

**Alternative report for the**

**UN Committee on the Elimination of**

**Racial Discrimination**

**CERD**

**concerning the German governmental report during the**

**111<sup>th</sup> session**

Submitted by:

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Special thanks to Uyanga Delgermaa, Francis Grimm, Tracy Hoffmann, Sara Borasio and Rabia Küçükşahin for supporting the development of the BUG alternative report.

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The **Bureau for the Implementation of Equal Treatment** (German title: *Büro zur Umsetzung von Gleichbehandlung*) was established in April 2009 and is a registered association under German law with charity status. It has consultative status at the United Nations.

BUG pursues the vision of a society, free of discrimination, in which all people are treated equally in all areas of life regardless of their ethnic origin, religion, gender, disability, age or sexual orientation and in accordance with the proclaimed principles of equality in Germany.

In order to achieve this goal, BUG promotes, implements and reinforces the General Equal Treatment Act (AGG) and provides legal aid for strategically important cases. BUG is committed to the political, social, and legal implementation of precedent-setting decisions in order to end discriminatory structures, rules, and practices.

BUG appreciates being given the opportunity to contribute to the CERD Committee's assessment of the German Governmental report concerning racism, xenophobia and related intolerance.

We would like to offer additional input to the CERD session with this shadow report, specifically concerning

- a) issues of racial profiling by the Federal Police and
- b) anti-Muslim racism experienced by women.

## **1 Racial profiling**

### **1.1 The legal framework**

Germany's federal government does not hold the power to rule on many matters related to education, sport and policing as this is largely controlled by the Länder (federal states). However, the Federal Police oversees monitoring the legal entry into the German territory – a competence which falls within the scope of federal law and has to comply with the CERD Convention, Article 2, 1..

This shadow report refers to issues related to the Federal Police, even though Länder police with their specific mandate such as crime prevention and investigation and traffic is facing comparable situations concerning racial profiling.

#### **1.1.1 Equal Treatment Principle in the Basic Law**

There is a general obligation for federal institutions to abstain from any discriminatory practice in Article 3 (3) of the German Basic Law which reads as follows:

*“No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. No person shall be disfavoured because of disability.”* (Translated from the original)

Therefore, racial profiling is an unlawful practice since it violates the principle of equal treatment.

### **1.1.2 The Federal Police Act (BPolG) and Its Concretisations**

Identity checks to counter illegal entry into Germany are regulated by the Federal Police Act, specifically in Section 22 and 23 BPolG. Section 22 (1a) BPolG allows the Federal Police to stop and question a person and check his/her identity in airports with international traffic and in railway stations. People can also be checked because of a possible illegal entry in trains within the territory of the country.

Section 22 (1a) BPolG reads as follows:

*“In order to prevent or stop unauthorised entry into the Federal territory, the Federal Police may, in trains and in the area of the railway facilities of the Federal Railways (§ 3), if it can be assumed on the basis of knowledge of the situation<sup>1</sup> or experience of border police<sup>2</sup> that these are used for unauthorised entry, as well as in a facility or establishment of an airport (§ 4) with cross-border traffic, stop every person for a short time, question them and demand that any identity papers or border crossing papers they are carrying be handed over for examination, and inspect any objects they are carrying.”* (Translated from the original)

Section 23 (1) no. 3 BPolG confers to the Federal Police the power to undertake identity checks for reasons of criminality and public danger, and to avoid illegal entry into Germany, however only at the borders and within 30 kilometres of the border.

Section 23 BPolG reads as follows:

*“(1) The Federal Police can determine the identity of a person:*

- 1. to avert a danger,*
- 2. for police control of cross-border traffic,*
- 3. in the border area to a depth of thirty kilometres to prevent or prevent unauthorized entry into the federal territory or to prevent criminal offenses within the meaning of section 12 (1) nos. 1 to 4.”* (Translated from the original)

Since European law, specifically the Schengen Borders Code, prohibits the introduction of

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<sup>1</sup> So-called ‘Lageerkenntnisse’

<sup>2</sup> So-called ‘polizeiliche Erfahrung’

systematic border controls at internal borders of the European Union, there have been concerns about the compatibility of Section 23 (1) no. 3 BPolG with European law.

No further guidance is given on how identity checks should be performed.<sup>3</sup> The internal regulation of the Federal Police (BRAS 120) contains only a general rule that external appearance of individuals must not be decisive for police' acts according to the prohibition of discrimination by the General Equal Treatment Act (AGG).<sup>4</sup> Additional concrete implementation of objective criteria for carrying out identity checks and in particular on knowledge of the situation<sup>5</sup> or experience of border police<sup>6</sup> is not defined there.

### **1.1.3 No Effective Protection in Civil Law and Administrative Law**

The scope of application of the General Equal Treatment Act (AGG) does not cover cases of discrimination perpetrated by state institutions, including police forces. Racial profiling as a form of racial discrimination performed by state actors cannot be litigated under the AGG.

A reverse situation is given in the field of administrative law where only an examination, whether the identity check was performed on reasonable grounds, can be achieved. The administrative law, only in reference to the constitutional clause on equal treatment, covers cases of discrimination and only assesses the appropriateness of the police act in general. Therefore, compensation cannot be obtained before the administrative courts but must be claimed via an additional civil lawsuit. The lengthiness and resource-intensive litigation of two separate proceedings are an obstacle to legally combat discrimination and to obtain compensation. So far, no civil law cases in Germany have been filed on such a matter.

## **1.2 Manifestations of Racial Profiling Performed by the Federal Police**

To demonstrate forms of racial profiling during an identity check, three cases are introduced. BUG has legally supported them as third party.

### **a) Koblenz**

In January 2014, a couple of West-African origin was travelling from Mainz to Bonn with their two daughters. The family was stopped and checked by the Federal Police on a regional train. Each family member was in possession of a German passport. The officers requested the

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<sup>3</sup> However, in 2020, the Federal Administrative Court decided in a case that the existing ministerial decree is sufficient to perform identity checks within the meaning of Section 23 (1) no. 3 BPolG in conformity with European law. *See*: Federal Administrative Court, 13.12.2019, Reference no. 6 B 30.19.

<sup>4</sup> Internal Regulation "BRAS 120" Edition of 2014, p. 4-5, available online: [https://day-migrationsrecht.de/files/page/0\\_88079200\\_1485810891s.pdf](https://day-migrationsrecht.de/files/page/0_88079200_1485810891s.pdf).

<sup>5</sup> So-called 'Lageerkenntnisse'

<sup>6</sup> So-called 'polizeiliche Erfahrung'

documents and checked the validity of the passports with the central office. No other travellers were controlled on this train. The police performed this check on the basis of Section 22 (1a) BPolG.

The family opened a court case in which the police officer testified that he checked the family because they spoke English and because the man could have been a trafficker of the woman and the two girls. In the first instance, the Administrative Court of Koblenz ruled in favour of the plaintiffs that the measures taken by the Federal Police had been unlawful.<sup>7</sup> The Federal Police appealed the judgement.

In the second instance, the Higher Administrative Court of Rheinland-Pfalz found that the measure taken by the Federal Police was unlawful due to a violation of the constitutional prohibition of discrimination under Article 3 (3) sentence 1 of the Basic Law. According to the Court, this violation does not only exist if the unequal treatment is exclusively or decisively linked to a prohibited ground such as skin colour, but already if an inadmissible differentiation feature has been a supporting criterion.<sup>8</sup>

#### **b) Bochum**

In a second case, which happened in November 2013 at the Central Station Bochum, a German citizen with Trinidadian roots waited in the train station in the evening to pick up his partner. A Federal Police Officers requested his documents on the basis of Section 23 (1) no. 1 / no. 3 BPolG. The police mainly suspected the man because of his behaviour (they asserted that he had pulled a hood over his head and stayed out of the sight of the police behind a glass pillar), but also in part because of *the colour of his skin*.

In the first instance, the identity check and first request to show the ID was considered lawful, but the suspicion was cleared up when the man's partner arrived from the train and joined them. Therefore, the officers should not have persisted in the ID check.

The plaintiff appealed the judgement and in the second instance the OVG Münster found that the identity check was unlawful. The court thereby follows the opinion of the Higher Administrative Court of Rheinland-Pfalz that it is also unlawful if skin colour is even one of the deciding factors for the control.

The court states that a violation of the right to non-discrimination can be justified in certain cases. Above that, it assesses that skin colour may be a partly causative criterion if there are "reliable indications of a specific group of perpetrators who are recognizable on the basis of

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<sup>7</sup> Administrative Court of Koblenz, 23.10.2014, Reference no. 1K 294/14.KO.

<sup>8</sup> Higher Administrative Court of Rheinland-Pfalz, 21.04.2016, Reference no. 7 A 11108/14.OVG.

their external characteristics.” The delinquency of a group that is characterized by a certain external attribute must therefore be demonstrated statistically. As to the problematic nature of such statistics, the court briefly mentions that statistical distortion effects are to be excluded.

### c) Saarlouis

The third case took place in July 2016, when a German citizen with West-African roots was standing on his doorstep at around midnight to smoke a cigarette. His house was within 30 kilometres of the French border. Three Federal Police officers approached him and subjected him to an identity check without initial suspicion. Since the plaintiff’s identity document was in his apartment, he identified himself verbally and a data match-up was run, deeming his personal data credible. This identity check was performed on the basis of Section 23 (1) no. 3 BPolG.

The plaintiff considered the identity check to be the result of racial profiling and saw it as a violation of his fundamental rights (Article 3 (3) of the Basic Law) and as an infringement of the Schengen Border Code. He filed a lawsuit against the Federal Police. The case was dismissed in September 2017 by the Administrative Court of Saarlouis and in February 2019 by the Higher Administrative Court of Saarland. Therefore, the case was referred to the Federal Administrative Court where the Federal Police was obliged to substantiate their argument that there had been *Lageerkenntnis* of illegal entries in the neighbourhood of the plaintiff.<sup>9</sup>

These cases are only some among several similar cases that had been analysed by German courts.<sup>10</sup>

## 1.3 Developments since the Concluding Observations by ICERD in Its Previous Report

The Committee has already urged Germany in its previous concluding observations to undertake several reforms in order to adequately prevent and eliminate racial profiling. These recommendations included, *inter alia*, an amendment and review of Section 22 (1a) and Section 23 (1) no. 3 BPolG, an establishment of an effective complaint mechanism and providing effective remedies, including compensation, in cases of racial profiling.<sup>11</sup>

The concern regarding discriminatory practices during identity checks is also shared by other human rights bodies. The European Commission against Racism and Intolerance (ECRI)

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<sup>9</sup> Federal Administrative Court, 13.12.2019, Reference no. 6 B 30.19.

<sup>10</sup> More cases related with racial profiling: Administrative Court Köln, 04.01.2016, Reference no. 20 K 7847/13; Administrative Court Dresden 18.01.2022.

<sup>11</sup> CERD concluding observations on the combined nineteenth to twenty-second periodic reports of Germany, 30.06.2015, § 11.

recommended in its sixth report on Germany to introduce a “reasonable suspicion standard” for identity checks because otherwise, laws that provide police officers to perform identity checks without an initial suspicion based on objective criteria “open the door to racial profiling.”<sup>12</sup>

Moreover, the European Court of Human Rights already ruled in a case that laws that confer the police the power to stop and search a person in a public space without reasonable suspicion of wrongdoing are in violation of Article 8 of the European Convention on Human Rights<sup>13</sup> if they are “neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.”<sup>14</sup>

Also, the UN Working Group of Experts on People of African Descent found in its report in 2017 that “racial profiling by police officers is endemic”<sup>15</sup> and recommended the Government to “review and amend all laws and regulations that led to *de facto* racial discrimination, such as the Federal Police Act.”<sup>16</sup>

Despite these recommendations, a reform of the legal provisions and an effective complaint mechanism are not yet in place. The same applies to providing effective remedies since the possibility to receive compensation in a case of racial profiling remains very limited.

According to the federal report submitted by Germany to the CERD Committee, “*police measures based exclusively or overwhelmingly on outward appearance or ethnic origin ... do not feature among the methods used in police practice in Germany.*”<sup>17</sup>

In response to questioning by the political party DIE LINKE, the government further indicates that anti-racism seminars are held during career training for the Federal Police and “*every police officer is trained on this topic in mandatory briefings.*”<sup>18</sup> However, details concerning the exact content of the curricula, how and when they will be taught is not public. A report by MEDIENDIENST revealed that although five states (Baden-Württemberg, Berlin, Saarland, Saxony-Anhalt and Thuringia) have explicit anti-racist training, the remaining eleven states as well as the Federal Police have not or only in part implemented such measures to prevent racial

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<sup>12</sup> ECRI Report on Germany (sixth monitoring cycle), 2020, § 105.

<sup>13</sup> Article 8 (1): Everyone has the right to respect his private and family life, his home and his correspondence.

<sup>14</sup> European Court of Human Rights, Gillan and Quinton v. the United Kingdom, application no. 4158/05, 12.01.2010, § 87.

<sup>15</sup> UN Office of the High Commissioner, Report of the Working Group of Experts on People of African Descent on its mission to Germany, 15.08.2017, § 25.

<sup>16</sup> UN Office of the High Commissioner, Report of the Working Group of Experts on People of African Descent on its mission to Germany, 15.08.2017, § 70.

<sup>17</sup> 23<sup>rd</sup> -26<sup>th</sup> Periodic Report Submitted by the Federal Republic of Germany in 2020, § 143.

<sup>18</sup> Response of the German Government to the minor interpellation of Clara Bünger, Nicole Gohlke, Gökay Akbulut, other members of parliament and the parliamentary group DIE LINKE, Reference no. 20/4961, 14.12.2022, p. 10, (translated from German).



profiling.<sup>19</sup>

### 1.3.1 Legal Reforms

In June 2020 Berlin has become the first federal state to adopt a state anti-discrimination law (LADG), which provides protection against discrimination by state authorities, including the police. Based on § 14, LADG, there is an Ombudsperson, which helps victims of discrimination to enforce their rights, for example, through a discrimination complaint. By using this legal mechanism there was a successful racial profiling complaint for the first time in September 2021. The complainant received a written apology from the police department admitting that the identity check “*appeared to be discriminatory and harassing.*” The police department stated: “*We express our regret for the incident and would like to apologize to you on behalf of the Berlin Police Department.*”<sup>20</sup>

The previous German Federal Government did not see the need for legal and structural reforms. However, the current Government is working on a reform of the Federal Police Act (BPolG), which touches in part upon issue related to racial profiling. The reform aims to introduce a receipt for each identity check without initial suspicion, where the legal ground for the check is supposed to be indicated. The reform is currently (August 2023) in the parliament for further negotiations. However, no definition of racial profiling or a shift of burden of proof is foreseen in the draft law. A definition that identity checks without initial suspicion need to be based on the behaviour and not on the appearance of the person is currently not in the draft law.

The Federal Ministry of Interior seems to intend to develop a guidance note on how identity checks without initial suspicion shall be performed by Federal Police officers when the changes for the Federal Police Act are adopted.

### 1.3.2 Efficient Complaint Mechanism

The Federal Police has no independent complaint mechanism for discriminatory police practice. Victims of discrimination can only file a complaint addressed to the Federal Police. Nevertheless, the previous Federal Government considered the existing structures to be sufficient to guarantee transparency and accountability of the use of the power to stop and search by the police.<sup>21</sup> On the contrary, after complaints against police officers about alleged assaults in office, only about two percent of the proceedings lead to an indictment, while 65%

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<sup>19</sup> MEDIENDIENST, Racism and anti-Semitism in the police force, 04.08.2022, available online: <https://mediendienst-integration.de/artikel/rassismus-und-antisemitismus-bei-der-polizei.html>, (translated from German).

<sup>20</sup> Tagesspiegel, Behörde entschuldigt sich schriftlich, 24.09.2021: <https://www.tagesspiegel.de/berlin/behorde-entschuldigt-sich-schriftlich-berliner-polizei-gesteht-erstmal-racial-profiling-ein-261310.html>.

<sup>21</sup> 23<sup>rd</sup> -26<sup>th</sup> Periodic Report Submitted by the Federal Republic of Germany in 2020, § 147 - § 150.

do not even report complaints to the police.<sup>22</sup>

Thus, an independent and effective police complaint system appears fundamental to a democratic and accountable police service. In Germany, a largely independent complaint structure for those affected by incidents involving the police exists only in the Länder Mecklenburg-Western Pomerania, Rhineland-Palatinate, Schleswig-Holstein and Thuringia for their police forces and based on the LADG in Berlin, while such structure is missing for the Federal Police.

### 1.3.3 Collection of Data Regarding Identity Checks

The Committee has already expressed its concerns about the lack of comprehensive data regarding the use of stops by the police.<sup>23</sup> Moreover, the European Racial Equality Directive explicitly recognizes the use of statistical data in order to demonstrate unequal treatment on the basis of race or ethnicity.<sup>24</sup>

Even though recording police controls may increase an understanding the phenomenon of racial profiling in Germany, there is still no data regarding the use of stops and their possible racial implications available. In April 2023, however, an interim report of the first study done on police officers in Germany was published by the German Police University (*Deutsche Hochschule der Polizei*).<sup>25</sup> The study is titled “*Motivation, Attitude and Violence in the Everyday Life of Police Officers*” (MEGAVO) and aims to assess the experiences of members of the police force, including any “*anti-democratic and misanthropic or authoritarian attitude patterns*.”<sup>26</sup> The results of the interim report suggest that “*stereotyping could definitely be observed in everyday police work*.”<sup>27</sup> The report finds that although self-reporting by officers show relatively low discriminatory attitudes, latently held stereotypes can be reinforced by officers’ recurring interactions when “*some locations known to be hotspots, such as certain parks or train stations, were increasingly being checked – also specifically with regard to certain groups of people*.”<sup>28</sup>

*“In this context, reifying perspectives in relation to certain ethnic groups/groups of people emerged. Statistics such as the police crime statistics (PKS) were cited, which would prove that certain groups/groups of people were particularly often conspicuous. Many police officers were*

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<sup>22</sup> Süddeutsche Zeitung, Kaum Schulungen zu Rassismus und Antisemitismus bei der Polizei, 05.08.2022, available online: <https://www.sueddeutsche.de/politik/polizei-studie-schulung-rassismus-1.5634140> (translated from German).

<sup>23</sup> CERD concluding observations on the combined nineteenth to twenty-second periodic reports of Germany, § 11.

<sup>24</sup> EU Directive 2000/43/EC, Preamble ground 15.

<sup>25</sup> MEGAVO, available online: <https://www.polizeistudie.de/>.

<sup>26</sup> MEGAVO, Project, available online: <https://www.polizeistudie.de/projekt/> (translated from German).

<sup>27</sup> MEGAVO, Interim Report, available online: <https://www.polizeistudie.de/wp-content/uploads/projekt-megavo-zwischenbericht-2023-04-04.pdf> (translated from German).

<sup>28</sup> Ibid.

*well aware of the process: Especially those who are on duty in hotspot police stations could, after a while, in which similar experiences were made again and again in relation to the behaviour of certain groups of people/ethnic groups, gain a reifying perspective. Negative characteristics would then be attributed to this group per se.”<sup>29</sup>*

In an interview with *Tagesschau*, member of the MEGAVO scientific advisory board Tobias Singelstein criticizes the study for its poor participation rate (only 16 %) and its lack of strong analysis and focus.<sup>30</sup> “*The MEGAVO study draws heavily on individual attitudes,*” Singelstein states, “*but these only make up part of racism. In this way, the structural side of the problem is hardly taken into account.*” He concludes that the study is far from complete and “not the racism study that’s been called for.”

In 2020, however, the German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung*) was commissioned by the Bundestag to establish a racism monitor.<sup>31</sup> This monitor will cover all spheres of life and will be carried out on a regular basis.

## **1.4 Recommendations to comply with ICERD standards**

Tackling racial profiling requires concrete measure such as the following, which the Committee may consider for its Concluding Observations:

### a) Ongoing legal reform

The Federal Police Act or the internal regulation of the Federal Police (BRAS 120) should specify indicators concerning ‘knowledge of the situation’<sup>32</sup> and ‘experience of border police’<sup>33</sup> in order to equip officers with clear guidance which evidence applies as ‘knowledge’ or ‘experience’.

<p><b>I. The Ministry of Home Affairs may - in the relevant legal or administrative instruments - provide guidance concerning ‘knowledge of the situation’ and ‘experience of border police’.</b></p>
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In the law itself or in a Guidance Note by the Federal Ministry of the Interior clarification on how to perform discrimination-free identity checks without initial suspicion shall be drafted in

<sup>29</sup> Ibid.

<sup>30</sup> Tagesschau, „Es braucht noch viel mehr Forschung“, 04.04.2023, available online:

<https://www.tagesschau.de/inland/gesellschaft/megavo-polizeistudie-101.html> (translated from German).

<sup>31</sup> DeZIM Institut, Press release, 03.07.2020, available online: [https://www.dezim-institut.de/fileadmin/PDF-Download/200703\\_PM\\_Rassismus-Monitor.pdf](https://www.dezim-institut.de/fileadmin/PDF-Download/200703_PM_Rassismus-Monitor.pdf).

<sup>32</sup> So-called ‘Lagekenntnisse’

<sup>33</sup> So-called ‘polizeiliche Erfahrung’

exchange with minority and other specialised civil society organisations, in order to provide systematic steps for undertaking such checks. This shall include principles of a legitimate and justifiable selection of persons.

For checks, particularly in trains, the following criteria could be considered:

- i. Personal checks should be performed only on trains with cross-border traffic.
- ii. The criteria for selecting the trains to be checked must be quantitative (specification of the maximum number of trains to be checked per day, specification of a maximum number of control processes per wagon and train), local (only cross-border trains) and time (be checked only within a certain time after crossing the border).
- iii. The selection of the wagon shall also be done at random. It is, therefore, necessary to determine in advance in which wagons the checks shall take place.
- iv. The selection of the persons to be checked must be made randomly according to non-discriminatory selection criteria already defined in advance.

**II. The Ministry of Home Affairs may establish and circulate a Guidance Note to all Boarder Police Offices in the Federal Police in which the relevant steps of an identity check without initial suspicion in a discriminatory free manner are described. Civil society actors may be consulted while doing so.**

b) Receipt when identity checks are carried out

It appears that the Federal Police act will be amended with the regulation that upon request each person undergoing an identity check can receive a receipt. This receipt shall outline the legal ground on which the check was performed as well as the identification number of the officer.

It is furthermore recommended to provide the possibility for persons checked to indicate their belonging to a group experiencing discrimination (if they so wish). This would allow the Federal Police to verify in the long-term if discrimination free checks are conducted.

**III. The Committee welcomes the intention to introduce a receipt for identity checks containing the legal ground and identification number of the officer performing the check. The Committee recommends to also include in the form the option that the person checked is able to identify him-/herself as belonging to a group facing (racial) discrimination.**

c) Data collection

Data that people who belong to an ethnic minority or people of colour are over-proportionally stopped for identity checks without initial suspicion has never been collected. However, people

of colour do indicate anecdotally that they experience identity checks more often than non-people of colour.

**IV. The Committee recommends the government to undertake a representative data collection exercised (as described above) to verify if such anecdotal evidence is underpinned with research.**

d) Independent Federal Police Complaint mechanism

Following the example set by some Länder mentioned above, the establishment of an independent police complaint institution in charge of investigating complaints against Federal Police officers should be considered.

**V. The Committee therefore recommends the German Government to establish an independent Complaints Commission investigating complaints against the Federal Police in an independent manner.**

e) Enact equal treatment law for state actors

The General Equal Treatment Act (AGG) is a civil law only binding private actors to equal treatment outside of employment. State actors are supposed to comply with the equal treatment clause of the Constitution. As the legal pathway to litigate cases of discrimination by state actors as outlined above is inappropriate, it should be considered to develop an appropriate legal framework to uphold state actors in particular the police to equal treatment and offer victims a reasonable legal pathway, including compensation and appropriate means concerning proof of discrimination.

**VI. The Committee recommends the German Government to establish an appropriate legal framework that state actors are bound in law to equal treatment and opens an appropriate legal mechanism along the legal standards outlined by the European Equal Treatment Directives.**

## 2 Anti-Muslim racism experienced by women

### 2.1 Racial Discrimination (ICERD Art. 1)

CERD's General Recommendation No. 32 (2009) states in Paragraph 7: *“The ‘grounds’ of discrimination are extended in practice by the notion of ‘intersectionality’ whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in Article 1 of the Convention.”*<sup>34</sup>

In a survey conducted in Germany in 2019, 52% of the participants considered Islam as a threat. 13% of those surveyed considered it appropriate to ban Muslims from immigrating to Germany. More than 40% indicated they would not accept a family member marrying a Muslim.<sup>35</sup> A survey conducted by the Evangelical Church in 2018 indicates that every second person shares the opinion that Islam does not fit into German society. Around 45% of those surveyed responded they are against a Muslim mayor in their community.<sup>36</sup>

In assessing the situation of Muslim women, it is apparent they face intersectional forms of discrimination, combining experiences of racism, gender, and religious discrimination. Therefore, intersectionality should be part of the analysis of the German Report by CERD.

Currently between 5.3 and 5.6 million Muslims live in Germany. This corresponds to between 6.4 and 6.7% of the total population of 83.17 million people. 48% of the Muslim population are women.<sup>37</sup> Approximately 30% of these Muslim women in Germany wear a headscarf.<sup>38</sup> 88% of these women wear the veil as their religious identity and duty. A recent study conducted by the Federal Office for Migration and Refugees shows that 35% of women who sometimes or never wear a headscarf also cited fear of being disadvantaged at school, in training or at work. Fear of harassment and verbal abuse was reported by 13% of those women as reasons for not wearing a headscarf.<sup>39</sup>

This alternative report presented by the Bureau for the Implementation of Equal Treatment is outlining racial discrimination of Muslim women in relation to gender, and religion in Germany.

Over 25 years of debates have taken place in Germany concerning the legal prohibition of

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<sup>34</sup> CERD/C/GC/32 marginal no 7.

<sup>35</sup> Bertelsmann Religionsmonitor (2019): [Weltanschauliche Vielfalt und Demokratie](#), p. 13, 77 f.

<sup>36</sup> Sozialwissenschaftliches Institut der Evangelischen Kirche in Deutschland (2018): [Islam und Muslim\\*innen in Deutschland](#), p. 4

<sup>37</sup> BAMF (2021): [Muslimisches Leben](#), p. 37, 48.

<sup>38</sup> Ibid., p. 117.

<sup>39</sup> Ibid., p. 122.

wearing a religious headscarf in professional life,<sup>40</sup> such as medical staff, teachers or in the judiciary. There are three central decisions of the Federal Constitutional Court (*Bundesverfassungsgericht*) concerning this matter. While the first two decisions relate to teachers wearing a headscarf,<sup>41</sup> the third decision touched upon a headscarf-wearing law trainee.<sup>42</sup> The first decision of the Constitutional Court dating back to 2003,<sup>43</sup> outlined that a ban of headscarves is not violating the German Constitution. Consequently, many *Länder*, holding decision making powers on any schooling matters, enacted their individual legal frameworks. Some of them allowed teachers wearing a headscarf and other prohibited it.<sup>44</sup>

In 2015, the Federal Constitutional Court decided in a new court case that a headscarf ban in public services would only be proportionate if there was a sufficiently concrete risk of danger to disturb peace at school.<sup>45</sup>

In 2020, a third decision was taken by the Constitutional Court allowing the restriction of wearing a headscarf during a legal traineeship at court in Hesse.<sup>46</sup> Several *Länder* have now made provisions that legal trainees (and sometimes also court staff not performing state duties) are not allowed to wear a headscarf in the courtroom. Those *Länder* are Baden-Wuerttemberg<sup>47</sup>, Bavaria<sup>48</sup>, Hesse<sup>49</sup>, Lower Saxony<sup>50</sup>, North Rhine-Westphalia<sup>51</sup>, and Schleswig-Holstein<sup>52</sup>.

## 2.2 Racial Prejudices (ICERD Art. 2, 4, 7)

Efforts by the German Government towards overcoming racial prejudices against headscarf-wearing Muslim women in accordance with ICERD Article 2, 4 and 7 are not reflected in the governmental report to CERD. Therefore, it can be assumed that no such activities have been undertaken by the German government.

Women wearing headscarves for religious reasons are at high risk for racial, gender, and religious discrimination. They are seen by mainstream society as being “oppressed by their

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<sup>40</sup> Cases brought to Court regarding the Nurse: Labour Court Cologne of 6 March 2008 case number 19 Ca 7222/07; the cashier and the nursery schoolteacher: CJEU of 15.7.2021 case number: C-804/18 and C-341/19.

<sup>41</sup> BVerfG, [Judgment of the Second Senate of 24 September 2003](#), case number: 2 BvR 1436/02; BVerfG, [Order of the First Senate of 27 January 2015](#), case number: 1 BvR 471/10.

<sup>42</sup> BVerfG, [Order of the Second Senate of 14 January 2020](#), case number: 2 BvR 1333/17.

<sup>43</sup> See footnote 41.

<sup>44</sup> *Länder* with legal restrictions on for headscarves for teachers listed below in chronological order: Baden-Wuerttemberg (01.04.2004), Lower Saxony (29.04.2004), Saarland (23.06.2004), Hesse (18.10.2004), Bavaria (23.11.2004), Berlin (27.01.2005), Bremen (28.06.2005), North Rhine-Westphalia (13.06.2006).

<sup>45</sup> See footnote 41.

<sup>46</sup> See footnote 42.

<sup>47</sup> § 21 AGGVG, from 17.12.2017

<sup>48</sup> Art. 11 BayRiStAG from 22.03.2018

<sup>49</sup> § 45 HBG from 24.11.2021

<sup>50</sup> § 31a NJG from 16.05.2020

<sup>51</sup> § 2 JNeutG NRW from 18.03.2021

<sup>52</sup> § 56 LBG from 20.05.2022

families”<sup>53</sup> and unwilling to integrate into society. Muslim women are also often portrayed as dangerous, as the headscarf is seen to be a symbol of radical Islamism.<sup>54</sup> Through these prejudices Muslim women are disadvantaged and discriminated against in public and political life, employment and education and are at risk of facing gender-based hate-motivated crime.

According to the definition of the ICERD, racial discrimination encompasses not only unequal treatment but also hate-motivated crimes. In Germany, racist hate crime is captured in the category of ‘politically motivated crime’. The Criminal Police Reporting Service records 610 Anti-Muslim hate crimes in 2022: 45 of them were violent crimes, of which 39 involved bodily harm.<sup>55</sup> Muslim women wearing a headscarf are at higher risk of experiencing verbal and physical violence, as the headscarf is a visible sign of gender and religion. However, the collected data does not consider gender. Reports from the Federal Anti-Discrimination Agency (FADA) show that 75.8% of verbally and physically violent discrimination was reported in the public and leisure sector by headscarf-wearing Muslim women. In many cases, bullying, racist or other derogatory statements were also reported.<sup>56</sup>

ICERD Article 2 states that laws must not create or perpetuate racial discrimination. However, Germany has several laws - as already mentioned above - at federal and state levels banning Muslim women from wearing a headscarf in areas of public service. Therefore, there are hardly any headscarf-wearing Muslim women in such public offices. As a result, there is no substantial evidence that women who wear headscarves are neutral in their tasks. The image of Muslim women seems to be based solely on ascriptions and prejudices. It generates a racial stigma based on gender and religion, which also leads to a violation of their right to self-determination, agency, and autonomy. Especially when headscarf-wearing women must make a choice between wearing a headscarf and employment. This stigma denies their capacity and sanity to be able to make decisions for themselves as a woman.

As there are hardly any statistical data concerning ethnic minorities in Germany, there are none about the representation of Muslims in public life, let alone of headscarf-wearing Muslim women in political life. However, there is anecdotal evidence that there are very few Muslim women with a headscarf in political parties or political positions. The reason for this is the likelihood of prejudices and bias against Muslim women wearing a veil.

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<sup>53</sup> Shooman (2014): „weil ihre Kultur so ist“, p. 83-99.

<sup>54</sup> Ibid.

<sup>55</sup> BMI/BKA: [Politisch motivierte Kriminalität im Jahr 2022](#), p. 12.

<sup>56</sup> FADA (2017): [Diskriminierungserfahrungen in Deutschland](#), p. 220f.



## 2.3 Employment (ICERD Art. 5)

In 2015, CERD expressed to be “*particularly concerned at reports of the ethno-religious discrimination of Muslim women in gaining access to work opportunities.*”<sup>57</sup>

A 2021 study released by The National Discrimination- and Racism Monitor (NaDiRa), found that headscarf-wearing women are more likely than other Muslim groups to report having experienced discrimination in the German labour market in the last five years. Headscarf-wearing Muslim women also report the highest instances of being overlooked for promotions, and of not applying for jobs to begin with due to the expectation that they would not be hired due to their religion. Over half of headscarf-wearing Muslim women report having been asked in job interviews whether they would be willing to remove their headscarves, with 34% stating that this occurs frequently; especially in jobs requiring higher qualifications. Over 60% of headscarf-wearing Muslim women stated that the consideration of whether they would be able to wear their headscarf influenced their choice of career.<sup>58</sup>

### 2.3.1 Public service employment

In June 2021, the “Law Ruling the Appearance of Civil Servants and Modifications of other related Employment Regulations” (*Gesetz zur Regelung des Erscheinungsbilds von Beamtinnen und Beamten sowie zur Änderung weiterer dienstrechtlicher Vorschriften*)<sup>59</sup> was enacted. The law restricts in §34 civil servants working in federal states institutions from exercising their profession when they wear a headscarf as this is “*objectively likely to impair confidence in the neutral exercise of their duties.*”<sup>60</sup> This new law originates from a Federal Administrative Court’s ruling regarding a police officer with tattoos depicting unconstitutional symbols (a swastika).<sup>61</sup> In this case it became obvious that there is a need for a legal basis to ban unconstitutional tattoos and behaviour. As a result, the law now also rules that religious symbols such as a Muslim headscarf are equally banned. This equates unconstitutional symbols with religious ones. This new piece of law now affects Muslim women in public offices at the federal level wearing a headscarf, particularly judges, states attorneys, police officers, and soldiers.

Similar cases occurred at the *Länder* level: A headscarf-wearing law trainee was denied conducting court sessions, taking evidence, representing the public prosecutor, and chairing an administrative hearing committee because of wearing a veil. Therefore, she filed a constitutional complaint against this prohibition. In its decision in 2020, the Federal Constitutional

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<sup>57</sup> CERD/C/DEU/CO/19–22, marginal no 14.

<sup>58</sup> Deutsches Zentrum für Integrations- und Migrationsforschung DeZIM e.V., (2022), [Kopftuch und Arbeit? Erfahrungen von Musliminnen und Muslimen auf dem deutschen Arbeitsmarkt.](#)

<sup>59</sup> Bundesgesetzblatt: [Bundesbeamtenstatusgesetz](#), issued on 06.07.2021, p. 2250.

<sup>60</sup> Beamtenstatusgesetz, § 34 (2).

<sup>61</sup> BVerwG, [judgement of 11. November 2017](#), case number: 2 C 25.17.

Court focused rather on the role of a judge than of a law trainee and did not take Art. 33(3) of the Constitution into account, which states that “*neither the enjoyment of civil and political rights nor eligibility for public office nor rights acquired in the public service shall be dependent upon religious affiliation. No one may be disadvantaged by reason of adherence or non-adherence to a particular religious denomination or philosophical creed.*”<sup>62</sup> The Constitutional Court in this decision outlines that it is to be respected when *Länder* define more restrictive legal frameworks concerning religious symbols.<sup>63</sup>

### 2.3.2 Private sector employment

A study conducted in 2016 states that Muslim women with a Turkish name who wear a headscarf must apply four times as often to be invited to a similar number of job interviews as applicants with a German name not wearing a headscarf.<sup>64</sup> A 2022 study found that the callback rate in Germany for veiled Muslims was 25.2%, compared to 53% for the majority group and 50.4% for unveiled Muslims. This sank as low as 17.9% for high customer-contact situations, compared to 54.5% for the majority group and 51.5% for unveiled Muslims.<sup>65</sup> According to an expert report by the FADA, the headscarf is “*predominantly considered undesirable or even incompatible with professional activity*” for many employers.<sup>66</sup> Various counselling centres reported cases in which women were advised to take off their headscarves, as this is the only way to integrate them into the labour market.<sup>67</sup> In one extreme case, a woman was threatened with sanctions by the job center in the form of a reduction of benefits if she did not remove her headscarf, with the rationale that the headscarf made it more difficult for her to find employment.<sup>68</sup>

The following case in the private sector employment displays that regulations are made in everyday working life to prohibit female employees from wearing their headscarves. A cashier working for a drugstore has worn a headscarf since 2014. When she did not comply with her employer’s request to take off the headscarf, she was assigned to another position that allowed her to wear the headscarf. In July 2016, she received instructions from her employer to appear at her workplace without showing any conspicuous large-scale signs of religious, political or ideological beliefs. The CJEU specified that rules such as in this case are disproportionate and therefore constitute indirect discrimination based on religion or belief.<sup>69</sup>

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<sup>62</sup> Constitution, Art. 33 (3).

<sup>63</sup> See footnote 42, marginal no. 102.

<sup>64</sup> Weichselbaumer (2016): [Discrimination against Female Migrants Wearing Headscarves](#), p. 12f.

<sup>65</sup> Mariña Fernández-Reino, Valentina Di Stasio, Susanne Veit, Discrimination Unveiled: A Field Experiment on the Barriers Faced by Muslim Women in Germany, the Netherlands, and Spain, *European Sociological Review*, 2022;, jcac032, <https://doi.org/10.1093/esr/jcac032>, p.11

<sup>66</sup> FADA (2010): [Diskriminierung aufgrund der islamischen Religionszugehörigkeit im Kontext Arbeitsleben](#), p. 8.

<sup>67</sup> FADA (2017): [Diskriminierung in Deutschland](#), p. 381.

<sup>68</sup> Ibid.

<sup>69</sup> CJEU of 15.7.2021 case number: C-341/19.

## 2.4 Education (ICERD Art. 7)

Part of the study ‘Experiences of discrimination in Germany’ commissioned by FADA evaluated a total of 1,655 cases of discrimination experiences in the educational sector.<sup>70</sup> In this field Muslims in particular experience discrimination. The report speaks about a day-care refusing headscarf-wearing mothers, bullying and poorer performance evaluation of students due to the attribution to the Muslim religion in schools and universities.<sup>71</sup>

From September 2019 until August 2021 the Contact Point for Protection against Discrimination in Schools (ADAS) in Berlin conducted a quantitative study on the experiences of Muslim students at Berlin schools in dealing with religious diversity. Although the surveyed enjoy going to school on average, most of them (78%) feel treated unequally and have the feeling that they must do more at school than others because of their background. Almost half of them (47%) have this feeling quite or very strongly.<sup>72</sup> More than half of them (62%) stated that there are teachers or educators at their school who make negative comments about certain religions. The negative comments related almost exclusively (92%) to Islam. In 15% of the cases, negative statements are made frequently or regularly.<sup>73</sup> The greater part of the negative reactions, e.g. in the form of stereotypical and derogatory remarks, were made by teachers and in some cases school administrations and primarily addressed headscarf-wearing Muslim girls and young women.<sup>74</sup> Statements made by female Muslim pupils during the interviews for the above-mentioned study:

“There are always negative comments and when you do well, the teachers are surprised but still give a lower grade than e.g. Germans.”

“Another teacher asked me in front of the whole class if I hadn’t joined ISIS after all.”

“I was not transferred to next grade level because of my headscarf.”<sup>75</sup>

## 2.5 Recommendations to comply with ICERD standards

Current legal protection against racial, gender, and religious discrimination does not fully comply with ICERD standards and needs to be analysed.

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<sup>70</sup> Ibid., p. 122.

<sup>71</sup> Ibid., p. 142 ff., 291.

<sup>72</sup> ADAS (2021): [Religion und Glauben an der Schule](#), p. 6.

<sup>73</sup> Ibid., p. 7.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., p. 30, 33.

a) Therefore, BUG suggests the Committee to ask the German Government:

<b>VII.</b>	<b>Will existing laws be amended to guarantee that headscarf-wearing Muslim women have equal access to employment, to participate in public life, in decision-making processes and in holding public offices in the judiciary?</b>
<b>VIII.</b>	<b>Beyond the legal framework, which measures will be taken by school authorities to ensure that headscarf-wearing Muslim girls and women are not discriminated against at school, in training, at work or by governmental institutions?</b>
<b>IX.</b>	<b>Will temporary positive measures be introduced to achieve equal participation of Muslim women in employment, in public life, in decision-making processes and in holding public offices in the judiciary?</b>
<b>X.</b>	<b>How will the Government of Germany ensure that discrimination complaint mechanisms according to § 13 of the General Equal Treatment Act (AGG) are also providing meaningful analysis of Muslim women experiencing discrimination in accessing and within employment.</b>
<b>XI.</b>	<b>Does the German Government mainstream an intersectional approach to race, gender and religion in policy- and law-making procedures?</b>
<b>XII.</b>	<b>Which steps is the German Government taking to reform the General Equal Treatment Act and which changes are foreseen to date?</b>

b) BUG would like to invite CERD to consider the following recommendations:

<b>XIII.</b>	<b>The German Government repeals laws prohibiting headscarf-wearing for civil servants and encourages the states (Länder) to repeal their laws prohibiting headscarf-wearing Muslim women from holding a public office in the judiciary.</b>
<b>XIV.</b>	<b>The German Government shall introduce temporary positive measures to achieve equal participation of Muslim women in employment, in public life, in decision-making processes and in holding public offices in the judiciary.</b>
<b>XV.</b>	<b>The German Government shall introduce measures to ensure that intersectional approaches are applied in policy- and law-making processes.</b>
<b>XVI.</b>	<b>The German Government is asked to initiate research and data collection concerning the representation of Muslim women in public and political life.</b>
<b>XVII.</b>	<b>The German Government shall collect data on violence based on race, gender, religion, and especially women facing intersectional discrimination like Muslim women.</b>