, Vol. 16 (Double Issue – 2012), pp. 357-382.

<sup>120</sup> Even aspiring lawyers with headscarf, who are familiar with legal possibilities, say that legal actions are out of question in cases of discrimination. Confer: „Studieren mit Kopftuch: Wir stehen unter einem Riesendruck!“, in Tagesspiegel from September 21, 2103.

<sup>121</sup> Federal Anti-Discrimination Agency (2013): Diskriminierung im Bildungsbereich und im Arbeitsleben., p.309.

<sup>122</sup> United Nations General Assembly (2014): Elimination of all forms of religious intolerance. Note by the Secretary-General, Sixty-ninth session August 5, 2014, A/69/261; European Commission/ Directorate-General for Justice (2013): Reasonable Accommodation beyond Disability in Europe? Luxembourg; Religare- Religious Diversity and Secular Models in Europe: Innovative Approaches to Law and Policy: [http://ec.europa.eu/research/social-sciences/pdf/policy-briefs-religare-may-2012\\_en.pdf](http://ec.europa.eu/research/social-sciences/pdf/policy-briefs-religare-may-2012_en.pdf); Emmanuelle Bribosia, Julie Ringelheim, Isabelle Rorive (2010): Reasonable Accommodation for religious Minorities: a promising concept for European Antidiscrimination Law? in: 17 Maastricht Journal of European and Comparative Law 137 (2010).

<sup>123</sup> European Commission/ Directorate-General for Justice (2013): Reasonable Accommodation beyond Disability in Europe? Luxembourg, p. 66.

*belief.*<sup>124</sup>

#### 4.8. Recommendations in Relation to Article 2

To ensure the compliance with the human rights obligations in Germany we ask the CERD Committee to recommend the implementation of the following measures to the Federal Government:

Lack of relevant data on discrimination:

- 1 Encouragement of research and studies pertaining to anti-Muslim racism and Islamophobia in the different societal areas (especially education and work)
- 2 introduction on the national level of a uniform, systematic collection and documentation of cases of discrimination on grounds of hostility against Muslims

Protection from anti-Muslim racist discrimination in the educational sector through:

- 1 Setting up low-threshold, neutral counselling and complaint-handling bodies that reach out to Muslim students and parents (they should counsel sensitively not only with view to racism in general but also with view to Islam or overall to religion)
- 2 Filling of the voids in legal protection against discrimination in public education at federal and *Laender* (regional) level
- 3 The Federal Anti-Discrimination Agency should analyse by means of social sciences studies and legal opinion legislation restricting the wearing of headscarves with regard to their discriminatory effect and examine their compatibility with the current case-law of the Constitutional Court, of the General Equal Treatment Act, as well as the relevant human rights standards. The conformity of national legislation with the international obligations of Germany for human rights is to be examined, in particular to ensure that they do not discriminate on the basis of ethnicity, religion and gender.<sup>125</sup>

<sup>124</sup> United Nations General Assembly (2014): Elimination of all forms of religious intolerance. Note by the Secretary-General, Sixty-ninth session August 5, 2014, A/69/261, pp. 22/23.

<sup>125</sup> Also see: Human Rights Watch (2009): Diskriminierung im Namen der Neutralität. Kopftuchverbote für Lehrkräfte und Beamtinnen in Deutschland, Berlin; confer: <http://www.hrw.org>, p. 6

While strengthening the Muslims' protection from discrimination, the strengthening of the religious and philosophical notion of diversity in schools should be promoted through government initiatives. To do this, the current judgment of the Federal Constitutional Court on the ban on headscarves in schools<sup>126</sup> offers an important supplemental support by legally clarifying that the privileged handling of Christian symbols and traditions in school is not in conformity with the Constitution and is a sign of discrimination adverse to equal treatment of adherents of other religions. According to this understanding, the equal treatment imperative secures school peace, because it corresponds to the lived diversity at school, in which the 'religiously pluralistic society' is reflected. The Court holds that it is the task of a school "open to a multitude of denominations" to teach the pupils tolerance towards other religions and worldviews and that this ideal - must be put into practice by allowing the wearing of headscarves, skullcaps, nuns habit or visible cross.

- 1 Teachers' Trainings and diversity-oriented school development with a focus on diversity of religion and belief, and in particular on anti-Muslim racism and Islamophobia

Protection against anti-Muslim racist discrimination in the work area by:

- 1 Abolition of national provisions on religious symbols and clothes
- 2 Implementation and opening of low-threshold anti-discrimination facilities in cooperation with Muslim organisations and institutions, which reach out to members of the Muslim target group and inform them of their rights and provide advice and support in cases of discrimination
3. Religious accommodation or adjustment in German Anti-Discrimination Law
4. Promotion of diversity initiatives in the economy and labor market (e.g. with reference to the German Diversity Charter of Enterprises ) to carry out diversity trainings focusing on diversity of religion and belief, with particular emphasis on anti-Muslim racial discrimination, as well as the religious dimension in the Diversity Management of the enterprises and businesses (The theme year 2016 proclaimed by the Anti-Discrimination Agency could give important impetus)

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<sup>126</sup> Confer: Press release by the federal Constitutio Court/Bundesverfassungsgericht from March 13, 2015, [http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html;jsessionid=0E305D47FABDCAF5B754B7D06C516529.2\\_cid361](http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html;jsessionid=0E305D47FABDCAF5B754B7D06C516529.2_cid361)

5. Monitoring by the Federal Anti-Discrimination Agency of the process of implementation in enterprises in accordance with the Anti-Discrimination Law to set up effective complaint mechanisms

## 5. On Article 4 ICERD (Fighting Racist Propaganda)

### 5.1. On Article 4. Section c. (Enforcement of the Prohibition of 'Racial' Discrimination by All State Authorities)

With regard to practical implementation of the prohibition of discrimination in all German authorities the State report refers to the positive action embedded in the National Action Plan on Integration, to promote the increase of employees with an immigrant background in the public service.<sup>127</sup> In this respect, very successful measures in administrations and public authorities have been carried out in the various cities and municipalities.

Unfortunately, we must assert that these are not effective in view on the overcoming of structural barriers against Muslim people, especially if they are identified as such, and that the situation for women wearing a headscarf has not improved as far as access to fields of activity in justice or in the public service is concerned, even if neutrality requirements do not apply. The regional 'headscarf bans' exude a symbolic message in areas where these bans have no validity at all, therefore many a times ,anticipatory' discrimination is exerted. For example, in 2013, four cases were made known to the Berlin Senate, in which at the hearing lawyers wearing a headscarf were rejected by the respective judges.<sup>128</sup> The Chamber of the Bar stepped in with a press release and made it clear that lawyers exercise an independent profession and that for this reason religious neutrality of the State does not apply.<sup>129</sup> One jurywoman, who wore a headscarf, was rejected by the public prosecutor, stating that she did not qualify as a lay assessor.<sup>130</sup> A judgment of the

<sup>127</sup> Federal Ministry of Justice (2013): 19th to 22nd State report ICER, S. 22.

<sup>128</sup> Written response of the Berlin Senate from October 25, 2013 to the question of deputy Dirk Behrendt from September 16, 2013, Bundestag paper/Drucksache 17/12660.

<sup>129</sup> Berlin Chamber of the Bar: Muslimische Rechtsanwältinnen dürfen vor Gericht mit Kopftuch auftreten, Press release from September 15, 2013: [http://www.rak-berlin.de/site/DE/int/01\\_aktuelles/01\\_01-mitteilungen/Sep\\_13/conta\\_Kopftuch\\_150913.php](http://www.rak-berlin.de/site/DE/int/01_aktuelles/01_01-mitteilungen/Sep_13/conta_Kopftuch_150913.php)

<sup>130</sup> In a decision from October 9, 2012, the District Court of Berlin has ruled that an Administrative Court is properly staffed, when a jurywoman wears a hijab-headscarf, completely covering ears and the neck but leaving the face to be seen. <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=KG&Datum=09.10.2012&Aktenzeichen=121%20Ss%20166/12> (reading from: February 25, 2015)

Superior Court of Justice (of Berlin) has clarified the admissibility of a lay assessor wearing a headscarf (Az. (3) 121 Ss 166/12 (120/12). According to a judgment from November 11, 2013 by the Administrative Court of Düsseldorf in North Rhine-Westphalia, wearing a headscarf does not ensue any obstacle for employment as a civil servant in General Administrative (Az. 26 K 5907/12).<sup>131</sup> The lack of knowledge respectively ruling enforcement on Muslim issues is devastating. It must be stated, that often employees of authorities are hardly aware of any wrongdoing and therefore abstain from measures to avoid similar discrimination in the future. Hence with a ruling from June 26, 2008 it was clarified by the Federal Administrative Court that the headscarf ban was not valid for teacher trainees, because otherwise they would disproportionately be restricted in their freedom of career choice (Az. 2 C 22.07). Consequently the Federal State of Berlin even has firmly established an exemption in the law of neutrality.<sup>132</sup> Despite that case-law, the rejection of candidates with headscarf on traineeships and internships in public schools is common practice; a school principal's statement in this behalf in a daily newspaper, even went undisputed.<sup>133</sup> In a legal opinion for the Regional 'State Office for Equal Treatment – Against Discrimination' in Berlin judge Susanne Baer of the Federal Constitutional Court (BVerfG), concluded, that this ruling which is for example not applied to trainees in justice, who are exempted from attending to their duty of representing the prosecutor in court and can still complete their training, is opening the door to a unilateral administrative practice, and leading to indirect discrimination and therefore not compatible with the Anti-Discrimination Act.<sup>134</sup> This unilateral administrative practice leads to legal uncertainty for Muslim women and men and therefore acts as a deterrent. Many Muslim women refrain from studying law, because they are afraid of discrimination, or they rightly estimate, that they will be denied professional

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<sup>131</sup> VG Düsseldorf zur Religionsfreiheit: Beamtin auf Probe darf Kopftuch tragen. In: Legal Tribune ONLINE, 08.11.2013, [http://www.lto.de/persistent/a\\_id/9997/](http://www.lto.de/persistent/a_id/9997/) (reading from: February 25, 2015)

<sup>132</sup> Marlene Grunert, Neutralität im Gericht: Mit Kopftuch im Referendariat. In: Legal Tribune ONLINE, 24.02.2014, [http://www.lto.de/persistent/a\\_id/11138/](http://www.lto.de/persistent/a_id/11138/) (reading from: February 25, 2015)

<sup>133</sup> „Bei ihren Mitarbeitern kennt sie aber kein Pardon: Praktikantinnen dürfen kein Kopftuch tragen“ in Tagesspiegel from February 04, 2015: Kopftuch-Streit an Grundschulen. Muslimischer Verband in Berlin pocht auf Religionsfreiheit.

<sup>134</sup> Susanne Baer; Kirsten Wiese (2008): Ist das Berliner Neutralitätsgesetz mit dem Allgemeinen Gleichbehandlungsgesetz vereinbar? Expertise im Auftrag der Landesstelle für Gleichbehandlung – gegen Diskriminierung in Berlin, 2008.

practice or they might have to accept substantial limitations.<sup>135</sup>

## 5.2 Recommendations in Relation to Article 4

As an undersigned State, Germany has committed itself not to allow State and local governments or public institutions to promote racial discrimination. As a guarantee of protection from discrimination in this respect is insufficient, we recommend the following measures:

- 1 Review and ensure access for Muslim men and women to recruitment and promotion procedures in justice and administration on all levels in accordance with the stipulations on legal protection against discrimination.
- 2 Nationwide introduction of de-identified recruitment process
- 3 Establishment of complaint-handling bodies sensitive to racism within State and local authorities or public bodies
- 4 General clarification on the part of State and official authorities in view of disclosed repeated unlawful discrimination within individual authorities or offices, for example by publishing notes and circulars, in order to ensure legal certainty and strengthen access to justice for members of vulnerable groups affected.

## **6. On Article 5 ICERD (Equality Before the Law and the Right to Security of a Person and State Protection Against Violence)**

### 6.1. Article 5. a) Equality in the Legal Courts and With Justice

Although racial discrimination is part of the Muslims' daily lives and despite the General Equal Treatment Act which gives the person affected legal rights, which they could exercise in legal actions against cases of suffered discrimination, there are, nevertheless, hardly any legal proceedings as compared to other categories of discrimination, such as age, disability or gender.<sup>136</sup> Between 2006 and 2009, there were only seven complaints filed by Muslim women

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<sup>135</sup> Liebscher, Doris; Juana Remus; Daniel Bartel (2014): Rassismus vor Gericht. Weiße Norm und Schwarzes Wissen im rechtlichen Raum, in: Kritische Justiz? p, 142, See also: Marlene Grunert, Neutralität im Gericht: Mit Kopftuch im Referendariat. In: Legal Tribune ONLINE, 24.02.2014, [http://www.lto.de/persistent/a\\_id/11138/](http://www.lto.de/persistent/a_id/11138/) (reading from February 25, 2015)

<sup>136</sup> Liebscher, Doris; Juana Remus; Daniel Bartel (2014): Rassismus vor Gericht. Weiße Norm und Schwarzes Wissen im rechtlichen Raum, in: Kritische Justiz? p, 135-151.

and men before labour courts in six *Laender*.<sup>137</sup> The number of discrimination lawsuits and criminal charges in cases of Islamophobe hate crimes does not reflect the extent of anti-Muslim and anti-Islam acts in Germany, as study results and reports to counselling bodies may suggest. Since there are numerous barriers in the access to justice for Muslims,<sup>138</sup> incidents of discrimination, anti-Muslim insults, threats, or even attacks are mostly not reported. The reasons for this are lack of language competence, fear of entering in the unknown domain of justice or lack of trust in authorities, justice and constitutional procedures. The non-recognition of de facto discrimination is one reason why an incident legally may not be addressed as discrimination.<sup>139</sup> In addition to such subjective barriers in the access to justice due to educational or migration background, anti-Muslim and Islamophobe prejudices and connected structural discrimination within the legal system also play a role as objective barriers to the access to justice. At least since the random detection of the racially motivated murder series by the „National Socialist Underground“ (NSU) and the eminent role of ‚racialized‘ preconceptions and bias during the preliminary investigations, have been disclosed by the enquiry commissions, the sense of security of the Muslim citizens in Germany has been heavily damaged.<sup>140</sup> Situations, in which Muslim clients, victims and accused, as well as other Muslim parties to legal proceedings are confronted with stereotypes and prejudices, are more than common. In a research project several of the interviewed plaintiff’s proxy respondents stated that the judicial reasoning was often characterized by racial stereotyping.<sup>141</sup> In March 2014 a case became known, in which a judge threatened with the imposition of fine money, if the witness did not remove her headscarf at the hearing.<sup>142</sup> Rino Iervolino, Lawyer and member of the Board of the Regional Association of the municipal Migrant Representation in Baden-Württemberg, that within the legal profession the

<sup>137</sup> Rottleuthner, Hubert/ Matthias Mahlmann (2011): *Diskriminierung in Deutschland. Vermutungen und Fakten*, Nomos Baden-Baden, p. 396.

<sup>138</sup> German Institute for Human Rights / Deutsches Institut für Menschenrechte/ Beate Rudolf (2014): *Rechte haben – Rechte bekommen. Das Menschenrecht auf Zugang zum Recht*, Berlin.

<sup>139</sup> Deutsches Institut für Menschenrechte/ Aliyeh Yegane Arani (2013): *Diversity-Kompetenz: Chance und Herausforderung für Rechtsanwältinnen und Rechtsanwälte*, Berlin, p. 6.

<sup>140</sup> Zentralrat der Muslime in Deutschland e.V.: Press release from May 6, 2013 at the start of the NSU-terror process in Munich

<sup>141</sup> Rottleuthner, Hubert; Matthias Mahlmann (2011): *Diskriminierung in Deutschland. Vermutungen und Fakten*, NOMOS, Baden-Baden, p. 337.

<sup>142</sup> *Taz* from March 30, 2014: „Justiz: an den Ohren herbei gezogen“, <http://www.taz.de/!135842/> (01.03.2015).

bias prevails, that forced sex in marriage is more commonly accepted in Muslim societies than in this our country.<sup>143</sup>

When it comes to fighting terrorism, Muslims, young men in particular, are facing an increased risk of being perceived as potential criminals. Muslim men are regularly checked by police controls in the setting of 'religious profiling' (investigations without a given suspicion).<sup>144</sup> 24% of Muslims interviewed in Germany in a FRA investigation said to have undergone police control during the past 12 months. 37 % of them believe that they had been specifically singled out by the police.<sup>145</sup> An expert's report, based on official statistics, points out that young people with migration background are not more often delinquent, but are subject to an "increased risk of criminalization", which means that in conflict situations charges are pressed against them much more often than is the case with teenagers of no migration background. The same expertise also notes a differing behaviour of public prosecutors and court officials towards foreigners, who are much more often remanded in custody.<sup>146</sup>

In constant reproducing close links between Islam, migration, crime and violence, media discourses promote the widespread racist legend on the high risk of delinquency by Muslim immigrants. This anti-Muslim attitude, having become 'presentable', does not pause when it comes to the field of justice; thus as a matter of fact during a session for legal trainees by the German Institute for Human Rights, a lawyer-to-be asks why Arabs are more often criminal than other groups.<sup>147</sup> A case which also suggests the existence of anti-Muslim bias within the German judiciary was the processing of the brutal murder of the then pregnant Marwa El Sherbini on July 1st, 2009, which took place during the court hearing in the Dresden District Court, who died of 18

<sup>143</sup> *Die Welt* from January 13, 2014: „Justiz muss sensibler mit Migranten umgehen“, in:

<http://www.welt.de/regionales/stuttgart/article123452338/Justiz-muss-sensibler-mit-Migranten-umgehen.html> (01.03.2015).

<sup>144</sup> The term has been derived from the concept of 'racial profiling', which refers to the police profiling based on ethnicity.

<sup>145</sup> FRA – European Union for Fundamental Rights (former EUMC) (2009): Data in Focus Report 2: Muslims, p. 13; see:

<http://fra.europa.eu/eu-midis/>

<sup>146</sup> Christian Walburg (2014): Migration und Jugenddelinquenz-Mythen und Zusammenhänge. Ein Gutachten im Auftrag des Mediendienstes Integration, Berlin. Contrary to prejudice the expertise unveils, that certain social groups, as for instance Muslim girls, show a delinquency rate lower to that of non-Muslim youths and that a less risky recreational behavior contributes to lower crime, for example, by a less intensive consumption of alcohol. See:

[https://mediendienst-integration.de/fileadmin/Dateien/Gutachten\\_Kriminalitaet\\_Migration\\_Walburg.pdf](https://mediendienst-integration.de/fileadmin/Dateien/Gutachten_Kriminalitaet_Migration_Walburg.pdf) (Stand: 25.02.2015)

<sup>147</sup> The author was among the instructors during the training, organized 2014 in Berlin by the German Institute for Human Rights on the human rights-based protection against discrimination and diversity for junior lawyers.

stabs with a knife before the eyes of her husband, her 3-year old son and in the presence of the judge. The killer, that goes from his letter beforehand send to the Dresden Court, as well as his statements to the victim, acted out of Islamophobe motives and had planned his deed. The husband, who ran to help his wife, was also critically injured by the killer and by a police officer, who at first sight mistook the husband to be the perpetrator.<sup>148</sup> Until today, the offender's anti-Muslim motive has not been fully apprehended in its scope nor has it been thoroughly been contextualized.<sup>149</sup> Studies from the United States and Great Britain show, that racist pre-conceptions can significantly contribute to legal unequal treatment for defendants, who are members of ethnic minorities.<sup>150</sup> Nevertheless, no scientific evidence has been produced so far on the role and possible impacts of anti-Muslim attitudes on investigation and trial in Germany. Only one single and recent study finds, that prejudices against Muslim men have a negative effect on case-law and that so-called „honour killings“ are not, as widely assumed, punished milder because of an imputed 'Islam-rebate', but in the contrary they are even punished harder than 'normal' killings of partners or spouses.<sup>151</sup>

## 6.2. Article 5b) A Person's Right to Security and State Protection Against Assault and Battery

The German government and its authorities do not sufficiently ensure effective protection and legal remedies against discriminatory or anti-Muslim and Islamophobe actions. The offences range from vandalism, smudgy swastika graffiti, to death threats and arson attacks.<sup>152</sup> In the last 30 years there were a dozen bomb threats and hundreds of attacks on mosques in Germany with a rising tendency since 2012. In Berlin alone a series of arson attacks on mosques were

<sup>148</sup> Central Muslim Council in Germany (ZMD). : Press release from June, 28, 2013: ZMD-Vorsitzender kommt zur Gedenkveranstaltung zum 4. Todestag von Marwa El-Sherbini nach Dresden

<sup>149</sup> Iman Attia; Alexander Häusler; Yasemin Shooman (2014): Antimuslimischer Rassismus am rechten Rand, Münster, p. 10.

<sup>150</sup> Among others, Kang, Jerry; Judge Mark Bennett; Devon Carbado; et.al. (2012): Implicit Bias in the Courtroom, in: 59 UCLA Law Review 1124 (2012), p. 1173; also confer: "Courts are biased against blacks with offenders less likely to be jailed for similar cases says official report." In: The Independent, November 24, 2013

<sup>151</sup> Zeit-Online from April 2nd, 2014 „Strafrabatt für Ehrenmord gibt es nicht“, <http://www.zeit.de/gesellschaft/zeitgeschehen/2014-04/ehremord-debatte-islam-rabatt> (reading from March 1st, 2015).

<sup>152</sup> Charles von Denkowski (2014) Collection of facts: attacks on mosques in 2014, paper presented at the OSCE.Human Dimension Implementation Meeting 2014; HDIM.NGO/0289/14; <http://www.osce.org/odihr/124654?download=true>

perpetrated for example between 2010 and 2011.<sup>153</sup> In June 2012, several mosques and Islamic organizations in Berlin received hate mails with the "Federal Government" indicated as sender, which read: „We will convert your mosques into concentration camps and then you will be so concentrated, that your ashes can be thrown away in one bucket.“ 2012 held numerous further attacks on Berlin mosques and Islamic institutions: among others mosques were vandalized with paint bombs and swastika graffitis or blood-dripping pig heads were deposited before a mosque.<sup>154</sup> Following the Berlin Senate Administration, responding to an enquiry by one deputy of the Green Party, 17 attacks on mosques had been reported for 2013 and 2014.<sup>155</sup> The Network against Discrimination and Islamophobia in Berlin has been documenting hate crimes since 2010 and has discovered a significant increase in anti-Muslim crimes in Berlin since 2012.<sup>156</sup> The present official figures also prove a nationwide increase of attacks on mosques during this period. Responses by the Federal Government to parliamentary enquiries reveal: Between 2001 and 2011 there have been at least 219 politically motivated offences against mosques. Thereafter there were 22 attacks per year on an average.<sup>157</sup>

Responding to another small enquiry by the Left group in the German Federal parliament (*Linksfraktion im deutschen Bundestag*) dating from June 2014, the Federal German Government stated that since then there has been a significant increase in attacks on mosques. According to that response 78 attacks on mosques were registered between 2012 and March 2014, which accrues to three attacks per month.<sup>158</sup> The response given to another enquiry revealed a further increase, as there had been 45 reported attacks on mosques, mosque associations and Islamic facilities in 2014 alone.<sup>159</sup> According to the figures gathered by the Network in the course of the year 2014 at least six arson attacks occurred, including the largest attack on a mosque in Germany so far. In a basement corridor, where the Muslim students of the University of Applied Sciences

<sup>153</sup> Tagesspiegel from November 28, 2010: Neukölln – erneut Brandstiftung auf Moschee; Tagesspiegel from November 11, 2011: Mann gesteht Anschläge auf Moscheen; <http://www.tagesspiegel.de/berlin/brandstiftung-mann-gesteht-anschlaege-auf-moscheen/4356656.html>

<sup>154</sup> Lydia Nofal (2012): Islamfeindlichkeit als wachsendes gesellschaftliches Phänomen, in Berliner Zustände, p. 39

<sup>155</sup> House of Representatives of Berlin document printed matter (Abgeordnetenhaus Berlin Drucksache) 17/14 735

<sup>156</sup> Records by the network: 6 hate crimes in 2010, 13 in 2011: and 32 reported cases in 2012. See also: <http://hatecrime.osce.org/germany>

<sup>157</sup> German Parliament printed matter paper (Bundestag Drucksache) 17/10293 from July 12, 2012

<sup>158</sup> German Parliament, printed matter paper (Bundestag Drucksache) 18/1627 from June 04, 2014

<sup>159</sup> German Parliament, printed matter paper (Bundestag Drucksache) 18/4269 from March 10, 2015

(HAW) in Hamburg do their prayers, the prayer rugs were twice set on fire by unknown perpetrators on 06 and 12 June 2014.<sup>160</sup> In Berlin-Kreuzberg, an arson attack on the Mevlana mosque was perpetrated, which caused considerable material damage. This trend is deeply worrying, yet fortunately no person has so far been killed by such an attack. In none of all these cases in 2014 did the Public Prosecutor General of the Federal Court of Justice (*Generalbundesanwalt*) initiate investigations for alleged anti-Muslim and Islam-hostile offences.<sup>161</sup>

However, the full extent of Islamophobe criminal offences remain in the dark, because there is no separate collection of hate crimes in this respect and because so long attacks and desecration of mosques have not been singled out as a stand-alone offence. Islam- and Muslim-hostile criminal offences and violent acts have been classified since 2001 by the Criminal Police Reporting Service Politically Motivated Crime (KPMD-PMK) as being politically motivated under the generic term xenophobic or religion-related "hate crime" attacking "prayer sites/mosques". Against this background of data collecting, the Criminal (BKA) does not have reliable figures enabling a complete and systematic evaluation of the data.<sup>162</sup> In addition to attacks on mosques there are Islamophobe attacks on individuals who are visibly Muslims or who are perceived as such.<sup>163</sup> The cases documented by the Network Against Discrimination and Islamophobia from Berlin range from every day, so-called micro aggressions (conspicuous discourtesy and detrimental treatment), insults and threats in form of hate mails and hate letters or directly verbal attacks in public space to physical attacks. For instance, a sticker was glued onto the car of a Muslim woman in November which displayed the slogan 'no Islam' accompanied by a Mohammed caricature in which his turban is depicted as a bomb. In December 2014, a headscarf-wearing Muslim woman, who was walking in the street with her 7-year old son, was approached by a woman in uniform of *Deutsche Post AG* (German Post Office). The latter first threatened the Muslim woman with

<sup>160</sup> Islamiq 22.06.2014: HAW HAMBURG: Gebetsteppiche in Brand gesetzt.

<http://www.islamiq.de/2014/06/22/gebeteppiche-brand-gesetzt/>

<sup>161</sup> Die Zeit from August 27, 2014: Feuer in der Mevlana-Moschee war ein Brandanschlag;

<http://www.zeit.de/gesellschaft/zeitgeschehen/2014-08/moschee-berlin-brand-anschlag>

<sup>162</sup> German Parliament, printed matter paper (Bundestag Drucksache) 18/4269 from March 10, 2015

<sup>163</sup> See also: Reach out – Opferberatung und Bildung gegen Rechtsextremismus, Rassismus und Antisemitismus (2012): „Ich möchte wie ein Mensch behandelt werden. Antimuslimischer Rassismus – Diskriminierungs- und Gewalterfahrungen von Menschen arabischer Herkunft, Berlin,

her fist saying, that with the headscarf she was wearing, she did not belong, then she tried to tear the scarf off her head. Having failed, she then reviled her and spitting in her direction said, she would soon be gassed. In December 2014, a headscarf-wearing Muslim woman deliberately was attacked in Braunschweig on Islamophobe grounds: As she crossed the street, a car directly came towards her, hitting her at her knee. Four young men stepped out of the car and insulted her for being a Muslim. When one grabbed her by the collar, by-passers intervened and the aggressors let go of the woman and drove away.<sup>164</sup>

The number of cases reported since the beginning of 2015, reinforce the impression that Islamophobe hate crimes are on the rise. Here we depict just a few of the cases brought to our attention:

- 1 On January 7, in the subway in Berlin, a woman demands from a Muslim woman to leave her seat, threatening her with gestures and insulting her (among other insults these were 'headscarf-slut', 'childfucker' and that she should shout out 'Hitler akbar') (source: case reported to the Network).
- 2 On January 17, in Mannheim, a Koran teacher is being attacked and pushed to the ground by three men, who insult him assuming that he is a Salafist.<sup>165</sup>
- 3 On January 26, in Weinheim, a 12 year-old girl is pursued by a 50-year-old man who had xenophobic propaganda with him; he hits her in the face.<sup>166</sup>
- 4 On January 31, at a petrol station in Stuttgart, a Muslim family is attacked in their own car by two people. Her husband having left the car to pay the bill, the wife stays in the car with their three children. At this moment two extreme right wing men enter the car, insult and physically aggress the family. When the husband comes running to the scene they attack him as well.<sup>167</sup>

<sup>164</sup> Polizei Braunschweig, December 19, 2014: Muslimin auf offener Straße attackiert – Zeugen gesucht; <http://www.presseportal.de/polizeipresse/pm/11554/2910204/pol-bs-muslimin-auf-offener-stra-e-attackiert-zeugen-gesucht>

<sup>165</sup> Rhein-Neckar-Zeitung, January 22nd, 2015: Überfall auf Mannheimer Koranlehrer schockiert Muslime, [http://www.rnz.de/nachrichten/mannheim\\_artikel,-Ueberfall-auf-Mannheimer-Koranlehrer-schockiert-Muslime-arid,70559.html](http://www.rnz.de/nachrichten/mannheim_artikel,-Ueberfall-auf-Mannheimer-Koranlehrer-schockiert-Muslime-arid,70559.html)

<sup>166</sup> Rhein-Neckar-Zeitung from January 27, 2015: Weinheim: 12-Jährige angegriffen – Polizei prüft islamfeindlichen Hintergrund

<sup>167</sup> Deutsch-türkische Zeitung from February 24, 2015: Stuttgart: Übergriff auf Frau mit Kopftuch; Stuttgarter Zeitung from February 25, 2015: Wirbel um Angriff auf türkische Familie <http://www.stuttgarter-zeitung.de/inhalt.rechtsradikaler-hintergrund-oder-nicht-wirbel-um-angriff-auf-tuerkische-familie.0c7f6529-b516-4268-8aba-99c30a5e3484.html>

- 5 On February, 1st, in Frankfurt am Main, an elderly Sikh man wearing a turban is attacked on the subway by drunken men; they kick him with their feet and call him names as 'Mohammad', 'Taliban' and 'Pakistan', revealing their hatred of Islam. (Source: case reported to the Network).
- 6 On February 09, in Kaiserslautern, a 21-year old Muslim woman is being attacked in the street. She passes out and when she reawakens, she realizes that her headscarf has been ripped off and her clothes have been drenched in alcohol.<sup>168</sup>

Investigating authorities do not record anti-Muslim racist crimes separately; therefore knowledge about their actual extent remains sketchy so far.<sup>169</sup> On this base, there is no reliable information about estimated numbers of unreported cases, either. Muslim organizations<sup>170</sup> can so far only give quite incomplete information about attacks on their mosques. From experience the Network Against Discrimination and Islamophobia in Berlin concludes that Muslims often do not report hate crimes or that investigations often neglect and therefore do not detect a politically-motivated background; therefore a high number of unreported cases must be assumed. Most incidents are not covered by the media, thus the threatening incidents are predominantly perceived only within the Muslim community and there they create a sense of exclusion, fear and threat.<sup>171</sup> It happens that the police advise victims to keep silent thereby actively hiding or even supporting anti-Muslim orientated crimes.<sup>172</sup> Muslims and Muslim organizations experience barriers in investigation, when they want to press charges against anti-Muslim incidents: Evidence on racial and Islamophobe motives are not considered and during the investigation processes racist motivations are rashly ruled out. For example, when the Mevlana mosque in Berlin was on fire in 2012 the press reported after only one day, that a political motive or a racist background was to be excluded.<sup>173</sup> This was later corrected, investigation resumed in

<sup>168</sup> Council of Muslim Students and Scholars / *Rat muslimischer Studierender & Akademiker*, Press release from February 21, 2015: *Mutmaßlicher Angriff auf muslimische Studentin*

<sup>169</sup> Charles von Denkowski (2014) Collection of facts: attacks on mosques in 2014, paper presented at the OSCE Human Dimension Implementation Meeting 2014; HDIM.NGO/0289/14, S. 1f; <http://www.osce.org/odihr/124654?download=true>

<sup>170</sup> Islamic umbrella organizations such as the Central Council of Muslims, the Islamic Community Milli Görüş (IGMG), and the Turkish Islamic Union of Institution for Religious Affairs (DITIB) so far have only partly documented cases of hate crime from their respective member organizations. Since 2012 INSSAN reports cases from Germany to the OSCE.

<sup>171</sup> Lydia Nofal (2012): *Islamfeindlichkeit als wachsendes gesellschaftliches Phänomen*, in *Berliner Zustände*, p. 39.

<sup>172</sup> Charles von Denkowski (2014) Collection of facts: attacks on mosques in 2014, paper presented at the OSCE Human Dimension Implementation Meeting 2014; HDIM.NGO/0289/14, p. 3

<sup>173</sup> *Berliner Zeitung*, August 13, 2014: *Brand in der Mevlana Moschee: Feuer in Kreuzberger Moschee offenbar nicht politisch motiviert.*

all directions, and it turned out that the fire was caused by arson.<sup>174</sup> This rapid foreclosure of the possibility of racist motivations by the investigating authorities in Berlin and at the same time in Bielefeld, where in a mosque twice in short succession Koran copies had been set on fire, the Muslim population felt especially insecure not forgetting the recent discovery of the massive failure of the authorities with regard to the NSU murders. After all, the NSU investigation committee of the German Federal Parliament had drawn a lesson from previous failures to end racist terror and on these grounds gave a recommendation, referring precisely to the openness to differing directions of investigation and to sufficiently consider political motivations for a criminal act.<sup>175</sup> The Federal Government says in 2015, that the broadening of the generic theme of 'hate crime' with the category "Islamophobia", which would be in accordance with the recommendation given by the 2nd Investigation Committee, is still being considered.<sup>176</sup>

### 6.3. Recommendations in Relation to Article 5

Apparently the measures enlisted in the State report (police education and training, raising awareness of racism, increased recruitment of officials with migration background)<sup>177</sup> have not been sufficient, to 1) enable police officers and investigating authorities to identify and take into consideration anti-Muslim and Islamophobe racist motives at an early stage in criminal investigation and 2) take into account and to sufficiently counteract racism which also works within the institutions.

In this respect it is necessary, that anti-Muslim racism is included as a criteria, and that Muslims are incorporated when people with migration background will be increasingly recruited as officers.

We basically welcome the fact that within the EU Germany belongs to the signatory states on hate crime legislation (framework decision 2008/913/JHA). Yet, because the stipulations are insufficient and not concrete enough when it comes to the implementation of the directive with

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<sup>174</sup> Berliner Zeitung, August 27, 2014: Mevalana-Moschee in Kreuzberg: Feuer in der Moschee war ein Anschlag.

<sup>175</sup> See as an example hereof: Berlin City Parliament: cross-party motion to implement the recommendations of the NSU Investigation Committee from April 1<sup>st</sup>, 2014, printed matter paper (Bundestag Drucksache) 17/1565

<sup>176</sup> German Parliament, printed matter paper (Bundestag Drucksache) 18/4269 from March 10, 2015, p. 2.

<sup>177</sup> Federal Ministry of Justice (2013): 19th-22nd ICERD State report, p. 25.

regard to law enforcement and investigation of hate crimes, the European Network Against Racism (ENAR) recommends that the signatory states should ensure:

*„(...) that bias is properly investigated and prosecuted in cases of hate crime against Muslims and should collect data on racist and Islamophobic crime.“ (ENAR).* Here are more and important recommendations with regard to Article 5 ICERD, and we strongly urge the Commission, to impose those on the signatory states:

- 1 commissioning the Anti-Discrimination Agency of the Federal Government (ADS) to explore the barriers to access to the law for Muslim women and men in Germany and to explore the influence of anti-Muslim racism and Islamophobic prejudices on the justice system (in 2017, the ADS theme year focusing on “Religion”)
- 2 diversity trainings for judicials and prosecutors<sup>178</sup> with a focus on diversity of religion and belief, with the aim of raising awareness on anti-Muslim racism and Islamophobia
- 3 Implementing modules on fundamental and human rights and diversity in legal education with a focus on diversity of religion and belief, diversity and awareness of anti-Muslim racism and Islamophobia
4. research on the extent of so far unreported and undocumented Islamophobic hate crime
5. nationwide uniform and systematic registration and documentation of anti-Muslim hate crimes
6. separate collection of anti-Muslim and Islamophobe motivated crime in the body of crime statistics by police and investigating authorities (PMK)
7. monitoring of the implementation of the recommendations by the NSU-enquiry-Commission

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<sup>178</sup>See also the recommendations of the Advisory Board of the project „Advocacy for Human Rights and Diversity“ of the German Institute for Human Rights: <http://www.institut-fuer-menschenrechte.de/themen/diskriminierungsschutz/projekt-anwaltschaft-fuer-menschenrechte-und-vielfalt/empfehlungen-beirat/>

## APPENDIX

### **Anti-Muslim Racism and Islamophobia in Germany.**

**Alternative Report on the 19th – 22nd State Report of  
the Federal Republic of Germany in accordance with  
article 9 of the International Convention on the Elimination  
of All Forms of “Racial” Discrimination (ICERD)**

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Network Against Discrimination and Islamophobia,  
INSSAN e.V.  
**A selection of case studies and individual reports**

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#### **1. Experiences of Discrimination at School**

##### 1.1 Insult and Threat by Other Students

- 1.1.1 „In school, I am often called a terrorist, a bomb thrower, Taliban etc. It's the same people always repeating this.“<sup>179</sup>
- 1.1.2 A Muslim girl in 7th grade on a school trip is picked on by three older students of another school because of her wearing a headscarf. At the same time they alarm her, indicating with a lighter to ignite her headdress.<sup>180</sup>
- 1.1.2 „Day in day out my daughter was referred to as Arab terrorist by a large crowd of pupils in elementary school. (...) The teachers had actually noticed, what happened (...), but no one helped the girl. She officially became the outsider in the school. Everyone at school already

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<sup>179</sup> Case descriptions of the Network Against Discrimination and Islamophobia in the year 2014.

<sup>180</sup> Case descriptions of the Network Against Discrimination and Islamophobia in the year 2014.

knew her as the “Arab terrorist”, until she finally collapsed. She was sent to a hospital and was treated in psychiatry.”<sup>181</sup>

## 1.2 Derogatory Remarks and Discrimination by Teaching Staff

1.2.1 „At *Gymnasium* (comparable to grammar school), I was the only one wearing headscarves. The headmaster said in his school headscarves are not worn.”<sup>182</sup>

1.2.2 “At the beginning of the school year a teacher says to me: “You still dare to frequent our school, after what we did to your sister?” My sister was the only girl wearing headscarves at school and was, after she had begun to wear headscarves, massively discriminated against by the teachers who put her under pressure.”

1.2.3 My teacher once said: “Every time a student is dressed in black in the class, we discuss in the teachers’ lounge, whether or not this girl is a terrorist.” On this very day I was all dressed in black and all eyes were on me. Although I know how to defend myself, I don't want to justify myself each and every time.”<sup>183</sup>

1.2.4 „In grammar school, we had a teacher who was extremely xenophobic. The girls wearing a headscarf were treated particularly badly, and they were told they should be dressed like Germans and assimilate.”<sup>184</sup>

1.2.5 Students report that one of their teachers openly says in class that he is against Muslims. Whenever he feels the situation fit, he speaks badly of Islam and Muslims. One of the students explains that once the principal put a glass of water right in front of him during Ramadan, provoking him into breaking the fast.<sup>185</sup>

<sup>181</sup> Reach out – Opferberatung und Bildung gegen Rechtsextremismus, Rassismus und Antisemitismus (2012): „Ich möchte wie ein Mensch behandelt werden. Antimuslimischer Rassismus – Diskriminierungs- und Gewalterfahrungen von Menschen arabischer Herkunft, Berlin, p. 9.

<sup>182</sup> Yegane Arani, Aliyeh (2010): Integration und Vielfalt in der Europäischen Bildung, LIFE e.V. Berlin, p. 14; [http://www.life-online.de/download/publication/2010\\_12\\_sistaabla\\_doku.pdf](http://www.life-online.de/download/publication/2010_12_sistaabla_doku.pdf)

<sup>183</sup> All case descriptions are from the cases reported to the Network Against Discrimination and Islamophobia in the years 2012, 2013 and 2014, see also: „Diskriminierungsfreie Schule – eine bildungspolitische Notwendigkeit. Policy Brief – Arbeitspapier“ developed by LIFE e.V., Inssan e.V. and Institut für Migrations- und Rassismusforschung, October 2013: [http://www.life-online.de/download/publication/2013\\_10\\_beschwerdemanagement\\_policy\\_brief.pdf](http://www.life-online.de/download/publication/2013_10_beschwerdemanagement_policy_brief.pdf)

<sup>184</sup> Open Society Institute (2010): Muslime in Berlin, New York, London, Budapest, p.79.

<sup>185</sup> Nina Mühe (2011): (In-)Tolerance towards religious minorities in German schools. Religious diversity challenges in regard to Muslim religious practice and education, European University Institute, Florence, p. 18.

- 1.2.6 „The teacher was very racist. Even my German fellow students felt that. I had the feeling that she constantly underestimated me and my capacities; she constantly called me to the blackboard seeking for an opportunity to ridicule me, if I might not have learned my stuff. Yet I was a good student and learned at home every day. Still I dropped out in the second year, because mentally I had no more strength and I needed a break.“<sup>186</sup>
- 1.2.7 „In grammar school, the teachers rejected that. (...) Hanan wore only the small bottom cloth. It covers the hair only, is not tied down and the neck remains free. The teacher asked her to take it off also, but Hanan refused. The teacher and my daughter argued. Then Hanan wanted to leave the class, but the teacher grabbed her by the hair trying to pull her by force into the gym.“<sup>187</sup>
- 1.2.8 „At first you always think, if the teacher expresses an opinion, that should be right. But then we started to notice, if two handed in almost the same homework on the same content, one would receive a 2+ (very good) (...) the other one would be turned down with a 6 (complete failure), and I think that speaks for itself. Anyhow, getting a 6 for a homework achieved, is a bit thick.“<sup>188</sup>

### 1.3 Experiences of Discrimination by Muslim Students' Parents:

- 1.3.1 Mother: (...) a teacher said to a reading tutor: When it comes to Turks and Arabs - you can't teach them anything anyway. They just don't get it. Well, we know such statements and have ceased to fight them.“
- 1.3.2 Father: "We adults and the children, too, are confronted with many prejudices and negative assessments: Muslims are backward, uneducated, abstain from education and are enemies of democracy. We learn about discrimination against our children and experience, how they are made outcasts of society. Many parents and their children have lost confidence in teachers and in schools.“<sup>189</sup>

<sup>186</sup> Reach out (2012): „Ich möchte wie ein Mensch behandelt werden. Antimuslimischer Rassismus – Diskriminierungs- und Gewalterfahrungen von Menschen arabischer Herkunft, Berlin, p. 29.

<sup>187</sup>ibidem, p. 17.

<sup>188</sup> Institut für Migrationsforschung und Interkulturelle Studien (IMIS) (2015): Policy Brief. Pathways to success. Erfolgreiche Einwandererkinder und ihre Aufstiegskarrieren im urbanen und internationalen Vergleich, p. 10.

<sup>189</sup> Life e.V. (2012): Mission (im)possible? Elternkooperation in der „Sekundarschule mit Migrationshintergrund“, Berlin, p. 15f; [http://www.life-online.de/download/201209\\_life\\_elternkooperation\\_schule.pdf](http://www.life-online.de/download/201209_life_elternkooperation_schule.pdf)

- 1.3.3 Mother: "She learns very much and very long at home. (...) If she has only half an error, even the full number of points will be deducted. Teachers are obviously stricter with Arab students than they are with others."<sup>190</sup>

## 2. Experiences of Discrimination in Internship and Training

- 2.1 „In seeking a placement for internship, I had major problems with the headscarf - I then did an internship in a women's organisation, where I had to take off the headscarf for three months, although some of the clients themselves came with a headscarf on. It was reasoned, that they might associate a headscarf with violence and oppression."<sup>191</sup>
- 2.2 „I had started my training. On the first day, everything went normal, but on the second day the headmistress came to me saying that it wasn't o.k. for me to wear the headdress in the secretariat. Either I had to take off the headscarf which I immediately refused, or I could have jumped in on the spot for a missing kitchen assistant, which I also refused ... The next day my mother had a conversation with the principal; she apologized many times and made clear that she respected my religion, but that she could accept no-one wearing a headscarf, because some of the pupils at the school were with headscarves and they reportedly claimed: 'if she can, why can't we?'..."<sup>192</sup>
- 2.3 „A friend of mine is just training to be an educator, she has completed 1 ½ years of theory. Now she must complete an internship in an elementary school and has received around 40 cancellations on the phone as she has mentioned her headscarf. In case she finds no internship placement, she will have to drop her professional training."<sup>193</sup>

<sup>190</sup> Reach out (2012): „Ich möchte wie ein Mensch behandelt werden. Antimuslimischer Rassismus – Diskriminierungs- und Gewalterfahrungen von Menschen arabischer Herkunft, Berlin, p. 7.

<sup>191</sup> Yegane Arani, Aliyeh (2010): Integration und Vielfalt in der Europäischen Bildung, LIFE e.V. Berlin, p. 15; [http://www.life-online.de/download/publication/2010\\_12\\_sistaabla\\_doku.pdf](http://www.life-online.de/download/publication/2010_12_sistaabla_doku.pdf)

<sup>192</sup> Case descriptions of the Network Against Discrimination and Islamophobia in the year 2012

<sup>193</sup> Case descriptions of the Network Against Discrimination and Islamophobia in the year 2014

2.4 A young woman is looking for a placement as a trainee as doctor's assistant. In the application process, she is informed she could start training only if she takes off the headscarf during working hours.<sup>194</sup>

### Case Study 1

Ms. B is a Muslim and wears a headscarf. After graduating from school, she applies for several training sites, including in a dental practice. Immediately after sending the CV (with application photo), she is invited to a job interview in the dental practice. The interview initially evolved quite positively, but then the dentist said she could only work in the office without a headscarf. In the doctor's practice equal rights of women were defended and therefore the wearing of headscarves could not be tolerated. However, the doctor would very much like to employ Ms. B provided her willingness to abandon the headscarf during working hours. However, Ms. B rejects this. Under these conditions, she is not willing to consider training in that place. Shortly after the interview, she receives an email from an employee in the dentist's practice, which again, reaffirms that the dentist would like to take her in, „in case she changed her opinion“. Ms. B. turned to the Anti-Discrimination-Network Berlin of the Turkish Federation (*ADNB* of *TBB*) for advice. She indicates that she would like to take measures against the dentist and that she was also prepared to take legal steps. The *ADNB* writes a letter of complaint, referring to the Anti-Discrimination Act and asserts the compensation claims on her behalf. The dentist responds to the letter of complaint, stating that the decision not to employ Ms. B was not linked to her wearing a headscarf, but was rather based on economic factors and that the office had not taken in any trainee in the final end. Therefore this was not a case of discrimination; after all, he had invited her despite her application photo, where she could be seen with a headscarf. Ms. B. then turns to a lawyer as advised by the *ADNB*. Before the Labour Court she pressed charges against the dentist referring to discrimination on grounds of religion. The mediation hearing fails because the dentist never wanted to consent to a comparison. Then the lawsuit went into contentious negotiations which ended in a verdict.

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<sup>194</sup> Antidiskriminierungsnetzwerk Berlin *ADNB* /*TBB* (2013): Antidiskriminierungsreport 2013, Berlin, p. 20.

The dental practice is sentenced to pay compensation to Ms. B. amounting to three monthly salaries for discrimination on grounds of religion.<sup>195</sup>

### 3. Experiences of Discrimination on the Job Market

3.1 „In several job interviews, I was asked whether I'd be ready to take off the headscarf, my answer was no, since that has nothing to do at all with my performance. The prospective employers did not directly say that they therefore rejected me, so I could not react, I can't force them to take me. Once I was told that they could not employ me, anticipating that some patients might not want to be treated by me due to the headscarf.“<sup>196</sup>

3.2 „The job centre sent me an offer as a cashier. Then I called asking for the contact person and I mentioned on the phone that I'm wearing a head scarf. Then the man said the job was still available, but with headscarf it wouldn't work. On this I said goodbye, put down the phone and was very disappointed.“<sup>197</sup>

3.3 The affected Muslim man works at the university. His colleagues insulted and attacked him largely on the basis of his religion. They talked about his faith contemptuously and viciously. Even Nazi symbols were used. The person concerned finally turned to university authorities. He first wanted to dismiss on his own, but then was persuaded to disassociate himself from this move for a little while longer.<sup>198</sup>

3.4 "After her second State examination the now 30-year-old lawyer sends her applications to law firms and businesses across Germany, a total of 60 files, a whole year she does so in vain. `When I started, I sent my applications with my photograph, on which I showed with a headscarf." she relates. These applications had always been returned immediately. (...) Therefore Marziya Özisli started not to send her picture anymore. Indeed, she then was invited several times: `There I sat facing several men and women, who eyed me from top to bottom. At the end, someone would always come up with the question, whether I

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<sup>195</sup> Discrimination cases from the consulting practice of anti-discrimination bureaux of the Anti-Discrimination Federation/*Antidiskriminierungsverband (advd)*, August 2012, p. 4-5.

<sup>196</sup> Case reported to the Network Against Discrimination and Islamophobia from 2012

<sup>197</sup> *ibidem*

<sup>198</sup> Case reported to the Network Against Discrimination and Islamophobia from 2013

was ready to abandon the headscarf during work routine. I would say no – and in the following days I'd receive a letter of refusal.'<sup>199</sup>

3.5 Clearly and without a doubt women with headscarves meet massive disadvantages during job search. In numerous cases job or internship commitments were revoked, once it became known, that the candidate was wearing a headscarf. In addition, it was also reported that individual companies did not even accept applications for this reason. To cancellations, when the wearing of a headscarf was explicitly referred to, must be added an unknown number of cancellations, which do not explicitly state their reason. Here the headscarf may be implicated in some cases, even if this is not blatantly uttered. Job centres also explicitly confirm that it is much harder to find a placement for Muslim women wearing headscarves.<sup>200</sup>

## Case Study 2

A Muslim woman from Berlin relates: „On the telephone, in December 2012, I got accepted to start my internship, which is mandatory with my studies in January 2013 in a shared doctors' practice. The occupational therapist received me well and introduced me kindly. Some two hours later I was presented to the superior, but she was very distant towards me; without shaking hands and addressing me directly, she left the room. After six hours of total work time she called me into her office to tell me, that she had a problem with my headscarf. She told me that she was for the equality and freedom of women, which did not match with my religious convictions and which she perceived as discriminatory. I told her that I felt free with my headscarf and that on the contrary she was restricting my freedom, by banning the wearing of the headscarf in her office. She reprimanded, that after all it was her office and that therefore she was in the position to decide who should be in there; I should stop discussing. In addition she told me clearly that I could continue my internship in her practice under the condition that I take off my scarf. I explained to her that I felt very disadvantaged and that her statements were discriminatory. After I told her

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<sup>199</sup> Interkultureller Rat in Deutschland (2010): *Starke Frauen, schwerer Weg! Zur Benachteiligung muslimischer Frauen in der Gesellschaft*, Darmstadt, p. 13.

<sup>200</sup> Senatsverwaltung für Integration, Arbeit und Soziales. Landesstelle für Gleichbehandlung gegen Diskriminierung (Eds.) (2008): *Mit Kopftuch außen vor?*, Berlin, p. 10f.

that such discrimination is against the law, she answered, that no written contract had been signed and that I had no evidence of the conversation. Hence I had to pack my things and leave the practice after six hour working time.<sup>201</sup>

### Case Study 3

Through a job placement agency Ms. T. applied for a job in a company as a student aide. In doing so, she had created a profile with the agency. On the application photo, she wears a headscarf. The company's refusal came through the agency. They stated that they had opted for another candidate, literally saying "needed someone with no headscarf - otherwise everything perfect". Ms. F turns to the Anti-Discrimination Network of the Turkish Federation in Berlin-Brandenburg (ADNB of TBB). In a letter of complaint she asserts her claims in due time and in accordance with the Anti-Discrimination Act (AGG). The fact, that in the meantime she no longer had the job advertisement at hand, made her demand a bit complicated, because she did not exactly discern the requirements asked for this specific job. In his responding letter, the Managing Director of the company said he thought that the headscarf on the application photo had been a fashion accessory. He basically disliked hats and headscarves for aesthetic reasons. Furthermore, he being a Jew himself could have no intentions of discriminating against someone on religious grounds. The ADNB of TBB then finds a lawyer for Ms. F. The lawyer files an action against the employer, requesting the payment of at least 6 monthly salaries, as it could be assumed that Ms. F. had been rejected on the sole ground of her wearing a headscarf and that besides her client can be assumed to have had the best qualifications. During the mediation hearing at the Labour Court, the parties settle as follows: Despite the Manager still insisting on his protective claim, the parties involved finally agree, that the company pays three monthly salaries as compensation; Ms. F was quite happy about that outcome.<sup>202</sup>

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<sup>201</sup> ibidem

<sup>202</sup> Discrimination cases from the consulting practice of anti-discrimination bureaus of the Anti-Discrimination Federation / Antidiskriminierungsverband (advd), August 2012; p. 4f.

#### Case Study 4

Ms. H. is Muslim and wears headscarves. She receives jobseeker's allowance. The administrator responsible for her case, prompts Ms. H. to bring with her, for the next appointment, a written justification, why – related to her faith – she needs to wear a scarf. Ms. H. asked the President of the local Integration Council, Mr. A. for assistance. Mr. A. contacted the Equal Treatment Bureau (GBB) in Aachen. Together they convene, that Mr. A. should accompany Ms H. to the up-coming appointment with the clerk of the job centre, have a conversation with the head of department of the job centre and that, depending on the output of this conversation, the GBB may write a letter of complaint with regard to the discriminating facts. In this conversation, the Department head of the job centre strives to defuse the issue by stressing the inexperience of the clerk at the same time soliciting understanding for the labour market, where employability of women wearing headscarves is severely hampered. After consultation with Ms. H., the GBB Aachen writes a notice of complaint to the management of the job centre, wherein the incident with Ms. H. is described. The letter explains that by the prompting of the job centre she feels her right to equality and freedom of religion infringed. She also feels under pressure, that she should justify her abiding with her religion while continuing to receive unemployment benefits. In addition, she senses an allegation in the prompt, blaming her to being responsible and reducing her chances of being placed in a job by wearing a headscarf. The complaint also comments on the conversation with the head of the department. Furthermore, the regulations violated by the prompt with regard to the Basic Law and the Anti-Discrimination Act are cited by the Equal Treatment Bureau. It calls on the job centre as a State institution, not to adopt discrimination and bearing prejudice against women with headscarf women on the labour market which would institutionalize the afore-said. The letter of complaint finally asks the job centre to give their opinion on that matter. In the same letter, the clerk's behaviour is seen as unacceptable, and as a remedy to pacify the situation a personal conversation between the clerk and Ms. H. is recommended. In this meeting, the clerk apologizes to Ms. H. for her previous behaviour. Ms. H. gives feedback to the GBB, that the matter has been resolved to her satisfaction by the excuse of the administrator.

## Case Study 5

A Muslim man who had been working as an aide with a temporary employment agency in Berlin since 2012, was employed as a leased labourer under conditions of sub-contracted labour in a firm providing hospital facility management. He asked the company to be exempted from work for one hour on Friday afternoon, to be able to take part in the Islamic community Friday prayer. In the first week of his employment he already had missed the Friday prayer, because the management had not yet ruled out a clarification on this issue. On the following Friday he asked the departmental head for permission to take off one hour at around lunchtime, to do the Friday prayer. This was strictly rejected with the reason: "Service is service." (something like: Don't mix business and other things"). He was also told that fellow Muslim employees in other departments did not perform Friday prayers. The man concerned pointed out his right to freedom of religion and announced that he would not return to the work site, unless they granted him his right to participate in the Friday prayer. On the very same day his employment contract with the temporary work agency was nullified informing him that they had no other placement for him, where he could possibly perform his Friday prayers.<sup>203</sup>

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<sup>203</sup> Discrimination case reported to the Network Against Discrimination and Islamophobia (ADNB) from the year 2015.