



## **Eliminating Racist Discrimination in Germany**

Parallel report addressed to the  
Committee on the Elimination of All Forms of Racial Discrimination  
of the United Nations

complementing the  
16<sup>th</sup> – 18<sup>th</sup> state report of the Federal Republic of Germany  
according to Article 9 of the  
Convention on the Elimination of All Forms of Racial Discrimination

The Forum Menschenrechte expresses its gratitude to Stiftung für Kinder (Foundation for Children), which through a generous donation has facilitated the compilation of this report.

Author: Johannes Klostermann, Köln  
Editorial team: Johannes Brandstätter, Berlin  
Yonas Endrias, Berlin  
Dorothee Haßkamp, Stuttgart  
Lutz Möller, Bonn  
Marei Pelzer, Frankfurt am Main  
Klaus Stoltenberg, Königswinter

The member organizations of the Forum Menschenrechte endorse the positions published by this network only in as far as justified by the respective mandate of the organization.

## **Member Organizations of the Forum Menschenrechte as of January 2008**

ACAT  
AGDF/Peace Brigades International  
Aktion Courage  
amnesty international  
ATD-Vierte Welt in Deutschland e.V.  
BAFF (Bundesweite AG Psychosozialer Zentren für Flüchtlinge und Folteropfer)  
Bundesfachverband Unbegleitete Minderjährige Flüchtlinge  
„Deutsche Gesellschaft“ e.V.  
Deutsche Gesellschaft für die Vereinten Nationen (DGVN)  
Deutsche Kommission Justitia et Pax  
Deutsche UNESCO-Kommission  
Deutscher Frauenrat  
Deutscher Gewerkschaftsbund (DGB)  
Diakonisches Werk der EKD  
FIAN e.V.  
Friedrich-Ebert-Stiftung  
Friedrich-Naumann-Stiftung  
Gemeinschaft für Menschenrechte im Freistaat Sachsen  
Germanwatch e.V. (Antrag auf Mitgliedschaft)  
Gesellschaft für bedrohte Völker  
Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde  
Gustav Heinemann-Initiative  
Heinrich-Böll-Stiftung  
Humanistische Union  
Human Rights Watch  
iaf e.V.  
Internationale Frauenliga für Frieden und Freiheit  
Internationale Gesellschaft für Menschenrechte (IGFM)  
Internationale Liga für Menschenrechte  
IPPNW – Deutsche Sektion der Internationalen Ärzte für die Verhütung des Atomkriegs, Ärzte in sozialer Verantwortung e.V.  
Kindernothilfe  
KOK- Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V.  
Kommission für Menschenrechte Freiburg (des Richter und Anwaltsverbands)  
Konrad-Adenauer-Stiftung  
LSVD – Lesben- und Schwulenverband in Deutschland  
medica mondiale  
Misereor  
Missio Aachen  
Missio München  
Missionszentrale der Franziskaner  
Nationaler Geistiger Rat der Baha'i e.V.  
Nürnberger Menschenrechtszentrum  
Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche  
Pro Asyl  
Reporter ohne Grenzen  
TERRE DES FEMMES  
terre des hommes Deutschland e.V.  
Vereinte Evangelische Mission/ VEM  
WUS – World University Service e.V.

### **Guests:**

Deutsches Rotes Kreuz  
Evangelische Kirche Deutschland

## **Table of Contents**

<b>1</b>	<b>INTRODUCTION</b>	<b>1</b>
<b>2</b>	<b>FUNDAMENTAL CONSIDERATIONS</b>	<b>2</b>
2.1	RACISM, RIGHTWING EXTREMISM, “RACE” - TERMINOLOGY	2
2.2	RACIST ATTITUDES IN THE POPULATION	4
2.3	NATIONAL ACTION PLAN AGAINST RACISM	5
2.4	DATA COLLECTION	6
<b>3</b>	<b>FULFILLING THE GUARANTEES OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)</b>	<b>8</b>
3.1	ARTICLE 2 ICERD	8
3.1.1	NOT ENGAGING IN OR PROMOTING RACIST DISCRIMINATION BY GOVERNMENT BODIES AND MONITORING MECHANISMS	8
3.1.1.1	The avoidance of discrimination on the part of public authorities	8
3.1.1.2	Discrimination by the police / racial profiling	9
3.1.2	REVIEW OF LEGISLATION AND EXECUTIVE NORMS WITH RESPECT TO RACISM	10
3.1.3	UNDERTAKING TO PROMOTE ANTI-RACIST ORGANISATIONS	11
3.2	ARTICLE 4 ICERD	12
3.3	ARTICLE 5 ICERD	13
3.3.1	LEGISLATION ON PEOPLE OF NON-GERMAN NATIONALITY	14
3.3.1.1	Asylum law	14
3.3.1.1.1	Access to the asylum procedure	14
3.3.1.1.2	Emergency legal protection in cases of removal of refugees to EU countries	15
3.3.1.1.3	Detention of asylum seekers	16
3.3.1.1.4	Dealing with refugees with special needs	16
3.3.1.1.5	Health care of refugees	17
3.3.1.2	Residential obligation	18
3.3.1.3	Social benefits for non-citizens under §3 AsylbLG	19
3.3.1.4	The rules to combat sham marriages for which a spouse is brought into the country	21
3.3.1.5	Combating forced marriages for which a spouse is brought into the country	22
3.3.1.6	Reunification of family members with social benefit claimants	25
3.3.1.7	Nationality law	26
3.3.1.7.1	Nationality tests	27
3.3.1.7.2	Lowering the limit for the criminal record in the case of naturalisation	28
3.3.1.7.3	Dual nationality	29
3.3.2	THE CONCERNS OF UNDOCUMENTED MIGRANTS IN THE HEALTH SYSTEM	29
3.3.3	EDUCATION	30
3.3.3.1	The situation of people with a migration background and minorities in the regular school	31
3.3.3.2	Schools for special education	35
3.3.3.3	Children who have applied for asylum and who are “tolerated”	36
3.3.3.4	Children without documents	36
3.3.4	LABOUR MARKET SITUATION OF THOSE NAMED IN ARTICLE 1(1) ICERD	37
3.3.4.1	The labour market situation of people with a migration background	37
3.3.4.2	Recognising foreign educational qualifications	40
3.3.5	WORK TO COMBAT DISCRIMINATION	42
3.3.5.1	Provisions of the General Equal Treatment Law (AGG)	42
3.3.5.2	Anti-discrimination advisory services	43

3.3.6	DISCRIMINATION ON THE BASIS OF RELIGIOUS AFFILIATION	45
<b>3.4</b>	<b>ARTICLE 6 ICERD</b>	<b>46</b>
3.4.1	STATISTICS ON CRIMES FOR RACIST MOTIVES	46
3.4.2	EFFECTIVE LEGAL PROTECTION: FILING PRIVATE ACTIONS	47
3.4.3	EFFECTIVE LEGAL PROTECTION: RACISM AS AN AGGRAVATING FEATURE IN SENTENCES	48
3.4.4	COMPENSATION FOR VICTIMS OF RACIST OFFENCES	48
<b>3.5</b>	<b>ARTICLE 7 ICERD – HUMAN RIGHTS EDUCATION</b>	<b>49</b>
<b>4 SUMMARY OF RECOMMENDATIONS</b>		<b>52</b>
<b>BIBLIOGRAPHY</b>		<b>61</b>

---

---

# 1 Introduction

You are about to read the first comprehensive parallel report to a state report of the Federal Republic of Germany, a signatory state to the Convention on the Elimination of All Forms of Racial Discrimination (ICERD or “the Convention”). Broadly coordinated by civil society, it supplements and comments on the 16th-18th German state report on the implementation of this international convention. Like the state report, it is addressed to the Committee on the Elimination of All Forms of Racial Discrimination (CERD) of the United Nations. At the same time the report is intended to assist political decision-makers in Germany to find their way around this subject.

The editor, Forum Menschenrechte, is an association of fifty organisations large and small, seeking to better organise the protection and promotion of human rights in Germany and coordinate civil society contacts to the Federal Government. It was founded after the World Conference on Human Rights in Vienna in 1993. For many years the Forum has been monitoring the Human Rights Council (formerly the Human Rights Commission) of the United Nations in Geneva and supporting the Federal Government with aides mémoires on the topics dealt with there. In Berlin, it has regular contacts to the Committee on Human Rights and Humanitarian Aid and to the Interior Committee of the German Federal Parliament (Bundestag) and to the German Foreign Office, the Federal Ministry of Justice and the Federal Ministry of the Interior.

## Priorities

In autumn 2006 Forum Menschenrechte started a review of whether the Convention was being properly implemented by the signatory state. This immediately raised fundamental questions, mainly concerning the full transposition of the provisions of the Convention into the laws of the federal and state governments. The periodical reports of the European Commission against Racism and Intolerance (ECRI) are of great relevance here. They do not refer expressly to the UN Convention, but show up how much legislation and statistical documentation of racial discrimination is still needed, including in the field of institutional discrimination. Hence Forum Menschenrechte decided to set priorities in this field in the first report of this kind.

Institutional discrimination is also a major obstacle to successful integration. For several years integration policy has been one of the controversial topics in German political debate. Along with the other international human rights conventions, the ICERD provides a central frame of reference for assessing policies for the integration of immigrants and refugees. In 2007 the Federal Government presented its first National Integration Plan (NIP) aiming to advance the integration of people with a migration background into society through the federal states, local authorities and civil society. It rightly met with a very positive response. However, the plan has considerable omissions, above all with respect to the need to amend legislation, take account of refugees and combat racial discrimination. When the time comes to evaluate the NIP, the Federal Government should also refer to the recommendations contained in the report of Forum Menschenrechte. Likewise the results and recommendations are intended to stimulate the progress of the National Action Plan against Racism, which has so far been most inadequate and the subject of detailed critique by Forum Menschenrechte.

It was not possible to give a comprehensive picture of the racial discrimination of individual groups, some of which were mentioned only in passing. The report cannot give an overview of desecrations of Jewish cemeteries with swastikas nor of attacks on black people, racially motivated arson attacks or other frequent offences. Such reports are already being made by local groups in many places. It is hard to produce an exhaustive documentation due to the inadequate statistical instruments. Equally, the institutional and direct discrimination against members of the Islamic faith can only be touched upon. Nor is it possible to address the situation of the Sinti and Roma people.

Another area not dealt with is the situation of refugees at the external borders of the European Union; there are several thousand casualties annually, which gives cause for outrage and profound dismay. The State party is at least partly responsible for this situation as it persistently pressed the EU to set up a border protection system and contributes to its financing. Whether the State party will be obliged to report on this in the context of the Convention or in which other place the matter should be dealt with in the context of UN state reporting – these are still open questions.

### **Structure of the report**

Structurally, the parallel report follows the Federal Government's state report as far as possible and likewise the order of the articles in the Convention.

The sections are preceded by some fundamental considerations on the use of the concepts 'race' and 'racism' and the above-mentioned problems of establishing statistical data. The main part points out gaps and potential improvements of the policy against racial discrimination regarding the selected emphases. It begins with the issue of refraining from racial discrimination under article 2 ICERD and raises the issue of racial profiling. Further, it takes up the need for reviewing legislation and implementing regulations. In connection with article 4, another issue is the possible banning of the NPD. Article 5 ICERD contains guarantees of the prevention and elimination of discrimination. Forum Menschenrechte here prioritises the question of how German legislation on non-nationals is to be assessed in view of CERD's General Recommendation No. 30. The situation of refugees and their families, and also citizenship law, are given particular attention. Then problematic situations for the addressees of article 5 ICERD are described with reference to education and work. There follow ideas on ways of combating racial discrimination and necessary supplements to criminal law, then the substantive part of the report is concluded with a section on human rights education. The final section provides a compact summary of all recommendations made in the report.

## **2 Fundamental considerations**

### **2.1 Racism, rightwing extremism, "race" - terminology**

The official German translation gives the title of the Convention as "Internationales Abkommen zur Beseitigung jeder Form von Rassendiskriminierung", and the recital and articles render "racial discrimination" as "Rassendiskriminierung".

The state report uses the terminology of the official German translation.

In Germany the term ‘racism’ is hardly ever used in public discussion. If it does occur, it is simplified to a purely biologicistic understanding of racism. Problems like ethnic discrimination or xenophobia are rarely ascribed to the concept of racism. On the other hand, ‘racism’ frequently crops up in the context of rightwing extremism, where the latter is generally understood to refer to politically motivated and organised groups. Hence, if forms of racism do not receive sufficient attention this reflects the general use of language. While there is a broad consensus on the rejection of racist violence this is not the case at all regarding racist attitudes, as they are not recognised and named as such.<sup>1</sup>

Another problematic point is the regular use of the term ‘race’ in official German documents like the translations of the ICERD, the general law on equal treatment (Allgemeines Gleichbehandlungsgesetz - AGG) and even in article 3(3) of the German constitution, the Basic Law (GG). It also occurs in the translation of European norms like the anti-discrimination directives of the European Union. The use of ‘race’ in German – even in quotation marks – shows a lack of distance to the biologicistic or culturalistic theories of the existence of races. This has a negative effect in a double sense.

First, public documents and laws lack a convincing rejection of racist thought. While the Federal Government notes in its state report that using the concept of ‘race’<sup>2</sup> does not mean support for biologicistic theories, this does not go far enough if the concept recurs throughout the report without due distance in the individual case.

Second, the practice of legal interpretation must be taken into account. The German legal system attributes considerable importance to the interpretation of the concepts used in framing laws. The wording constitutes the ultimate limit for admissible interpretation. This necessitates a positive definition of the concept of ‘race’. Consequently, German literature on constitutional law does not really overcome a biologicistic concept of ‘race’, even if the authors formally reject any related recognition of the existence of ‘races’.<sup>3</sup>

Such approaches contradict a human rights-based understanding of the ICERD’s concept of “racial discrimination”. In the construing of ‘races’ a group of people are attributed certain qualities. These features are by no means restricted to biological features. There may be morpho-physiological features like the colour of a person’s skin, sociological ones like language, symbolical and intellectual ones like attitudes, cultural and religious attitudes, and even imaginary characteristics. In the process of attribution the group appears as a quasi natural group, and the nature of this group (“they”) is formulated in relation to one’s own group (“we”). ‘Races’ thus do not really exist, they are the outcome of a social attribution of seemingly natural qualities to a supposedly homogeneous group. ‘Race’ here stands for an artificial, socially conditioned naturalisation of differences. Back in 1950, UNESCO called upon the states to drop the use of the term ‘race’ as it did not reflect biological facts but only a “social myth” that had caused an enormous amount of violence, and continues to do so.<sup>4</sup>

---

1 See 2.2.

2 State report, p. 1, footnote 1

3 The standard commentary on the German constitution writes (our translation):

“The feature ‘race’ is in-born [...]. Race is characterised by the inheritability of features. If a person belongs to a race that does not just mean the lifelong allocation to a group with the same features, as with sexuality, but it also means that these features can be passed down to others.” Maunz/Dürig/Herzog, Art. 3 (3) para. 58; see also Heun, p. 475; Starck, art. 3 para. 387.

4 UNESCO 1950

The terms ‘racism’ and ‘racist’ characterise undesired behaviour and undesired attitudes far more clearly and at the same time more precisely than “racial discrimination”. They highlight the fact that it is all about the attribution of certain qualities lying not in the person of the victim but in the prejudiced view of the perpetrator, and the consequent unequal treatment or persecution. For these reasons, the German version of the present parallel report on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) uses the translation “Internationales Abkommen zur Beseitigung jeder Form *rassistischer* Diskriminierung” and generally replace “racial” with the equivalent German term for “racist”.

With respect to the terminology of the state report, other German government documents and laws, there is an urgent need to change the use of the terms ‘Rasse’ (race) - whether placed in quotation marks or not - and ‘Rassendiskriminierung’ (racial discrimination).

The words ‘Rasse’ (race) and ‘rassisch’ (racial) should not be used in any official German legal texts and documents or in any translations of international agreements, not even in composite words.

By contrast, ‘Rassismus’ (racism) and ‘rassistisch’ (racist) are valid concepts.

## **2.2 Racist attitudes in the population**

Under article 7 ICERD the States parties “undertake to adopt ... measures with a view to combating prejudices leading to racial discrimination”.

In its state report the Federal Government claims that racist attitudes in Germany are on the decline. Unfortunately it does not name the source on which this statement is based.<sup>5</sup>

The equating of rightwing extremism and racism at many points in the state report clouds the view of the specific character of the racism problem. It is not certain, for example, whether the Federal Government really means racist attitudes within the meaning of the ICERD. Two sociological studies concerned with racist and related attitudes in the population paint another picture.

Since 2002 sociologist Wilhelm Heitmeyer has been conducting a long-term study on the concept of group-related ‘Menschenfeindlichkeit’ (hostility to human beings), a concept he coined himself. This cannot be equated with the concept of racism used by Forum Menschenrechte in accordance with international standards.<sup>6</sup> Nevertheless, the replies to the questions posed indicate that between 12.6% and 54.7% of the German population agree with different racist statements.<sup>7</sup>

The study “Vom Rand zur Mitte” (from the margin to the centre) focused on the phenomenon of rightwing extremism. In this connection the researchers also questioned participants on xenophobic and anti-Semitic attitudes. Between 34.9% and 39.1% completely or largely agreed with xenophobic statements; between 13.5% and 17.9% completely or partly agreed with anti-Semitic statements. If we include the interviewees who at least partly agreed to xenophobic or anti-Semitic statements, there is between 64.1% and 68.8% agreement with xenophobic statements and between 34.5% and 41.4% agreement with anti-Semitic statements.<sup>8</sup>

---

5 State report, p. 50.

6 See 2.1.

7 Heitmeyer 2007, p. 26 f.

8 Decker/Brähler 2006, p. 32 ff.



Even if they were not focused on racism alone, the results of the two studies show how widespread in the German public are attitudes aiming to disparage or exclude groups on the basis of their ethnic origin. Attitudes consolidated and enrooted over decades are important causal factors for the forms of institutional discrimination set out in this report.

In their 2006 report to the UN Human Rights Committee, UN Special Rapporteur Jahangir and her colleague Diène made some observations that are also relevant to the situation in the State party. After the attacks of 11 September 2001, new forms of discrimination emerged. Whole – religious - groups have been labelled as potential terrorists since the attacks. Collectives are made responsible for individual acts. This involves the merging of the factors ‘race’, culture and religion. Discrimination is practised by governments to protect national security and identity in the name of combating terrorism. In this context the governments of many countries have curtailed rights codified in the ICESCR and the ICCPR<sup>9</sup>. Religious or cultural rights have particularly suffered. The main consequence of that was the sidelining of the final declaration and the action plan of the World Conference against Racism in Durban. Racist thinking has increasingly come to permeate the legal system, public order, education, the whole area of work and the welfare system.<sup>10</sup>

Measures to combat racism must not only focus on people with rightwing extremist attitudes but must take a macro-social approach extending to parts of the population that tend towards racist prejudices and attitudes.

German policy-makers must supplement their policy of combating rightwing extremism with a policy of combating racism as a separate issue.

### **2.3 National Action Plan against Racism**

The final report of the UN World Conference against Racism in Durban (2001) provides that the States parties draw up national action plans to combat racism.<sup>11</sup> CERD has underlined the importance of this document and the obligations undertaken.<sup>12</sup>

The National Action Plan against Racism is referred to only very briefly in the state report as part of its description of the World Conference in Durban in 2001.<sup>13</sup>

After attempts to draw up a National Action Plan against Racism in cooperation with civil society organisations, the Federal Government presented a first draft of a NAP against racism in September 2007, which took no account of the suggestions made before by the organisations. When the report was presented in November 2007 all representatives of civil society organisations levelled fundamental criticism at numerous aspects of the draft NAP; the governmental representatives took the line, however, that consulting civil society as stipulated in the final declaration of Durban did not require them to examine the criticism or adopt the proposals of the organisations.

The present draft National Action Plan has serious defects. The precondition for a functioning action plan is, in the view of Forum Menschenrechte, a self-critical description of social reality with a sense of where the problems lie. However, the draft plan does not contain such a description. It does not mention groups substantially

---

9 International Convention on Economical, Social and Cultural Rights (ICESCR); International Convention on Civil and Political Rights (ICCPR).

10 Jahangir/Diène 2006.

11 Durban Programme, no. 191 (a).

12 CERD 2002.

13 State report, p. 7, footnote 1.

impacted by racist discrimination, e.g. visible minorities or undocumented migrants. Consequently it contains no steps to counter the racism that these unnamed groups face. Indeed, the draft does not contain enough specific measures to combat racism. It mostly describes the measures already taken to combat racism, substantially restricted to combating rightwing extremism. And yet in Germany there is a serious shortfall in the combating of racism from the middle of society.<sup>14</sup> At the time of writing, the finalisation of the NAP was foreseen for the end of June 2008.

The draft National Action Plan should be revised in cooperation with civil society organisations, as foreseen in the Durban Programme of Action.

The National Action Plan should contain a problem-sensitive status description and develop specific measures for countering racism from the centre of society as well.

The National Action Plan should contain arrangements for the evaluation of measures and the establishing of affirmative action programmes.

The National Action Plan should not focus on one-off actions but understand the combating of racism as a long-term process and therefore be regularly extended.

A government-financed steering committee should be founded, on the Irish model, in which members of both the government and civil society organisations together guide the implementation of the National Action Plan.<sup>15</sup>

The language of the National Action Plan must be carefully checked to avoid the least suggestion of sharing racist stereotypes.

## **2.4 Data collection**

Reports on the Convention are to contain demographic data relating to the target group to which it refers.<sup>16</sup> The target group will be defined by its differing from the rest of the population in terms of the features of racist discrimination according to article 1(1) ICERD.<sup>17</sup> The states themselves must collect and forward data on these features; it must be the privilege of the persons concerned to allocate themselves to a group or not.<sup>18</sup>

The data in the state report is taken from the official statistics of the Federal Statistical Office.

Historically speaking, the Federal Republic of Germany is hesitant when it comes to collecting sensitive data which may make vulnerable groups visible. At the time of National Socialism such data was abused for its policy of annihilation. However, collecting data is essential for combating racism. There is indirect discrimination when laws, ordinances or other rules de facto concern certain groups. If there is no data on individual groups it is not possible to point to any particular repercussions on them. Accordingly, the action plan of the World Conference against Racism in Durban also attaches great importance to data collection and situational analysis.

The current data collection leaves a lot to be desired. The Federal Statistical Office covers, besides nationality, only migration background, which, it says, leads to identifying people with a “need for integration”.<sup>19</sup> The international PISA study also

---

14 See 2.2.

15 Irish Department of Justice, p. 153.

16 CERD 1973 and CERD 1999, no. 4.

17 CERD 1999, no. 2.

18 CERD 1990.

19 Federal Statistical Office 2005, p. 5.

covered migration background.<sup>20</sup> By contrast, in its 2006 Migration Report the Federal Office for Migration and Refugees, responsible for pro-integration programmes, opts almost exclusively for nationality.<sup>21</sup> In her report on the situation of foreigners in Germany<sup>22</sup> by Maria Böhmer, the Federal Government's Commissioner for Migration, Refugees and Integration ('Integration Commissioner') again relies on data from the Federal Statistical Office; she primarily cites the criterion of nationality and only refers to migration background in passing.

Nation-wide, victims of racist discrimination have only been able to speak up since the creation of the Federal Equal Treatment Agency (Antidiskriminierungsstelle des Bundes) on the basis of the new General Equal Treatment Law. Its task is to receive complaints of discrimination and conduct statistical evaluations.<sup>23</sup> So far it has only been able to draw on the isolated figures of local and regional anti-discrimination offices and anti-racism initiatives, which were not collected by a standardised method.<sup>24</sup>

The groups protected by the Convention are characterised by more features than migration background and nationality. For example, colour of skin and ethnic origin – even beyond two generations – are possible points of connection under the Convention, which are not necessarily covered by the features used in the state report.

In order to implement the obligations from the Convention considerable efforts should be made to further develop statistics and data collection, so as to recognise structural discrimination within the meaning of the Convention. Account should be taken here of the recommendations of the "European Handbook on Equality Data" (published by the European Commission in 2007).

The necessary care and sensitivity should be guaranteed by ensuring that the use of data is only permitted in absolutely anonymised form and their use by public or private bodies is prohibited beyond the purpose of recognising cases of discrimination.

The Federal Government should conduct an ongoing evaluation of the type of data collection in consultation with the organisations of civil society representing potential victims. Above all, self-advocacy groups should be involved to ensure the acceptance of an extended data collection.

The Federal Government's Equal Treatment Agency should be strengthened in its task of collecting data. It should not just receive data in the case of complaints of discrimination that come in, but also actively collect data on discrimination. Federal, state and local authorities should also be obliged to report every case presented to them to the Federal Equal Treatment Agency if it involved the charge of racist discrimination.

---

20 OECD 2003, p. 16.

21 Federal Office for Migration and Refugees 2007.

22 Integration Commissioner 2007.

23 § 27(2) and 3 AGG

24 One example is the evaluation of the work of the North Rhine-Westphalian anti-discrimination office ([www.nrwgegendiskriminierung.de](http://www.nrwgegendiskriminierung.de)) or the figures of the victims' initiatives in the federal states of Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia ([www.opferperspektive.de](http://www.opferperspektive.de)).

# **3 Fulfilling the guarantees of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**

## **3.1 Article 2 ICERD**

### **3.1.1 Not engaging in or promoting racist discrimination by government bodies and monitoring mechanisms**

Under article 2(1) (a) ICERD the States parties undertake to engage in no act of racial discrimination and to ensure that all public authorities and public institutions act in conformity with this obligation. Under article 5 ICERD the States parties guarantee the right of each individual to equality before the law. Article 2(29) ICESCR and article 2(1) ICCPR provide that the rights guaranteed by the two human rights covenants, that concern a broad field of state action, must be free of racial discrimination. The elimination of existing discrimination as detailed in article 5 ICERD also requires that existing cases of discrimination be investigated in order to be able to recognise the necessary need for action.

The Federal Government indicates generally - and also in its remarks on the introduction of the General Equal Treatment Law (AGG) - that arrangements comparable to the AGG are unnecessary for public administration.<sup>25</sup> Discrimination is understood to be prohibited here already through article 3(3) sentence 1 GG although, if necessary, anyone could refer a matter to the Federal Constitutional Court.<sup>26</sup>

#### **3.1.1.1 The avoidance of discrimination on the part of public authorities**

The guarantee of article 3(3) GG alone is not enough to prevent and prosecute incidents of discrimination in the area of public administration.

According to the statistics of the Cologne anti-discrimination office, 28% of complaints stem from discrimination at public offices and authorities.<sup>27</sup> On the other hand, a search in juris, the most comprehensive case law database in Germany, did not reveal a single decision by the Federal Constitutional Court regarding article 3(3) sentence 1 GG in connection with the search term 'racism'.<sup>28</sup>

The AGG applies in the area of public administration only to a limited degree. It covers the areas in which the public sector is the employer. Further, it covers relationships in which the state is a private law service provider. However, it does not extend to the fields of education and public provision with goods and services foreseen in Council Directive 2000/43/EC.<sup>29</sup>

---

25 See the grounds for the AGG, parliamentary record 16/1780, p. 1: "Equality before the law and the protection of all individuals from discrimination is a human right that is enshrined in Article 3 of the Basic Law in Germany. In the relationship of citizens to the state, all areas of state action are already bound by the constitutional principles of equality." (our translation)

26 State report, p. 3, p. 33.

27 Anti-discrimination office, Cologne 2006, p. 23.

28 Research in [www.juris.de](http://www.juris.de) in spring 2008, regarding the concept of 'race', legal commentaries on the Basic Law only mention one judgement about the deprivation of Jewish citizens of their nationality under National Socialism: Collection of Decisions of the Federal Constitutional Court 23, 98, 107.

29 See the grounds for the AGG, parliamentary record 16/1780, p. 31 f.

In Germany there is a claim to damages in the event of infringements of official duties by public offices or servants under §839 sentence 1 Civil Code (BGB) in connection with article 34 GG. However, this norm has considerable disadvantages vis-a-vis the claims existing towards private individuals under the AGG. First, in contrast to §22 AGG, the civil code does not provide for any facilitation of evidence regarding claims against public offices. Those concerned have to present a convincing case for the discrimination and, moreover, give positive proof – a much higher obstacle. Moreover, the compensation under §839 sentence 1 civil code (BGB) is in many cases limited to material damage. It falls under the general principles of §§249 ff. BGB, that allow the replacement of non-material damage in only exceptional cases.<sup>30</sup> While the Convention provides for a regular compensation of non-material damage,<sup>31</sup> in reality this often does not apply to the field of public administration.

Restricting the validity of the AGG or comparable rules to the area of civil law runs counter to the undertaking of the States parties in article 2(1), 1<sup>st</sup> half-sentence ICERD, “to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”.

The purview of the General Equal Treatment Law should be extended to any action by the public administration. To this end, provisions could be introduced to the official liability law comparable to the General Equal Treatment Law.

### **3.1.1.2 Discrimination by the police / racial profiling**

Racial discrimination by the police is a particularly sensitive area for those concerned. Racial profiling is proving particularly hard to deal with. According to the ECRI definition (General Policy Recommendation No. 11) it is “the use by the police, with no objective or reasonable justification, of race, colour, language, religion, nationality, or national or ethnic origin in control, surveillance or investigation activities”.

There are sufficient indications that racial profiling is also practised in Germany. However, this form of discrimination has so far rarely been discussed as a burning issue - and not at all in the public at large. And yet racial profiling is in itself discriminating: features like ethnic origin give rise to the suspicion of being a potential criminal or disturbing public safety and order. That creates a stigma based on features such as ethnic origin, colour, language or religion.

Racial profiling can occur in the fulfilling of all police duties. A particularly problematic measure is searching independently of suspicion (Schleierfahndung). Some federal states have included a provision in their police laws according to which this type of search is admissible under certain conditions.<sup>32</sup> The norms empower the police officers to check identity without there being any suspicion or objective and reasonable grounds for taking the details of certain persons.<sup>33</sup> The officers pre-select the people affected without any defined criteria.<sup>34</sup> There has so far been no scientific<sup>35</sup> or political evaluation of the way in which the regulations are applied.

---

30 §253(2) BGB: “Should compensation be due because of a physical injury, harm to health, restriction of freedom or sexual self-determination, a fair monetary compensation may also be demanded for harm that is not to property.”

31 CERD 2000, para. 2.

32 Cf. the list in Rachor 2007, p. 536.

33 Herrnkind, KJ 2000, 188, 192.

34 Rachor 2007, p. 541.

35 Rachor 2007, p. 545.

Nevertheless, the statistics intended to prove the success of the new regulations indicate that racial profiling is being practised. This follows, among other things, from the fact that the introduction of such searches in the statistics has above all led to a rise in offences against the provisions of alien law.<sup>36</sup> This can also be assumed in the sight of indications for some norms which expressly mention the prevention of infringements of the residence law. In addition, the regulations on this type of unmotivated search specifically name non-nationals as a target group.

As recommended by ECRI the problem of racial profiling in Germany should be examined and there should be constant observation of police activity with respect to this issue. Following these recommendations, action should also be taken with the aim of reflecting the differing origin and migration backgrounds proportionate to their share of the population in the ranks of the police.<sup>37</sup>

### **3.1.2 Review of legislation and executive norms with respect to racism**

Pursuant to article 2(1) (c) ICERD each State party shall take effective measures to review governmental policies and amend or abolish laws which create or perpetuate racial discrimination.

As a means of inspecting the government departments, the state report names legal examination when issuing federal laws, the work of ECRI and the European Monitoring Centre for Racism and Xenophobia (EUMC)<sup>38</sup>, along with judicial legal protection.<sup>39</sup>

The means of legal examination described by the Federal Government can merely serve to monitor legislation at the federal level. It does not cover the federal states (Länder) and municipalities. ECRI and EUMC merely make recommendations that the Federal Government does not have to act upon. The German legal situation has no compelling regulations on evaluating laws in terms of their (possibly indirect) racist effect.

Accordingly, the legal examination pursuant to §46 of the general rules of procedure of federal ministries only covers cases of direct discrimination. The de facto effect of laws can only be verified after they have gone into force. There are no suitable mechanisms available to carry this out.

For several reasons it is insufficient to point to the judicial review of legal norms as a possible way of uncovering an infringement of the Convention. First, Germany does not have a means of abstractly monitoring norms directly through complaints by citizens. Citizens can only influence the abolition of laws by going to court first and in seeking justice in their own (possibly special) case. Only when the appeal courts do not meet their interests in their suits before ordinary or administrative courts is there the option of making a constitutional complaint to the Federal Constitutional Court. It alone is entitled to declare a norm to be unconstitutional. A further possibility of reviewing norms by the Federal Constitutional Court lies in specific monitoring, which is introduced when a court regards a norm as relevant for a decision and is convinced that it is unconstitutional. The court can then suspend the proceedings and let the Federal Constitutional Court decide on whether the norm is constitutional or not. At this point it must be recalled that to date there is no comprehensive and complex case law by the Federal Constitutional Court on article 3(3) sentence 1 GG in respect of racial discrimination. One reason for this is possibly that the Federal Constitutional Court only

---

36 In detail Herrnkind, KJ 2000, 188, 194f; likewise Rachor 2007, p. 545.

37 ECRI 2003, no. 87; Hammarberg 2006, no. 93.

38 Now known as the Fundamental Rights Agency (FRA).

39 State report, p.4.

decides on the constitutional nature of norms when the due process of law has been followed.

Studies of the reporting of discrimination have, however, shown that only a small share of citizens report discrimination cases to complaint offices.<sup>40</sup> The barriers to going to court are far higher. This applies all the more for cases of racial discrimination. A thorough review of all existing and future legal norms in terms of their compatibility with the Convention cannot be achieved with existing resources.

As recommended by ECRI, a national agency must be set up to monitor racism.<sup>41</sup> Forum Menschenrechte proposes appointing a commission of independent experts, on the pattern of ECRI, which would draw up periodical reports on the situation of racism and racial discrimination in Germany, including racist and discriminating laws, and make relevant recommendations to the federal and state governments.

### 3.1.3 Undertaking to promote anti-racist organisations

Article 2(1) (e) ICERD commits the States parties to encourage integrationist organisations and initiatives and other means of eliminating barriers between races. In its final comments on the 15th state report CERD welcomed the introduction of the programmes XENOS, entimon and civitas.<sup>42</sup>

The Federal Government refers to the federal programmes known as XENOS, entimon and civitas, with which civil society organisations were supported between 2000 and 2006.<sup>43</sup>

The support for integrationist initiatives considerably increased with the institution of XENOS, entimon and civitas in 2000. Forum Menschenrechte appreciates the efforts of the Federal Government to support civil society organisations and initiatives dedicated to combating racism. After these programmes ran out, the Federal Government decided to set up a new form of support, which presupposes a substantial contribution by local authorities. Forum Menschenrechte is gratified that new programmes are now going to be set up, after the conclusion of the preceding ones.

However, the expired and present support programmes have inadequacies that make it hard for the organisations to work successfully, sometimes even impossible. The Government's new funding programme<sup>44</sup> addresses preventative education, and intended to raise awareness. It is explicitly not intended to support the kind of work that aims to protect the victims. Furthermore, the volume of funding for the new programmes has been reduced considerably.<sup>45</sup> Projects of the 1st pillar receive a maximum federal contribution of 50% of costs and the rest have to be covered by other funds. The maximum funding period is three years. The precondition for support is that projects must be new and innovative, and must not have begun already.<sup>46</sup> Projects of the 2nd pillar to be supported are local action plans. Here, too, the local authorities are

---

40 European Commission 2007, p. 21.

41 ECRI 2003, No. 23.

42 CERD 2001, No. 6.

43 State report, pp. 58-62.

44 Federal programme "Youth for diversity, democracy and tolerance – against rightwing extremism, xenophobia and anti-Semitism".

45 In 2001-2006 funding for projects to combat racism amounted to €192mn, €32mn p.a. The present support programme totals €19mn p.a.

46 Federal programme "Youth for diversity, democracy and tolerance – against rightwing extremism, xenophobia and anti-Semitism". Guidelines on the programme scope "Pilot projects: youth, education and prevention" (in German).

obliged to raise funds of their own. The number of fundable local action plans per federal state has been limited. They must be additional programmes, not already existing ones. Maximum support is for three years.

A key criticism is that the new programmes described do not allow for continuing work to combat racism. Only pilot projects are consistently funded but not adequately evaluated. There is no standard provision to take on successful projects and finance their work on a permanent basis. In addition, continually raising funds of their own involves a great effort for voluntary groups, and means considerably limiting the number of addressees [of possible donors] and thus the possible success at many levels. This type of support counteracts the principle of sustainability that is central to the Federal Government's support guidelines. The obligation to support initiatives to combat racism under article 1(1) (e) ICERD thus cannot be effectively fulfilled.

As recommended by ECRI, the financing of initiatives and facilities to combat racism should be placed on a long-term basis.<sup>47</sup> Besides the support via local authorities further funding of civil society initiatives should be raised.<sup>48</sup> Existing projects should be regularly evaluated with a view to being continued and integrated into general structures.<sup>49</sup>

### **3.2 Article 4 ICERD**

In article 4 (b) ICERD the States parties undertake to ban any organisation that promotes “racial hatred and discrimination”; in article 2(1) (b) ICERD they undertake “not to sponsor, defend or support racial discrimination by any persons or organisations”. According to CERD's General Recommendation no. 15 racist organisations must be banned as early as possible.<sup>50</sup> In its concluding observations on the 15th state report of the Federal Republic, the committee noted the efforts undertaken by the government, and the lower and upper houses of parliament (Bundestag and Bundesrat) to take the question of the constitutionality of the National-Democratic Party of Germany (NPD) to the Federal Constitutional Court.<sup>51</sup>

The state report describes the criminal prosecution of racist propaganda and incitement to racial hatred under article 4.<sup>52</sup> Further, it gives relevant statistics and describes the legal bases for the banning of associations and also the consequences for private individuals. The litigation to ban the NPD is briefly outlined.<sup>53</sup>

The most active rightwing extremist party in Germany, besides numerous small organisations and parties, is the NPD; it achieves major success in elections and has thus gained widespread support. The NPD has racist aims. It starts from a biologicistic approach to race and conducts political activity on this basis. In 2006 the report on the protection of the constitution presented by the Federal Ministry for the Interior cited the NPD as follows: “An ‘African, Asian or Oriental’ will never be able to become a German because ‘the granting of printed paper [the German passport] does not change a person's genes, which are responsible for the form of physical, mental and spiritual features of individuals and peoples’.”<sup>54</sup> With the German People's Union (DVU), an

---

47 ECRI 2003, no. 98.

48 See Hammarberg 2006, no. 85.

49 See OECD 2005, p. 61.

50 CERD 1993 (1), no. 6.

51 CERD 2001, no. 5.

52 State report, p. 23 ff.

53 State report, p. 31.

54 Domestic intelligence report 2006, p. 77



equally racist party, and “free forces” (Freie Kräfte)<sup>55</sup>, the NPD forms what it calls a “rightwing popular front”: in order to achieve good results at elections these parties have agreed that only one rightwing party should stand in each federal state. The NPD is represented in the state parliaments of Saxony<sup>56</sup> and Mecklenburg-Western Pomerania<sup>57</sup>. Its electoral success gives it the right to government support in the form of electoral campaign reimbursement and to funding as a parliamentary group in the state parliaments.<sup>58</sup> These grants are of great importance to the NPD.

At the beginning of 2001 the Federal Government, the Bundestag and the Bundesrat made separate applications to the Federal Constitutional Court that the NPD be banned. During the proceedings the disturbing fact was publicised that several members of the NPD’s federal board and of some state boards worked as informants for the domestic intelligence agencies. The Federal Constitutional Court thereupon called on the competent authorities to reveal all informants in the NPD leadership. The competent ministers of some Länder refused to do this, as in their view this would counter the informants’ need for protection and ultimately the effective functioning of the domestic intelligence agencies.<sup>59</sup> The Federal Constitutional Court saw this as an obstacle to the proceedings and terminated the banning procedure against the NPD on 18.03.03.<sup>60</sup>

The existence of government informants in the leadership of a racist organisation must not take on such dimensions as to prevent the conducting of a banning litigation. The financial support of the NPD by the state, which constitutes an important part of the NPD’s overall financing, amounts to state financing of the dissemination of racist thought. This contradicts the undertaking made under article 2(1) (b) ICERD.

In view of General Recommendation no. 15, which calls for a ban of organisations spreading racist propaganda, the possibility of initiating a new NPD banning litigation should be examined.

### **3.3 Article 5 ICERD**

Article 5 ICERD contains the core of the guarantees set out in the Convention. It standardises three undertakings by the States parties. They undertake to ban racist discrimination in any form (1st guarantee), to eliminate existing discrimination (2nd guarantee) and to guarantee the equality of all before the law (3rd guarantee). Some of the rights relating to these guarantees are listed in article 5 ICERD. However, this is not a complete list. Rather, article 5 ICERD is predicated on other universal human rights that are codified in other human rights conventions and in national law. The Convention commits the States to prevent and ban racist discrimination in the assertion of such rights.<sup>61</sup> The ban on discrimination under article 5 ICERD thus extends to all rights laid down in human rights instruments.

---

55 These are mainly rightwing extremist groups that stem from “comradeships” and other forms of organisation. They have no party affiliation and are responsible for a considerable share of racist offences, see Domestic intelligence report 2006

56 9.2 % of votes.

57 7.3 % of votes.

58 AG Finanzquellen 2007

59 Federal Constitutional Court, 2 BvB 1/01 of 18.3.03, para. 34,  
[http://www.bverfg.de/entscheidungen/bs20030318\\_2bvb000101.html](http://www.bverfg.de/entscheidungen/bs20030318_2bvb000101.html)

60 Federal Constitutional Court, 2 BvB 1/01 of 18.3.03,  
[http://www.bverfg.de/entscheidungen/bs20030318\\_2bvb000101.html](http://www.bverfg.de/entscheidungen/bs20030318_2bvb000101.html)

61 CERD 1996, no. 1.

### 3.3.1 Legislation on people of non-German nationality

Article 1(2) ICERD states that the Convention does not apply to distinctions made between a State party's own citizens and non-citizens. However, this must not lead to an evasion of the ban on racial discrimination and the fundamental protection against discrimination as guaranteed by the International Bill of Rights.<sup>62</sup> Even if some of the rights set out in article 5 ICERD only belong to nationals of the signatory state, this only applies to the extent that it is admissible against the background of international law.<sup>63</sup> Accordingly, the Convention must be interpreted such that different treatment on the grounds of nationality or residential status amounts to discrimination unless the different treatment serves a legitimate purpose and pursues such a purpose in an appropriate manner, always in the light of the subject matter and the aim of the Convention.<sup>64</sup> Despite article 1(2) ICERD every case of different treatment of non-citizens is subject to the reservation of proportionality.

The legal affairs committee of the German Parliament should conduct a public hearing with UN experts, in particular the Committee on the Elimination of All Forms of Racial Discrimination plus the German Institute for Human Rights, in order to discuss the relevance and the implications of General Recommendation no. 30 for German legislation.

In the drafting of new laws with provisions on non-citizens there should be a routine check on whether the provision is required and whether it is compatible with CERD's General Recommendation no. 30. Existing provisions should also be examined with this in mind.

#### 3.3.1.1 Asylum law

Protection against racism must extend to all people forced to leave their country owing to racially motivated persecution. Anyone who is persecuted on racist grounds, because of their colour or belonging to a certain ethnic group, enjoys the right to be protected as a refugee within the meaning of the Geneva Refugee Convention (GRC) outside of their country of origin. In the granting of asylum, the human rights protection from racial discrimination as foreseen by the Convention finds its equivalent in refugee law, if the act of discrimination constitutes persecution. The right to seek asylum in another country is also guaranteed in article 14(1) of the Universal Declaration of Human Rights (UDHR).

In the years since the amendment to asylum law in 1993 protection for refugees in Germany has been largely curtailed. That starts with the very access to the asylum procedure. In addition, refugees are frequently discriminated against after their arrival in Germany in law and in practice, which contravenes the rights guaranteed in article 5 ICERD.

The state report contains no information on the way refugees are dealt with.

##### 3.3.1.1.1 Access to the asylum procedure

In the last few years it has become increasingly difficult to apply for asylum in Germany and go through the asylum procedure. An obvious consequence of this has been a considerable drop in the number of asylum applicants in Germany - in 2007 there were only 19,164. There are different reasons for this decline, particularly European

---

62 CERD 2004, no. 2.

63 CERD 2004, no. 3.

64 CERD 2004, no. 4.

border protection policy. And even if asylum seekers manage to lodge an application in Germany they are massively hampered in their access to the asylum procedure. In 2007 28% of all asylum applications were not substantively examined but it was merely stated that another EU state was responsible for conducting the asylum proceedings. In these cases there is no examination of the grounds for fleeing; there is just a formal examination of the route by which the asylum seeker entered the European Union.

The basis of the examination of competence is the Council Regulation (EC) No. 343/2003 of 18 February 2003 (Dublin II). This regulation lays down criteria for determining the competence for the asylum procedure. Each asylum seeker is only to be able to lodge an asylum application in one EU state.

With the law transposing residence and asylum law directives of the European Union of 19 August 2007 into national law (BGBl. I 2007 p. 1970), that took effect on 28 August 2007, the conditions under which access to the asylum procedure is guaranteed in Germany were tightened up once again. People can be turned away (refoulement) at the borders now on spec. Individuals are refused entry when there are “indications that another state is responsible on the grounds of legal provisions of the European Community or an international treaty for the execution of the asylum procedure”. (§18(2)2 Asylum Procedure Law (AsylVfG)). Access to the asylum procedure is thus refused merely on the basis of suspicion. This provision is incompatible with the right to asylum.

Refoulement on suspicion, which can be undertaken if there are indications of another state being responsible for the asylum procedure, must be abolished. Accordingly §18(2)2 Asylum Procedure Law must be dropped.

### **3.3.1.1.2 Emergency legal protection in cases of removal of refugees to EU countries**

Article 5 ICERD provides for equal treatment before the law independently of the features named in article 1(1) ICERD. General Recommendation No. 30 stresses that the different treatment of non-citizens must pursue a legitimate goal in an appropriate way, in order to be compatible with the provisions of the Convention. In General Recommendation No. 31, CERD expressly refers to article 16 GRC which sets out the right of a refugee to have free access to the courts in the area of all States parties.

Asylum seekers who are to be deported to another EU state on the basis of the Dublin II regulation no longer receive emergency legal protection in Germany as a matter of principle. That means that removals back to other EU states cannot be prevented by court order (§§ 34a, 27a, 26a AsylVfG). Under Dublin II the individual right to maintain the family unit until the first-instance decision (Art. 8), the rights of unaccompanied minor refugees (Art. 6), the humanitarian clause (Art. 15) and the possibility of obtaining an asylum procedure in Germany for other reasons (Art. 3 II) are thus no longer accessible to judicial review. The deportation takes place without any guarantee of emergency legal protection and before the final decision on the main issue. Asylum seekers are instructed to pursue their court procedure in Germany from abroad. However, a precondition for the holding of court proceedings is an address to which the summons can be sent. In some EU states, e.g. Greece, a large proportion of the asylum seekers are forced into homelessness and so have no fixed abode. But in many other cases too, the contact with lawyers is interrupted; legal counsel is no longer possible and thus the main issue is left undecided. The exclusion of interlocutory legal protection thus prevents a court from checking decisions on European competence. A rights-free space has been created for asylum seekers that is unheard of for any other population

group. In view of the fact that the asylum procedure is about preserving and realising human rights, this does not comply with the principle of proportionality.

If asylum seekers are sent back to another EU country in the context of Dublin II procedures they must be able to contest the removal decision before a court by way of an interim order for legal protection. §34a Asylum Procedure Law must be amended accordingly.

### **3.3.1.1.3 Detention of asylum seekers**

Pursuant to article 5 ICERD, the right to equal treatment before the law must be preserved; legislation for non-citizens must pursue a legitimate goal in an appropriate way. In General Recommendation No. 31 CERD refers directly to article 16 GRC. Further, it points out that detainees must be immediately brought before a judge or another competent authority.

The rights of asylum seekers are also violated in Germany when they are regularly detained on arrival from neighbouring EU states. At present dozens of refugees from Iraq are in German prisons awaiting deportation. Detention occurs even though the UNHCR has repeatedly pointed out that the detaining of asylum seekers is to be avoided as a matter of principle. In Germany this detention has become the rule. Those concerned are detained until it has been ascertained whether another EU state is responsible for carrying out the asylum procedure.

Further, the law from summer 2007 introduced the instrument of refolement detention (§15(5) Residence Law (AufenthG)). This is applied in practice towards the cases of asylum applicants for which Germany's non-competence has been established under Dublin II. Only in exceptional cases can this form of detention be avoided.

In addition, restrictions have been introduced for asylum seekers who enter by air and are detained in the transit area of the airport. If the person was turned back, custody for 30 days is possible in the transit area without this being ordered by a judge (§15(6) AufenthG). This violates the judge's reservation and also article 5 (a) ICERD.

The detention of refugees during the asylum procedure must be abolished §14(3). The asylum procedure law must be amended accordingly.

### **3.3.1.1.4 Dealing with refugees with special needs**

Article 5 (b) ICERD guarantees the right to "security of person" and state protection against "violence or acts of bodily harm".

These rights are in danger if those needing special protection in the asylum procedure are not identified. If they are rejected for that reason and deported to their country of origin, they may be again at risk of grave mistreatment or torture.

The asylum procedure conducted by the Federal Office for Migration and Refugees is in many cases not suited to an early identification of persons in need of particular protection, e.g. traumatised refugees, accompanied and unaccompanied minors, child soldiers, persons who have suffered torture, rape or other serious forms of mental, physical or sexual violence. Besides considerable deficiencies in the protection for civil war refugees and victims of internal conflicts, their psychosocial, psychotherapeutic and rehabilitative care is lacking as well.

Insufficient attention is given to the need for protection of refugee children – particularly unaccompanied minors. There are no provisions for identifying them and

giving them special support and rehabilitation immediately after their entry. Asylum seekers between the age of 16 and 18 are not treated as minors. This reflects the spirit of the German reservation towards the Convention on the Rights of the Child (CRC), which ruled out the applicability of the CRC to the different treatment of non-citizens and citizens. Without this reservation the German provisions would constitute an infringement of the CRC.

The Federal Office for Migration and Refugees must guarantee the identification of groups needing special protection through in-service training of its own staff and recourse to external expertise. In particular, there must be more intensive assessment after certifying that the person is traumatised.

### 3.3.1.1.5 Health care of refugees

Article 5 ICERD guarantees every person, regardless of colour, ethnic group or origin, the right to equality before the law and, in particular, in article 5 (e) (iv) ICERD the right to public health and medical care. In addition, in article 12(1) ICESCR the States parties undertake to recognise the right of every person to the measure of physical and mental health achievable for him or her. In its General Comment No. 14 “The right to the highest attainable standard of health (article 12 ICESCR)”, the UN Committee for Economic, Social and Cultural Rights stated the following on 11 August 2000:

“In particular, States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including (...) asylum seekers and illegal immigrants, to preventative, curative and palliative health services (...)”.<sup>65</sup>

Article 12 ICESCR calls for the “highest attainable standard of physical and mental health” and also recognises “a wide range of socio-economic factors that promote conditions in which people can lead a healthy life”.<sup>66</sup> Legislation is thus obliged to involve the aspect of access to health care without discrimination, including psychological and psychosocial care.

The right to health is of particular importance for persons with a special need of protection, such as accompanied and unaccompanied minors, disabled and older people, pregnant women, single parents with children and persons who have suffered torture, rape or other grave forms of mental, physical or sexual violence. That is accounted for in article 7(1) and article 9(1) of the Council Directive on the protection of victims<sup>67</sup>, article 13(4) of the Council Directive on temporary protection<sup>68</sup> and articles 15, 17 to 20 of the Council Directive on reception conditions<sup>69</sup>.

German law only allows for the treatment of acute illnesses and painful conditions. Only in rare exceptional cases can support payments be paid in addition. This provision in §§4 and 6 Asylum Seeker Benefit Law (AsylbLG) applies to the whole period during which benefits are drawn under AsylbLG (generally four years). This does not correspond to the requirements under international and European law.

Worse treatment in health care, to which asylum seekers and groups equated with them are subject under the Asylum Seeker Benefit Law for at least four years, is unequal treatment and unacceptable from the perspective of human rights, and therefore to be

65 General Comment No. 14, para. 34.

66 General Comment No. 14, para. 4.

67 Council Directive 2004/81/EC.

68 Council Directive 2001/55/EC.

69 Council Directive 2003/9/EC.

eliminated. Moreover, the special rights to medical care, rehabilitation and therapy which apply under the EU directives for asylum seekers, refugees and victims of human trafficking with special needs, must be implemented by the German legislature.

### 3.3.1.2 Residential obligation

Article 5 (d) (i) ICERD grants the exercise of the right to freedom of movement and to the free choice of place of residence without discrimination. The granting of these rights follows also from article 12(1) ICCPR. If non-citizens are covered by the provision in some cases and not in others, this may be regarded as discrimination under article 1(3) ICERD. As only non-citizens are covered by the provision this may also be regarded as discrimination in comparison with citizens, unless the provision is supposed to achieve a legitimate aim in an appropriate manner.<sup>70</sup>

The state report does not mention the provisions on local restriction of residence.

The residence of non-citizens with a residence permit under §§22–25 AufenthG may under §12 AufenthG be attached to the condition that they do not leave a certain area. This possibility becomes relevant if social benefits are claimed under social code II (SGB II), social code XII (SGB XII) or the Asylum Seeker Benefit Law (AsylbLG). This restriction is intended to ensure that the burdens for local authorities in paying social benefits for non-citizens are distributed as evenly as possible.

The UN High Commissioner for Refugees has thoroughly examined the compatibility of this provision with international conventions. According to this study the stipulation in §12 AufenthG, as far as it concerns refugees, contravenes the right to freedom of movement guaranteed in article 26 GRC and other human rights instruments, and also in article 32 of the Council Directive on qualifications (QD)<sup>71</sup>. It also contravenes the bans on discrimination contained in article 23 GRC, article 28 QD, article 1 European Convention on Social and Medical Assistance in connection with articles 1 and 2 Protocol to the European Convention on Social and Medical Assistance and article 14 European Convention on Human Rights (ECHR) in connection with article 2 Protocol 4 to the European Human Convention on Human Rights (P4/ECHR). If the provision covers those with subsidiary protection it contravenes the right to freedom of movement guaranteed in article 2(1) P4/ECHR and the ban on discrimination of article 14 ECHR in connection with article 2 P4/ECHR.<sup>72</sup>

A decision of the Federal Administrative Court (BVerwG 1 C 17.07) of 15 January 2008 made an adaptation of international law merely for the group of recognised refugees. The Federal Administrative Court decided that restrictions on residence were illegal for recognised refugees if the immigration authorities were pursuing the aim of distributing the financial burden of social benefits to the Länder on a prorata basis. The Geneva Refugee Convention guarantees freedom of movement as a matter of principle for those who had been granted refugee status, the court stated.

The restriction of freedom of movement of people with a residence permit under §§22–25 AufenthG, that is only linked to their status and their being social benefit claimants, must be abolished.

<sup>70</sup> See 3.3.1.

<sup>71</sup> Council Directive 2004/83/EC.

<sup>72</sup> UNHCR 2007.

### 3.3.1.3 Social benefits for non-citizens under §3 AsylbLG

Under article 5 (e) (iv), (vi) ICERD the right to public health, medical care, social security and social services must be granted without racial discrimination. Moreover, the right to access to cultural life without discrimination arises from article 15(1) (a) ICESCR and from article 27(1) UDHR. Article 9 ICESCR standardises the right to social security, article 11(1) ICESCR the right to an adequate living standard and article 12 ICESCR the right to the highest attainable standard of health.

The granting of social benefits to non-citizens is not raised in the state report.

Asylum seekers, foreigners with a toleration visa (Duldung), foreigners obliged to leave the country (e.g. border crossing certificate, undocumented inter alia) and foreigners with residence permits under §25(4) sentences 1 and 5 AufenthG receive benefits defined under the Asylum Seeker Benefits Law. The amount and scope of these benefits is in contradiction to the guarantees under the ICERD and in some cases also under the ICESCR.

Most of those entitled to benefits under the AsylbLG are objectively largely comparable with those who receive benefits under SGB II. Like the latter, they are basically able to work but are just not able to at the moment of the granting of benefit. Moreover, the purpose of the benefits is similar in both cases: under §3(1) sentence 1 AsylbLG the benefit is to cover “the basic needs for food, accommodation, heating, clothing, health and body care, and household goods and consumer durables”. Under §20(1) sentence 1 SGB II those eligible receive a standard benefit “to guarantee them a living”. This standard benefit is almost completely the same as that under §3 AsylbLG – with one exception: the standard benefit under §20 SGB II also covers “relations to their environment and participation in cultural life”.<sup>73</sup>

The benefits under §3 AsylbLG are granted in kind and only exceptionally in the form of vouchers or cash. By contrast, the payments under §20 SGB II are monetary.

The benefits under §3 AsylbLG concern a considerable number of people in Germany. At the end of 2006 140,650 people received benefits under §3 AsylbLG, of whom 49,219 were under 18.<sup>74</sup> The benefits under §3 AsylbLG amount to between €132.94 and €224.97 per month. By contrast, benefits under §20 SGB II amount to between €208 and €347. On average the difference between the two types of benefit is between 140% and 150%.<sup>75</sup> Furthermore, only non-citizens are entitled to benefits under §3 AsylbLG, while only German citizens are eligible under §20 SGB II.

The granting of benefit under §3 AsylbLG is discriminatory in the sense of the Convention in that it is used for foreigners who are not just staying in Germany for a short time. If they stay for a fairly long period the provision is disproportionate. The purpose of the organisation of §3 AsylbLG derives from the grounds of the law: to prevent people immigrating to the Federal Republic of Germany for economic

---

73 §20(1) SGB II states: “(1) The standard benefit to guarantee a living covers, in particular, food, clothing, body care, household goods, household energy without the share of heating costs, daily needs and a reasonable amount of relations to the environment and participation in cultural life.” The fact that this does not mention the heating costs and household goods contained in the list in §3 AsylbLG, does not constitute a difference. They are granted in addition to other benefits under the AsylbLG too, see §3(2) sentence 2 AsylbLG.

74 Federal Government, parliamentary record 16/7574, p. 3.

75 Relation of benefits under §20 SGB II - §3 AsylbLG: head of household €347-€224.97 (154.24%), household members from the age of 15 €278- €199.40 (139.42%), between 7 and 14 €208 - €178.95 (116.23%), under 7 €208- €132.94 (156.46%).

reasons.<sup>76</sup> In addition, the law is intended to match the benefits to the needs of people typically staying in Germany for only a short time.<sup>77</sup> The last-mentioned reason is logical only to the extent that the people covered by the provision are not only typically in Germany for a short time but also *de facto* stay there mainly temporarily. As soon as the people covered by the provision stay in Germany for a long period this rationale can no longer constitute a legitimate purpose. This, for example, applies for the participation of these people in cultural life: it may be the case that short-term restrictions on cultural life and relationships to their environment are considered possible, but this cannot apply for a long-term stay as it would lead to exclusion. This is particularly true since benefit claimants depend on benefits under §3 AsylbLG for up to 48 months.<sup>78</sup> This period can even be extended.<sup>79</sup> Thus §3 AsylbLG is disproportionate for those who receive benefits only under §3 AsylbLG for a long period, because it excludes them from enjoying guaranteed human rights. Since this happens as distinct from German citizens it constitutes discrimination within the meaning of the Convention for the group of people receiving benefit under §3 AsylbLG for a considerable period.

A further element of discrimination is the amount of the benefits drawn. As described above, the standard rates under §20 SGB II are around 140%-150% higher the rates under §3 AsylbLG. The above-mentioned designation also extended to the amount of the rates of §3 AsylbLG according to the rationale for the law. However, this was decided back in 1993. Since that time there has been no rise in the standard rates although this possibility was foreseen in the first version of the law and is still given.<sup>80</sup> During the same period the average living costs in Germany rose by 22.5%.<sup>81</sup> This figure shows, above all, that the benefits under AsylbLG can no longer meet current needs. But also with a rise in rates under AsylbLG to adapt to the rise in living costs it is not possible to keep up the distinction between the two rates without discrimination. The social code in §20 SGB II states that these benefits are standard payments “to provide a living”. This means that they are to cover the necessary costs. Providing less than living costs cannot be justified by the aim of not offering an incentive to immigrate to Germany. The proportionality of the means used to achieve such a goal ends at the point where basic necessities are no longer available. The intention cannot be to eke out a living along the lines of a struggle to survive. What must be decisive is the guarantee of enjoying human rights as laid down in the International Bill of Rights. Article 5 ICERD lists some of these guarantees such as the participation in the right to social security and social services free of discrimination, the right to participation in cultural activities or “the right of access to any place (...) intended for use by the general public”, article 5 (e) (iv) and (vi), (f) ICERD. These guarantees can no longer be enjoyed if benefits are restricted to such a point that only covers the bare necessities. Here again the long period of four years must be considered, for which only benefits under §3 AsylbLG are granted. By way of justification, the Federal Government has said lately that due to the short stay of benefit claimants under §3 AsylbLG no benefits are necessary for integration into German society.<sup>82</sup> This consideration, too, is not proportional in view of the other considerations set out above. Benefits under §20 SGB II do not serve to integrate people into German society either – their recipients are

---

76 Grounds given by competent committee, parliamentary record 12/5008, p. 13.

77 Grounds for bill of governing parties, parliamentary record 12/4405, p. 5.

78 After 48 months benefit claimants may obtain higher benefits under SGB XII, §2(1) AsylbLG.

79 When claimants “have themselves influenced the duration of the stay [...] by abuse of rights”, § 2(1) (end) AsylbLG.

80 §2(3) AsylbLG in the version of 1993; today §3(3) AsylbLG.

81 Federal Government, parliamentary record 16/7574, p. 5.

82 Federal Government, parliamentary record 16/7574, p. 3.



already German citizens. Thus the unequal treatment of benefit claimants under §20 SGB II and §3 AsylbLG is not justified and amounts to discrimination.

The restrictions described worsen if the benefit – as foreseen by §3(1) sentence 1 AsylbLG as the standard case – are granted in kind and by vouchers. In some cases the claimants can only shop in certain stores with high prices. In others the balance on vouchers is lost if the state amount is not spent in one go. Remaining amounts not spent at the end of the month are also sometimes lost, which makes it difficult to plan for the future.<sup>83</sup> If meals are taken in a canteen or there is a limited range of foodstuffs on offer in shops, cultural and religious customs cannot be taken into account and this may be considered an infringement of the ban on discrimination. CERD's General Recommendation No. 21 is relevant here, which calls for respect for the cultural self-determination of minorities.<sup>84</sup>

The payments from the Asylum Seeker Benefit Law must be adjusted to standard rates applicable for the social benefits of citizens able to work (social code II).

As recommended by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, benefits should also be distributed in monetary form, not in kind.<sup>85</sup>

### **3.3.1.4 The rules to combat sham marriages for which a spouse is brought into the country**

The right to be able to enter into a marriage without any state restriction is enshrined as a human right in many instruments, including in article 5 (d) (iv) ICERD, in article 16(1) UDHR and in article 23(2) ICCPR. Under article 10(1) UDHR the signatory states recognise that the family as a natural nucleus of society should enjoy maximum protection and support, particularly regarding its foundation. In principle, this is guaranteed in Germany.

The state report does not raise family law aspects of aliens law.

German law contains provisions limiting the marriage of couples when one partner lives abroad or is a non-citizen. These provisions deserve to be examined.

With respect to article 5 (d) (iv) ICERD there is a problem with the legally standardised suspicion that marriage or kinship is not genuine. §27(1) AufenthG states that bringing one's family into the country must only serve the purpose of creating or preserving family unity. This rule already prohibits marrying or applying for a partner to follow only for the purpose of giving him or her a residence permit in Germany. However, the reform of the immigration law - with §27(1a)1 AufenthG<sup>86</sup> - has created yet another standard precisely for the same context. The consequence is that family reunification is open to statutory suspicion of not being genuine and in reality being only for the purpose of acquiring a residence permit for the person entering the country. Apart from sham marriage, this suspicion also arises with the adoption of foreign children, where applicants may now be suspected of just wanting to get the children into Germany. In

---

83 Classen 2008, p. 113.

84 CERD 1996 (2), no. 5.

85 Hammarberg 2006, no. 140.

86 §27(1) (a) AufenthG states: "Family reunification is not allowed if

1. it is clear that the marriage or kinship is conducted or founded exclusively for the purpose of enabling the person to enter and reside in German territory, or
2. there are factual indications substantiating the assumption that one of the spouses was forced into marriage."

practice there is a strong danger that the amendment of the law will lead to increased – unnecessary - pressure on family members justify themselves.

Marriages entered into in Germany are also under increasing suspicion of not being genuine. In §1310(1) 2<sup>nd</sup> sentence, 2<sup>nd</sup> half-sentence, §1314 (2) No. 5, §1353(1) 2<sup>nd</sup> sentence, 1<sup>st</sup> half-sentence BGB, the immigration law created a regulatory chain that enables registry officers to refuse to marry couples when it is obvious that the marriage is a sham. In practice the same criteria are used as in the visa procedure. An obviously sham marriage is suspected above all when one of the spouses has no fixed residence status. In this case it may happen that the registry offices refuse to cooperate although there is de facto no proof at such an early stage that the marriage would not be genuine. In this situation, those concerned have the problem that is almost impossible to prove their intention. The only criterion to be used in deciding cases where the couple want to enter into marriage within the meaning of §1353 (1) 2<sup>nd</sup> sentence, 1<sup>st</sup> half-sentence BGB, is whether they know a lot about the personal concerns of the partner. The provision of §1314(2)5 BGB, which declares that a sham marriage can be annulled, was especially created in order to be able to combat sham marriages by non-citizens.<sup>87</sup> It is thus to be assessed with the aid of the principles of the General Recommendation No. 30.

Since the provision takes effect even before the marriage it is questionable whether it is suited to fulfilling its purpose. At such an early stage there are hardly any clues leading to the suspicion that the marriage is not genuine. The situation is particularly problematic for people from cultures where it is the custom to have only limited contact to the future spouse, e.g. some Islamic countries. In these cases it is hard to ascertain the reasons for limited contact between the spouses.

Even if one assumes that the rule is suitable and necessary, it is not appropriate. Sham marriages can de facto only be checked when there is a duty to give mutual support in the marriage (§ 1353(1) 2<sup>nd</sup> sentence, 1<sup>st</sup> half-sentence BGB). However, this only arises after the wedding ceremony. So those wishing to wed have no opportunity to prove the seriousness of their wish, if the registry officer refuses to cooperate before the wedding. The provision places the right to marry under the suspicion of not being genuine and thereby restricts it. The provision is not appropriate and thus does not fulfil the standard of proportionality. It is an infringement of the ban on discrimination under Article 5 ICERD.

A suspicion that a marriage has been entered into so that one spouse can obtain residence status in Germany should only be open to verification after the wedding.

In addition to §27(1) Residence Law, the provision of §27(1a)1 Residence Law provides that family reunification only for the purpose of obtaining a residence permit is inadmissible. As this is stated twice and causes additional pressure on marriages the provision of §27(1a)1 Residence Law should be deleted.

### **3.3.1.5 Combating forced marriages for which a spouse is brought into the country**

The right to be able to enter into a marriage without any state restriction is established as a human right in many instruments, e.g. in article 5 (d) (iv) ICERD, in article 16(1) UNHR and in article 23 (2) ICCPR. Under article 16 UDHR signatory states recognise that the family is entitled to protection by society and the state, and that men and

---

<sup>87</sup> Palandt-Brudermüller, §1314 para. 14

women (...) “have the right to marry and to found a family”. This right is, in principle, guaranteed in Germany.

The state report does not raise family law aspects of aliens law.

The combating of forced marriages has been the focus of German alien legislation recently. This is to be welcomed, in view of the fact that the freedom of marriage from force is established in many human rights instruments, e.g. in Art. 16(2) UDHR and in Art. 23(3) ICCPR. The question arises, however, whether the provisions chosen are suited to achieving their purpose and observe the principle of proportionality.

In the case of family reunification, §27(1a)2 AufenthG provides that family reunification shall not be approved if there is tangible evidence of a forced marriage. The provision may possibly be suited to preventing forced marriages, since it prevents the founding of the family unit in Germany. There are, however, doubts as to whether it is required. After all, it only applies when a forced marriage already exists. In this situation, a milder remedy could be providing offers of assistance in Germany. The provision lays the emphasis of combating forced marriages at the wrong place. Instead of offering assistance to the victim of a forced marriage, there is a general prohibition of entry to federal German territory. That neither helps the victim nor removes the coercion of the marriage.

If one still assumes that the provision is required, there remain serious doubts about its appropriateness, in view of the effects on other married couples. Couples wanting to marry without being forced are multiply burdened. Their partnership is under the shadow of a statutory suspicion that it is possibly either a sham marriage, or a forced marriage or both together. CERD should thus examine whether the provision satisfies the requirements of proportionality, which must be respected according to General Recommendation No. 30.

The combating of forced marriages nominally serves to introduce a minimum entry age of married non-citizens.<sup>88</sup> After the reform of immigration legislation, §30(1) sentence 1 No. 1 AufenthG provides that both spouses must have turned 18 if one of them wants to follow the other to Germany. This is a restriction on the married couple that only applies to non-nationals. It is not certain that this provision is suited to preventing forced marriages. There has been no scientific study of this question; the provision was adopted on the basis of mere speculation by the legislature.<sup>89</sup> Even if one excludes the question of less burdensome alternatives, there remain strong doubts as to the appropriateness of the provision. Since it is not certain whether the purpose of defining a minimum age can be achieved, the consequences for couples wishing to marry must be accorded all the greater weight. If one of the partners is under 18, they cannot be reunited in Germany. If the partners have decided that they want to live in Germany it may be assumed that they have created the conditions for a livelihood in Germany. In

---

88 Grounds for the law, parliamentary record 16/5065, p. 172.

89 In reply to the critical query about the underlying evidence, the Federal Government several times refers to its grounds for the law, see parliamentary record 16/7288, p. 13ff. They merely make assertions without referring to scientific findings or studies:

”Due to the outdated understanding of the family and family roles, it seems on the available evidence that forced marriages more frequently involve a partner under 18. There is less incentive for a forced marriage if the right to residence status and possible controls by the husband or family using force only arise when the bride has turned 18.” Grounds for the law, parliamentary record 16/5065, p. 172.

In its reply to the question: “What international, European and national studies on the migration of women and girls are available to the Federal Government, and in the context of what surveys on migration and integration are gender-specific data collected and evaluated?”, parliamentary record 16/7408, p. 21, the Federal Government named no study of the problem of forced marriages in Germany.

such a situation the couple can simply not be told to live abroad. This would force them to set up a new livelihood, which would probably not be possible in many cases. In reality, this leads to under-18-year-olds being prevented from marrying. In view of the right to marry with the consent of both partners, CERD should examine whether such a provision is still in conformity with the standard of proportionality.

Another way of combating forced marriages is the requirement of a simple knowledge of German that is laid down in §30(1)2 AufenthaltG. This provision is disproportionate and, for couples with one foreign partner, constitutes discrimination under article 5 ICERD in connection with article 16(1) sentence 2 UDHR.

The provision serves a legitimate purpose, yet there are grave doubts about its appropriateness. The grounds given for the law assume that the provision is appropriate since offers of assistance can be understood more easily if the person has language skills. Moreover, it is claimed, simple language skills constitute a level of education that makes potential victims of forced marriages less attractive for such marriages.<sup>90</sup> This supposition is doubtful, however, if the legislature is satisfied with a vocabulary of only 200 words.

At any rate, the existing integration courses available after the arrival of the spouse are a better means of achieving the goal named. The integration courses are sponsored by the Federal Office for Migration and Refugees and serve as language and orientation courses for new immigrants. If the integration courses are to really promote integration it is a matter of course that they should be provided in a quality that at least reaches the level of language courses before entry. In addition, the course participants in the integration courses enjoy the opportunity of social contacts and can use them much better to be liberated from possible forced situations.

Even if the norm is considered necessary it is not appropriate. The duty to acquire language skills in the country of origin means that all couples are affected even if neither partner is in a forced situation. In large countries with a low average income the duty to learn German may constitute a barrier to joining the partner in Germany. The costs of a language course are on average €600,<sup>91</sup> and in addition there will be loss of earnings through participation and possibly costs for board and lodging at the place of the course. Since the introduction of the rules on language and minimum age the numbers of spouses coming to Germany has fallen by a good 40%.<sup>92</sup> The right to family life also means that spouses can live together. If that cannot happen, the possible advantages of the provision to combat forced marriage are negligible.

The provision according to which citizens of visa-free countries under §30(1) sentence 3 No. 4 AufenthaltG are exempted from the obligation to learn German is also discrimination under article 1(3) (end) ICERD. This states that the differing treatment of non-citizens is inadmissible if it only concerns nationals of certain countries. This is the case in §30(1) sentence 3 No. 4 AufenthaltG. It is not clear why the members of these countries should be less protected from forced marriages. Nevertheless, they are exempted from the obligation to learn German beforehand. The grounds stated in the law refer solely to the close economic ties between visa-free countries and Germany.<sup>93</sup> This means that there is no objective connection between language knowledge and the

---

90 Grounds for the law, parliamentary record 16/5065, p. 173.

91 Reply of the Federal Government, parliamentary record 16/7288, p. 5.

92 See the statistics in the reply of the Federal Government to the small question by the Left party, parliamentary record 16/8175, p. 10.

93 Grounds for the law, parliamentary record 16/5065, p. 175.

demand for simple language skills before entry. The infringement of article 1(3) (end) ICERD is thus apparent.

As recommended by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, family reunification should be facilitated.

The provision of §27(1a)2 AufenthG, according to which family reunification is excluded if there is suspicion of forced marriage, is not in conformity with the principle of proportionality and should be rescinded.

As advocated by ECRI, a country-wide advisory service infrastructure should be set up for victims of forced marriages.

CERD should arrange for investigations to verify whether the restrictions on family reunification on the basis of the age of the arriving person under §30(1)1 AufenthG are in conformity with the standard of proportionality.

The requirement of language skills in §30(1) AufenthG should be rescinded. The acquisition of language skills should rather be guaranteed through the provision of courses after arrival.

### **3.3.1.6 Reunification of family members with social benefit claimants**

The right to a family comprises living together as a family and is protected as a human right in article 23(2) ICCPR, article 16(1) UDHR. According to article 16 UDHR the contracting states recognise that the family should enjoy maximum protection and support, particularly with respect to their founding and as long as they are responsible for the care and raising of children who are entitled to support.

The state report does not raise family law aspects of aliens law.

Preventing the arrival into the social systems is the purpose of the provision in §§27(3) sentences 1, 28 AufenthG.<sup>94</sup> Accordingly, the immigration to join socially disadvantaged persons can be prevented, and in the case of Germans it will depend on whether they have their residence in Germany. The provision de facto prevents family life together for socially disadvantaged individuals. This is an inappropriate restriction of the right to family life and thereby a contravention of Art. 5 ICERD.

The right to family life together is extremely important to every person. While it is not constitutive for the existence of a family, a family primarily exists when the members live together. This is also shown elsewhere in family law.<sup>95</sup> Socially more vulnerable individuals are, independently of their nationality, disadvantaged by the provision on socially strong persons. De facto they are prevented from enjoying the right to live with their family in Germany. Above all in connection with the obstacles described above, which were set up for the right to family life together, it is hardly possible for those who are already needy to have their family members come to join them. The law requires that their income must suffice to provide for themselves and all relatives. Further, according to the general granting preconditions (§5 AufenthG), they must also be able to prove that they have adequate accommodation, which they have to finance themselves. This mainly affects people living in a difficult work environment and who are affected by unemployment or low-paid jobs far more than Germans are.<sup>96</sup> For a not inconsiderable share of people with a migration background, the possibility to seeking a

94 Grounds for the law, parliamentary record 16/5065, S. 171

95 A marriage is regarded as failed under civil law if the partners have no longer lived in the same residence for a year (or three years in the event of disagreement on the divorce), §1566 BGB.

96 See 3.3.4.1.

spouse in another country is so restricted that family reunification is probably prevented in many cases.

Family reunification must not depend on requirements about what the person living in Germany can afford. ECRI and Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, call for the unrestricted granting of the right to family reunification for refugees.<sup>97</sup> The provisions restricting this right should thus be rescinded.

### 3.3.1.7 Nationality law

The state report describes the reform of nationality law of 2000, but does not yet go into current developments.

Admittedly, CERD in its final recommendations in 2000 were satisfied with the developments in German nationality law. However, developments in the last few years make it necessary to take up this topic area again.

On 31.12.06 there were 6,751,002 non-Germans living in Germany. Their average length of residence was 17.3 years.<sup>98</sup> This is of great significance for the consequences following from the lack of citizenship. Citizenship is the precondition for enjoying a number of human rights. For example, this applies to the right to take part in elections, article 21(1) UDHR, article 25 (b) ICCPR, the right of equal access to public service, article 21(2) UDHR, article 25(c) ICCPR or the right to return to the country (“his/her country”), article 13(2) UDHR, article 12(4) ICCPR. These human rights are granted to all people equally, but they do not apply to the same extent in every country. They could be called indirect human rights.

Most non-German citizens in Germany live there on a permanent basis. These people cannot enjoy their rights to the fullest extent; the group of citizens and of inhabitants of a country diverge greatly. The Director of the German Institute for Human Rights has said on this matter that the states are called upon to allow access to civic rights as “indirect human rights” to those people who have found the centre of their life in the country on a lasting basis.<sup>99</sup> This group too is exposed to the considerable restrictions through alien law (described above) over a long and mostly unforeseeable period of time.

Another consideration is that Germany has one of the lowest naturalisation rates according to OECD statistics.<sup>100</sup> The nationality law amended in 2000 led temporarily to a rise in naturalisation figures, but they have now fallen to the earlier level. In the meantime nationality law has even been tightened up (see following sections).

The more restrictive naturalisation conditions are due to the general climate in German interior policy (see section 2). The naturalisation tests in Baden-Württemberg and Hesse (see 3.3.1.7.1) were introduced by the respective state governments in the run-up to the state and local elections in these Länder in 2006 and attracted a lot of attention all over the country. It was claimed that those seeking naturalisation did not support the basic values and order of the state, due to their Islamic faith and thereby constituted a security risk for the state.

---

97 On the situation of refugees likewise: Hammarberg 2006, No. 155; ECRI 2003, No. 43.

98 Federal Statistical Office

<http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Content/Statistiken/Bevoelkerung/AuslaendischeBevoelkerung/Tabellen/Content100/AlterAufenthaltsdauer,templateId=renderPrint.psml>

99 Bielefeldt 2006, p. 7.

100 Thränhardt 2008, p. 10.

Back in 1999 a state election campaign in Hesse had an influence on nationality law. At the time, a party elected to govern used the pre-electoral period to launch a campaign to collect signatures against the acceptance of dual nationality. It managed to prevent the provision contained in draft legislation of the then federal government by portraying those applying for dual naturalisation as a security risk for national order. The naturalisation law of 2000 thereupon largely excluded the acceptance of dual nationality (see 3.3.1.7.3).

CERD should address the fact that a high number of non-German citizens live in the State party on a permanent basis who cannot fully exercise their human rights and undergo considerable unequal treatment through restrictive alien legislation as compared to nationals. In its dialogue with the State party CERD should emphasise its General Recommendation No. 30.

Measures should be taken in the field of information, awareness-raising and confidence-building, so that the people who fulfil the statutory preconditions for acquiring German nationality can make increasing use of it, in order to be able to fully assert their human rights.

CERD should be able to dialogue with the State party on what statutory barriers or interior policy climate stand in the way of acquiring nationality.

Under article 1(3) ICERD the differing treatment regarding nationality law is not covered by the Convention “provided that it does not discriminate against nationals of any particular nationality”. CERD should check whether General Recommendation No. 30 and the accompanying examination of proportionality must also be applied to nationality law.

### 3.3.1.7.1 Nationality tests

The state report describes the reform of nationality law from 2000, but does not go into current developments.<sup>101</sup>

Regarding the naturalisation of citizens from Muslim states: since January 2006 discrimination may be seen as having become possible under article 1(3) (end) ICERD in Baden-Württemberg. Restrictions of freedom of opinion may occur here that prove disproportionate under General Recommendation No. 30.

This federal state examines the loyalty to the constitution called for under §10(1) sentence 1 No. 1 nationality law (StAG) on the basis of a special guide for interviews that all candidates from a Muslim country have to go through.<sup>102</sup> As these requirements only apply to candidates for naturalisation from certain countries, and the non-fulfilment is linked with a rejection of naturalisation and thus a negative legal effect, this is discrimination under article 1(1), (3) (end) ICERD. The director of the German Institute for Human Rights criticised the content because it was not clear on what criteria the replies would be rated. Several questions focus on the worldview of the candidate. These questions run counter to the right to freedom of opinion enshrined in the Basic Law. If the candidates are thereby not to be granted this basic right this will also be discriminatory compared to German citizens.

---

101 State report, p. 40.

102 Those affected are people from all countries belonging to the Islamic Conference. Press release of the Baden-Württemberg Interior Ministry of 14.12.05, [http://www.innenministerium.baden-wuerttemberg.de/de/Meldungen/111612.html?referer=83820&template=min\\_meldung\\_html&\\_min=\\_im](http://www.innenministerium.baden-wuerttemberg.de/de/Meldungen/111612.html?referer=83820&template=min_meldung_html&_min=_im)

Under §10(1) sentence 1 No. 7 StAG candidates for naturalisation in all of Germany must in future<sup>103</sup> show that they know something about the German legal and social order; the evidence is to take place regularly under §10(5) StAG<sup>104</sup> once the naturalisation test has been passed. That will cast a disturbing practice – first planned by the federal state of Hesse - in legislative form. So far the Federal Office for Migration and Refugees has not yet drawn up the test. However, the practical example of Hesse is proving problematic within the meaning of the Convention.

The federal state of Hesse devised a naturalisation test designed to test knowledge of the legal and social order.<sup>105</sup> This test is close to the legal provision that has now been included in §10 StAG. The problematic thing about the test devised by the Hessian interior ministry was the difficulty of the questions. After it was published there were many reprints in the press and discussion about whether German citizens would pass it. The level was aimed more at the requirements of upper secondary school (years 11–13, i.e. the classes ending in the qualifications for university entrance) than at lower education levels. Taking account of the disadvantaged situation of many people with a migration background in the German educational system<sup>106</sup>, the naturalisation test proposed by Hesse has proved a disproportionately high barrier to naturalisation of non-citizens. The requirements of the test named in §10(5) StAG are not yet known. Under §10(7) StAG the federal interior ministry is responsible for drawing up the test and it has not yet published the details.

There are doubts about the appropriateness of an abstract test as a criterion for integration. Nor does it seem necessary since staying in Germany for years, learning some German and expressing recognition of the basic order of the federal republic, as also required by §10 StAG, are available as more appropriate evidence of integration. However, it by no means seems necessary to require would-be citizens to have a higher degree of knowledge about the state to which they are applying for citizenship than is taught the resident nationals.

As already called for by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, naturalisation tests must not discriminate against certain groups of candidates.<sup>107</sup> It must thus not be linked to a certain nationality or religion.

Its degree of difficulty should be geared to the material necessary for life together in the Federal Republic of Germany and not overstretch the educational level of the candidates for naturalisation.

### **3.3.1.7.2 Lowering the limit for the criminal record in the case of naturalisation**

Under article 1(3) ICERD differing treatment regarding nationality law is not covered by the Convention “provided that it does not discriminate against nationals of any particular nationality”.

The state report does not raise the effect of offences with criminal law relevance on the part of applicants for naturalisation.

---

103 §10(1) sentence 1 No. 7 StAG will take effect from 01.09.08.

104 §10(5) StAG will take effect from 01.09.08.

105 Press release from Hesse’s Interior Minister Bouffier of 14.03.2006; <http://www.hmdi.hessen.de> > Bürger & Staat > Ausländerwesen > Einbürgerung > Einbürgerungskonzept

106 See 3.3.3.

107 Hammarberg 2006, no. 158.



In the course of the reform of nationality law the criminal record limit was lowered for candidates for naturalisation who had committed offences. Under the law applicable until August 2007 it was possible to apply for naturalisation after a fine of up to 180 units at a certain daily rate, while the limit is now 90 units. This clearly restricts opportunities for naturalisation. This provision is of great significance in practice because fines under §12a (1) sentence 2 StAG are now to be added up. In addition, there is no provision for a time limit on exclusion from naturalisation. Thus, for example, a young person who commits several offences in his youth and thereby passes the limit of 90 daily units (this could happen through travelling on public transport without a ticket and a few minor thefts) will thereby be excluded from naturalisation until the end of his life. He will have no chance at all throughout his whole life to balance out such acts of youthful recklessness.

The criminal record limit after which the possibility of naturalisation is excluded, should be raised again to 180 units. In addition, provisions on a time limit on minor offences should be inserted into the nationality law so that the committing of minor offences will no longer constitute a barrier to naturalisation after a certain time.

### **3.3.1.7.3 Dual nationality**

Under article 1(3) ICERD differing treatment regarding nationality law is not covered by the Convention “provided that it does not discriminate against nationals of any particular nationality”.

The state report does not raise the provisions for the loss of nationality.

As of 01.01.2000 the clause relating to German residents (Inländerklausel) was rescinded in the regulations about the loss of nationality. This clause enabled citizens living in Germany to take another nationality without losing their German one. Now German nationality will definitely be lost as soon as another nationality is obtained (§17(2) StAG). The clause was abolished primarily because of the use made of it by people with a migration background who took Turkish nationality.<sup>108</sup> The principle of avoiding dual nationality was thereby strengthened in naturalisation law. Press reports indicate that up to 50,000 people lost their German nationality due to the provision laid down in §17(2) StAG. This high number indicates that the ban on dual nationality is a considerable barrier to the acquisition of German nationality.

CERD should enter into dialogue with the State party about allowing dual nationality in principle and thereby accepting the recommendation of ECRI.<sup>109</sup>

### **3.3.2 The concerns of undocumented migrants in the health system**

Under article 5 (e) (iv) ICERD all people have an equal right to access to public health care, medical care, social security and social services. The same right is enshrined in article 22 UDHR and article 9 ICESCR. According to article 12 ICESCR, the States parties recognise the right of each and everyone to the highest attainable standard of physical and mental health.

The state report explains only briefly that for the people who are obliged to leave the country the extent of health care is basically limited to the treatment of acute illnesses

---

108 Reply by the Federal Government to a ‘small question’ by the party The Left, parliamentary record 16/139, p. 2.

109 ECRI 2003, no. 8.

and pain conditions. It does not raise the obligation to report patients under the Residence Law (AufenthG).

The lack of a residence permit is a considerable problem for foreigners when they fall ill. Under §87(2) AufenthG all public offices are obliged to inform the immigration department if they hear about the presence of a foreigner without a residence permit. The concept of “public offices” is to be understood broadly and also covers public hospitals. Besides, the social welfare authorities are obliged to report the presence of a person without a residence permit. This becomes relevant when undocumented migrants depend on public support because they cannot pay for private treatment. They are entitled to public support in the framework of claims under the asylum seeker benefit law. However, if it is not an emergency case, the hospital or doctor will clarify beforehand whether the costs of treatment are covered. Since medical secrecy is not generally practiced here, or the patients themselves should apply to the social welfare authorities for support, the latter are obliged to notify the immigration departments.<sup>110</sup> What happens in practice is that undocumented migrants often go to the doctor too late, if at all.<sup>111</sup> This is particularly detrimental in the case of pregnancy examinations, when not only the mother but also the child is at risk.

According to General Recommendation No. 30, the notification duty should meet the standard of proportionality. In this connection, it should be noted that the Federal Constitutional Court has raised particularly strict demands regarding the proportionality of unequal treatment that cannot be influenced through one’s own behaviour.<sup>112</sup> The notification duty serves to reveal the unofficial residence of non-nationals. In reality, the health care of undocumented persons is extremely restricted. The duty to notify the authorities under the residence law makes access to the health services so difficult that it can ultimately amount to a refusal of the right to health. If the notification duties have such a wide-reaching effect they are out of proportion to their purpose. Hence the notification duty under §87(2) AufenthG cannot be justified for health care institutions. It thus constitutes discrimination within the meaning of article 5(e) (iv) ICERD.

The notification duty of public offices under the residence law should be so limited in law and practice that undocumented migrants do not need to fear the discovery of their status if they claim their right to health care.

Notification duties must thus be limited to the point that people do not need to fear the consequences of seeking medical assistance.

### 3.3.3 Education

The right to education is enshrined in article 26 UDHR. It is also set forth in article 5 (e) (v) ICERD and article 13 ICESCR. Further, a more precise definition is given in articles 28, 29 CRC.

The state report describes the improvement of education and training as the central starting point for making learning success independent of a migration background.<sup>113</sup> It states that improving the data situation is important but does not mention any steps to implement this.<sup>114</sup>

---

110 On the whole matter: DIMR 2007(1), p. 14.

111 DIMR 2007(1), p. 14.

112 BVerfGE 11, 160, 169ff .

113 State report, p. 43.

114 State report, p. 44.

In 2000 the OECD's Programme for International Student Assessment (PISA) examined the German education system as part of its international comparative study. This study was supplemented in 2003 by a German study of the educational success of children with a migration background (PISA-E). Likewise in 2003, the results of the Progress in International Reading Literacy Study (PIRLS) were published. At the beginning of 2007, UN Special Rapporteur Vernor Muñoz addressed discrimination in the German school system. The flaws in the German educational system detected in different studies particularly affect people with a migration background. Yet the 2003 PISA-E study showed that it was not the composition of school classes that was responsible for student performance. The great differences in achievement are due to the school system itself.<sup>115</sup>

Unfortunately, the different studies cannot consider the special situation of all those protected by the Convention, as they have to rely on inadequate data. The PISA and PIRLS studies take account of migration background. The government's children and youth report plus the report of the Federal Integration Commissioner on the situation of foreigners in Germany ask questions about nationality and migration background. As stated, this approach does not correspond to that of the Convention and cannot cover all the issues in the ICERD.<sup>116</sup> No other data is available.

With strict respect for the principles of privacy and data protection, data collection in the area of education should be extended so as to cover all the relevant features in the Convention.<sup>117</sup>

### **3.3.3.1 The situation of people with a migration background and minorities in the regular school**

Access to education suited to students' abilities is enshrined in article 26(1) sentence 1 UDHR, article 13 ICESCR and article 28(1), article 29 CRC; under article 5(e) (v) ICERD this has to be without discrimination. On the basis of the German reservation regarding the CRC, this does not apply to non-citizens.<sup>118</sup> This restriction leads to a considerable reduction in human rights guarantees for this group in the field of education.

The state report does not contain a detailed description of the situation.

In primary school (year 1– year 4) all children are taught the same way and without distinction. In most federal states these (generally) four years are followed by secondary school. Here follows a subdivision into three main school types: Hauptschule (secondary school fostering technical skills and/or for students with lower achievements at primary level), Realschule (secondary school for students with intermediate achievements) and Gymnasium (secondary school for students with higher achievements) and there are other types of schools. The distribution of foreigners and children with a migration background onto these school forms is patently different from that of German children, while the particular migration background is not registered. The figures available point to structural discrimination.

---

115 Stanat 2003, p. 259 f.

116 See 2.3; also Motakef 2006, p. 43.

117 On this see CERD 1999 and CERD 1990.

118 "Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens." <http://www2.ohchr.org/english/bodies/ratification/11.htm#reservations>

While 41.6% of children without German nationality only get as far as completing Hauptschule, this applies to only 24.5% of students with German nationality. This picture is reversed with the Realschule leavers: here 41.6% of children with German nationality achieve a leaving certificate as compared to 29.1% of children with other nationalities. There is an even more pronounced gap between the students passing either their Abitur (Advanced level subjects enabling university entrance) or technical Abitur. Only 10.2% of non-German children attain this highest German school standard, compared to 26% with German nationality. In view of these figures, it is not surprising albeit most disturbing, that 19.2% of students with foreign nationality do not achieve any school leaving certificate, while this only applies to 7.9% of German children.<sup>119</sup>

Thus 60.8% of children with foreign nationality have no or only the lowest school leaving certificate. That only applies to 32.4% of students with German nationality. Language problems alone cannot explain such a strong difference, particularly as many of the non-German school children have lived in Germany since their birth.<sup>120</sup> Qualifications are of enormous importance for later success on the labour market, as is shown from the connection between the share of those in work and their level of skills.<sup>121</sup>

A further problematic aspect becomes clear regarding the financing of the individual school types, from which a clear indication of indirect discrimination becomes visible when one looks at the other states in the OECD comparison. Germany spends an annual 4.8% of its GDP on education. These funds are not distributed equally. While the funding of the secondary level I (years 5-10) lies below the OECD average, the funding of secondary level II (years 11–13) is over the average OECD-wide.<sup>122</sup> That means that the school forms in which students of foreign nationality are particularly strongly represented are provided with less funding than the average in the OECD comparison. The schools at which they are less represented on average are financed above the average OECD level.

Consequently, this means a double disadvantage of foreign students: they are over-represented in the school forms that will give them a lower social status for the rest of their life. On the other hand, these school forms are even worse funded, which can lead to less motivated and lower paid teachers, poorer school buildings and older teaching aids.

Discrimination can be seen not just in the type of school attended by non-German students. The PISA comparative study also inquired about features that could give information about children with a migration background. The data go so far back that a distinction can be made between children with their own migration experience and children of the second generation (parents with migration experience). The school performance of children with a migration background is much worse than that of children without a migration background. In two main areas that are essential for the children's later success, those with a migration backgrounds produced far poorer results: 44.1% of young people only achieve elementary reading skills.<sup>123</sup> In mathematics 46.8% of young people do not reach the level that would be necessary in everyday life to solve ordinary problems later.<sup>124</sup>

---

119 Statistical data from: 12th report on children and young people, p. 67.

120 Stanat 2003, p. 260.

121 See 3.3.4.1.

122 Motakef 2006, p. 20.

123 OECD 2003, p. 50 and p. 219.

124 OECD 2003, p. 48 and p. 217f.

Accordingly, it is not only the case that foreign students are mainly found in school types that will later not allow them a high social status. If the skills of students with a migration background remain as poor as shown in the PISA study almost half the people with a migration background will have fundamental problems of social participation after leaving school – either because they do not understand and cannot express themselves or because they cannot do simple calculations. This contradicts the obligation from article 29(1) (a) CRC, according to which the signatory states shall promote the “development of the child’s personality, gifts and (...) abilities to their fullest potential”. The competent committee for the rights of the child interpreted this commitment in such a way that essential life skills must be guaranteed for each child.<sup>125</sup> However, if this is not the case for almost half of all children with a migration background this is an infringement of the CRC. The comparison between German children with a migration background and German children without a migration background clearly points to a violation of article 5 (e) (v) ICERD.

The strong imbalance in the distribution of children of immigrants onto the different school forms has led to a situation where Vernor Muñoz, UN Special Rapporteur on the Right to Education, has advised Germany to reconsider the strong division into different school forms.<sup>126</sup> Unfortunately the State party has not yet officially reacted to the report. Muñoz’ recommendation is supported by different findings. At the end of primary school, pupils in Germany have comparatively good reading skill and the results are largely homogenous.<sup>127</sup> This is in contrast to the very poor results that were noted for children with migration background at the end of the middle level (secondary level I).

CERD must thus examine whether there is not only an infringement of the CRC but also of the Convention.

It may be observed that the findings of the PISA study have woken up German education policy-makers. Where there used to be indifference, the need for action has now been recognised.<sup>128</sup> However, the question is whether the solutions currently being discussed do justice to the problem and to the victims and whether effective policies will be adopted.

A standard demand of German politicians and public opinion is for children with a migration background to learn to speak German better. They think that this will enable the children to enjoy the participation they lack. There is some truth in this demand, but the politicians do not see that German language skills are quite widespread. The inadequate school grades in the German school system often correlate with the low income of parents. This particularly applies to migrants and their children, who frequently have a low income. Parents alone are blamed for the low achievement of their children. That conceals the failure of the school and pre-school educational system. In contrast to the usual explanations of language deficiency, the background of the poor school achievements of a large number of immigrant children lies in the decades of ignoring the fact that Germany is a country of immigration. The arrival of immigrants in German society was not wanted. For a long time, educational policy ignored the reality of immigration and can thus be rated as discriminatory due to origin.

Language researchers assume that fostering the language the children have learned from their parents is extremely important for success in the second language. So the countries that did best in the PISA study foster the parental language of the students besides the

---

125 CRC, General Recommendation No. 1, para. 9.

126 Muñoz 2006, no. 54.

127 Bos et al. 2003, p. 13.

128 Compare the version of the Integration Commissioner 2007, p. 43ff.

national language – with much better results than in the countries that only foster the national language.<sup>129</sup> A second effect is that those concerned need not have the feeling that their parental language is inferior and not recognised in society. This applies all the more since learning the second language is often not entirely successful and there has often been insufficient scientific evaluation of results of fostering children with a migration background.<sup>130</sup>

The indecisiveness of politicians can be seen, for example, regarding language fostering in the 7th report of the Federal Government's Integration Commissioner, Maria Böhmer. She first states that fostering language is of immense importance.<sup>131</sup> Then she remarks that it implies the need for recognition and promotion of multilingualism.<sup>132</sup> Her conclusion is, however, not e.g. the fostering of the parental language, but, on the contrary, the fostering of the parents' knowledge of German.<sup>133</sup> Here she correctly shows the causes and the ways to help children but in the end draws another conclusion: promote the multilingualism not of the children but of the parents – and that only to the extent that the latter should learn German. Such an approach does not do justice to several human rights obligations. Under article 3(1) CRC the wellbeing of the child must always be given priority. Article 5 (e) (vi) ICERD commits the signatory states to respect the culture of ethnic minorities,<sup>134</sup> which is also expressed in the recognition of their language.

Studies have also shown that the school recommendations at the end of primary school do not always correlate with the actual achievements of the students.<sup>135</sup> One reason for this may be that there are no binding standards in the core subjects that are generally relevant for selection.<sup>136</sup> If children receive a wrong transition recommendation this may constitute direct discrimination. The lack of statutory provisions, which leads to such problems, constitutes indirect discrimination and violates article 5 ICERD.

The Federal Government should finally respond to the report of UN Special Rapporteur Vernor Muñoz on the German educational system, based on his visit to Germany. His recommendations should be implemented. In addition, the recommendations on transition to secondary schools should be revised. The German language skills of students should not be considered so important as to lead to their exclusion. Generally speaking, the permeability of the school system should be increased and there should be a study of whether the selection or allocation of students in the structured school system at the secondary level can be postponed to a higher age. Further, the question of whether the structured school system does not itself lead to a discriminatory effect should be examined. Should this prove the case, steps must be taken to eliminate the discrimination.

A careful evaluation of the methods used should take place regarding language fostering and, if desired, modern methods of language teaching should be used more extensively.<sup>137</sup> The first language should be fostered on an equal basis.

---

129 Motakef 2006, p. 29 with further evidence.

130 Stanat 2003, p. 260.

131 Integration Commissioner 2007, p. 53.

132 Ibid., p. 54f.

133 Ibid., p. 55.

134 Particular sensitivity is required regarding the right to preserve the culture of ethnic minorities: CERD 1996 (2), para. 5.

135 Bos et al. 2003, p. 18.

136 Bos et al. 2003, p. 18.

137 Muñoz 2006, No. 40.

The German reservation regarding the UN Convention on the Rights of the Child should be dropped.

CERD should press for the conducting of studies on the discriminatory effect of education systems.

### 3.3.3.2 Schools for special education

Access to education suited to the student's abilities is enshrined in article 26(1) sentence 1 UDHR, article 13 ICESCR and article 28(1) CRC; article 5 (e) (v) ICERD stipulates that it must be free of discrimination. Under article 24(1) and (2) of the Convention on the Rights of Persons with Disabilities, this group of people have a right to an inclusive education in a regular school, including the right to attend secondary schools.<sup>138</sup>

The state report does not raise the issue of referring students to schools for special education on the basis of their origin.

According to data from (independent) anti-discrimination offices, parents of children with a migration background increasingly report cases in which their children are supposed to attend the special education school due to their lack of German language skills.<sup>139</sup> Instead of fostering their German in the regular school they are shunted off into a branch of school that offers very little opportunity of obtaining a regular school leaving certificate.<sup>140</sup> If the students do not catch up after leaving the special education school they are likely to have the same status on the job market as someone who was not able to obtain a school leaving certificate at all. Such a procedure contravenes article 28(1) and article 29(1) (a) CRC and thereby violates the ban on discrimination under article 5 (e) (v) ICERD. Avoiding such discrimination means that fostering German skills should be more strongly rooted in the regular school and that children should not be referred to school types in which they cannot achieve a regular leaving certificate because of their lack of language skills.

There are no figures available on the number of children with a migration background attending special education schools. There are, however, figures on the number of foreign children attending such schools. They have a share of 15.8%,<sup>141</sup> whereas the foreign population in Germany accounts for 8.8% of the whole.<sup>142</sup>

The Federal Government's Commissioner for the concerns of disabled people, Karin Evers-Meyer, has called for the abolition of the system of special education schools.<sup>143</sup> In any case, the guidelines for referral to special education schools must guarantee that the referral is not merely due to a lack of language skills. The children need support in their first language, to learning German and also subject-specific language support – after all, maths and sciences are also languages for special purposes that need to be learned.

138 The convention entered into force on 3.5.08. Germany signed it on 30.07.07.

139 Source: Personal information from the anti-discrimination office (ADB) Cologne of 19.02.08; likewise Gomolla.

140 80.4% of students in schools for special education do not achieve the required level, about 17.6% obtain a Hauptschule leaving certificate and 1.8% a Realschule leaving certificate. Source: 12<sup>th</sup> report on children and young people – report on the life situation of young people and the performance of child and youth assistance services in Germany, parliamentary record 15/6014, p. 277.

141 Motakef 2006, p. 40.

142 Federal Statistical Office, [http://www.statistik-portal.de/Statistik-Portal/de\\_jb01\\_jahrtab2.asp](http://www.statistik-portal.de/Statistik-Portal/de_jb01_jahrtab2.asp)

143 Interview from 11.6.07, <http://www.dradio.de/dkultur/sendungen/interview/634177/>

### 3.3.3.3 Children who have applied for asylum and who are “tolerated”

The German government’s reservation regarding the CRC means that it has made an exception from the scope of protection of this convention for arrangements applying to non-citizens. Yet article 26(1) sentence 2 UDHR and article 13(2) (a) ICESCR provide that primary education for children must be compulsory. Under article 13(2) (a) ICESCR there is also a commitment to supply primary education free of charge.

The state report does not raise the special situation of asylum seeker and ‘tolerated’ children.

Such children confront additional problems compared to other children with a migration background. While in Germany school attendance is generally compulsory this does not apply to children who have applied for asylum and who are tolerated (according to our information) in Hesse, Baden-Württemberg and Saarland; they just have the *right* to go to school.<sup>144</sup> The consequence is that these children sometimes do not receive financial support for special school requirements.<sup>145</sup> As already described, such children have only very limited financial resources – in the extreme cases only monthly pocket money of €40. This money has to be used for school books, which is a strain on what the parents can afford at the beginning of the year. There can be no question of attending social events like school trips.

A further disadvantage for these students is that they may be refused permission to attend school. If they are under a statutory obligation to go to school this cannot happen. The children can always attend another school but then it might be further away and the cost of transport prohibitive, as they are not obliged to attend. In extreme cases children may de facto be excluded from attending school. In addition, they depend on their parents always seeking their good. In other cases the youth affairs departments are responsible for children going to school, and sometimes enforce this against the will of the parents. This cannot happen if education is not compulsory for the children.<sup>146</sup> This situation often has repercussions on the children for many years, because first of all there may be the asylum procedure and then, in many cases, the subsequent status of being “tolerated”.

Germany does not fulfil its human rights obligations towards children who have applied for asylum and then may have to live for long periods on a temporary ‘toleration’ visa (Duldung). Free, compulsory primary education is so important for their later life that there can be no justification for not providing it as laid down in General Recommendation No. 30 of CERD.

Federal states in which there is no compulsory education for all children independently of their residential status must introduce it.

### 3.3.3.4 Children without documents

The German government’s reservation regarding the CRC means that it has made an exception from the scope of protection of the convention for arrangements applying to non-citizens. Yet article 26(1) sentence 2 UDHR and article 13(2) (a) ICESCR provide that primary education for children must be compulsory. Under article 13(2) (a) ICESCR there is also a commitment to supply primary education free of charge. The state report does not raise the special situation of children without documents.

144 terre des hommes 2005, p. 22ff. Refugees and tolerated persons still only have a right to go to school in Hesse, Baden-Württemberg and the Saarland: terre des hommes, Aktuelle Entwicklungen 2005.

145 terre des hommes 2005, p. 23.

146 terre des hommes 2005, p. 22.



The above-mentioned obligation to provide free, compulsory education for all children also applies to children without documents, and it is not guaranteed by all German federal states. Such children here encounter another obstacle to attending school. The duty to notify the authorities under §87(2) AufenthG also applies at schools, so that head teachers have to tell the immigration departments when they hear of children not having documents. For this reason parents often do not send their children to school, as they are afraid of being discovered and deported. The notification duty is thus a barrier to school attendance for children without documents. Their right to obtain education on an equal basis, as set out in the above-mentioned international standards, is thereby not guaranteed.

§87(2) Residence law stipulates that all public institutions have a duty to notify the authorities when they discover the unofficial presence of a non-citizen. Since this is an obstacle to enjoying the right to education for children without documents, §87(2) AufenthG should make an exception from this duty for all schools and educational institutions including childcare facilities.

### **3.3.4 Labour market situation of those named in article 1(1) ICERD**

Statements about the labour market situation in connection with article 1(1) ICERD can only be made to a limited extent. The reason is, above all, the lack of statistical data. So far data has been almost exclusively collected on nationality. Recently it was also extended to the feature of migration background. However, there are as yet no plans to collect data on the features named in article 1(1) ICERD in a systematic way.<sup>147</sup>

#### **3.3.4.1 The labour market situation of people with a migration background**

Article 23(1) UDHR, article 6 ICESCR, article 5 (e) (i) ICERD provide for the right to work; the right to an adequate standard of living is enshrined in article 11 ICESCR. The right to protection from discrimination on the labour market follows from article 5 (e) (i) ICERD.

The state report does not enlarge on the labour market situation of people with a migration background and minorities. It concentrates on the “BQF Programme”, which seeks to raise the vocational qualifications of target groups with a particular need for support.<sup>148</sup> With respect to access to the labour market, the report quotes the provisions of the immigration law on moving to Germany for purposes of employment.<sup>149</sup> It gives no information about discrimination on the labour market.

The data on the labour market situation of people with a migration background, or those without German nationality has been described in detail by the Federal Government’s Integration Commissioner.<sup>150</sup> The data indicate that the labour market situation for these groups is very problematic.

It is pleasing that some of the restrictions on non-citizens taking up employment have been removed. The rules laid down by the Interior Ministers’ Conference and the reformed §104a AufenthG have given people who have had a ‘toleration visa’ (Duldung) for many years the right to stay and the opportunity to take a job. A further easing of their situation is the enabling of employment without checking on priority

---

147 See 2.4.

148 State report, p. 45.

149 State report, p. 46.

150 Integration Commissioner 2007, p. 85 ff.

(e.g. that of EU citizens) after having had a Duldung for four years, see §10 sentence 2 Employment Procedure Ordinance (BeschVerfVO). Further it is very pleasing that there has been intensive discussion on measures in the labour market sector during the process of drafting the National Integration Plan and that the political parties have undertaken to improve the labour market situation of people with a migration background.

The unemployment rate of people with a migration background is running at 18% and is thus almost twice as high as that of people without (9.8%).<sup>151</sup> The employment situation of foreigners is even more serious, since 20.4% of them are unemployed.<sup>152</sup> As the Integration Commissioner states, a substantial reason for the lower employment rate is the lack of skills of those concerned. While 11.3% of those without a migration background have no vocational qualifications, this applies to 36% of people with a migration background and thereby to more than three times as many. Even more serious is the situation with foreigners, of whom 44.7% have no vocational qualifications. By contrast, about 18% of the working population without a migration background has a university or third-level degree but only about 14% of those with a migration background. About 11% of employed people are technicians or master tradesmen while this only applies to 5.8% of those without a migration background.<sup>153</sup> The deficiencies in the German educational system are responsible for this situation regarding people with a migration background.<sup>154</sup>

People with a migration background are also under-represented in parts of public administration. While there are no figures regarding migration background for the whole area of public administration, the share of civil servants can be taken as an indicator of the participation of people with a migration background in the public service. Of the employees with a migration background 1% are civil servants compared to 6% of those without a migration background.<sup>155</sup> That means that they are clearly under-represented among civil servants.

It is praiseworthy that, in the National Integration Plan, the Federal Government engages with the issue of people who have completed their education and now want to be obtain further qualifications. In the framework of the WeGebAU Programme (further education of low-skilled person and employed older workers in companies) of the Federal Employment Services, people with a migration background are to receive more attention. The advice and information network “Integration through Qualification” (IQ) pilot projects has initiated projects to benefit unemployed people with a migration background.<sup>156</sup>

However, the fostering of the mastery of the German language by non-citizens has to be seen as an ambivalent instrument if carried out by job centres. That is because they are able to cut benefits by up to 30% and cancel supplementary benefits if the person does not attend a compulsory integration course (§31(1) sentence 1 (b) SGB II. This is a legal consequence that can affect non-citizens alone, in the framework of benefits under the social code (SGB II) and is thus open to discrimination for this reason alone. It must be mentioned here though, that there are occasional reports from women that the

---

151 Integration Commissioner 2007, p. 86.

152 Integration Commissioner 2007, p. 86.

153 Integration Commissioner 2007, p. 93; there are no fundamental differences here between foreigners and the group of people with a migration background.

154 See 3.3.3.

155 Integration Commissioner 2007, p. 95; foreigners are generally not barred from access to the civil service, §4(1)1; para. 2 Framework Law on Civil Service (Beamtenrechtsrahmengesetz).

156 Integration Commissioner 2007, p. 110.

compulsory attendance of integration courses is a relief to them, as they do not need to justify themselves to their family.<sup>157</sup>

Cases of discrimination on the labour market are a considerable problem for those affected. Access to the labour market has a great influence on the situation of the children of employed persons. Children of parents with a low level of education and income are much more likely to attain a lower educational qualification and then belong to a lower social level.<sup>158</sup> So far there has been very little data on the extent of racial discrimination on the German labour market.

A test intended to expose direct discrimination was conducted by the International Labour Organisation (ILO). In Germany access to the labour market was tested on the example of persons with a Turkish background. In contrast to other countries the study was limited, but a discrimination rate of 19.3% was noted with regard to semi-skilled jobs.<sup>159</sup>

Other studies were mainly based on questionnaires of migrants. According to surveys by the EUMC about 23% of interviewees have suffered discrimination in the last five years.<sup>160</sup> Other sources were e.g. mentioned in an OECD report on the labour market integration of migrants.<sup>161</sup>

Although these studies sometimes only reflect subjective impressions they are a clear indication that discrimination does exist in the German labour market.

As already described, many problems in the labour market are based on the fact that the people concerned only have low qualifications. The obvious conclusion might be that this skills problem is regarded as the main, or even the only, cause of disadvantages on the labour market and thereby conceal the actual extent of discrimination.<sup>162</sup>

Under article 5 first half sentence ICERD the States party undertake to eliminate racial discrimination in all its forms. Fulfilling this obligation logically presupposes that the States party do not close their eyes wherever there are signs of racial discrimination but, instead, examine the scale of discrimination. As described, there are a number of signs that incidents of racial discrimination on the labour market are not isolated cases. In addition, it is highly likely that the true extent of discrimination is concealed. In order to fulfil the Convention, Germany has the responsibility of investigating this extent.

Generally speaking, the labour market situation of people with a migration background is such that the right to work under article 23(1) UDHR, article 6 ICESCR, article 5 (e) (i) ICERD and also the right to an adequate living standard under article 11 ICESCR do not seem to be guaranteed everywhere.

As recommended by ECRI, the opportunities for sanctions in the context of integration courses declared compulsory by a job centre should be monitored and, if necessary, corrected.<sup>163</sup>

---

157 Frings 2006.

158 Motakef 2006, p. 21.

159 ILO 1996, p. 51. Unlike in other countries examined, no recruitment interviews were considered in Germany – only the response to the first contact was assessed. Other countries examined proved to have discrimination rates of 33% - 41%. The authors of the study assume that there would have been a much higher rate of discrimination in Germany if recruitment interviews had been taken into account as well (loc. cit.).

160 EUMC 2006, p. 33.

161 OECD 2005, pp. 52–54.

162 Also OECD 2005, p. 54.

163 ECRI 2003, no. 38.

According to article 5 ICERD the Federal Government is committed to examine and eliminate provisions with a discriminating effect and to undertake support measures within the meaning of article 2(2) ICERD. Under §27(3)2 and 3 General Equal Treatment Law, the Federal Equal Treatment Agency has the responsibility to take action to prevent disadvantage and to conduct scientific investigations into this field. The Federal Equal Treatment Agency should exhaust the opportunities recommended by the European Union to uncover structural discrimination, namely by interviewing victims, conducting surveys with self-reports, discrimination tests and other investigations.<sup>164</sup>

### 3.3.4.2 Recognising foreign educational qualifications

Several human rights agreements provide for the right of access to the labour market. Under article 5(e) (i) ICERD the whole work environment must be free of discrimination. Moreover, other human rights agreements are to be considered in the framework of article 5 ICERD. The right to work arises from article 5(e) (i) ICERD, article 23 (1) UDHR, article 6(1) ICESCR, the principle of equal pay for equal work from article 5 (e) (i) ICERD, article 23(2) UDHR, article 7 (a) (i) ICESCR and the principle that everyone should have equal opportunities for promotion “subject to no considerations other than those of seniority and competence”, article 7 (c) ICESCR.

The state report contains no information on this topic.

For non-citizens, access to the labour market is often determined via the right to residence in Germany. The situation is problematic on the German labour market for people who have acquired a foreign vocational or educational qualification. The recognition of such qualifications often depends on whether the person is from an EU country or not.<sup>165</sup> If there are no particular rules on the recognition of qualifications there must be a check on whether the training is equivalent with German training in functional, formal and material terms.<sup>166</sup> Only if it is fully equivalent will there be an unconditional recognition of the foreign qualification; if it is partly equivalent the recognition may be linked to conditions if these eventually lead to equivalence.<sup>167</sup>

The recognition of qualifications is particularly important if the person wants to work in a regulated trade or occupation in which skills are a prerequisite for doing so.<sup>168</sup> But also in non-regulated trades, the recognition of foreign qualifications is important as evidence of skills and for advertising their services. In addition, a number of collective agreements link a certain salary level to a certain level of education and training.<sup>169</sup>

In view of the higher probability that they have a foreign qualification, it may be assumed that people with a migrant background are the main group to be affected by the non-recognition of foreign qualifications. These are cases of indirect discrimination, which are not justified. The purpose given is the interest of – potential – employers in the nature of the qualifications possessed by an applicant or would-be provider of

---

164 European Commission 2007, p. 35. Since the Federal Equal Treatment Agency is also the complaints centre, it can include data in this capacity.

165 Austrian and French vocational and educational qualifications are a special case. There are special agreements between Germany and these countries on the recognition of qualifications. There is also a bilateral agreement with Switzerland.

166 Information from western German chamber of skilled trades (Westdt. Handwerkskammertag), p. 9.

167 Westdt. Handwerkskammertag, p. 9.

168 Becker-Dittrich 2006, p. 4; regulated occupations are in: health, technical field, schools, social pedagogy and social work, shipping/sailing, transport, law, forestry, food chemistry, auditing, tax accounting.

169 E.g. in the classification for the public service collective agreement.

services on the market.<sup>170</sup> The recognition of a qualification can thus also be a means of consumer protection.<sup>171</sup> However, it may be doubted whether the employers always know the full details of the German qualifications and thus whether the purpose is achieved at all.

The provision is not required anyway, as there is a less strict arrangement in the EU that can be applied to other non-citizens as well (Directive 2005/63/EC). This is more directed towards the individual case and thereby easier to handle. As a general principle, the similar *value of training* is replaced by similar *types of functions*. Fundamentally, everyone who is allowed to exercise an activity in one of the states may also do this in another of the states involved. The precondition for the recognition of a qualification is that it be achieved in one of the states involved, that it immediately opens the door to the relevant occupation in that state and that the activity be functionally comparable to the one whose recognition is desired. Even if there is a difference in level in the training, recognition is possible, although adjustment courses or aptitude tests may be demanded. Appropriate professional experience must be taken into account when it comes to classification.<sup>172</sup> These requirements could be generally applied to all non-citizens. The provision is thus not necessary.

Further, the provision lacks appropriateness. The effects on those concerned are immense, as described. For this reason it is probably necessary to assess in each case whether a qualification can only be recognised if the training corresponds to that required in Germany in every respect, or whether the similarity of functions for the activity will suffice. Only when considering the individual case will it be possible to assume that the recognition has taken place in an appropriate manner.

It is discrimination in the sense of the Convention when the Council Directive cannot be applied to nationals from third states even if they acquired their qualifications in one of the states involved<sup>173</sup>.

Then the recognition of the qualifications for the citizens of the state involved is directed to the principle of functional equivalence, while the recognition of the qualifications of nationals of third states is based on the narrower principle of material equivalence. That may affect e.g. Latin Americans who do training in Spain and then want to work in another EU country. That is discrimination against nationals of all non-EU states and thereby constitutes a violation of the duty to treat all non-citizens equally under article 1(3) ICERD.

The process for recognising foreign vocational and educational qualifications, which currently often still leads to non-recognition, must be improved. It might be feasible to introduce the principle of functional equivalence applicable in the European Union as the fundamental principle of recognising foreign qualifications, including those of third-state nationals. This proposal should be examined.

It must at least be stipulated that the principle of functional similarity exists for all non-citizens with European (EU) qualifications, independently of the nationality of the person concerned.

---

170 Westdt. Handwerkskammertag, p. 5.

171 Westdt. Handwerkskammertag, p. 5.

172 For a fuller description see Becker-Dittrich 2006, pp. 8-10. It does not cover all exceptions and special cases and so cannot be considered exhaustive.

173 On this provision: Becker-Dittrich 2006, p. 10.

### **3.3.5 Work to combat discrimination**

#### **3.3.5.1 Provisions of the General Equal Treatment Law (AGG)**

Article 5 ICERD contains the commitment of States parties to prohibit (reactive) and eliminate (proactive) racial discrimination. Under article 6 ICERD they must provide effective protection and legal remedies against racial discrimination.

The state report briefly describes the provisions of the AGG.<sup>174</sup>

In its final comments on the 15th state report of the Federal Republic of Germany, CERD regards the introduction of an effective law to combat racism as very important. After many years of debate the AGG was passed in July 2006 and went into force on 18.08.06. The law is a milestone for those affected by discrimination, even though there are still gaps and problems in the law. Its aim is to meet the two purposes named in article 5 ICERD.

The fact that a law specifically targeted at discrimination contains a directly discriminatory provision is most disturbing. Under §19(3) AGG landlords can refuse to rent apartments to people on grounds of ethnic origin if this happens “with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions”. Independent anti-discrimination offices have reported that these grounds were used to justify racial discrimination even before the act was passed. This provision is discriminatory because it appears completely implausible to refuse an apartment to a member of the majority group on the grounds that there are already many other members of the majority group living in the building. But this would need to be the case if the norm was to be of any use to those affected by discrimination. Accordingly it worsens the situation of the persons named in article 1(1) ICERD and undermines their rights when they suffer discrimination in the field of housing. It is incompatible with article 2(1) (a) ICERD.

A great hurdle within the AGG is the deadline for raising claims. Under §21(5) AGG it is only two months after the knowledge of the facts underlying the claim. However, the limitation for offences under the civil code is three years from the end of the year in which the knowledge of the facts underlying the claim was obtained by the person concerned. Here there is a normal difference of over three years between the general rules and the deadline under the AGG. That means that those protected by article 1(1) ICERD are also placed in a worse position regarding the raising of claims regarding discrimination than those who do so according to the provisions of the civil code.

Support for complainants by advisory services makes sense as a preliminary step in the court proceedings. Many complainants who go to advice bureaus have to screw up their courage and have already waited several weeks or even months after the discrimination occurred. Yet the advice bureaus offer very low-threshold assistance, essentially without charge and often in a language the persons concerned can understand. The hurdle of going to a lawyer is far higher for most of them. That often only happens when the two-month time limit has already expired. So the deadline is, in fact, leading to the effective prevention of the legal protection of the persons concerned.

This applies to an even greater extent to job applicants who are refused a job by employers on discriminatory grounds. The deadline for raising their claims is two months after receiving the rejection from the employer (§15(4) AGG). The period begins to run independently of whether the applicant was aware of the discriminatory

---

<sup>174</sup> State report, p. 46f.

circumstances at that point in time. Accordingly a compensation claim may be already excluded before the person entitled to raise the claim even finds out about the facts underlying the claim.

Any deadline provision must be rated an infringement of article 6 ICERD. It is also questionable whether this provision will achieve the effective protection against discrimination to which the states committed themselves in article 5 ICERD.

Further restrictions allow doubts to arise about the effectiveness of the General Equal Treatment Law. For example, raising claims in the event of discrimination by employers under §15 (1) sentence 2 AGG is linked to guilt on the part of the employer. That is a tightening up compared to the former legal situation applicable to discrimination on the basis of gender or a disability (§611a(2) BGB and §81(2) No. 2 SGB IX).

The AGG provides for an exception for the field of housing, which allows landlords to reject would-be tenants “with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions” (§19(3) AGG). This permits direct discrimination and must thus be rescinded.

The two-month deadline for raising claims under §21(5) and §15(4) AGG should be completely rescinded or at least adapted to the general regulations on the expiry of claims.

### 3.3.5.2 Anti-discrimination advisory services

Article 5 ICERD contains the commitment of States parties to prohibit (reactive) and eliminate (proactive) racial discrimination.

The state report briefly describes the provisions of the AGG but not the situation of anti-discrimination advisory services.

A comparison with other European countries shows a considerable deficiency of the AGG and all the work against racial discrimination. It is true that in creating the Federal Equal Treatment Office the AGG has established a central body as required by the directives. However, that does not yet mean that the persons concerned can be assisted. The Federal Equal Treatment Office takes a horizontal approach in being responsible for a variety of possible grounds for discrimination. In addition, it has other responsibilities besides the advisory service<sup>175</sup> - but a staff of only 20. In view of the myriad of tasks to be performed by such a small staff, the office can only be a place for initial inquiries but not a service for the advice and support of persons affected. It has only one, central location in Berlin and lacks local networks, which would be necessary for

---

<sup>175</sup> §27(2) and (3) AGG state the responsibilities of the Federal Equal Treatment Agency:

(2) The Federal Equal Treatment Agency shall independently support persons who turn to it in asserting their rights to protection from discrimination. Here they can, in particular,

1. give information about claims and options for legal action in the framework of statutory provisions to protect against disadvantage,
2. arrange for advice or counselling by other bodies,
3. strive for an amicable settlement between the parties.

To the extent that the Commissioner of the German Parliament or Government is responsible, the office will promptly notify her of the concerns of the persons named in para. 1.

(3) The Federal Equal Treatment Agency shall perform the following tasks independently, unless they involve the competence of the Commissioner of the Federal Government or German Parliament:

1. publicity,
2. programmes to prevent disadvantage for the reasons stated in §1,
3. conducting scientific studies on these disadvantages.

accompanying people to appointments with the authorities or to court, or for personal discussions with them.

Some federal states also fund local initiatives to combat ethnic discrimination with resources designated for combating rightwing extremism. Only North Rhine-Westphalia has endeavoured to support local initiatives more extensively, which has ended in the establishment of five anti-discrimination offices. In other federal states there is one single body concerned with combating ethnic discrimination alone – again that is the case only for a minority of the federal states (see member organisations of the German Equal Treatment Agency, advd)<sup>176</sup>. The lack of advisory bodies is leading to considerable problems in implementing the General Equal Treatment Law.

Besides advice in individual cases an emphasis in the work of independent anti-discrimination bodies is that of detecting and highlighting structural discrimination. From their subjective and often isolated viewpoint, those concerned frequently cannot recognise whether the disadvantages they suffer also affect others. This is possible for organisations, however, which receive repeated reports on disadvantage. They can obtain an overview of the underlying mechanisms. So that structural discrimination can be tackled it will be necessary for advisory services to receive their own right to file an action. Further, the support of victims of discrimination in court-cases must be extended, this being only rudimentary so far under §23 AGG. Equal treatment agencies with less than 75 members should be reinforced. The provision that court procedures should be limited to those in which legal counsel is not prescribed, should be rescinded.

At the same time there must be guarantees that discrimination cases can be proven in court. In several EU member states discrimination tests have been permitted as evidence in court-cases. This method, by which the test persons examine the behaviour of a supposedly discriminatory person or organisation with the aid of specific features, can above all be of great help to people in a vulnerable position. It will also serve to uncover structural discrimination and should thus be recognised in German court-cases as evidence.

The Federal Equal Treatment Agency should be given more staff in order to be able to effectively uncover and combat cases of discrimination.

Independent anti-discrimination complaint centres, the importance of which was stressed by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe,<sup>177</sup> should be better funded and an extensive advisory network established.

Advisory services should have an independent right to bring legal action so that complaints can be lodged regarding structural discrimination too. Support for those concerned in court-cases should be made possible for bodies with less than 75 members. The limiting of support to court proceedings not requiring legal counsel should be dropped.

To prove structural discrimination it should be possible to prove them in court proceedings with the aid of discrimination tests which reveal discriminatory behaviour by using test persons.

---

176 The Antidiskriminierungsverband Deutschland (advd) is an association of independent organisations striving to combat discrimination: <http://www.antidiskriminierung.org/>

177 Hammarberg 2006, no. 84.



### 3.3.6 Discrimination on the basis of religious affiliation

According to article 1(1) ICERD the agreement covers all discrimination on the basis of “race, colour, descent, or national or ethnic origin”. CERD has so far not decided on the extent to which the Convention also covers discrimination on the basis of religion.

Freedom of opinion involves being allowed to criticise religious organisations, teachings and customs, particularly regarding their compatibility with human rights. This point is regularly referred to in public discussions, and rightly so. Freedom of religion and belief need freedom of opinion.<sup>178</sup> Criticism must, however, not be discriminatory or slanderous. Article 20(2) ICCPR also bans support for racial or religious hatred.

In Germany there has been criticism of Muslim beliefs and behaviour stemming from their faith, which cannot per se be rated a matter of racial discrimination. The differentiated analysis begun by the UN Special Rapporteur on freedom of religion, the UN Rapporteur on racism<sup>179</sup> and the German Institute for Human Rights in Berlin<sup>180</sup> must be completed and continued.

The wording of article 1(1) ICERD has hitherto not included discrimination on the basis of religious affiliation or belief. That seems to indicate that discrimination on the basis of Islam should not be covered by the Convention. At the same time, the phenomena described below suggest that discrimination on the basis of religious affiliation should be dealt with here.

For Germany the question of the occurrence of discrimination on the basis of affiliation to Islam is becoming ever more urgent. Many of the more than three million Muslims in Germany have a migration background. The largest group here is those with a Turkish migration history, but large numbers of Muslims have migrated to Germany from Arab and African countries as well. After the attacks of 11 September 2001 there has been a merging of the factors ‘race’, culture and religion as causes of discrimination. Studies show that in the years since the attacks on the World Trade Center there has been an increase in negative attitudes by non-Muslims towards Muslims. Muslim and other organisations report that this has led to discrimination. According to the surveys by sociologist Heitmeyer (quoted in section 2)<sup>181</sup> 20.9% of Germans approved the statement that it would be better to have “no Muslims at all in Germany” and 24.3% agreed that Muslims “should be prohibited from migrating to Germany”.

The critical attitudes towards Islam in the population correspond to legislation affecting Islamic life in Deutschland.

Muslim women have great problems when they wear a headscarf. In most federal states, civil servants are prohibited from doing so as this is said to contradict the state’s neutrality in religious matters. In Hesse and Berlin the ban on headscarves applies to any employment in the public service, including cleaning personnel. Schools do not have the right to forbid girl students from wearing headscarves. However, occasionally this is restricted when parents, students and teachers adopt agreements on a ‘voluntary’ ban on wearing headscarves at the school. In working life job advertisements time and again state that applications from women wearing a headscarf will not be considered.

---

178 Jahangir/Diène 2006, in particular nos. 60-66.

179 See 2.3; compare also Jahangir/Diène 2006, which at several points draws parallels in the mode of appearance, but points to differences in category, particularly in section 38 of the report.

180 Bielefeldt 2008.

181 See 2.1.

Muslim religious education is given in very few federal states so far; Christian education is given in all, however. The slow introduction of Muslim religious education is explained on the argument that Islamic communities have insufficient legal status, if any.

When it comes to building mosques, the public authorities and Islamic communities often find themselves confronting a sceptical to hostile neighbourhood, which tries to prevent them being constructed.

It could also be regarded as discrimination that, unlike Christian ministers of religion, Islamic imams do not have the right to refuse to bear witness before a court of things that they have learned while exercising their activity as imam. An amended provision is currently being planned. Draft legislation provides that Christian clergy and Jewish rabbis should be protected from bugging, but not Muslim clergy. They are also to be excluded from a provision protecting clergy from online investigations.

The provisions described here give the impression that they are due to the legislature's presumption that Islam constitutes a threat. Unequal treatment of religious communities or statutory restrictions on certain religious customs must be justified and meet standards of proportionality.

CERD should explain how the new forms of discrimination on grounds of religious categories can be effectively countered. It might be conceivable that the UN Human Rights Committee define the threshold for the effectiveness of article 20(2) ICCPR more precisely in its General Comment No. 11. The international discussion on the interdependence of human rights, including the right to freedom of opinion, religion and belief, and the promotion of mutual respect, deserves due praise in this context.

### **3.4 Article 6 ICERD**

#### **3.4.1 Statistics on crimes for racist motives**

Under article 4, 2<sup>nd</sup> half-sentence ICERD, the States parties undertake to eradicate all acts of racial discrimination. Article 4 (a) ICERD commits them to declare an offence punishable by law “acts of violence or incitement to such acts” against the group protected by the Convention. Moreover, under article 6 ICERD the States parties must guarantee that, before the courts, those affected by racism shall receive effective protection and legal remedies against acts of racial discrimination.

The state report presents the statistics on politically motivated crime – rightwing and on sentences regarding certain (mainly propaganda) offences.<sup>182</sup>

The generally inadequate data collection on racial discrimination was pointed out above. This particularly applies to the statistical documentation of crimes with a racist motivation. This suffers from systematic defects, which considerably restrict the reliability of information regarding the Convention.

The state report relies on the statistics on sentences by courts with respect to specific crimes<sup>183</sup> and the system of measuring “politically motivated crime – rightwing”<sup>184</sup>. A problem raised by the state report itself is that these crimes do not cover just racist crimes.<sup>185</sup> Moreover, the statistics do not cover racist crimes that are not extremist as

---

182 State report, pp. 24-28, p. 48 f.

183 Ibid., p. 24-28.

184 Ibid., p. 48 f.

185 Ibid., p. 24, col. 26.

well.<sup>186</sup> An accurate and comprehensive investigation of the type and number of racist crimes is thereby not possible.

Initiatives set up by victims have for years produced higher case figures than occur in the official statistics. The group Opferperspektive (victim perspective) from Brandenburg counted 117 violent acts in 2003, while the federal state's crime office only counted 87. In 2004 it counted 137 acts of violence as against 105 according to the official statistics, in 2005 it was 140 to 97 and in 2006 132 compared to 90.<sup>187</sup> In other federal states a similar situation is reported.<sup>188</sup>

In order to be able to fulfil the Convention and combat racist offences it is necessary for the extent of crimes with a racist motivation to be made public. To that end, as recommended by the EUMC, racist offences must be statistically distinguished from rightwing extremist offences.<sup>189</sup>

According to the EUMC recommendations, there should be important when reporting racist offences that they be classified as having a racist motivation either by the police or by the person reporting the crime.<sup>190</sup> That way the statistics will no longer depend so one-sidedly on the personal estimation of the police officer.<sup>191</sup>

### 3.4.2 Effective legal protection: filing private actions

Article 6 ICERD commits the states to provide effective legal remedies – independently of whether the crimes have an extremist background or not.

The state report does not raise the effects of the provisions on filing a private action.

In respect to criminal law protection, victims of racist offences complain of inadequate criminal law protection regarding the prosecution of 'ordinary' racist offences. In many cases these are insults under §185 penal code (StGB) or slight bodily injuries under §223 StGB. Insults and slight bodily injuries need not be prosecuted ex officio in all cases by the public prosecutor. Under §374(1) Nos. 2 and 4, §376 criminal proceedings order (StPO) such offences shall only be prosecuted by the public prosecutor if there is a particular public interest in criminal prosecution. The principles for ascertaining a particular public interest in criminal prosecution are laid down in the rules for criminal procedures and fines (RiStBV).

Whether a public interest in criminal prosecution is assumed is up to the investigation of the public prosecutor in charge.<sup>192</sup> If the public prosecutor does not perceive a special public interest in criminal prosecution he refers the victim to the procedure of private action.<sup>193</sup> That means that the victims must conduct investigations and collect evidence on their initiative. The criminal proceedings and charge must be taken on by the victim – and, as appropriate, his legal counsel. It is hard enough for a victim to do this and the chances of success are mostly very slight. Lawyers advise their clients against filing

---

186 EUMC 2005(2), p. 81.

187 Opferperspektive, <http://www.opferperspektive.net/service/print?id=625>

188 <http://mut-gegen-rechte-gewalt.de/artikel.php?id=3&kat=10&artikelid=2037>; there are generally no figures for western federal states. Victim advice centres were only funded in eastern German states by the CIVITAS programme. This does not mean that there are fewer racist offences in western German states, they are just not recorded in the same way by civil society.

189 EUMC 2005(1), p. 46 : "A requirement on police to record all incidents of racially-motivated crime as an identifiable category of crime [...]"

190 EUMC 2005(1), p. 46.

191 This problem was also described by the EUMC 2005(2), p. 83.

192 Meyer Goßner, §376 para. 7

193 Meyer Goßner, §376 para. 6

private actions.<sup>194</sup> This type of action has proved unsuitable for racist crimes. The provisions thus do not correspond to the obligation under Art. 6 ICERD to provide for effective legal remedies against racial discrimination.

There must be a guarantee that simple bodily injuries and insults stemming from racist motivation are always prosecuted by the public prosecutor ex officio, and that it not be left to the victim to take on the criminal prosecution. This can be simply and efficiently guaranteed by amending the rules for criminal procedures and fines (RiStBV). There is already a provision that in the event of substantial offending of honour a general interest in criminal prosecution under §376 criminal procedure order should be assumed.<sup>195</sup> At this point the racist motivation of the perpetrator should be added.

### **3.4.3 Effective legal protection: racism as an aggravating feature in sentences**

Article 6 ICERD commits the States parties to provide effective legal remedies for racial discrimination. CERD, in its General Recommendation No. 30, and ECRI, in its General Policy Recommendation No. 7, propose that the states should include racist motivation as an aggravating aspect in fixing the sentence for a crime.<sup>196</sup> The same recommendation was made by EUMC in its investigation of racist offences.<sup>197</sup>

The state report does not respond to this recommendation, unfortunately.

The recommendations of CERD, ECRI and EUMC have not yet been implemented by Germany. The general provision on the fixing of the sentence is to be found in the §46 StGB. Racism here falls under the feature “motives and aims” of the offender, that may be taken into account in the fixing of the sentence. However, this has not yet been made sufficiently clear in the wording of the law, which means that racist motives in case law are rarely cited as grounds when fixing the sentence. The leading commentary on the penal code does not even mention racist motives when commenting on the grounds for fixing a sentence.

Racist motivation when committing a crime should always lead to a stiffer sentence. As called for by CERD, ECRI and Thomas Hammarberg, the Human Rights Commissioner of the Council of Europe, racist motives should thus be expressly mentioned in the general part of the penal code as grounds for fixing the sentence.<sup>198</sup>

### **3.4.4 Compensation for victims of racist offences**

According to article 6 ICERD the States parties are committed to offering victims of racial discrimination in court the opportunity of receiving appropriate compensation or satisfaction. In its General Recommendation No. 31, CERD calls for the right of all victims of racial discrimination to “seek just and appropriate reparation”.<sup>199</sup> Under article 1(3) (end) ICERD, differences between nationals and non-nations are only permitted as long as nationals of a certain country are not discriminated against. According to CERD’s General Recommendation No. 30, laws in which non-nationals are treated differently from nationals must follow a legitimate aim in an appropriate way in the light of the Convention.

---

194 Andrejewitsch/Walischewski 2007, para. 188.

195 Rules for the penal case and fine procedure, no. 229.

196 CERD 2004, no. 22.

197 EUMC 2005(1), p. 46

198 CERD 2004, no. 22; EUMC 2005(1), p. 46; Hammarberg 2006, No. 87; ECRI 2003, nos. 13, 105

199 CERD 2005, no. 6.

The state report describes the provisions of the victim compensation law (OEG) and the opportunities for hardship benefits.<sup>200</sup>

The OEG applies unrestrictedly only for German nationals. For nationals of other countries comprehensive differentiation applies – both regarding the ‘whether’ of compensation and also the amount - according to the country of origin, and also regarding the type and duration of the residence in Germany. It is striking that a legal residence status is presupposed. Even if, according to the state report, this does not mean that the person has to hold a valid residence permit, it must be assumed that undocumented migrants will be regularly excluded from the application of the OEG. For non-nationals with a valid residence permit different arrangements apply, also differentiated according to country of origin. It is doubtful whether differentiation according to country of origin complies with the standard of proportionality in the light of the Convention. This applies all the more as an offence against article 1(3) (end) ICERD is probable, in view of the differentiation by different countries of origin.

Also regarding the claiming of benefits there is a fine differentiation of how long a non-national has been in Germany. The criteria by which the level of benefits is established are independent both of the type of offence, the severity of the harm suffered and the individual victim. The question arises here as to how it can be justified, for example, that people who have been in Germany for between six months and three years do not receive any benefits dependent on income, which those who have resided here for more than three years are entitled to.

The hardship provisions, albeit welcomed by Forum Menschenrechte, do not balance out the flaws of the OEG. Under article 6 ICERD compensation benefits must be justiciable. This is not possible with voluntary payments.

CERD should check the provisions of the Victims Compensation Law to see whether they pursue a legitimate goal in an appropriate way in the light of the Convention. That is because the provisions contain frequent examples of nationality-related unequal treatment that are not linked with criteria connected to the offence, the offender or the individual victim.

### **3.5 Article 7 ICERD – human rights education**

Under article 7 ICERD the States parties undertake to adopt measures “particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination”.

In the state report, the Federal Government explains that education for democracy and tolerance is in the curricula of some subjects in all federal states. In addition, it describes pilot projects on education for tolerance.<sup>201</sup>

In Germany, education falls under the responsibility of the Länder. Educational programmes with the aim of international understanding and the reduction of prejudice take place in Germany under different headings: besides “education for democracy and tolerance”, some are quite resolutely “anti-racism education, “intercultural education”, “human rights education” and then there is “one-world education”, underlining development issues and currently merging with environmental education in “education for sustainable development”. Anti-racist and intercultural education, or education for tolerance, take place all too often on the basis of an acutely felt problem situation and

---

200 State report, p. 51 ff.

201 State report, p. 63 f.

often offer too few starting points to be deeply and lastingly rooted in the educational system. By contrast, starting from a legal concept, human rights education is often geared to structuring and finding a positive form for the way people of different origins, particularly students, can live together without discrimination. Intercultural learning and education for tolerance have a more sustained effect if they are based on a mature understanding of human rights.

According to a survey conducted by the universities of Marburg and Leipzig<sup>202</sup> of 2003 the average German cannot even name three human rights. The imparting of knowledge about human rights is also necessary in order to promote the recognition of minority rights. Adults too have first to be aware that all people have rights before they can recognise the rights of all those living in this country, independently of their nationality or residential status.

The relevant normative document of the international community on education in this topic complex was adopted in 1974 by the UNESCO member states. It is entitled “Recommendation on Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms”. Following the declaration of the World Human Rights Conference in Vienna in 1993 and the UN Decade for Human Rights Education from 1995 to 2004, there has been a World Programme for Human Rights Education since 2005. The Standing Conference of the German education ministers (KMK) adopted recommendations on the promotion of human rights education at school in 1980 and 2000.

Human rights education is both protective and preventative against racial discrimination. In the spirit of the world action programme on human rights education, it must convey knowledge about human rights and the mechanisms to protect them, skills for using and implementing them in daily life, create values and reinforce behaviour that encourage standing up for the protection of human rights. It should start in preschool.

As shown by a list drawn up by the KMK secretariat in 2006, there are great differences between the federal states in the way they put human rights education into practice. Some states relate their school laws to human rights; in the framework curricula of most of them there are enough starting points in several subjects to deal with topics relevant to human rights. It is important to make good use of this leeway in the Länder school laws and curricula, particularly through a focused and broad-based education and training of the teaching staff.

The Länder give the schools more and more freedom in designing their teaching and daily school life. In return, they must give the schools clear instructions when it comes to framing strategic outline papers about the values and norms to structure this free space. Human rights take pride of place here along with freedom from discrimination. Schools must be obliged to reflect on these central values and norms in the voluntary declarations they have worked on collectively or in “mission statements”.

In addition, the depiction of human rights in school books urgently needs to be revised. An examination<sup>203</sup> of educational plans and 95 school books from 2006 demonstrated that they contained factual errors and fell far short of the KMK recommendations. A proposal on how human rights education should be formulated in the context of the

---

202 Study on behalf of Leipzig University by the opinion pollster USUMA in October 2003 in cooperation with the German Institute for Human Rights.

203 Druba 2006.

discussion on educational standards was submitted by Forum Menschenrechte in 2006.<sup>204</sup>

In addition, human rights education should be given more space in out-of-school, informal and non-formal education. In all, there are no government-organised processes underway in Germany at present, such as those called for by the United Nations in its World Programme for Human Rights Education.

Human rights education is particularly important for disadvantaged groups. For them, human rights are norms going beyond national civil rights. They can hold up these norms both to individuals and to society as a whole. Many studies have found that those affected by discrimination often put up little resistance to it.<sup>205</sup> Often victims do not even report the cases of discrimination – simply because they no longer recognise themselves as victims. Human rights education can contribute to awareness-raising on both sides. It can lead to the victims becoming aware of their rights – and by asserting them they will little by little change the society in which they are discriminated against.

The federal states should finally implement the mandate of the World Programme for Human Rights Education, particularly within the framework of delegating more personal responsibility to schools. They should prescribe ‘human rights’ and ‘freedom from discrimination’ as central principles of order in the schools and provide teachers with relevant in-service training programmes.

---

204 Forum Menschenrechte 2006.

205 European Commission 2007, p. 21.

## 4 Summary of recommendations

### Fundamental considerations

- *Racism, rightwing extremism, “race” - terminology*

With respect to the terminology of the state report, other German government documents and laws, there is an urgent need to change the use of the terms ‘Rasse’ (race) - whether placed in quotation marks or not - and ‘Rassendiskriminierung’ (racial discrimination).

The words ‘Rasse’ (race) and ‘rassisch’ (racial) should not be used in any official German legal texts and documents or in any translations of international agreements, not even in composite words.

By contrast, ‘Rassismus’ (racism) and ‘rassistisch’ (racist) are valid concepts.

- *Racist attitudes in the population*

Measures to combat racism must not only focus on people with rightwing extremist attitudes but must take a macro-social approach extending to parts of the population that tend towards racist prejudices and attitudes.

German policy-makers must supplement their policy of combating rightwing extremism with a policy of combating racism as a separate issue.

- *National Action Plan against Racism*

The draft National Action Plan should be revised in cooperation with civil society organisations, as foreseen in the Durban Programme of Action.

The National Action Plan should contain a problem-sensitive status description and develop specific measures for countering racism from the centre of society as well.

The National Action Plan should contain arrangements for the evaluation of measures and the establishing of affirmative action programmes.

The National Action Plan should not focus on one-off actions but understand the combating of racism as a long-term process and therefore be regularly extended.

A government-financed steering committee should be founded, on the Irish model, in which members of both the government and civil society organisations together guide the implementation of the National Action Plan.

The language of the National Action Plan must be carefully checked to avoid the least suggestion of sharing racist stereotypes.

- *Data collection*

In order to implement the obligations from the Convention considerable efforts should be made to further develop statistics and data collection, so as to recognise structural discrimination within the meaning of the Convention. Account should be taken here of the recommendations of the “European Handbook on Equality Data” (published by the European Commission in 2007).



The necessary care and sensitivity should be guaranteed by ensuring that the use of data is only permitted in absolutely anonymised form and their use by public or private bodies is prohibited beyond the purpose of recognising cases of discrimination.

The Federal Government should conduct an ongoing evaluation of the type of data collection in consultation with the organisations of civil society representing potential victims. Above all, self-advocacy groups should be involved to ensure the acceptance of an extended data collection.

The Federal Government's Equal Treatment Agency should be strengthened in its task of collecting data. It should not just receive data in the case of complaints of discrimination that come in, but also actively collect data on discrimination. Federal, state and local authorities should also be obliged to report every case presented to them to the Federal Equal Treatment Agency if it involved the charge of racist discrimination.

## **Article 2 ICERD: Not engaging in or promoting racist discrimination by government bodies and monitoring mechanisms**

- *The avoidance of discrimination on the part of public authorities*

The purview of the General Equal Treatment Law should be extended to any action by the public administration. To this end, provisions could be introduced to the official liability law comparable to the General Equal Treatment Law.

- *Discrimination by the police / racial profiling*

As recommended by ECRI the problem of racial profiling in Germany should be examined and there should be constant observation of police activity with respect to this issue. Following these recommendations, action should also be taken with the aim of reflecting the differing origin and migration backgrounds proportionate to their share of the population in the ranks of the police.

- *Review of legislation and executive norms with respect to racism*

As recommended by ECRI, a national agency must be set up to monitor racism. Forum Menschenrechte proposes appointing a commission of independent experts, on the pattern of ECRI, which would draw up periodical reports on the situation of racism and racial discrimination in Germany, including racist and discriminating laws, and make relevant recommendations to the federal and state governments.

- *Undertaking to promote anti-racist organisations*

As recommended by ECRI, the financing of initiatives and facilities to combat racism should be placed on a long-term basis. Besides the support via local authorities further funding of civil society initiatives should be raised. Existing projects should be regularly evaluated with a view to being continued and integrated into general structures.

## **Article 4 ICERD:**

In view of General Recommendation no. 15, which calls for a ban of organisations spreading racist propaganda, the possibility of initiating a new NPD banning litigation should be examined.

## **Article 5 ICERD**

- *Legislation on people of non-German nationality*

CERD in his General Recommendation no. 30 has ascertained that the applicability of ICERD on legislation on non-citizens cannot in general be excluded. In contrast, any legislation on non-citizens has to achieve a legitimate aim in an appropriate manner, as regards ICERD.

The legal affairs committee of the German Parliament should conduct a public hearing with UN experts, in particular the Committee on the Elimination of All Forms of Racial Discrimination plus the German Institute for Human Rights, in order to discuss the relevance and the implications of General Recommendation no. 30 for German legislation.

In the drafting of new laws with provisions on non-citizens there should be a routine check on whether the provision is required and whether it is compatible with CERD's General Recommendation no. 30. Existing provisions should also be examined with this in mind.

- *Access to the asylum procedure*

Refoulement on suspicion, which can be undertaken if there are indications of another state being responsible for the asylum procedure, must be abolished. Accordingly §18(2)2 Asylum Procedure Law must be dropped.

- *Emergency legal protection in cases of removal of refugees to EU countries*

If asylum seekers are sent back to another EU country in the context of Dublin II procedures they must be able to contest the removal decision before a court by way of an interim order for legal protection. §34a Asylum Procedure Law must be amended accordingly.

- *Detention of asylum seekers*

The detention of refugees during the asylum procedure must be abolished §14(3). The asylum procedure law must be amended accordingly.

- *Dealing with refugees with special needs*

The Federal Office for Migration and Refugees must guarantee the identification of groups needing special protection through in-service training of its own staff and recourse to external expertise. In particular, there must be more intensive assessment after certifying that the person is traumatised.

- *Health care of refugees*

Worse treatment in health care, to which asylum seekers and groups equated with them are subject under the Asylum Seeker Benefit Law for at least four years, is unequal treatment and unacceptable from the perspective of human rights, and therefore to be eliminated. Moreover, the special rights to medical care, rehabilitation and therapy which apply under the EU directives for asylum seekers, refugees and victims of human trafficking with special needs, must be implemented by the German legislature.

- *Residential obligation*

The restriction of freedom of movement of people with a residence permit under §§22–25 AufenthG, that is only linked to their status and their being social benefit claimants, must be abolished.

- *Social benefits for non-citizens under §3 AsylbLG*

The payments from the Asylum Seeker Benefit Law must be adjusted to standard rates applicable for the social benefits of citizens able to work (social code II).

As recommended by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, benefits should also be distributed in monetary form, not in kind.

- *The rules to combat sham marriages for which a spouse is brought into the country*

A suspicion that a marriage has been entered into so that one spouse can obtain residence status in Germany should only be open to verification after the wedding.

In addition to §27(1) Residence Law, the provision of §27(1a)1 Residence Law provides that family reunification only for the purpose of obtaining a residence permit is inadmissible. As this is stated twice and causes additional pressure on marriages the provision of §27(1a)1 Residence Law should be deleted.

- *Combating forced marriages for which a spouse is brought into the country*

As recommended by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, family reunification should be facilitated.

The provision of §27(1a)2 AufenthG, according to which family reunification is excluded if there is suspicion of forced marriage, is not in conformity with the principle of proportionality and should be rescinded.

As advocated by ECRI, a country-wide advisory service infrastructure should be set up for victims of forced marriages.

CERD should arrange for investigations to verify whether the restrictions on family reunification on the basis of the age of the arriving person under §30(1)1 AufenthG are in conformity with the standard of proportionality.

The requirement of language skills in §30(1) AufenthG should be rescinded. The acquisition of language skills should rather be guaranteed through the provision of courses after arrival.

- *Reunification of family members with social benefit claimants*

Family reunification must not depend on requirements about what the person living in Germany can afford. ECRI and Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, call for the unrestricted granting of the right to family reunification for refugees. The provisions restricting this right should thus be rescinded.

- *Nationality law*

CERD should address the fact that a high number of non-German citizens live in the State party on a permanent basis who cannot fully exercise their human rights and undergo considerable unequal treatment through restrictive alien legislation as compared to nationals. In its dialogue with the State party CERD should emphasise its General Recommendation No. 30.

Measures should be taken in the field of information, awareness-raising and confidence-building, so that the people who fulfil the statutory preconditions for acquiring German nationality can make increasing use of it, in order to be able to fully assert their human rights.

CERD should be able to dialogue with the State party on what statutory barriers or interior policy climate stand in the way of acquiring nationality.

Under article 1(3) ICERD the differing treatment regarding nationality law is not covered by the Convention “provided that it does not discriminate against nationals of any particular nationality”. CERD should check whether General Recommendation No. 30 and the accompanying examination of proportionality must also be applied to nationality law.

- *Nationality tests*

As already called for by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, naturalisation tests must not discriminate against certain groups of candidates.<sup>206</sup> It must thus not be linked to a certain nationality or religion.

Its degree of difficulty should be geared to the material necessary for life together in the Federal Republic of Germany and not overstretch the educational level of the candidates for naturalisation.

- *Lowering the limit for the criminal record in the case of naturalisation*

The criminal record limit after which the possibility of naturalisation is excluded, should be raised again to 180 units. In addition, provisions on a time limit on minor offences should be inserted into the nationality law so that the committing of minor offences will no longer constitute a barrier to naturalisation after a certain time.

- *Dual nationality*

CERD should enter into dialogue with the State party about allowing dual nationality in principle and thereby accepting the recommendation of ECRI.

- *The concerns of undocumented migrants in the health system*

The notification duty of public offices under the residence law should be so limited in law and practice that undocumented migrants do not need to fear the discovery of their status if they claim their right to health care.

Notification duties must thus be limited to the point that people do not need to fear the consequences of seeking medical assistance.

- *Education*

With strict respect for the principles of privacy and data protection, data collection in the area of education should be extended so as to cover all the relevant features in the Convention.

---

206 Hammarberg 2006, no. 158.

- *The situation of people with a migration background and minorities in the regular school*

The Federal Government should finally respond to the report of UN Special Rapporteur Vernor Muñoz on the German educational system, based on his visit to Germany. His recommendations should be implemented. In addition, the recommendations on transition to secondary schools should be revised. The German language skills of students should not be considered so important as to lead to their exclusion. Generally speaking, the permeability of the school system should be increased and there should be a study of whether the selection or allocation of students in the structured school system at the secondary level can be postponed to a higher age. Further, the question of whether the structured school system does not itself lead to a discriminatory effect should be examined. Should this prove the case, steps must be taken to eliminate the discrimination.

A careful evaluation of the methods used should take place regarding language fostering and, if desired, modern methods of language teaching should be used more extensively. The first language should be fostered on an equal basis.

The German reservation regarding the UN Convention on the Rights of the Child should be dropped.

- *Schools for special education*

The Federal Government's Commissioner for the concerns of disabled people, Karin Evers-Meyer, has called for the abolition of the system of special education schools. In any case, the guidelines for referral to special education schools must guarantee that the referral is not merely due to a lack of language skills. The children need support in their first language, to learning German and also subject-specific language support – after all, maths and sciences are also languages for special purposes that need to be learned.

- *Children who have applied for asylum and who are “tolerated”*

Federal states in which there is no compulsory education for all children independently of their residential status must introduce it.

- *Children without documents*

§87(2) Residence law stipulates that all public institutions have a duty to notify the authorities when they discover the unofficial presence of a non-citizen. Since this is an obstacle to enjoying the right to education for children without documents, §87(2) AufenthG should make an exception from this duty for all schools and educational institutions including childcare facilities.

- *Labour market situation of those named in article 1(1) ICERD*
- *The labour market situation of people with a migration background*

As recommended by ECRI, the opportunities for sanctions in the context of integration courses declared compulsory by a job centre should be monitored and, if necessary, corrected.

According to article 5 ICERD the Federal Government is committed to examine and eliminate provisions with a discriminating effect and to undertake support measures within the meaning of article 2(2) ICERD. Under §27(3)2 and 3 General Equal Treatment Law, the Federal Equal Treatment Agency has the responsibility to take

action to prevent disadvantage and to conduct scientific investigations into this field. The Federal Equal Treatment Agency should exhaust the opportunities recommended by the European Union to uncover structural discrimination, namely by interviewing victims, conducting surveys with self-reports, discrimination tests and other investigations.

- *Recognising foreign educational qualifications*

The process for recognising foreign vocational and educational qualifications, which currently often still leads to non-recognition, must be improved. It might be feasible to introduce the principle of functional equivalence applicable in the European Union as the fundamental principle of recognising foreign qualifications, including those of third-state nationals. This proposal should be examined.

It must at least be stipulated that the principle of functional similarity exists for all non-citizens with European (EU) qualifications, independently of the nationality of the person concerned.

- *Work to combat discrimination*

- *Provisions of the General Equal Treatment Law (AGG)*

The AGG provides for an exception for the field of housing, which allows landlords to reject would-be tenants “with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions” (§19(3) AGG). This permits direct discrimination and must thus be rescinded.

The two-month deadline for raising claims under §21(5) and §15(4) AGG should be completely rescinded or at least adapted to the general regulations on the expiry of claims.

- *Anti-discrimination advisory services*

The Federal Equal Treatment Agency should be given more staff in order to be able to effectively uncover and combat cases of discrimination.

Independent anti-discrimination complaint centres, the importance of which was stressed by Thomas Hammarberg, Human Rights Commissioner of the Council of Europe,<sup>207</sup> should be better funded and an extensive advisory network established.

Advisory services should have an independent right to bring legal action so that complaints can be lodged regarding structural discrimination too. Support for those concerned in court-cases should be made possible for bodies with less than 75 members. The limiting of support to court proceedings not requiring legal counsel should be dropped.

To prove structural discrimination it should be possible to prove them in court proceedings with the aid of discrimination tests which reveal discriminatory behaviour by using test persons.

- *Discrimination on the basis of religious affiliation*

CERD should explain how the new forms of discrimination on grounds of religious categories can be effectively countered. It might be conceivable that the UN Human

---

207 Hammarberg 2006, no. 84.

Rights Committee define the threshold for the effectiveness of article 20(2) ICCPR more precisely in its General Comment No. 11. The international discussion on the interdependence of human rights, including the right to freedom of opinion, religion and belief, and the promotion of mutual respect, deserves due praise in this context.

## **Article 6 CERD**

- *Statistics on crimes for racist motives*

In order to be able to fulfil the Convention and combat racist offences it is necessary for the extent of crimes with a racist motivation to be made public. To that end, as recommended by the EUMC, racist offences must be statistically distinguished from rightwing extremist offences.<sup>208</sup>

According to the EUMC recommendations, there should be important when reporting racist offences that they be classified as having a racist motivation either by the police or by the person reporting the crime.<sup>209</sup> That way the statistics will no longer depend so one-sidedly on the personal estimation of the police officer.<sup>210</sup>

- *Effective legal protection: filing private actions*

There must be a guarantee that simple bodily injuries and insults stemming from racist motivation are always prosecuted by the public prosecutor ex officio, and that it not be left to the victim to take on the criminal prosecution. This can be simply and efficiently guaranteed by amending the rules for criminal procedures and fines (RiStBV). There is already a provision that in the event of substantial offending of honour a general interest in criminal prosecution under §376 criminal procedure order should be assumed.<sup>211</sup> At this point the racist motivation of the perpetrator should be added.

- *Effective legal protection: racism as an aggravating feature in sentences*

Racist motivation when committing a crime should always lead to a stiffer sentence. As called for by CERD, ECRI and Thomas Hammarberg, the Human Rights Commissioner of the Council of Europe, racist motives should thus be expressly mentioned in the general part of the penal code as grounds for fixing the sentence.<sup>212</sup>

- *Compensation for victims of racist offences*

CERD should check the provisions of the Victims Compensation Law to see whether they pursue a legitimate goal in an appropriate way in the light of the Convention. That is because the provisions contain frequent examples of nationality-related unequal treatment that are not linked with criteria connected to the offence, the offender or the individual victim.

## **Article 7 ICERD - human rights education**

The federal states should finally implement the mandate of the World Programme for Human Rights Education, particularly within the framework of delegating more

---

208 EUMC 2005(1), p. 46 : “A requirement on police to record all incidents of racially-motivated crime as an identifiable category of crime [...]”.

209 EUMC 2005(1), p. 46.

210 This problem was also described by the EUMC 2005(2), p. 83.

211 Rules for the penal case and fine procedure, no. 229.

212 CERD 2004, no. 22; EUMC 2005(1), p. 46; Hammarberg 2006, No. 87; ECRI 2003, nos. 13, 105

personal responsibility to schools. They should prescribe 'human rights' and 'freedom from discrimination' as central principles of order in the schools and provide teachers with relevant in-service training programmes.



## Bibliography

*12th report on children and youth*

12th report on children and youth of the Federal Government, Parliamentary record 15/6014

*ADB Cologne 2006*

Antidiskriminierungsbüro Köln et al., Gemeinsamer Bericht der Träger der Antidiskriminierungsarbeit im „Drei-Säulen-Modell“ in Köln 2006

*AG Finanzquellen 2007*

Länderoffene Arbeitsgruppe, Finanzquellen der rechtsextremistischen Kreise, 2007, [http://www.berlin.de/imperia/md/content/seninn/verfassungsschutz/stand2005/lage\\_finanzquellen\\_2007.pdf](http://www.berlin.de/imperia/md/content/seninn/verfassungsschutz/stand2005/lage_finanzquellen_2007.pdf)

*Andrejewitsch/Walischewski 2007*

Andrejewitsch/Walischewski, in: Büchting, Beck'sches RechtsanwaltsHandbuch, 9. Auflage 2007

*BAMF 2007*

Bundesamt für Migration und Flüchtlinge, Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung (Migrationsbericht 2006), 2007

*Becker-Dittrich 2006*

Becker-Dittrich, Gerti, Zugang zu und Integration in den Arbeitsmarkt – Bedeutung der Anerkennung von Qualifikationen und Fähigkeiten, Europäische Migrationsgespräche: Arbeitsmärkte in der Europäischen Union – offen und zugänglich für alle?, Berlin 28.4.2006

*Bielefeldt 2006*

Bielefeldt, Heiner, Einbürgerungspolitik in Deutschland – Zur Diskussion über Leitkultur und Staatsbürgerschaftstests, 2006

*Bielefeldt 2008*

*Bielefeldt, Heiner*, Das Islambild in Deutschland. Zum öffentlichen Umgang mit der Angst vor dem Islam., 2. Auflage 2008

*Bos et al. 2003*

Bos, Wilfried / Lankes, Eva-Maria / Prenzel, Manfred / Schwippert, Knut / Valtin, Renate / Walther, Gerd, Erste Ergebnisse aus IGLU: Schülerleistungen am Ende der vierten Jahrgangsstufe im internationalen Vergleich - Zusammenfassung ausgewählter Ergebnisse, 2003

*Federal Constitutional Court 11, 160*

Bundesverfassungsgericht, Entscheidungen des Bundesverfassungsgerichts, Band 111

*CERD 1973*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 4, 1973

*CERD 1990*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 8, 1990

*CERD 1993 (1)*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 15, 1993

*CERD 1996 (2)*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 21, 1996

*CERD 1996*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 20, 1996

*CERD 1999*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 24, 1999

*CERD 2000*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 26, 2000

*CERD 2001*

Committee on the Elimination of all Forms of Racial Discrimination, Concluding Observations on the 15<sup>th</sup> State Report of the Federal Republic of Germany, 2001

*CERD 2002*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 28, 2002

*CERD 2004*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 30, 2004

*CERD 2005*

Committee on the Elimination of all Forms of Racial Discrimination, General Comment No. 31, 2005

*Classen 2008*

Classen, Georg, Sozialeistungen für MigrantInnen und Flüchtlinge – Handbuch für die Praxis, 2008, S. 113

*Decker/Brähler 2006*

Decker, Oliver / Brähler, Elmar, Vom Rand zur Mitte – Rechtsextreme Einstellungen in Deutschland, Studie der Friedrich-Ebert-Stiftung, 2006

*DIMR 2007(1)*

German Institute for Human Rights (Editor), Frauen, Männer und Kinder ohne Papiere in Deutschland – Ihr Recht auf Gesundheit, 2007

*DIMR 2007(2)*

German Institute for Human Rights, Annual Report 2006, 2007

*Druba 2006*

Druba, Volker: Menschenrechte in Schulbüchern. Eine produktorientierte Analyse, Frankfurt am Main: Peter Lang, 2006

*Durban Programme*

World Conference on Racism, Programme of Action

*ECRI 2003*

Europäische Kommission gegen Rassismus und Intoleranz (ECRI), Dritter Bericht über Deutschland, 2003

*EUMC 2005(1)*

Europe Monitoring Centre on Xenophobia and Racism, Policing Racist Crime and Violence – a comparative analysis, 2005

*EUMC 2005(2)*

Europe Monitoring Centre on Xenophobia and Racism, Racist Violence in 15 EU Member States – A Comparative Overview of Findings from the RAXEN National Focal Points Reports 2001-2004, Wien 2005

*EUMC 2006*

Europe Monitoring Centre on Xenophobia and Racism, Migrants' experiences of racism and xenophobia in 12 EU member states, 2006

*European Commission 2007*

European Commission, European handbook on equality data, 2007

*Forum Menschenrechte 2006*

Forum Menschenrechte, „Standards der Menschenrechtsbildung in Schulen“, 2006

*Frings 2006*

Frings, Dorothee, Auswirkungen der Hartz-Reformen auf Migrantinnen und ihre Familien, Vortrag anlässlich der Hohenheimer Tage zum Ausländerrecht 2006, 27. Januar 2006

*General Recommendation no. 14*

Committee on the Rights of the Child, General Recommendation Nr. 14

*Gomolla*

Gomolla, Mechthild, Institutionelle Diskriminierung im Bildungs- und Erziehungssystem, [http://egora.uni-muenster.de/ew/personen/medien/Institutionelle\\_Diskriminierung\\_im\\_Bildungs-\\_und\\_Erziehungssystem.PDF](http://egora.uni-muenster.de/ew/personen/medien/Institutionelle_Diskriminierung_im_Bildungs-_und_Erziehungssystem.PDF)

*Hammarberg 2006*

Thomas Hammarberg, Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his Visit to Germany 9-11 and 15-20 October 2006

*Heitmeyer 2007*

Heitmeyer, Wilhelm (Editor), Deutsche Zustände, Folge 6, 2007

*Herrnkind, KJ 2000, 188*

Herrnkind, Martin, Personenkontrollen und Schleierfahndung, Kritische Justiz 2000

*Heun*

Heun, Werner, in: Dreier, Horst: Grundgesetz

*ILO 1996*

International Labour Office, Goldberg et al., Arbeitsmarkt-Diskriminierung gegenüber ausländischen Arbeitnehmern in Deutschland, International Migration Papers 7, Genf 1996.

*Integration Commissioner 2007*

Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, 7. Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland (Dezember 2007), 2007

*Irish Department of Justice*

Department of Justice, Equality and Law Reform, Planning for Diversity – The National Action Plan Against Racism

*Jahangir/Diène 2006*

Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, 2006, A/HRC/2/3

*Maunz/Dürig/Herzog*

Maunz, Theodor / Dürig, Günter / Herzog, Roland, Grundgesetz: Kommentar, 4. Auflage, 50. Ergänzungs-Lieferung Oktober 2007, Art. 3 Abs. 3 Rdnr. ...

*Meyer-Goßner*

Meyer-Goßner, Lutz; Strafprozessordnung – Kommentar, 48. Auflage 2005.

*Motakef 2006*

Motakef, Mona, Das Menschenrecht auf Bildung und der Schutz vor Diskriminierung – Exklusionsrisiken und Inklusionschancen, 2006.

*Muñoz 2006*

United Nations/General Assembly/Human Rights Council (2007). Report of the Special Rapporteur on the right to education, Vernor Muñoz. Addendum: Mission to Germany (13-21 February 2006).

*OECD 2003*

OECD, Where immigrant students succeed - A comparative review of performance and engagement in PISA 2003.

*OECD 2005*

OECD, The Labour Market Integration of Immigrants in Germany., 2005

*Palandt-Brudermüller*

Brudermüller, Gerd, in: Palandt, Bürgerliches Gesetzbuch: Kommentar, 65. Auflage 2006, § 1314 Rdnr. 14

*Rachor 2007*

Rachor, Frederik, in: Lisken, Hans / Denninger, Erhard (Editor), Handbuch des Polizeirechts, 4. Aufl. 2007.

*State Report*

Bundesministerium der Justiz, 16.-18. Staatenbericht der Bundesrepublik Deutschland zu Art. 9 des Internationalen Übereinkommens zur Beseitigung jeder Form von Rassendiskriminierung, 2006, S. 4

*Stanat 2003*

Stanat, Petra, Schulleistungen von Jugendlichen mit Migrationshintergrund: Differenzierung deskriptiver Befunde aus PISA und PISA-E, in: Deutsches PISA-Konsortium, PISA 2000 – Ein differenzierter Blick auf die Länder der Bundesrepublik Deutschland, 2003.

*Starck*

Starck, Christian, in: von Mangoldt, Hermann / Klein, Friedrich / Starck, Christian, Das Bonner Grundgesetz: Kommentar, 4. Aufl.

*Federal Statistical Office, 2005*

Federal Statistical Office, Bevölkerung und Erwerbstätigkeit, Bevölkerung mit Migrationshintergrund – Ergebnisse des Mikrozensus 2005

*terre des hommes 2005*

Terre des hommes, >>Wir bleiben draußen<< - Schulpflicht und Schulrecht von Flüchtlingskindern in Deutschland, 2005

*terre des hommes, Aktuelle Entwicklungen 2005*

terre des hommes, Aktuelle Entwicklungen Oktober 2005: Schulpflicht vs. Schulrecht von Flüchtlingskindern in Deutschland

*The Voice 2006*

The Voice Refugee Forum, <http://www.thevoiceforum.org/node/396>

*Thränhardt 2008*

Thränhardt, Dietrich, Einbürgerung - Rahmenbedingungen, Motive und Perspektiven des Erwerbs der deutschen Staatsangehörigkeit , 2008

*UNESCO 1950*

UNESCO, Statement on Race and Racial Prejudice, Paris 1950

*UNHCR 2007*

UNHCR, Regionalvertretung für Deutschland, Österreich und die Tschechische Republik, UNHCR-Stellungnahme zu Maßnahmen zur Beschränkung der Wohnsitzfreiheit von Flüchtlingen und subsidiär geschützten Personen, Juli 2007

*Verfassungsschutzbericht 2006*

Bundesministerium des Inneren, Verfassungsschutzbericht 2006

*Westdt. Handwerkskammertag*

Westdeutscher Handwerkskammertag, Anerkennung ausländischer Bildungsnachweise – Leitfaden für Beratungs- und Anerkennungsstellen