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Antidiskriminierungspolitik in der deutschen Einwanderungs- gesellschaft

Stand, Defizite, Empfehlungen

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Abstract

There are signs of discrimination in all areas of life in Germany (education, workplace, housing, justice system and law enforcement). Yet Germany's anti-discrimination policy does not protect against all forms of discrimination in all areas of life. In addition, the widespread use of terms such as "people with an immigrant background" (Menschen mit Migrationshintergrund) not only fails to reflect the full extent of racial discrimination, as Afro-Germans, Jews, Sinti and Roma are not covered by the expression, but is also not in line with international, European and German anti-discrimination laws. This means that the effective number of those subject to racial discrimination is larger than the number of those identified as migrants or descendants of migrants.

German anti-discrimination law is not designed to prevent or dismantle structural or widespread discrimination. It aims instead to provide individuals who have suffered discrimination the opportunity to take legal action against the offending person or institution. German anti-discrimination law and policy are therefore reactive and not pro-active. They both draw on the relationship between two individuals and not between an individual and a public body, unless the latter is an employer. Finally, they are limited to specific areas of life and are not designed to permit the pursuit of institutional redress (e.g., through associations or other organizations) in cases of systemic discrimination.

This state of affairs is reflected in the public perception of anti-discrimination policy as a privilege favoring minorities rather than a

civic duty. It is also a product of the chaotic genesis of Germany's anti-discrimination law, which draws on a variety of international agreements and EU regulations and is also a manifestation of the (often begrudging) implementation of European directives in this area. Germany's anti-discrimination protections are therefore by design of a patchwork nature. To date, the German government has been opposed to adopting an equal treatment directive for Europe that targets gaps in discrimination protections. Furthermore, when presiding over discrimination complaints, German judges tend to be hesitant to conservative in their decisions, which may be related to the absence of ethnic diversity within the German judicial system.

Those affected by discrimination face several hurdles in seeking legal redress. There are a number of exceptions to the rules in Germany's legal framework, the General Equal Treatment Act (AGG), which effectively limits the reach of protections against discrimination. There are no provisions, for example, for the pursuit of a class-action lawsuit. Penalties for established cases of discrimination are moderate and do not serve as a deterrent to others. The victimization and stigmatization suffered by those discriminated against play no role in anti-discrimination policy. State (or state-financed) measures remain limited to providing (inadequate) counseling to victims of discrimination and the "pursuit of an amicable agreement" as per the AGG's mandate (§ 27 Abs. 2 Nr. 3 AGG). Most Bundesländer do not have an equality-tasked agency similar to the "equality bodies" seen in the UK, and there is no independent, non-governmental (but state supported) framework for providing easily accessible information and counseling services throughout the country.

Unlike Germany, other European and North American countries have equality-tasked agencies that are independent of migration authorities and active in labor, housing, education and law enforcement issues. Equipped with greater budgets (relative to their population numbers) and greater reach in their jurisdiction, these agencies have the authority to investigate (e.g., hiring practices), represent (e.g., arbitration and court proceedings), issue decisions (e.g., decree pro-active measures, act as co-decision-maker in public works tenders), issue

sanctions (e.g., impose fines) and monitor (e.g., conduct surveys and sensitivity trainings).

To date, there has been no commitment made to introducing proactive measures designed to mitigate structural discrimination against individuals from migrant families, people of color, Sinti and Roma and others, and to increase their opportunities for participation and representation in key areas of society. Gender and disability discrimination are the only areas where pro-active legislation in public service has been implemented and yielded results. Similar measures should be extended to include racial and migration-related discrimination.

Examples of successful measures such as the United Kingdom's Public Sector Equality Duty and the United States' Federal Employment Equity Act can provide helpful input for the design of similar measures in Germany. Authorities in both the UK and the USA are required not only to collect equality data on their employees and customers, but must also develop equality plans with concrete measures to battle unequal treatment and underrepresentation. Finally, authorities in both countries are also required to maintain transparency in monitoring implementation and progress.