

ECRI Country Report Germany 2013

Contribution

submitted by

Büro zur Umsetzung von Gleichbehandlung
(BUG) e.V.

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Developed and submitted by:

Bureau for the Implementation of Equal Treatment (BUG)
Vera Egenberger – Director
Greifswalder Str. 4
D – 10405 Berlin
Tel 0049 30 6988 366 18
Fax 0049 30 311 603 73
e-mail: vera.egenberger@bug-ev.org
Website: www.bug-ev.org (available in German and English)

A. Introduction

The **Bureau for the Implementation of Equal Treatment**, (German title 'Büro zur Umsetzung von Gleichbehandlung', BUG) was established in April 2009 and is a registered association under German law with charitable status.

In accordance with the now well established principles of equality, 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. .

To help make this vision a reality, BUG strives to test and strengthen the implementation of the General Equal Treatment Act (AGG), in particular by providing legal aid to help strategically important cases come before a court. By bringing the cases it identifies to the courts, BUG is engaged in furthering the political, social and legal implementation of AGG by facilitating courts to create legal precedent, thereby helping to end discriminatory structures, rules and practices. BUG is also engaged in lobbying, information work and public relations. BUG encourages and supports the development of greater synergy between relevant organisations via meaningful networking, dialogue and the exchange of strategic information among relevant stakeholders.

BUG strongly regrets not to be in the position to personally contribute to the meetings of the ECRI delegation held in Berlin on 11th March 2013. We therefore offer a submission on ethnic/religious discrimination and institutional racism in Germany in this short written contribution.

We value the work of ECRI and greatly welcome the consideration of our contribution to the country report on Germany within the 5th monitoring cycle.

B. The context

As the ECRI Delegation is well aware, Germany has implemented several European Union Equal Treatment Directives into one single national piece of law, the so-called Allgemeines Gleichbehandlungsgesetz, AGG (General Equal Treatment Act). This piece of civil law has been in force since 2006 and provides legal sanctions against discriminatory treatment in employment and in other spheres.

For criminal matters related to violent forms of racism the criminal code includes Art. 130. However this Article is largely interpreted in relation to hate motivated crimes committed by persons from extreme right-wing groups, whether organised or informal. The law scarcely mentions violent forms of racism perpetuated by persons without an extreme right wing affiliation. The consequence of this approach is that every-day-racism (in all its forms) is mostly neglected.

With the adoption of the EU Framework Decision on Racism and Xenophobia amendments to § 46 of the Criminal Code has been considered but was not adopted by Parliament because a majority wasn't at the time in favour of a change. An amendment may lead to the possibility of increasing sanctions (aggravated circumstances) when a crime is motivated by racism.

C. Thematic contribution of BUG

Within the thematic focus of BUG we seek to focus our contribution to two major issues related to **racial/religious discrimination**, as well as **violent forms of racism/institutional racism**.

1. Racial/religious discrimination

A particular characteristic of German society is the denominational nature of social service provision which are provided under the umbrella of either the Catholic Church (via its agency, *Caritas*) or the Protestant Church (via its agency, *Diakonie*). Church affiliated organisations within this structure run kindergartens, homes for the elderly, social and counselling services, hospitals, schools and many other types of social service provision. These institutions receive significant levels of state funding (up to 100 %) to deliver their services. They are in this sense acting for government to fulfil its responsibilities under the welfare state. All services are typically provided by these organisations and offered to the general public regardless of who they are. Together these welfare organisations with either a catholic or a protestant church affiliation rank as Germany's second largest employer after the state itself. They employ approximately 1.3 million people.

The General Equal Treatment Act (AGG) provides an exemption for confessional employers of the type just mentioned (§ 9 AGG), in that they can consider church affiliation in their selection processes for prospective employees, where the religion constitutes a justified occupational requirement. In practice confessional employers do consider the religious affiliation a justified occupational requirement for all positions. Close to 100 % of the vacancies published by these church-linked employers are filled only by personnel who have a proven membership of the respective church. In the case of Catholic employers, a membership in the Catholic Church is a strict requirement; while in the case of Protestant employers, a membership of any Christian church is required, irrespective of the job in question. This applies equally for a position in a canteen of a *Diakonie* home for the elderly, for cleaning personal in a Catholic hospital or for health care workers in a confessional mobile healthcare service for homeless people.

Church affiliation is indicated in Germany in the tax form of every employee, which they present start their new position. No religious or other than Christian affiliations is indicated as non-member of the Christian church. The general practice in such cases seems to be that the first job selection criterion is formal religious membership, rather than, for example, church attendance.

In 2010, 30 % of the German population were registered as being Catholic and another 30 % as being Protestant. Though this does not indicate the extent to which they perform their espoused religious faith, in practice, many people maintain their formal membership of their church solely in order not to endanger their current employment situation or diminish their chances in the labour market in future.

This legal exemption for the Christian churches affects negatively people with a Muslim, Jewish or Baha'i affiliation (approximately 6% of the German population) as much as this concerns people without any religious affiliation (35 % of the German population).

We therefore recommend ECRI to emphasise in its country report on Germany that the German government should ensure discrimination free recruitment procedures for all confessional employers financed by state funding in full or in part, and only allow preferential treatment for persons with the required religious affiliation in positions where that religious affiliation is a genuine, legitimate and justified occupational requirement.

2. Violent forms of racism/institutional racism

As the ECRI delegation is well aware there have been 10 murders by a Nazi-terror group called Nationalsozialistischer Untergrund (NSU) from 2000 to 2006. Nine of the ten victims had a migrant background. The police, the Federal Criminal Bureau and the state security services in several Länder governments investigated these murders until November 2011. The weapon with which most of the persons were killed was only coincidentally identified by the police. Criminal investigations focused largely on ‘Ausländerkriminalität’ (criminal activities by foreigners). Even families of victims have been accused of being involved in criminal activities. The police services treated the victims’ families inappropriately and ignored indications that the murders had a racist motivation.

Based on the definition offered by the Stephen Lawrence inquiry of 1999 institutional racism was defined as: *“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”*

There is little to no understanding of institutional aspects of racism in the German police forces, across public services or in schools where discrimination of people with black and ethnic minority background occurs. The investigation of the NSU murders illustrates the gross absence of sensitivity and understanding of this phenomenon: for 11 years the relevant investigation services did not consider a racist motivation behind the crimes.

We therefore recommend ECRI to underline in its country report on Germany that the German government takes a comprehensive approach to tackle institutional racism in Germany including

- *a review of general and specific public policies*
- *recruitment practices within state structures that reflect diversity principles*
- *an assessment and amendment of criminal investigation methods concerning the motivation of a crime*
- *anti-racism trainings of police and other state forces*
- *statistical registration of hate motivated crimes*
- *an improved cooperation with victims’ families*
- *a reflection on the prosecution of hate motivated crimes*

As both aspects are complex issues we stand ready to offer any additional background information as the ECRI delegation deems fit. BUG would welcome any reference to the above mentioned aspects in its country report.