

### International anti-ageist policy versus national context?

Sackmann, Reinhold; Kopycka, Katarzyna

Veröffentlichungsversion / Published Version

Forschungsbericht / research report

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

SSG Sozialwissenschaften, USB Köln

#### Empfohlene Zitierung / Suggested Citation:

Sackmann, R., & Kopycka, K. (2010). *International anti-ageist policy versus national context?* (Der Hallesche Graureiher : Forschungsberichte des Instituts für Soziologie, 2010-2). Halle: Universität Halle-Wittenberg, Philosophische Fakultät I Sozialwissenschaften und historische Kulturwissenschaften, Institut für Soziologie. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-308303>

#### Nutzungsbedingungen:

Dieser Text wird unter einer Deposit-Lizenz (Keine Weiterverbreitung - keine Bearbeitung) zur Verfügung gestellt. Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

#### Terms of use:

This document is made available under Deposit Licence (No Redistribution - no modifications). We grant a non-exclusive, non-transferable, individual and limited right to using this document. This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

## **International anti-ageist policy versus national context?**

Reinhold Sackmann, Katarzyna Kopycka

Der Hallesche Graureiher 2010 – 2

Martin-Luther-Universität Halle-Wittenberg  
Forschungsberichte des Instituts für Soziologie

Adam-Kuckhoff-Str. 39/41  
D-06108 Halle (Saale)  
Postanschrift: 06099 Halle (Saale)

Telefon: 0345 /5524 251  
Telefax: 0345 /5527150  
e-mail: [institut@soziologie.uni-halle.de](mailto:institut@soziologie.uni-halle.de)

Druck: Druckerei der Martin-Luther-Universität Halle-Wittenberg

ISSN 0945-7011

Alle Rechte vorbehalten

**International anti-ageist policy versus national context?**

Table of Contents.

1. Introduction .....	4
2. Diffusion of anti-ageist policies by means of isomorphic copying or by means of interstitial translations between the world society and nation-states? .....	4
3. Content analysis of the discourse on age discrimination and discrimination in Germany and Poland 1999-2009 .....	5
3.1 Temporal dynamic of the discourse on age discrimination in Germany and Poland.....	5
3.2 The structure of actors towards discrimination and anti-discrimination policy in Germany and Poland.....	8
3.3 In-depth analysis of the process of copying/translation of age discrimination in Germany and Poland.....	12
3.4 Effects of anti-discrimination discourse or policy on age typifications? .....	25
4. Conclusions .....	30
References .....	33

## 1. Introduction<sup>1</sup>

Policies against ageism were strengthened by guidelines preventing discrimination set up by the European Union in the years following 2000. These policies were motivated by both egalitarian principles and considerations of employability, which occasionally contradict each other. However, policies at the international European level do not necessarily determine national legislation or practice. Our paper, therefore, concentrates on the question, whether a translation of “international” anti-ageist policies into national public debate is successful insofar as it results in a change of direction within public debates or whether it fails due to path dependencies of ideologies paralleling former institutional practice.

To answer this research question we proceed in three steps: First, a theoretical model of the diffusion of international actor concepts is developed in a comparative analysis of neo-institutionalism and translation theory as well as deducing the hypotheses underlying these two perspectives. Second, an applied quantitative and qualitative content analysis of two renowned newspapers (one Polish and one German) is described. Lastly, the comparative results are explained, discussed and a conclusion is provided at the end of the paper.

## 2. Diffusion of anti-ageist policies by means of isomorphic copying or by means of interstitial translations between the world society and nation-states?

Our work attempts to theoretically model a tension between (sometimes very small) influential epistemic communities within the world society structures and large membership organizations dominating the power game at the national level. Within this constellation, simple models involving the “copying”, “diffusion” or “modernization” of ideas and practices do not seem to be as adequate at generating a realistic description as the more complex model of an interrelated translation of ideas and practices (Latour 2005) utilized in this analysis.

From these theories we have deduced two hypotheses:

H1: New world societal models of anti-ageist policy spread by copying nation states driven by epistemic communities (normative pressures), by markets (mimetic processes) or by supranational states (coercion) (cf. DiMaggio/Powell 1984).

H2: New world societal models of anti-ageist policy are not copied by nation states, but rather translated. This implies:

H2a: It remains an open question, whether the translation is successful insofar as it influences evaluative components of national age typifications.

H2b: Whether the original concept changes its content remains open within the process of translation.

H2c: A successful translation affects the power structure of the nation state insofar as some actors gain more power while others lose some part of it.

H2d: In the interstitial space between world society and nation state translations are connected to negotiations of content and power.

---

<sup>1</sup> We want to express our thanks to Olga Goldenberg, Christoph Schubert and Sybill Uhlir for their help with the selection of the articles and the coding, as well as to James Thompson for correcting our English.

### 3. Content analysis of the discourse on age discrimination and discrimination in Germany and Poland 1999-2009

To answer the research question concerning the translation of anti-ageist policies an empirical case study of the public policy debates on anti-age discrimination policy in Germany and Poland was carried out. Articles in the two leading national newspapers – the Frankfurter Allgemeine Zeitung (FAZ) and the Gazeta Wyborcza (GW) – were studied between the years 1999 and 2009 by means of quantitative and qualitative content analyses.

A content analysis has to strike a difficult balance between the goals of a precise comprehension of single articles, which is usually achieved by means of a qualitative analysis of meaning structures, on the one hand, and a meaningful explanation of extended discourse traits, which is intended by samples of elements of meaning, on the other. In our analysis we tried to connect both by analysing the discourse on age discrimination by means of a quantitative content analysis. To understand the specific logic of this discourse a comparison is drawn to the quantitative content analysis of the discourse on discrimination, as both seem to be connected to each other in that age discrimination is a late offspring of the discrimination discourse. Furthermore, to understand the context of the discourse of age discrimination better, the discourse on age, especially age typifications, was sampled. This not only gives us a chance to contextualize the discourse on age discrimination, but it also enables us to measure the effects of the age discrimination discourse on age typifications (within public discourse). On top of the quantitative content analysis a qualitative in-depth analysis of ten articles about age discrimination was undertaken in order to understand the specificities of the translation process.

All of the articles using the term “age discrimination” were analysed. The term “discrimination” was analyzed by means of a random sample of 35 days per year in all articles where the term occurred. We also used a random sample of 35 days per year to analyse the term “age”. As the number of articles mentioning age was simply too great and unspecific, among the randomly sampled articles involving age, only those were coded containing an (implicit or explicit) age typification towards humans above the age of 15.

#### 3.1 Temporal dynamic of the discourse on age discrimination in Germany and Poland

Both the neo-institutionalist conception involving a spread of world-societal models in different nation states as well as translation theory presuppose that there are elements of culture already well-established at the international level or in other nation states which are still not present in a particular national context or are only present in a rudimentary form. A quantitative frequency analysis of all the articles using the word “discrimination” or “age discrimination” attempts to test whether these words contain new concepts (Fig. 1 and 2).

Figure 1: Number of articles containing the words “age discrimination” and “discrimination” in the German newspaper FAZ from 1999 to 2009

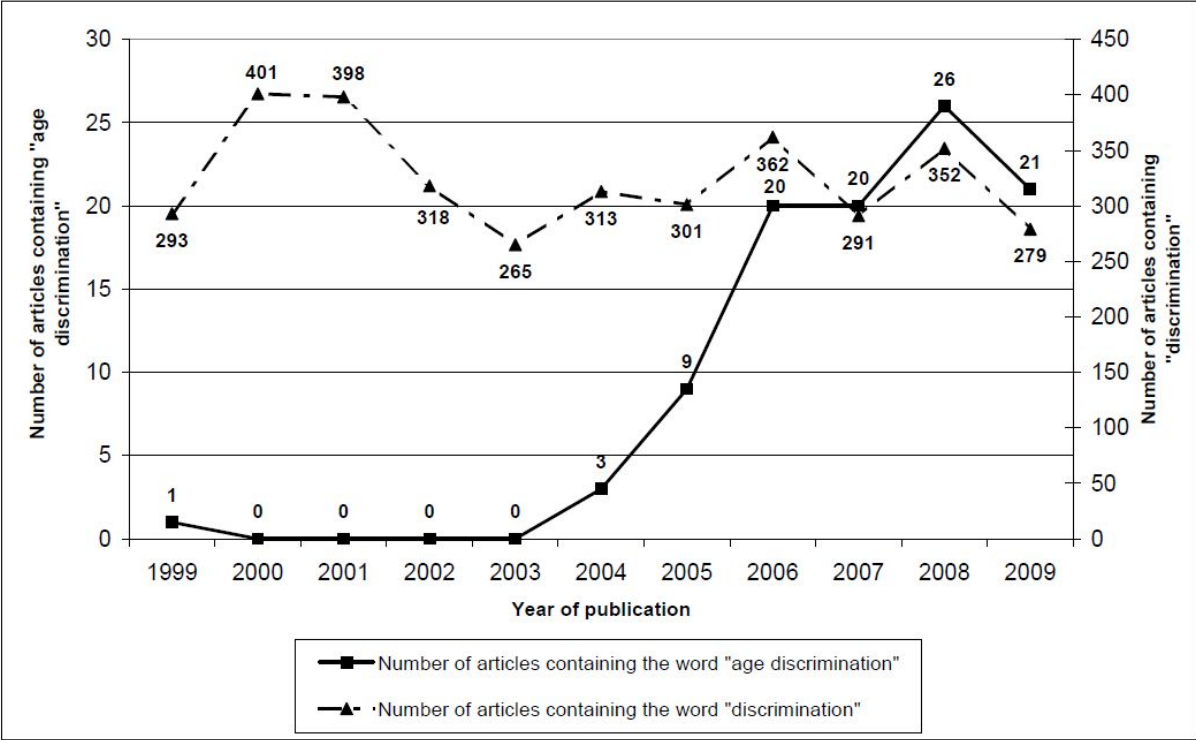
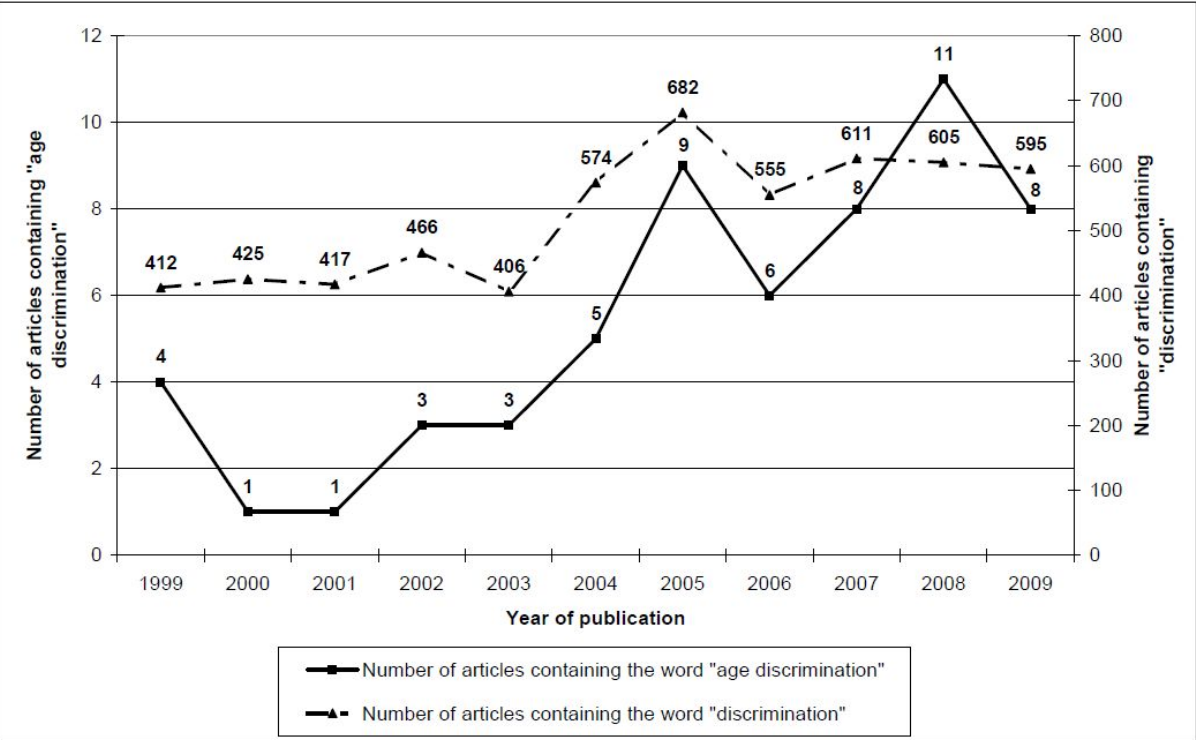


Figure 2: Number of articles containing the words “age discrimination” and “discrimination” in the Polish newspaper GW from 1999 to 2009



As we see, figures 1 and 2 show that in both countries “discrimination” is a common and well-established concept in the print media discourse. The word “discrimination” appears in

the German FAZ almost daily. For Poland (GW) we find an even greater number of articles in which the term occurs. As for Germany, between 1999 and 2009 there is no clear pattern of change, for in the years 2000 and 2001 as well as in 2006 and 2008 the term appears with only slightly greater frequency than in the other years studied. This pattern does not fundamentally change with either the failure to pass an anti-discrimination law in 2005 or with the passage of the General Law on Equal Treatment (AGG) in August 2006. Generally speaking, legal reforms do not influence the quantity of articles about “discrimination”.

Between 2003 and 2005 we observe in Poland a rapid increase in the number of articles using the term “discrimination”, which then stabilised at this higher level. It seems plausible that the EU accession of Poland in 2004, the need to implement European anti-discrimination policies as well as the changes of government (e.g. in late 2005 from liberal left-wing to conservative right-wing and again in 2007 to central-right) are responsible for this dynamic. The fact that Poland year for year failed to pass anti-discrimination legislation indicates that discrimination issues still constitute an open political process, which may well explain the increased presence of the discrimination discourse in the Polish press compared to the German press.<sup>2</sup>

In the German discourse the pattern of the concept “age discrimination” contrasts both in the level of usage and the temporal pattern of use with the general discrimination discourse. From the beginning of the internet archive in 1992 up to the year 2003, the term occurred in only one article, and that was a summarization of the British sociologist Walker’s presentation at a gerontology congress. Outside of this small epistemic community the term was not used in the public discourse. In the first legal initiative in 2005 (which eventually failed), its second attempt (passing in 2006) and in the years following the term “age discrimination” shows up only in about 5% of all newspaper editions. It turns out to be a word that can be utilized without ever reaching a high degree of popularity. Eye catching is the fact that the year with the highest frequency is 2008; a year in which the opponents of the concept, Herzog and Gerken, published a controversial article (which will be discussed later in more detail).

The analysis of Polish articles containing the word “age discrimination”, however, shows a slightly different dynamic than the one found in Germany. Although within the 11 year period analyzed the number of those articles increased, this development is far less linear and the numbers never reached the levels found in Germany. One can observe a slight increase in the use of the term “age discrimination” in the years 2004-2005, which coincides with the EU accession of Poland as well as with the integration of some of the anti-ageist policies into national legislation, i.e. the Polish labour law. While the numbers varied in later years, the average remains around 8 articles per year. This very hesitant development of the anti-ageism discourse in the Polish press shows that the introduction of the anti-ageist legislation does not necessarily produce immediate social change. Moreover, it stands in contrast to Germany, where the General Law on Equal Treatment (AGG) also regulates age discrimination and to a great extent directly influenced the anti-ageist discourse (in accordance with the assumptions of the neo-institutional theory). It seems that the rapid growth of the public debate on ageism observed in Germany has not yet reached Poland, and it remains to be seen if the long awaited new law concerning equal treatment will contribute much to it.

*First result: (In contrast to the well-established discourse on discrimination at the national level) the discourse on age discrimination in the first decade of the new millennium is innovative for both Germany and Poland. This innovation is connected – in Germany more so than in Poland - with legal activities translating new European law into national law (and*

---

<sup>2</sup> Work on an umbrella law concerning equal rights was started in 2005, and is planned to go up for the final vote in the second half of 2010.



*their accompanying controversies). The relevance of age discrimination is much greater in the German than in the Polish public discourse.*

### 3.2 The structure of actors towards discrimination and anti-discrimination policy in Germany and Poland

Politics against age discrimination can be understood as an analogue reformulation of the anti-discrimination policy against racism and sexism. The neo-institutional analysis (Meyer et al. 1997; Meyer 2005) shows that the foundation of a world society is connected with new concepts of agency that also shift power relations. Among others, building a world society upon human rights is intertwined with a new model of the individual. A new model based upon the anti-discrimination policies established in the USA during the 1950s and 1960s was soon adopted by UN-conferences and conventions against race discrimination as well as for gender equality (Nickel 1999; Hitzel-Cassagnes/Meisterhans 2009). Neo-institutional theory stresses that certain collective actors like NGOs and epistemic communities are created or strengthened by these policies (March/Olsen 1998; Kollman 2007). Notably, in the 1970s the European Union (which was initially conceived for economic and peacekeeping purposes) already began via the European Court of Justice (ECJ) to take up anti-discrimination policy and strengthened it (even before an intensification of European collaboration took place in the 1980s).

In the following chapter the structure of the actors and their figuration is compared in articles representing the discourse on discrimination in general, on the one hand, and articles referring to age discrimination, on the other. Whereas there are strong arguments for the thesis of neo-institutional theory, that small groups of national societies (NGOs and epistemic communities) profit from the rising importance of a world society – especially its discourse on discrimination – some peculiarities of diffusion cast doubt upon the neo-institutional conception of actors. Cases involving content changing and power-distorted translations as well as cases of persistent failures to take-over human rights and anti-discrimination policies show that specific constellations of ideas and figurations of actors are important in diffusion processes. For example, can different figurations of actors explain why the spread of concepts concerning age discrimination is slower than the spread of concepts of discrimination on gender or race/ethnicity? In the following content analysis the frequency certain objects of discrimination, the figuration of actors for and against anti-discrimination policy and the evaluation of the discourse are examined.

An analysis of the 353 sampled German newspaper articles on discrimination in general shows that between 1999 and 2009 most articles involve ‘classic’ forms of discrimination: the most frequent subject in the German discourse is ethnic/racial/linguistic discrimination (accounting for 25% of all articles on discrimination). If we include two further classic forms of discrimination, namely gender and religious discrimination, then already 47% of the field is accounted for. Some forms of discrimination are ‘new’ insofar that they are not explicitly mentioned in the 1949 German constitution, yet show up in the EU directives after 2000. Besides age discrimination, there is discrimination on the basis of sexual orientation and discrimination of the handicapped. If one adds to these forms articles in which more than three kinds of discrimination are listed, then ‘new’ forms of discrimination are the subject of 24% of all the articles involving discrimination. In the German press discrimination on the basis of sexual orientation is the most frequently mentioned form of ‘new’ discrimination (10%). In 26% of the articles on discrimination ‘other’ forms of discrimination are mentioned, e.g. discrimination of companies.

In Poland the 511 articles analyzed containing the term “discrimination” show similar frequency distributions. Over 50% of them describe classic forms of discrimination on the

basis of race/ethnicity/language, sex or religion. However, with 25% the most prevalent form addressed in the Polish print media discourse is gender discrimination (and not ethnic discrimination as in Germany). When the new forms of discrimination (discrimination on the grounds of sexual orientation, disability and age) are combined with articles, where more than three discrimination grounds are mentioned, then approximately 23% of all the articles analyzed are accounted for. Just as in Germany, discrimination on the grounds of sexual orientation is at 10% the most frequent among the new forms. 26% of the articles describe other forms of discrimination, e.g. discrimination of companies (5%).

If one compares the figurations of actors in the discourse on age discrimination with the figurations in the discourse on discrimination in general, there are some striking differences between the two countries: within the general discrimination discourse in Germany the most frequently mentioned actors against discrimination are NGOs (20%), followed by politicians in the governing parties (17%) and the European Union (13%). However, within the discourse on age discrimination the dominate actors pushing for this policy are the European Union (27%), followed by legal professionals (21%) and employees (mainly suing in court) (14%). Oddly enough, in the field of age discrimination NGOs are absent as strong supporters of this policy. As a result, supranational actors dominate the field and the degree of juridification is quite high within this discourse.

A comparison of the structure of relevant actors within the general discrimination and age discrimination discourses in Poland reveals both similar and contrary findings to those in Germany. In contrast to Germany, no major differences between these two discourses in Poland were detectable. Nevertheless, the actor constellations do show some variation. In both the age and general discrimination discourses the most prevalent actor criticizing discrimination are NGOs (24% and 19% of the articles respectively). The second major groups criticizing discrimination, according to the articles analyzed, are the experts/professionals and scientists (22% for the age discrimination discourse and 13% for the general discrimination discourse). Moreover, journalists (which almost exclusively comprised the category “other”) play an important role as critics of discrimination in both discourses; they are mentioned in 15% (age discrimination) and 10% (general discrimination) of the articles. With regards to age discrimination, other groups worth mentioning are employees (which is congruent with the German case) and common citizens showing up respectively in 17% and 19% of the articles. Also worth noting, while the roles of the European Union and legal groups in criticising discrimination within the general discrimination discourse are rather marginal, in the age discrimination discourse they appear respectively in 10% and 13.5% of the articles. The increased involvement of legal professionals and the European Union in the age discrimination discourse were also observable in Germany. In Poland, however, neither the European Union nor the legal professionals belong to the major groups leading the anti-ageist discourse. Instead it is performed by small epistemic communities of NGOs and professionals.

After looking at the proponents of the anti-discrimination policies we now want to take a closer look at the opponents of these policies. In Germany there is a difference between the articles on discrimination in general and on age discrimination. One difference is that there are (in relation to the proponents) more critics of policies against age discrimination. Whereas supporters of anti-discrimination policy in articles involving general discrimination are mentioned 199 times versus 37 times for opponents of this policy (i.e. 16% of all actors), within the age discrimination discourse supporters come 154 times to the public forefront versus 69 times opponents (i.e. 31% of all actors). Despite a majority of supporters in both arenas, the number of critics of anti-discrimination policy is twice as high in the field of age discrimination. The rare group of opponents against general anti-discrimination policies is headed by politicians in the opposition (24%) and employers (15%). In the case of age

discrimination those most critical of anti-discrimination policy (or critical of certain lawsuits) are legal professionals (56%), scientists (13%) and employers (12%). A comparison of the opposing groups emphasizes the results of this analysis that courts and legal professionals are dominating the German discourse on age discrimination, whereas in the general field of discrimination politicians and interest groups are the most influential.

The significance of lawsuits on the age discrimination discourse is demonstrated by the fact that in 58% of all articles involving age discrimination in the German newspaper a specific trial is mentioned (in contrast to only 14% of the articles involving general discrimination).

Here, a similar pattern to the one already observed concerning types of actors criticizing discrimination is visible: the general anti-discrimination discourse and the anti-ageist discourse in Poland differ less than in Germany as far as the actors criticizing the anti-discrimination policies are concerned. Whereas in the 511 articles on general discrimination critics of discrimination are mentioned 366 times, critics of the anti-discrimination policies appear only 53 times – almost 7 times less often. For the age discrimination articles this ratio is exactly the same: the critics of anti-discrimination policies are mentioned 13 times (i.e. 13% of all actors) and the critics of discrimination appear 89 times in the press material analyzed. As such, we notice that in Poland critics of the anti-discrimination policies concerning both age discrimination and general discrimination comprise the same share of the actors mentioned in the articles.

However, the constellations of actors criticizing anti-discrimination policies, according to the Polish articles, show more pronounced differences between the two discourses being compared (general and age discrimination specific) than for the critics of discrimination. Of those criticizing anti-discrimination policies in general, the most prevalent are NGOs (20%), common citizens (18%), opposition and local politicians (16%) and the experts/professionals/scientists (16%). The critics of anti-ageist policies, in contrast, consist mainly of legal professionals, opposition politicians, Quangos and experts/professionals/scientists. One has to remember that the very small share of articles referring to those critics in the Polish press (mentioned only 13 times in 9 articles) makes quantitative inferences difficult. Nevertheless, the structure of the actors is similar to the one we found in Germany, and as such appears to support this outcome.

With regard to evaluations of discrimination and anti-discrimination policies the German discourse on age discrimination is more in line with the general discrimination discourse (yet also showing characteristic differences in this domain). Discrimination is negatively viewed (83% in the case of general discrimination; 56% with regard to age discrimination) and anti-discrimination policy is positively evaluated (49% with reference to general discrimination; 33% to age discrimination). Characteristic of the discourse on age discrimination is that claims are increasingly dismissed as being unsubstantiated (33% of the articles on age discrimination; 14% of the articles on general discrimination). Slightly more often the evaluation is 'controversial' in the case of age discrimination (33%) than in general discrimination (30%).

In the case of the Polish discourses on discrimination in general and on age discrimination we also noticed greater convergence. In both discourses discrimination is judged negatively (with 83% and 77% respectively viewing it unfavourably). However, just as in the German articles, in the Polish discourse we also find a greater number of articles involving age discrimination, where the accusation of discrimination is presented as being illegitimate (13%), than in the general discrimination discourse (3%). Furthermore, both in the discourse on age discrimination as well as in the general discrimination discourse in the Polish press there are quite a number of articles presenting positive opinions concerning discrimination. Respectively, they account for 8% and 12% of the articles. In these articles discriminating

practices are viewed not as discrimination, but as a rational or natural state, or even as advantageous for the discriminated group.

Opinions about anti-discrimination policies are in the Polish press, in contrast to Germany, rather negative as well. In the general discrimination discourse 36% of the voices about the anti-discrimination policies are negative and 30% are positive. As far as the age discrimination discourse is concerned, it has to be noted that in the 59 articles addressing this topic within the period analyzed, only 9 opinions about the anti-ageist policies could be identified. From those 9, 3 are negative, 2 are positive, 3 are controversial and 1 balanced the pros and cons.

*Second result: Neo-institutional theory can better explain the German constellation of actors in the field of the general discrimination discourse than the constellation in the field of age discrimination. In the general field of discrimination NGOs are dominant and are supported by (copying) government politicians and supranational actors. To some degree they prevail over opposition politicians and powerful national interest groups (like employers) because they act within the framework of shared normative expectations that negatively evaluates discrimination and (with some reservations) positively assesses anti-discrimination policy. However, in the field of age discrimination NGOs are, to a large extent, absent from the group of supporting actors for anti-discrimination, therefore, the supranational actor itself becomes dominant. The price for this figuration of actors is a juridification of policy, which is mirrored in the articles that mainly consist of articles on lawsuits. The discourse on age discrimination shares the same set of values with the general discourse on discrimination, however, the juridification of the claims is accompanied in some cases by specific rejections. It is difficult to assess whether a translation of the concept will be successful because the debate on anti-discrimination policy (primarily conducted by legal professionals) remains controversial.*

*On the one hand, the Polish discourses on discrimination in general and age discrimination are more in line with the theoretical presuppositions of neo-institutional theory, for NGOs dominate both the critics of discrimination, age discrimination and the proponents of anti-discrimination policy. On the other hand, they also dominate the critics of anti-discrimination policy. An explanation for this constellation of actors is that in Poland NGOs are quite present in the discourse because the institutionalization of anti-discrimination policy is unfinished. This interpretation is supported by the fact that the typical normative background of anti-discrimination policy (discrimination is negative, anti-discrimination is by and large positive) is still on the move. Even in the field of general discrimination the majority of articles evaluate anti-discrimination policy negatively.*

*In general, one could state that there are three types of actor constellations in the field of discrimination: The successful translation type (represented by the general discourse on discrimination in Germany) mobilizes a coalition of NGOs, government politicians and supranationals against interest groups and is based on a normative consensus. Open translations come in two forms: one as a form of juridification of the issue (represented by the age discrimination discourse in Germany), where the supranational actor itself becomes the dominant player because NGOs are missing. This apparently successful situation, however, comes at the price of law without interest groups. The other form of an open translation is the constellation of actors in Poland connected with the discourses on discrimination in general and age discrimination. In both fields NGOs dominate, yet they did not find political entrepreneurs to support their concepts, which is probably one reason why a normative consensus on this issue has still not been achieved.*

### 3.3 In-depth analysis of the process of copying/translation of age discrimination in Germany and Poland

A qualitative content analysis of some selected articles was done to achieve a more precise interpretation of changes in the discourse (as well as check the initial hypotheses). Following the concept of grounded theory (Glaser/Strauss 1967; Strauss/Corbin 1990; Strübing 2004), the theses and their theoretical foundations were reformulated in light of the material and its analysis.

For the qualitative analysis of the German articles on age discrimination, 5 out of 101 articles were selected. Criteria for selection were a high content density coupled with relevance for an analysis of a change in the field as well as a certain degree of type conformity to the field. The articles are: a) An article from the early days of the discourse on age discrimination (4/6/2005). It was the sixth article since 1992 to use the term age discrimination in the newspaper analyzed. It presents societal proponents of an anti-discrimination policy in the context of an anti-discrimination law developed at that time (which failed that year under the red-green coalition). b) The second article (1/31/2007) describes – half a year after the black-red great coalition passed the new act – an abuse of the act characterized by the newly coined phrase “AGG-hopper”. c) The third article (8/18/2007) analyzed was published one year after the passing of the new act various societal groups and persons are interviewed about their experiences with the new law. d) In the fourth article (9/8/2008) the former president (and former chief justice of the Supreme Court) of the federal republic, Herzog and his colleague Gerken, criticize the law on anti-discrimination (especially on age discrimination). This article stirred a lively discussion both in the media and amongst experts. e) The last article (9/9/2009) analyzed conflicts between German and European Union courts.

From the 59 Polish articles concerning the issue of age discrimination, 15 of them were selected for the in-depth analysis. The relatively high number is due to the fact that they were all rather short and not very elaborate. In Poland the discourse on age discrimination is far less developed than in Germany, and as such many articles have the character of short informative statements. From the 15, 5 were chosen because their rich content enabled a deeper analysis. These contain: a) an early article in age discrimination debate (8/9/1999) on the labour market situation and the employers’ opinions on elderly workers presented by human resources professionals; b) an article (9/22/2003) published shortly before the new anti-ageist legislation was implemented into the Polish labour law, and which mirrors the position of an anti-mobbing NGO on the issue of age discrimination; c) an article (6/22/2006, published two years after the introduction of the anti-ageist regulations in the Polish labour law) describing the discriminatory practices of a small firm and the opinions of an independent research institute as well as a public labour agency about the case; d) an interview with a member of the Helsinki Foundation for Human Rights (4/30/2007, at the time of a big case of age discrimination in the Polish Radio); and e) an interview with a chief member of the Polish Employer Association (1/14/2008) discussing the employers’ view of the anti-discrimination legislation. The other 10 articles were studied because of their relevance to the formulated hypotheses.

A comparison of the in-depth analyzed German articles on age discrimination from the neo-institutionalist perspective on the three primary forms exercising isomorphic pressure from a world society to the national level (professional organizations, market, state) shows that coercion in the form of law as a form of statist force is central to this field and far more pre-eminent than one would expect. The focus of all five articles is legislation initiated by the European Union and its precedence case law. This (in many cases unexpected) pressure is felt by the actors, for instance, as the legal professional Bauer expressed in an interviewed on August 18<sup>th</sup>, 2007:

*“Because I do not like to talk about clients, I prefer to talk about the effects of the AGG [General Law on Equal Treatment] on me: In former times I used to tell male candidates applying to our law firm that flashy earrings are hardly advisable for a top corporate law firm. Today I would not dare to say this as I would not say similar things to female applicants. My opinion remains the same. At 62 years of age I do not like being “re-educated” by the legislator.” (FAZ 8/18/2007: C4)<sup>3</sup>*

This employer expresses the coercive power with the expression that he dislikes being re-educated (at the age of 62) by the legislator.

Polish articles on ageism show, on the other hand, that the anti-discrimination discourse is primarily carried out by professional groups of human resources specialists, small epistemic groups like NGOs and academic communities, and public opinion. The coercive pressure coming from supranational (European) legislation is only of limited importance to the development of the anti-ageist policies. The issue of implementing them into national law is addressed in only one article (GW 9/21/2002) and the changes undertaken are not presented as problematic. The article is rather a non-argumentative statement about these changes. Another article (GW 5/18/2005) describes the translation process of the European anti-ageist legislation in Great Britain only to state at the very end that the Polish administration does not even know about the European initiative. The subjectively felt coercive pressure in this case is therefore minimal. The public servants interviewed, after learning about the case from the journalist, point to governmental employment policies directed at the 50+ age group. Later articles describing court cases on ageism did not mention the European legislation at all. The anti-discrimination legislation referred to in the article is the Polish constitution and the Polish labour law. Hence, in contrast to Germany, in Poland we cannot speak of mechanisms of coercion as the primary driving force behind the anti-discrimination ideas. Instead, the diffusion of the anti-ageist discourse from the supranational level is, on the one hand, channelled through public opinion, as displayed in an early article (reader’s letter, GW 11/25/2000) contrasting ageism practices towards those over 50 year of age in Poland and the situation of this age group in the US labour market. The other channel, on the other hand, is comprised of small epistemic communities of experts on discrimination, for example, the British study claiming that older employees are of value to the firm (GW 8/23/1999) or the M.A. thesis on discrimination written at the University of Gdańsk (GW 9/22/2003).

With respect to theoretical controversy, whether the spread of new forms of world societal models are primarily copies (as suggested by neo-institutionalism) or translations, the criteria of proof is that translations are connected with a shift of power and that content may change, whereby it is open whether the translation has been successful.

The qualitative analysis of the German articles shows that indeed a shift of power caused by a translation is perceptible; a shift supported by some and opposed by others – sometimes even fought against. On the side of groups who hope to gain power by an adoption of the anti-discrimination policy are the NGOs. Several groups are mentioned in the articles: “Bureau against age discrimination”, an association “Public against violence”, the “Lesbian and gay liberation front”<sup>4</sup> and a lesbian and gay umbrella organization in Germany. Usually these are smaller local initiatives (with limited power resources). In a very early article (4/6/2005) a journalist depicted the irrelevance of the power such groups have by beginning the article with a description of the scene:

---

<sup>3</sup> In this citation, it is interesting that Bauer implicitly alludes to discrimination on the grounds of sexual orientation (as in Germany, men with flashy earrings are often typified as homosexuals), but explicitly mentions only the more customary discrimination of women.

<sup>4</sup> This association in Cologne has an English name.

*“On Hanne Schweitzer’s table lies a package of tobacco with rizzla. “If it does not disturb you, I shall smoke a cig”. Mrs. Schweitzer heads the Cologne Bureau against age discrimination. The association was founded in 1999 and sits in a quiet back road of the Neumarkt. The office was formerly occupied by a techno music label that eventually went bankrupt. The golden years of a narcissistic youth culture are at an end even in Cologne.” (FAZ 4/6/2005: 36)*

Already the description of the environment signals the NGO’s lack of resources: the employee’s hand-rolled cigarettes combined with the unfavourable location of the office would seem to indicate a poor NGO. Powerful groups, in contrast, opposed the planned (and later realized) act: employers and employers’ corporations (e.g. Federal corporation of German employer organizations; head of personnel policy Deutsche Lufthansa (FAZ 8/18/2007: C4), have the support of legal professionals in the articles (e.g. Gleiss Lutz; head of the Federation of labour judges (FAZ 8/18/2007: C4); Prof. Dr. Roman Herzog; Dr. habil. Lüder Gerken (FAZ 9/9/2008: 8)). The impression remains that the act runs counter to national relations of power despite reporting a low level of support for the new act by the head of the legal division at the service trade union Ver.di as well as the chief executive of human resources at the temporary work agency Randstad. This reversal of power would explain why the liberal-conservative newspaper analyzed mainly expresses dismissive views towards the act. The chief adversary of the act’s opponents is the European Union, above all the European Court of Justice (ECJ). While opposing national interests are mentioned less often, many times the impending loss of power of the German Supreme Court is aired. The articles rarely hint at the fact that the European approach to anti-discrimination policy closely follows the example of the USA; a point that is both used to support and denounce the policy.

Another sign for a shift of power towards (at the moment) less privileged groups by anti-discrimination policies is the fact that the prerogative of employers’ power is lightly circumscribed by the act, but not questioned in a fundamental sense (cf. Edelman 1992 for the effect of the American anti-discrimination legislation). For this reason powerful groups perceive the act as ineffective rather than as disruptive for their own plans and actions. As one legal professional expressed it:

*“Discrimination at work is an exception, but it still exists. However, today candidates are not rejected on the grounds of age, but “officially” it is stated that his qualifications are not good enough or that he does not show the required motivation.” (FAZ 8/18/2007: C4)*

Or in the words of an airline’s head of personnel policy:

*“Therefore, for us the AGG [General Law on Equal Treatment] has hardly any practical effects besides bureaucracy. For employers it is now advisable to include witnesses during interviews in certain cases. For that one simply needs more persons. Also we abstain from telling candidates the reasons for a rejection.” (FAZ 8/18/2007: C4)*

From the perspective of the powerful, the act does not shift the balance of power itself, but rather the reasonable description of the power relation e.g. abstaining from providing a justification for not selecting a candidate.

Concerning the question whether and how the balance of power between the main actors in the field of age discrimination has been reshaped due to the introduction of anti-ageist policies, the analysis of the Polish print media discourse shows some similar tendencies to those found in Germany – although with a few important exceptions. As in Germany, the NGOs represent the group in Poland expecting to gain a greater share of the power from the more elaborate anti-discrimination legislation. The articles mention only two NGOs active in this field: the Gdansk Anti-mobbing Association under the patronage of Barbara Grabowska, and the Helsinki Foundation for Human Rights. However, only the former has a strong focus

on anti-ageism. The Helsinki Foundation, on the other hand, treats age discrimination cases rather as a sidetrack (if not nuisance) to their main activities, and are willing to offer their support in only a few cases. Adam Bodnar, a Helsinki Foundation legal professional said (GW 4/30/2007):

*“The Helsinki Foundation can offer support to employees discriminated against by Targalski [Director of the Polish Radio. The interview focuses on the 2007 case of age discrimination in the Polish Radio. Those employees who decided to go to court eventually (2009) won their cases. – KK]. We are able to take two-three such cases within the framework of the precedence cases program. We offer legal assistance free of charge”*

It is clear from this statement that the Helsinki Foundation, while offering assistance up to a certain point, is not going to aggressively pursue ageism cases and does not expect any gains in power or resources for the Foundation from such legal actions.

Moreover, among those hoping to gain control over the new field of expertise created by the anti-ageist legislation are QuaNGOs, such as the ombudsman, the National Labour Inspectorate or public administration. This line of conflict between governmental (or quasi-governmental) and non-governmental actors comes sharply into view in the interview just cited. Adam Bodnar from the Helsinki Foundation is criticizing the National Labour Inspectorate in their control function (GW 4/30/2007):

*“This inept control in the radio [the Polish Radio] confirms the need for creating an institution independent of the government to deal with equality issues. Such a body would investigate alleged case of discrimination, would report employers, would represent discriminated employees in court, would mediate or do in-depth research on the issue of discrimination”*

The same line of conflict is depicted in an article published in 2009 (GW 2/25/2009) describing the political debate over the creation of the new post in the Warsaw city hall responsible for preventing and fighting discrimination. An opposition party is in favour of strengthening NGOs rather than creating a new political position:

*“I think that minorities [here mentioned as an example of the discriminated group - KK] get help from non-governmental organizations. Let’s let them live, let’s support them, rather than creating a bureaucratic fiction”*

In both of the case presented above it was governmental or quasi governmental bodies that were eventually assigned with the responsibility (and received the resources) for monitoring equality issues. The Polish umbrella law on equal treatment, which implements European anti-discrimination policy in the role of the body for promoting equal treatment, sees the ombudsman (who is nominated by Sejm) as not independent of the governing political forces. As we saw in the case of Warsaw, an anti-discrimination office was created rather than the possible institutional and financial support of the already existing NGOs active in this field.

According to the newspaper articles analyzed in Poland, the main beneficiaries of anti-ageism legislation are the discriminated persons themselves. Henryk Michałowicz, one of the heads of the Polish employer association,<sup>5</sup> clearly points at this particular group of individual actors (GW 1/14/2008):

*“It is good to know about anti-discrimination laws. Such knowledge will for sure strengthen the position of those, who are or can be discriminated against”*

---

<sup>5</sup> Konfederacja Pracodawców Polskich



Yet another type of actor potentially benefiting from anti-discrimination legislation are, judging from the Polish press, the lawyers and consulting firms offering mediatory services to employers (GW 7/3/2005).

The main actor losing a degree of power via the implementation of the anti-ageist policies are in the case of Poland the employers. Whereas in Germany this shift in power relations was said to be of minor significance, i.e. with firms adapting smoothly to new regulations as to how they justified decisions, but not in their actual practices, the reaction of Polish employers is far less clear. Thus, at the beginning of the anti-discrimination discourse they took a very similar stance to their German counterparts. In one of the early articles on age discrimination we read (GW 8/9/1999):

*“A few years ago the age criterion in a job advertisement was standard. Now more and more offers appear which do not mention age. This does not mean, though, that employers changed their requirements towards candidates. They rather understood that they should not write it.”*

This article shows that the restructuring of power relations between employer and employee, due to the anti-discrimination legislation, is merely a verbal façade, and that the in-depth power structure remains untouched. As late as 2006, two years after the introduction of anti-ageist regulations into Polish labour law, not only did the attitudes towards older employees not change, but the overt expression of age discrimination was not even an uncommon practice. Mirosław Bąk from the Institute for Private Enterprise and Democracy said (GW 6/22/2006):

*“I am sure no firm from Germany or France would permit such an advertisement [with an overt age limit - KK]. I would like to believe that such gaffes result from a lack of knowledge and not prejudices. Sadly it is often otherwise.”*

In this context the already cited interview (GW 1/14/2008) with a chief member of the Polish Employer Association, Henryk Michałowicz, stands out. Here, however, the loss of some of the employer's previous power is presented as real. The first lines of the interview suggest that the anti-discrimination regulations in the labour law are relevant only on the level of verbal communication and have no further meaning for employment practices. Michałowicz states:

*“Employers cannot say that they do not want such an [old - KK] employee because age discrimination is illegal in Poland. Financial sanctions deter this”.*

Later in the interview, however, we learn that the anti-discrimination laws provide employees with a powerful tool that they can quite easily use against their employers. This situation makes it much harder for an employer to defend himself than it is for the employee to make an accusation.

*“It's enough for the employee to suggest something like that, to introduce doubt to the court. I've recently heard that the practices stemming from the world of politics are being carried over into the workplace – people record discriminating remarks with their cell phones and that's enough. And then, it is the employer who has to bear the weight of the evidence – it is up to him to prove the opposite. (...) It's worth knowing the anti-discrimination laws. Such knowledge will surely strengthen the position of persons being or likely to be discriminated against.”*

Furthermore, Michałowicz speaks about the legal obligation of the employers to prevent ageism:

*“An employer is legally obliged to prevent age discrimination. And knowledge of legal regulations and sanctions should reach employees, and in this way contribute to a change of attitude.”*

Hence, in contrast to the German articles, one can see that in Poland anti-ageist legislation is not treated light-heartedly (in the sense of a minor bureaucratic nuisance), but is considered a powerful tool able not only to defend the discriminated persons but also, in the long run, to change the Polish employment culture.

Interestingly enough, the interview also treats problems of age discrimination in the wider context of the labour market's future development in combination with the coming of the knowledge economy as well as indirectly with the demographic trend towards ageing.

*"It should be important what I am inside and not how old I am. This is what our labour market will soon have to look like. The economy is going in this direction – it will be based on knowledge. Wise employers are aware of this."*

In this context age discrimination is not only a forbidden practice, but a foolish one as well.

In general there was only a weak change of power in Germany between employers and employees as the result of anti-discrimination policy. Yet, the perception of the new legislation on power relations between national state and EU was completely different. Supporters of an anti-discrimination policy like the spokeswoman for the Lesbian and gay association in Germany have the impression of a strong partner:

*"I dare to make two prognoses for the future of the AGG [General Law on Equal Treatment]. First: In the next few years the European Commission will have made it clear to the German government that Germany cannot fall below EU standards, but that it must offer more effective instruments against discrimination e.g. associational claims. In case of need, the ECJ [European Court of Justice] will push." (FAZ 8/18/2007: C4)*

This view of power relations is shared by the opponents of the anti-discrimination policy. Thus, the former president Herzog and the legal professional Gerken demanded in a one-page article *"Stop the European Court of Justice"* (FAZ 9/9/2008). They deplore:

*"On a European level such an incapacitation [by the court] of the "masters of the treaties" is apparently tolerated without resistance" (ibid.).*

In the article the authors decry the usurpation of subdominant executive courts in relation to the legitimately governing European Council by the heads of government (the so-called masters of the treaties). According to this view, resistance is not only necessary because "illegitimate" power groups dominate the discourse, but also because radical action is necessary to restore the legitimate order<sup>6</sup>:

*"Against this background the decision of the German Supreme Court in the case of Mangold is far-reaching: The ECJ will be cut down to its size if an appeal is granted. It also will have the effect that an application of a judgement of the ECJ will not be allowed in Germany and therefore the precedence of EU-law before national law will be abolished at that point" (ibid.).*

Here a revision of the judgement of the ECJ in the case of Mangold is propagated. In this judgement the validity of EU-directives for anti-discrimination was accepted even before it was implemented into German law. The aim of the revision – from the authors' viewpoint – is a change in the balance of power between the EU and nation state, above all between the ECJ and the German Supreme Court. They also aim at hindering a translation of anti-discrimination policy. Whether they will succeed is still an open question, for instance, because the decision of the German Supreme Court is still pending.

---

<sup>6</sup> The title *"Stop the European Court of Justice"* deliberately alludes to protest movement slogans like 'Stop Castor-transport'.

With reference to the initial hypothesis of the translation approach (the diffusion of models is an open process as it might be accompanied by a change of power relations), we did find proof for a change in power relations implicating a (small) shift in national power relations. In the case of law-making or the jurisdiction of age discrimination this provoked resistance movements that can still lead to a failure of the translation.

In sharp contrast to Germany, the Polish articles (as was briefly mentioned above) showed no particular tension between supranational and national actors regarding the implementation of the anti-discrimination policies. The obvious reason for this fact is that, in contrast to Germany, a stricter anti-discrimination legislation also including ageism remains in line with the Polish constitution. Anti-discrimination legislation is seen as complementing and concretising the general legal framework set in the constitution and is, therefore, rather welcomed by the legal community. This view is also supported by the fact that all the verdicts of the Polish courts concerning age discrimination reported in the newspaper GW over the 11 year period analyzed fall to the advantage of the persons claiming discrimination. These verdicts are, furthermore, justified with reference to Polish national law (not European legislation).

A second dimension of translation is a semantic-practical shift in the process of diffusion. As intended, since partial shifts during law-making were hardly discussed in the German press – the implementation of an EU directive – they are not the subject of the following discussion. In our paper only the thematic shifts or identities discussed in the press will be analyzed.

A closer look at the German articles in the in-depth analysis reveals three main themes: 1) a discourse on perception at the beginning of the translation process, 2) the practical implementation in routines, and 3) the call for resistance against the translation.

Initially, the discourse on perceptions of anti-discrimination policy concentrated on whether the phenomenon really existed. As previously shown the concept of “age discrimination” was hardly present prior to the initial steps to introduce legislation – even a discourse on the subject was missing. A first semantic shift that was important in the years 2004 and 2005 involved the question, whether the phenomenon to be regulated actually existed or was it was merely a fiction. The title of an early article was quite telling in this regard:

*“Unmanned objects of curse. Bureau scenes of anti-discrimination work: Lesbian black handicapped can also be earthly” (FAZ 4/6/2005: 36).*

Since the article was printed in the newspaper’s feuilleton section, puns in the title are not unusual (however usually difficult to translate). The common unidentified flying object (UFO) that only exists in the fantasy of men and media is turned into “unmanned objects of curse” (sounding in German very much like UFO) meaning anonymous (unmanned in the strict sense of the German word), but also politically correct objects (an all female crew) provoking rejection (curse). The title refers to a statement made during the interview by an NGO activist:

*“The sociologist reacted slightly irritated: Indeed the draft bill is especially good for the registration of such cases, where e.g. a woman of non-German origin is also lesbian and above all handicapped. Despite this the victims are “no ufos” and the fear of the supposed average man is inappropriate” (ibid.).*

Early on, activists had to justify themselves by explaining that victims of discrimination are real people and not just imaginary literary constructions or objects of fantasy.

Right after the new law was passed, the semantic shift in the direction of fictitious discrimination reappeared in discussions of malpractice. When characterizing this group a new phrase “AGG-hopper” was coined and successfully spread within the discourse:

*“Fake job applications to gain money in new German are called “AGG-hopping”: Since the new General Law on Equal Treatment (abbr.: AGG) came into effect, some people have specialized in suing employers for alleged discriminations. They apply with standardized letters even though they know that they do not have a chance. The sole purpose is to pocket the compensation money later, according to the motto: discriminated – but rich” (Local issue of the FAZ 1/31/2007: 43).*

The noun “AGG-hopper” turns unidentified discriminated persons into persons with attributes of discrimination, who force financial compensation by threatening to sue (cf. Schiefer 2008). The popularity of this figure within the discourse in the law’s first year is illustrated by the fact that three out of eight experts interviewed explicitly or implicitly mention the theme of AGG-hopper one year after the new bill was introduced.

However the interviews already show in August 2007 (one year after the introduction) that the phases “*incomprehension*” (FAZ 8/18/2007: C4) and “*sceptical views and questions of many colleagues in management*” (ibid.) shifts towards new adaptive routines that reflect the new legislation. A legal professional wrote:

*“Up to now the effects on personnel policy are limited. Nearly all companies have authorized persons for AGG. Most of them have adapted there application procedures, many have trained their employees” (ibid.).*

In a similar vein of thought a human resources manager at Randstad stated:

*“The fuss over the implementation of AGG was more a “tempest in a teapot”. As in the case of gender discrimination a few years ago, everyone in charge of personnel or recruitment has done their homework and avoided or inhibited AGG-specific discriminations” (ibid.).*

These passages show that even those supporting the equal treatment policy (like the Randstad manager) as well as those objecting to it (like the legal professional) reported that they encouraged (and observed) an adaptive change of routines that reacts to the new law in a preventive way.

The introduction of anti-discrimination policies affected those in managerial positions at companies by slightly constraining their ability to act, not to mention the reluctant acceptance of a minor loss of power. However they rarely feature as central critics of the legislation in the newspaper discourse. Among other things, this can be attributed to the fact that they are successful in the practical translation of anti-discrimination policy by a change of routines.

Massive resistance against a translation exists within the legal community and several actors within the national courts (including the very highest courts). In general politics, age discrimination features more as a peripheral theme. But why, then, is it so important that even a former president exposes himself in articles by calling for revolution? Herzog’s and Gerken’s article was not a spontaneous statement, but rather a well-calculated move, for it appeared just a few days before the German conference of legal experts [*Juristentag*], who criticised law when it passed two years ago. A trade union spokesman offered the following explanation one year earlier:

*“In my view, a public perception of discrimination always existed. To me far more important is that the law documents the public will of society to actively fight discrimination and to prohibit it” (FAZ 8/18/2007: C4).*

The trade union spokesman for Ver.di supposes that prior to the legislation there was a diffuse feeling of discrimination. This normative view was publicly supported by the law and armed with practical measures and sanctions. Not mentioned in this argument is that anti-discrimination policy is a form of applied human rights policy connected to a shift within the universe of values by introducing “new”, i.e. newly codified, aspects of discrimination. As

values are related to each other in a web of beliefs, such innovations are connected to a shift in the order of values.

As such, Herzog and Gerken, who tried to stop the translation of the concept of age discrimination, were motivated not only by power interests (e.g. against the ECJ, against the EU, for employers' interests), but by value-rational motives as well. They denounced the justification of the ECJ in the case of Mangold:

*“For a justification of its judgement, the ECJ put forward an adventurous construction. In “the common constitutional traditions of the member states” and in “different treaties under international law” the ECJ believed to have discovered a prohibition of discrimination on the grounds of age. The German legislation violates EU-law not because of the anti-discrimination directive (that would not have to be implemented), but because it violates a “general basic principle of community law”. But this “general basic principle of community law” was completely fictitious. Only two (out of 25 at that time) member states – Finland and Portugal - mention a prohibition of discrimination on the grounds of age in their constitution; and a prohibition in even a single treaty under international law is – despite the succinct statement of the ECJ – unknown.” (FAZ 9/8/2008: 8)*

Two aspects in this passage of the article are especially interesting in that they make reference to the meaning of precedence law and the dimension of human rights.

Herzog's and Gerken's reference to the case Mangold indicates the dominant form by which law executes translations (which is comparable to the importance of routines, e.g. in recruitment, to the integration of anti-discrimination policy within companies). After the enactment of the Law on Equal Treatment many articles refer to single court decisions, where the claim of an employee was judged by the court to be a legitimate case of discrimination or whether the claim of discrimination was rejected as a false accusation. As more and more cases are published the awareness of “true” case of discrimination advances (which is now more than a fictional “ufo”-case). By means of this precedence law can now produce binding translations via case decisions. This stands in opposition to a pure discourse, where controversial positions stay in opposing corners without mediation. It should be noted that this is a general characteristic of law which is not merely restricted to age discrimination.

Nevertheless, there are individual elements in the Mangold decision and in the field of age discrimination that have led to conflicts. For our purposes the following judicial questions are not as important as the question of the sociology of law within the context of judicial decisions. The EU anti-discrimination directives are driven by two motives: on the one hand, in a parallel discussion concerning a European constitution, a more precise formulation of what the human rights policy in the sense of anti-discrimination policy means is provided. On the other hand, we have the implementation of a newly coordinated EU-employment policy as part of the Lisbon process. The latter is central to the interests of the European Council and the German government within it. The analyses of the OECD (1994) had shown that the lasting higher unemployment rates in the European Union (in comparison to the US and Japan) are also caused by the rationing of the labour supply as the result of its labour market policy (and labour law). The new goal was to raise the labour participation rate of women and older workers (instead of the former goal of raising the number of non-employed, e.g. by early retirement), as this seemed to be connected with lower unemployment rates. This re-orientation has repercussions in the sociology of law as studies show that the former ideological approach to protect older workers by specific rights (e.g. longer legal period of notice of discharge for older age groups) produced unintended consequences such as lowering the chances of re-employing older workers (cf. Dorndorf 1999). What makes the Mangold case so curious is that the ECJ does not criticise an old law as being discriminatory, but rather a new law written with the new ideology of the Lisbon process in mind. The intention of the

law was to increase the re-employment chances of both younger and older workers by offering more possibilities for fixed contracts for these age groups. This case was decisive for both the German discourse and policy in that after Mangold – as well as some initial reluctance – all the actors now had an interest in quickly implementing a German anti-discrimination law (thereby putting an EU directive into practice), and thus allowing Germany to defend itself from being a victim of EU-decisions.

In the passage by Herzog and Gerken quoted above, the authors state that the constitutional justification for the prohibition of age discrimination is “*completely fictitious*”. This strong legal accusation against a court decision, which presupposes a pre-modern arbitrariness of jurisdiction, is part of a value conflict of the actors involved. In another part of the article the authors claim:

*“that with intent the ECJ systematically ignores central basics of occidental jurisdiction by courts, [...] and invents basic law principals” (FAZ 9/8/2008: 8).*

Both passages imply – from the authors’ point of view - that the judges of the ECJ acted outside of the “normal occidental” jurisdiction. These severe charges indicate that the authors feel their universe of values has been challenged by a translation of the anti-discrimination model.

To better understand the sharpness of the Herzog’s and Gerken’s reaction, some background on the genesis and development of human rights is important. The American and French human rights articles in their respective constitutions are an element in most modern constitutions - including the federal German constitution from 1949. With the UN Universal Declaration of Human Rights in 1948, a world societal human right came into being.<sup>7</sup> Both the German human rights and world societal human rights run parallel to each other most of the time. Furthermore, since the 1960s there has been a tendency to implement human rights by means of anti-discrimination policies both in Germany and in UN. Above all anti-discrimination policies protecting against gender and race discrimination have – with its roots in the USA and sometimes mediated by the UN – established a new model. For a sociologist, this is quite convincing because age (like gender and race) is an ascribed status. However, only after the EU directives 2000ff. was there sufficient motivation throughout most of Europe to put the addendum into law.<sup>8</sup> Two factors are important for this delay: on the one hand, protection against discrimination on the grounds of age (in contrast to gender, race and religion) does not figure in many national constitutions, e.g. the German constitution. Herzog and Gerken criticize this extension of the catalogue of human rights by forming analogies such as “inventing law”. On the other hand, there are problems of content in the translation of the discrimination and anti-discrimination model to the field of age; for such a translation is not as easily visible in sociological theory (cf. Sackmann 1998 and Saake 2008) as it is in normative theory (Daniels 1990) and in legal literature (Fredman 2003). The problem is that the criterion of age (in contrast to gender and race) does not refer to clear cut real permanent groups of individuals. Since everyone gets older, one’s potential membership in an age group also changes. As such, discrimination (and anti-discrimination) can refer either to partial segments of single life courses; and/or to specific generational or cohort groups; and/or to specific age groups at a certain historical moment in time. This ambiguity is not just theoretically or methodologically a difficult problem to resolve, but in the legal sphere as well. Most laws concerning age discrimination (like the General Law on Equal Treatment) contain a long list of exceptions (thus making the construction of each sentence a complicated affair).

---

<sup>7</sup> Bornschier (2002) is right in stressing that with the Universal Declaration of Human Rights a (weak) world society is emerging beside a world system that already existed for a longer period of time.

<sup>8</sup> At that time in Europe there are frontrunners and laggards (cf. O’Cinneide 2005).

After Herzog and Gerken made their case for a clash of cultures and a conflict of values, the article also drew many critical remarks including from legal professionals. In a recent article the FAZ's legal journalist, Reinhard Mueller, chose a mediating tone:

*“By all means, this is not a reason for a broad side against the European Court of Justice. The judges in Luxembourg will rightfully be criticized, if they make decisions with dubious methods or if they pretend to be the motor of integration without foundation. But all too often someone representing different interests in a certain matter strikes out at the European Court of Justice in the hope of getting something from Luxembourg that European law cannot offer.” (FAZ 9/9/2009: 10)*

Putting all critique aside, Mueller admonishes that the conflict between national and international supreme courts should not escalate into a form reminiscent of war-like actions (e.g. “broad side” and “strike out”).

In the case of Poland, the articles also show some shifts in the meaning of the concept “age discrimination” over the course of its translation from the supranational to the national level. First of all, there are some articles expressing a general disbelief that age discrimination is an actual phenomenon. Secondly, we find articles placing anti-ageist discourse into the context of professional burnout and physical or health preconditions for certain jobs. Thirdly, age discrimination is used as an argument in the abortion debate. Last but not least, there are a few examples of successful translations of the anti-ageist legislation in behavioural routines.

Just as in Germany, at the beginning of the age discrimination debate a great number of articles in the Polish press can be found diagnosing the problem and coming to the conclusion that age discrimination is not a real phenomenon. To the contrary, employers (presently) cherish older workers. Striking is the fact that – in contrast to Germany – these kinds of articles do not cease over time, but are present from the very beginning of the anti-ageist discourse through to the end of the period analyzed. Another point worth noting is that this line of discourse is taken up exclusively by those working in human resources. These articles describe age discrimination as a phenomenon of the past, incidents that occurred during the period of transformation to a market economy. These actions were motivated, at that time, by a fear that older individuals having worked in the socialist economy would not meet the requirements of firms operating within a free market. In an early article from 1999 we read (GW 8/9/1999):

*“For the situation of 50-year-olds Roman Wojtala [human resources professional - KK] blames western companies that were entering our market at the beginning of the 90s. In his opinion they created a myth, that a person over 50 is a substandard employee. – They didn't know polish reality. They thought that a manager who doesn't speak English is undereducated. They didn't realize the fact, though, that he had to learn Russian his entire life. They also feared that persons of this age have learned habits in socialist factories, where work organization is different from that of the western firms”.*

According to the human resources experts cited in this article, however, the attitude of employers towards older workers has clearly changed as of late. The same argumentation can be found in a much more recent article from 2008, which describes the recruiting campaigns of a few firms targeted directly at the group of older workforce. Another article from that same year again presents the opinions of HR specialists for older workers highlighting the strengths and advantages they bring to the employer. Confronted with the question as to why, despite all those positive features, older persons are still unable to find employment, the HR professionals point to the workers that do not believe in themselves, do not try to develop, etc. In an early article from 1999 the cited HR professional, Roman Wojtala, clearly states:

*“But those scared of the changes that happened in Poland and did nothing to develop, they condemn themselves to exclusion. Whether a 50-year-old belongs to this group or not, depends solely on him.”*

In the previously mentioned article from 2008, which reconstructs the HR experts’ opinions of older workers in a form of a listing of their features, the last two characteristics and the only two negative ones are (GW 3/25/2008):

*“Sad”*

*Pióro: it gets on my nerves that people over 50 create a self-fulfilling prophecy: that nobody is going to employ them, that there is no use for them except retirement. And during the job interviews they are so sad that they actually don’t get the job*

*Lacking self-confidence*

*Zofia Jurczyk, Leclerc: We were looking for a person with experience for a quality manager position. Here you have to do audits, organize research, - you need experience. We had three candidates; all of them about 30 years of age.”*

In the bulk of articles referred to here we observe a shift in translation of the anti-ageism discourse. The fact that it is more difficult for older people to find a job is acknowledged. The reason for this situation, however, is not the discriminating attitudes of employers. Instead, the ones to blame are older workers themselves, who are “sad”, “do not believe in themselves” or are not willing to invest in their own continued professional development. The problem of age discrimination is translated here into an individual matter; the guilt or responsibility is thus attributed to individuals.

This line of discourse coupled with the fact that it is led by human resources professionals speaks to the prominent role employers play in the field of age discrimination. Another example of this prominence is the depiction of the discriminated persons as opportunists using the new legislation to sue their employers and receive compensation. As we have already seen, this translation form was relevant for Germany. Within the Polish articles only one later article (2009) used this line of argumentation. The head of a regional department of Polish Television, Maria Kudroń, claims in an official statement published in the newspaper:

*“Age discrimination is a serious social problem; it especially affects women. Baseless use of the term ageism in a fight for access to the program “Approaches” [the journalist suing was dismissed from hosting the program - KK] is acting to the detriment of those for whom this problem is actually of concern”.*

The employee accusing the television channel of age discrimination in the choice of journalists to host programs was presented here as an instrumentally misuse of the concept in her fight for access to favourable programmes.

The second form of translation involving age discrimination found in the Polish press is its placement within the context of professional burnout or physical / health requirements for certain jobs and positions. This line of argumentation can be seen as an attempt to specify the exact meaning of ageism and occurs quite early in the anti-discrimination debate (2003). Whereas the NGO representative, Romuald Chutkowski, from the Gdansk Anti-mobbing Association wants to see age discrimination within a wider context of regulations addressing labour conditions, legal professionals – at that time – tried to differentiate age discrimination from other phenomena. They focused on showing what age discrimination is not, while at the same time pointing to other legal regulations concerning labour conditions.

Thirdly, the Polish articles show a very unusual turn in the translation of the age discrimination discourse, in which the concept is used as an argument in the debate



concerning abortion laws. The termination of a pregnancy is seen as a form of age discrimination. Because foetuses are understood to be children – only younger than those already born – they should have the same protection and basic human rights as all other human beings already born. This mode of translation was fiercely attacked by left wing organizations, which are normally the driving forces of the other discrimination discourses (e.g. women movements, lesbian and gay associations, etc.) and which are also the main critics of ageism in its original meaning. In an article from 2004 reporting on the preparations for the March for Equality in one of the larger Polish cities we read (GW 11/20/2004):

*“A conservative-liberal association KoLiber wanted to join the March for Equality. The organizers agreed and asked them to send the slogans under which KoLiber would take part in the march. When they finally found out what the slogans were, the approval was withdrawn. Joanna Najfeld, the spokesperson of KoLiber: - we wanted to protest against age discrimination (it concerned the protection of the unborn), against sex discrimination (because men are being discriminated against as well) or against discrimination because of individual welfare (it concerned higher taxes for higher earnings). But the organizers of the march narrowed the term tolerance to their own point of view. – These slogans showed a misapprehension of the idea of the march – Izabela Kowalczyk from Konsola [an NGO organizing the march - KK] replies. – it was a common provocation”.*

Last but not least, the Polish print media discourse also shows signs of a successful translation of anti-ageist legislation in behavioural routines of organizations. While in Germany it was clear that firms had adapted their routines to the new European standards, in Poland the picture is less clear. Some firms still overtly use the age criterion, for example, in job advertisements. Yet, an interview with Michałowicz from the Polish employer association suggests that firms, generally speaking, have indeed adjusted their internal regulations and routines to fit the anti-discrimination legislation. Employment agencies also have no problems with the implementation of the anti-ageist regulations into their routine task (GW 6/22/2006):

*“Among the job advertisements in the labour offices in Zielona Góra and Gorzów, there are no such offers, where age is an employment criterion. – We do not accept such advertisements from employers - says Jadwiga Konik, vice-director of a county (powiat) labour office in Gorzów. (...) – An employer often defines the age of an employee. Then our employee asks to remove such a condition – says Konik”.*

The Polish articles show some similarities as well as important differences in the development of the anti-ageism discourse compared to the German case. As in Germany we find articles questioning the existence of the age-discrimination phenomenon, suggesting that accusations of discrimination are not legitimate and finally accusing the claimants of misusing the legal regulations. Moreover, the Polish articles also show successful translations of anti-ageist legislation into the routine behaviour of firms and public sector agencies. However, a very important part of the German debate on age-discrimination concerning its “failed translation” into a general critique of the subordination of national legislation to European law finds no counterpart in the Polish discourse. Furthermore, there are some shifts in the content of the concept of age discrimination that are unique to Poland. The most radical case to date is the use of the concept “age discrimination” as a framework for the debate on abortion.

*Third result: A detailed qualitative analysis of articles concerning age discrimination in Germany and Poland offers important insights about the gestalt (A) and translation (B) of the concept age discrimination within the two countries. A) In Germany the diffusion of the concept age discrimination is strongly linked to lawful coercion from supranational political institutions (which is highly atypical for present forms of the formation of a world society). In Poland, however, the character of the model’s diffusion is still more like a discourse*

*dominated by NGOs, epistemic communities and tales from abroad – a form far more typical for the present world society. B) International models of age discrimination spread in the form of translations: B1) An indicator for a translation is that it is connected with a shift in national power relations. In Germany a translation of the concept “anti-age discrimination policy” increases the power of small NGOs versus employers (which is influential for the bottom line of the newspaper reports, but does not provoke major conflicts). Far more controversial is the (supposed) shift of power between the national Supreme Court and the European Court of Justice accentuated by a conflict of values. This heated conflict was quite unexpected as both courts of justice share very similar views on human rights. This is a strong indicator for the fact that even among OECD-countries “copied models” can cause conflicts of values because institutionalised ideas are embedded within a particular web of beliefs. The (perceived) shift of power by the translation was less pronounced in Poland. And because anti-discrimination policy is seen as a natural part of the post-1990 constitution, there is no legal strife between different levels. Furthermore, in Poland a minor shift of power between employers and NGOs has taken place. However, with the general weakness of the civil society, multi-functional NGOs are rather reluctant to enter the field (but nevertheless fight a party-political occupation of QuaNGOs). B2) The concept of age discrimination was widely unknown to both the German and Polish publics at the beginning of the observation period. As such, the debate in both countries began by asking whether the phenomenon under discussion was “real” or not. At that point the similarities between the two countries come to end. In Germany a juridification of the concept feeds into a practical translation of anti-discrimination models: it becomes part of new bureaucratic routines in companies and is exemplified and tested in publicized court decisions. In Poland the degree of practical translation is lower because age discrimination is ever so slightly above the threshold of any noncommittal discourse item. Companies often do not translate the concept into new routines because human resource manager view age differences as a cohort phenomenon, in which older workers themselves have to be blamed for their difficulties because they continue to embody socialist mentalities and work ethic. An indicator of the open nature of the juristic item “age discrimination” is that it can arbitrarily be shifted (for outside observers) to strange fields like abortion.*

### 3.4 Effects of anti-discrimination discourse or policy on age typifications?

Anti-discrimination policy follows two aims situated on different levels. The first aim is to achieve individual justice by helping individuals discriminated against to receive compensation for their suffering. This is a normal court procedure or routine that evaluates individual claims on a case to case basis. In the analysis of the age discrimination articles we saw that such procedures were the subject matter of a great number of articles. A second aim of the anti-discrimination policy is preventive in nature and focuses on the organizational and societal levels. The idea is to eliminate prejudice as well as to help establish a just, meritocratic order. Usually social movements are inspired by this aim, values are forged and ideologies are fought over. It was in this realm that the term “ageism” (Bytheway 2005) was coined and should be fought by means of anti-discrimination policy. Effective age-discrimination legislation can be measured either by looking at the cases fought and won in the legal arena or measured by the changes in discourse and attitudes influenced by prejudice. The latter seems to be the more decisive of the two. Thus, the final part of our analysis concentrates on the effects of anti-discrimination policy and legislation on public discourse, above all on age typification.

Both in Germany and Poland age typifications are, generally speaking, negative in orientation – especially towards older age groups (Filipp/Mayer 1999; Szukalski 2004) – and are dominated by a deficit model of older individuals. Elderly people are seen as deserving of

help, assistance and protection. This general pattern was reinforced by the fact that the major course the German labour market policy had taken between the years 1983-1996 was early retirement. This was the main answer in the 1980s when West Germany was confronted with the largest structural unemployment since World War II, and this policy was continued through into the 1990s (where the challenge was a shock transformation causing extensive structural unemployment in East Germany). Proponents of this policy argued that their actions helped disadvantaged elderly workers in the labour market. However, age specific unemployment rates stayed high for older age groups (Sackmann 2001) and participation of these workers in the continuing education programmes, compared to the international community, was extremely low. In this economic climate older employees were classified as a “risk group” within the labour market (along with young people, the handicapped, women and low qualified workers). The early retirement policy unintentionally led to financing problems of pension insurance schemes. As a result the policies after 1996 phased out the early retirement model, which eventually contributed to the considerable rise in the retirement age (Sackmann 2007; 2008) and starting in 2000 led to the subsidisation and propagation of additional private insurance systems (“Riester-Rente”). Early retirement was also in Poland one of the main strategies for coping with rapid social and economic change during the transformation period. Only very recently has the government begun moving away from this policy. Nonetheless, many occupational groups were still in a position to secure the “privilege” of early retirement. As a consequence the economic activity rate of 55 to 64 year olds in Poland is one of the lowest in Europe – in 2007 approximately 30% (GUS 2009).

In the following we test whether the introduction of legislation against age discrimination in 2006 influenced the evaluative components of age typification within the public discourse. A random sample of newspaper articles containing the term “age”, which included some kind of elaboration on age typification, were analyzed with reference to the genre of the article, the age group reported, the evaluation of age in the article as well as the date of publication. In discourse analysis it is very difficult to single out any one factor as the agent of change because there tend to be parallel processes at work which overlap, are interwoven or even counteract each other. So the attribution of a directional change in the evaluative nature of age typifications remains rather preliminary. Instead, our analysis should be viewed as testing the bigger picture, evaluating the general direction and themes rather than attempting to single out an exact figure or causal agent of change.

Fig. 2 and 3 show the general direction age typifications in Germany and in Poland have taken as well as the changes that have taken place during the 2000s.

Figure 3: Evaluation of age in the German public discourse, FAZ 1999-2009

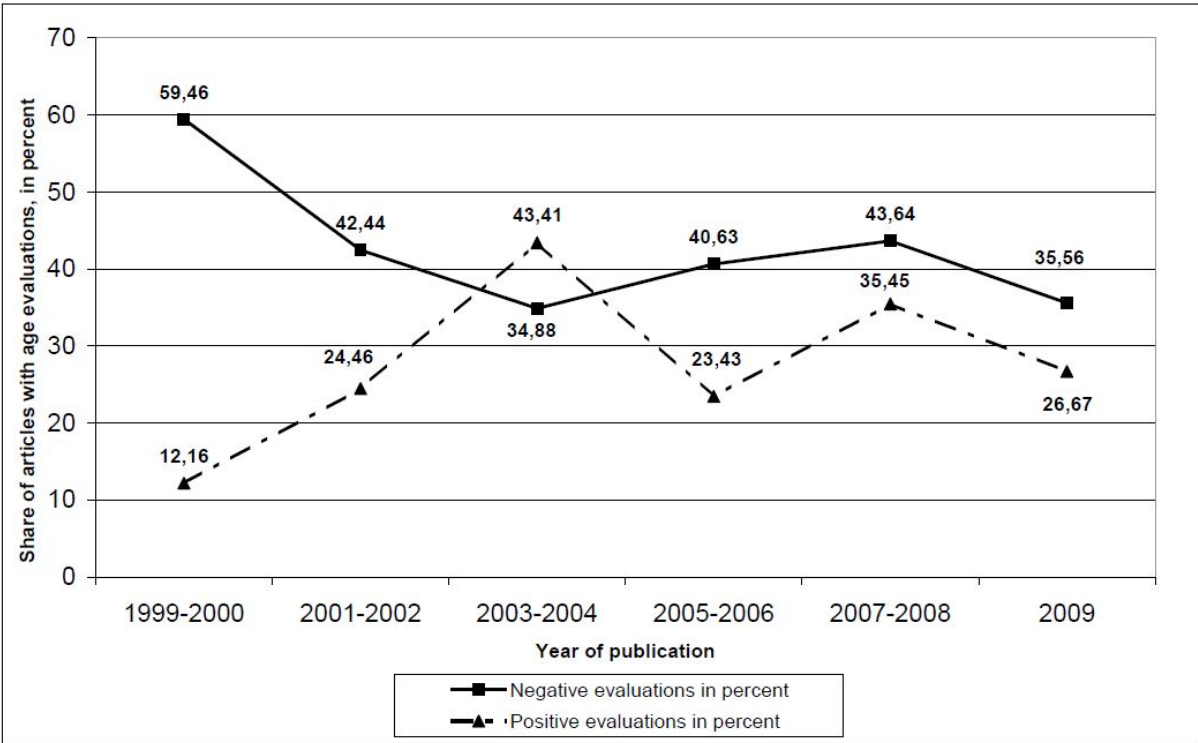
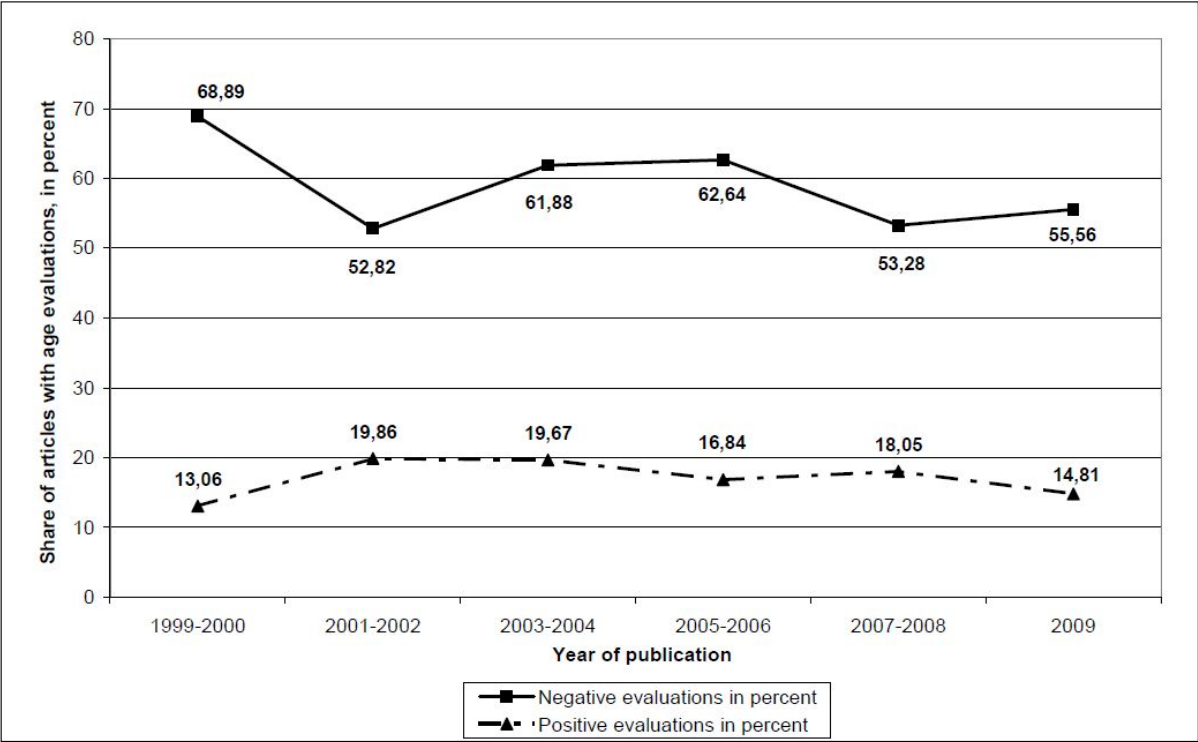


Figure 4: Evaluation of age in the Polish public discourse, GW 1999-2009



In all but one year the figure shows that a negative evaluation of age is prevalent in Germany. Not all of the articles evaluate age, but in 42% of all cases that do, it is evaluated negatively (against 29% which evaluate it positively). In Poland the age typifications found in the sample of articles analyzed were even more negative. The share of positive typifications is always

smaller than the share of negative opinions about age. On average, among articles expressing a certain age evaluation 60% are negative and only 17% positive.

In both countries there is a considerable fluctuation of age typifications within the discourse reflecting different connotations of thematic agendas discussed in contemporary debates. For Germany there seems to be a slight trend towards a more positive age typification in the public debate. As for Poland no such trend can be observed. As a result of the decades of political programs ambivalent towards the working capacity of older employees, this general pattern of negative opinions about age is consistent with the expectation of a general negative age typification both in Germany and in Poland. Although Poland introduced anti-ageist legislation as well (primarily in 2004), we cannot observe any change in the prevalence of negative opinions about age. The slight dynamics towards more positive age evaluations, however, can be discerned in the German press. This might be attributable to the possible influence of anti-discrimination policy regarding positive age typifications. Yet before jumping to a specific conclusion, we would like to learn more about the age typification genres and age groups as they change over time.

The German discourse on age typification over the last decade was dominated by a discourse on “provision for old age” (with 26% of all articles on age belonged to this category). “Labour market” (14%), “politics and questions of political succession” (13%) and “general interest” themes (10%) clearly occur less frequently in age typifying articles.<sup>9</sup> In contrast, Polish articles show a very different structure of age typifications. The most prevalent are a “general interest” theme (with 34%) and a sport theme (with 25% of the articles analyzed). The issue of provision for old age appears in only 9% of the articles. The framework of the articles on old age pensions was both in Poland and Germany, however, usually one of risk: because public pensions are expected to dwindle, people (individuals and politicians) should do something to avoid poverty in old age.

In Germany this agenda was strongly pushed within the public debate on policies as well as in articles advising about the different kinds of private pension plans, various alternatives as well as what to consider when planning. As poverty in old age was seen as a major argument, the age typification in this genre was quite negative. In 1999, 2000, 2002-2004, 2006, 2008-2009 articles of the “provision for old age” genre topped the list of those mentioning a negative age stereotype. In the majority of these articles the elderly were the age group ascribed this (fictitious) stigma.<sup>10</sup> In the Polish press as well, the articles concerning the provision for old age show a consistent dominance of the negative old age stereotype. A small share of the articles in the sample, however, meant that, in contrast to Germany, they are not the main framework of negative stereotypes towards age. Only once in 1999 do negative opinions of age dominate the headlines, and that was in conjunction with the information chaos accompanying the newly introduced regulations concerning early retirement schemes. The genre “labour market” represents another hotspot within the German press debate surrounding negative age typifications. They top the list of most negative evaluations of age in 2001, 2004 and 2007. These articles primarily discuss either young people under the age of 25 or older workers in the age group 50-65 years.

The main framework for negative age typifications in the Polish press was “general interest”. The second major group consisted of articles on sport themes.

Hence, we were able to identify a “standard” article on a negative typification of age. In Germany it is the “provision for old age” genre as well as the age group “65 and above”. In

---

<sup>9</sup> Further coded genres of age typifying articles were “company staff”, “market”, “economy/ firm succession”, “science”, “sports”, “actors”, “church”, “other”.

<sup>10</sup> Old age poverty is labeled here as an imagined stigma because during the whole decade age specific poverty rates showed most of the years lowest poverty rates (of all age groups) in the age group above 65 years.

Poland these negative opinions concerning age are concentrated, on the one hand, in articles about personal affairs and the age group 65+, and on the other, in sport articles the negative typifications are aimed at 25-50 year olds. Surprisingly enough, this “sport” framework also contains the most positive opinions about age. Here two age groups dominate: the young (15-25) and the middle-aged (25-50).<sup>11</sup> Astonishingly, no comparable “standard” article containing a positive typification of age could be discerned within the Germany discourse. Heterogeneity continues to prevail. The most popular genres change from year to year (“general interest” 2000, “labour market” 2001, “politics and questions of political succession” 2002, “provision for old age” 2003, “economy/ firm succession” 2005, 2007, “company staff” 2004, 2009, “market” 2006). Furthermore, the age groups mentioned in the positive articles are quite varied: 12% young people, 32% middle aged people (25-50), 28% older people (50-65), 28% seniors (above 65). If there is a trend towards a more positive image of ageing, it cannot be attributed to a single issue, a change of importance or evaluation of a single age group.

What about the effects of the law against age discrimination passed in 2006? Table 3 and 4 show the results of a cross-tabulation of the publication dates of an article as well as an evaluation of age in age-typifying articles.

Table 1: Evaluation of age in German age-typifying newspaper articles 1999-2009, random sample FAZ, according to date of publication before and after anti-age-discrimination legislation

Date of publication	Articles with positive evaluation of age	Articles with negative evaluation of age	Total
1999-8/17/2006	27.5 % (125)	42.9 % (195)	70.4 % (320)
8/18/2006-2009	32.3 % (55)	40.6 % (69)	72.9 % (124)
Sum	(180)	(264)	(625)

Table 2: Evaluation of age in Polish age-typifying newspaper articles 1999-2009, random sample GW, according to date of publication before and after anti-age-discrimination legislation

Date of publication	Articles with positive evaluation of age	Articles with negative evaluation of age	Total
1999-2003	17 % (28)	61 % (100)	78 % (128)
2004-2009	16 % (44)	59 % (160)	75 % (204)
Sum	(72)	(260)	(332)

Table 3 corroborates the suggestion that anti-age discrimination legislation in Germany might have a (small) preventive effect on age typification. The number of articles transporting a positive age typification rises from 27% to 32% after the legislation. Correspondingly, the number of articles containing negative age typification drops from 43% to 41%. The overall

<sup>11</sup> The middle-aged dominate both the negative as well as positive opinions in the frame of articles on sport. On the whole, however, in this field negative typifications also are more numerous than the positive ones.

number of articles with either a positive or a negative age typification rises from 70% to 73%, whereas the number of articles with a ‘deliberative’ age typification or ‘not compliant with age’ typification shows a correspondingly slight decrease.

The registered effects of the new legislation on age typification are in accordance with the intentions of the law: a more positive image and less stereotypically negative evaluation of age. Statistically speaking, however, a Chi-square test shows that the differences are not significant.<sup>12</sup> The small amount of change is not unusual given that the aim under consideration is a rather general discourse shaped by many actors, interests and themes. It is too early to draw a positive conclusion from the effects of anti-age discrimination legislation on general age typifications. Nonetheless, one should not be completely dismissive of the effects this sort of legislation has on general discourse semantics.

As for Poland, table 4 shows rather contrary results. Although the percentage of articles containing negative opinions about age sinks after the introduction of the anti-ageist regulations into the Polish labour law, this decrease is very small (from 61% to 59%). Moreover, despite the implementation of new legislation, the share of articles expressing positive views about age continues to decrease. Also the overall percentage of articles expressing negative or positive opinions decreases. This corresponds to an increase in the share of articles which present a ‘not compliant with age’ typification. This would mean that stereotypical thinking is still prevalent, whereas individual behaviour starts to change and undermine the traditional views.

#### 4. Conclusions

The guiding question of this paper is, whether European anti-ageist legislation has been successfully translated in countries with an ageist tradition insofar as it changed opinions and evaluations in public debate or whether it failed to path dependencies parallel to former institutional practice.

Both Germany and Poland have a strong tradition of early retirement; a tradition which reverberated during the transformation crisis that both countries had to come to grips with over the last two decades. Parallel to this institutional preference both countries share negative age typifications. In both countries there was never a strong social movement against age discrimination. The concept itself was largely unknown. For example, between 1992 and 2003 in the leading German newspaper *Frankfurter Allgemeine Zeitung* the term “age discrimination” was used only once when citing a British sociologist. From this we can draw the conclusion that the impetus for change came from outside its border in the form of the European Union’s new directives to combat age discrimination starting in 2000. In both countries we see that the new concept is taken up into the discourse, despite being a relatively unpopular concept (in Poland even more so than in Germany). Such a pattern of diffusion of societal models from the international level to a national one has become quite common over the last few decades. Still open to scientific debate is whether this diffusion follows more the copying mode postulated by neo-institutional theory or whether it follows more a process of translation postulated by actor-network-theory, which emphasizes the open nature of the process and (in successful cases) a shift of power and content. Also open is the question which conflicts arise in these diffusion processes, e.g. in some developing countries conflicts concerning human rights are not uncommon.

That the concept of discrimination and anti-discrimination policy is already familiar to us from classical issues like gender, race/ethnicity or religion represents a facilitating

---

<sup>12</sup> 1.04 with one degree of freedom.

background for the copying of age discrimination concepts as well as the anti-discrimination policy reacting to them. A quantitative content analysis of a German newspaper shows that indeed a general discrimination discourse is well-established in Germany. On average, each day there is an article in the newspaper talking about discrimination. NGOs cooperating with governing politicians are fighting discrimination, while opposition parties and interest groups are against it. The majority share normative presuppositions, despite differing interests, insofar as most actors in the press are against discrimination and for anti-discrimination policy.

A look at the general discrimination discourse in Poland shows that this background is not on such solid ground. On the one hand, there are even more articles about discrimination, especially after Poland joined the EU. Furthermore, NGOs and epistemic communities propagate the cause. On the other hand, however, there is an increase in normative strife. We arrive at a paradoxical situation, where the majority are against discrimination, but at the same time, are also against anti-discrimination policy. Given this discourse figuration, it is no wonder that legislation concerning anti-discrimination policy is still pending in Poland.

The main focus of this article is on age discrimination. In this respect even in Germany the situation is quite different from the general discrimination discourse it originates from. A quantitative content analysis shows that in this field NGOs are missing as main propagators of anti-discrimination policy or as major critics of discrimination. This vacancy in the discourse is filled by the European Union, which is responsible for a juridification of the problem. Despite shared norms (against discrimination, for anti-discrimination policy, however, with a somewhat lower degree of consensus in this field) the high degree of juridification sets coercion as the major form of isomorphic power in this field. Given the present state of world society, the dominance of coercion on the part of a supranational state upon a national state in this field is very unusual. However, this does not guarantee the translation of the concept. We find a minor shift of power by the new anti-ageist legislation from employers to NGOs. A qualitative content analysis shows that a practical translation of the content of anti-discrimination policy is achieved by translating the initially unknown concept into new organizational routines and by finding in publicized court decisions a more precise meaning of “real” age discrimination in contrast to an alleged one. The unknown object of age discrimination or UFO – the starting point of the debate – was turned into a new preventive standard procedure. Whereas the translation was successful at the organizational level, the shift of power relations turned out to be highly controversial. Some legal professionals perceived a shift of power from the German Supreme Court to the European Court of Justice, which in the case of age discrimination is intertwined with a conflict of values. Even the former president of the federal republic took part in this heated debate. The still open translation of anti-ageist policy at a legal level shows that even between countries and supranational units with similar traditions, basic values and experience with human rights, sharp conflicts of values can arise, for translations do not simply add a single item to a given list of ideational objects, but each new object may change an existing web of beliefs.

On the surface, the translation of age discrimination in Poland would appear to be an uncomplicated matter because the new anti-ageist legislation is seen as being in line with the post-1990 constitution. Thus, the European Union does not figure as prominently in this discourse as it does in Germany. As one would suppose, NGOs are central propagators of anti-discrimination legislation, while at the same time, not specialising in the field. The legislation is still pending. In Poland we also register a slight shift of power from employers to NGOs in the field of age discrimination. In contrast to Germany, however, practical translation of anti-discrimination policy in organizations has not taken place on a broad scale. A major reason for this is that (most publicized) human resource managers (as a central profession in this field of implementation) do not acknowledge the existence of age



discrimination. Instead, they individualize the problem and attribute it to the inability of older workers to adapt to the new capitalist labour markets. One can suppose that cohort conflicts might be a reason for this perception.

Common to both countries is the fact that NGOs are far weaker within the field of age discrimination than in other fields of discrimination. More than likely, the weakness of NGOs in this field is not an effect of national idiosyncratic notions, but is connected with the ambiguity of the concept age group.

The effect of the new legislation can be either evaluated in the number of court cases or on its (preventive) influence on public discourse. The quantitative content analysis of age typifications in two leading newspapers (one in Poland and one in Germany), shows that in both countries a negative age typification dominates (more so in Poland than in Germany). After the new anti-age discrimination legislation was introduced, a minor shift towards more positive age evaluations in Germany (i.e. in the latter half of the first decade of the new millennium) was visible. Both theoretically and statistically, it is difficult to attribute this shift to the new legislation. In Poland the initial steps of anti-ageist legislation did not result in shift of age evaluations.

It is too early to draw definitive conclusions regarding the overall effects of anti-ageist legislation in Germany and Poland. While there are some indicators suggesting that German age typifications are very slowly beginning to change (following an earlier renunciation of early retirement), this path is by no means a stable one. Up till now, in Poland there does not appear to be any major effects resulting from the initial attempts at legislation beyond some discussion. From this we can conclude that in Germany a seed for anti-ageist policies has been planted; one which Poland is still lacking.

## References:

- Bornschier, Volker (2002): Weltgesellschaft. Zürich.
- Bytheway, Bill (2005): Ageism. In Johnson, Malcolm L. (Hg.): The Cambridge Handbook of Age and Ageing. S. 338-345.
- Daniels, Norman (1990): Justice and Transfers Between Generations. In Johnson, Paul/Conrad, Christoph/Thomson, David (Hg.): Workers Versus Pensioners: Intergenerational Justice in an Ageing World. Manchester: Manchester University Press. S. 57-79.
- Dorndorf, Eberhard (1999): Beschäftigungseffekte des Arbeitsrechts und ihre juristische Rechtfertigung. In Jahrbuch Ökonomie und Gesellschaft 15: 284-305.
- Edelman, Lauren B. (1992): Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law. In American Journal of Sociology 97: 1531-1576.
- Filipp, Sigrun-Heide/ Mayer, Anne-Kathrin (1999): Bilder des Alters. Altersstereotype und die Beziehungen zwischen den Generationen. Stuttgart: Kohlhammer.
- Fredman, Sandra (2003): The Age of Equality. In Fredman, Sandra/ Spencer, Sarah (Hg.): Age as an equality issue. Oxford: Hart Publishing. S. 21-69.
- Glaser, Barney/ Strauss, Anselm (1967): The Discovery of Grounded Theory. Hawthorne: Aldine de Gruyter.
- Hitzel-Cassagnes, Tanja/ Meisterhans, Nadja (2009): Konstitutionalisierungsperspektiven eines fragmentierten Weltrechts. In Brunkhorst, Hauke (Hg.) (2009): Demokratie in der Weltgesellschaft. Baden-Baden: Nomos. S. 159-183.
- Kollman, Kelly (2007): Same-Sex Unions: The Globalization of an Idea. In International Studies Quarterly 51: 329-358.
- Latour, Bruno (2005): Reassembling the Social: An Introduction to Actor-Network-Theory. Oxford: Oxford University Press.
- March, James G./Olsen, Johan P. (1998): The institutional dynamics of international political orders. In International Organization 52: 943-969.
- Meyer, John W. (2005): Weltkultur. Frankfurt/M.: Suhrkamp.
- Meyer, John W./Boli, John/Thomas, George M./Ramirez, Francisco O. (1997): World Society and the Nation-State. In American Journal of Sociology 103: 144-181
- Nickel, Rainer (1999): Gleichheit und Differenz in der vielfältigen Republik. Baden-Baden: Nomos.
- O'Conneide, Colm (2005): Age discrimination and European law. Brussels: European Commission.
- OECD (1994): The OECD Jobs Study. Paris: OECD.
- Saake, Irmhild (2008): Lebensphase Alter. In Abels, Heinz/ Honig, Michael-Sebastian/ Saake, Irmhild/ Weymann, Ansgar: Lebensphasen. Eine Einführung. Wiesbaden: VS Verlag für Sozialwissenschaften. S. 235-284.
- Sackmann, Reinhold (1998): Konkurrierende Generationen auf dem Arbeitsmarkt. Opladen: Westdeutscher Verlag.
- Sackmann, Reinhold (2001): Age and Labour Market Chances in International Comparison. In European Sociological Review 17 (4): 373-389.

Sackmann, Reinhold (2007): Social Protection in Germany: Is There a Growing Generational Inequity? In *Horizons Stratégiques*, No. 5: 120-129.

Sackmann, Reinhold (2008): Chancen und Risiken der Festlegung von Altersgrenzen des Ruhestands. In *Zeitschrift für Gerontologie und Geriatrie* 41: 345-351.

Schiefer, Bernd (2008): Zwei Jahre Allgemeines Gleichbehandlungsgesetz. In *Zeitschrift für Arbeitsrecht* 39: 493-525.

Strauss, Anselm/Corbin, Juliet (1990): *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*. Los Angeles: Sage.

Strübing, Jörg (2004): *Grounded theory*. Wiesbaden: VS.

## Veröffentlichte "Hallesche Graureiher" ab 2000, Stand: Juni 2010

Unsere aktuelle Publikationsliste finden Sie im Internet unter:

<http://www.soziologie.uni-halle.de/publikationen/index.html>

- Petermann, Sören, 2000: *Bürgerumfrage Halle 1999*. Der Hallesche Graureiher 2000-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.
- Stange, Constanze, 2000: *Kunst - Erwerbsarbeit - Geschlecht. Zur Ungleichheit von Künstlerinnen und Künstlern in Sachsen-Anhalt*. Der Hallesche Graureiher 2000-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.
- Sahner, Heinz, 2000: *Zehn Jahre nach der Wiedervereinigung: Über Diskrepanzen - Unterschiede zwischen dem was ist, und dem, was darüber berichtet wird*. Der Hallesche Graureiher 2000-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg sowie in: *Stadtforschung und Statistik* 2/00
- Sahner, Heinz, 2000: *Großwohnsiedlungen der Stadt Halle, Heide-Nord im Vergleich*. Der Hallesche Graureiher 2000-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.
- Henning, Jörg, 2001: *Transformationsprobleme nach der Wende am Beispiel der Stadtwerke Halle GmbH*. Der Hallesche Graureiher 2001-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.
- Petermann, Sören, 2001: *Soziale Vernetzung städtischer und ländlicher Bevölkerungen am Beispiel der Stadt Halle. Abschlussbericht und Codebuch*. Der Hallesche Graureiher 2001-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.
- Bayer, Michael, 2002: *Subjektive Zufriedenheit im Kontext organisatorischen Wandels und beruflicher Veränderungsprozesse am Beispiel eines ostdeutschen Krankenhauses*. Der Hallesche Graureiher 2002-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Petermann, Sören, 2002: *Bürgerumfrage Halle 2001*. Der Hallesche Graureiher 2002-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Thumfart, Alexander, 2002: *Führungsgruppen und die politische Integration Ostdeutschlands*. Der Hallesche Graureiher 2002-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Sahner, Heinz, 2002: *Halle im Spiegel der Statistik und im Urteil der Bürger. Ausgewählte Daten aus dem Einwohner- und Statistikamt der Stadt Halle und aus den Bürgerumfragen 1993 bis 2001 des Instituts für Soziologie der Martin-Luther-Universität Halle-Wittenberg*. Der Hallesche Graureiher 2002-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

- Sahner, Heinz, 2002: *Einheitlichkeit der Lebensverhältnisse: Transformationsprozesse in Ostdeutschland. Das Land Sachsen-Anhalt im Vergleich*. Der Hallesche Graureiher 2002-5. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Birkel, Christoph, 2003: *Die polizeiliche Kriminalstatistik und ihre Alternativen. Datenquellen zur Entwicklung der Gewaltkriminalität in der Bundesrepublik Deutschland*. Der Hallesche Graureiher 2003-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Sahner, Heinz, 2003: *Sozialstruktur und Lebenslagen*. Der Hallesche Graureiher 2003-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg. Erscheint in: Oscar Gabriel/Everhard Holtmann (Hrsg.), 3. neubearb. Auflage, Handbuch Politisches System der Bundesrepublik Deutschland, Oldenbourg Verlag, München und Wien
- Eisentraut, Roswitha; Reschke, Steffen, 2003: *ESF-geförderte Existenzgründungen in Sachsen-Anhalt*. Der Hallesche Graureiher 2003-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Bayer, Michael; Kühnel, Martin, 2003: *Die Flutkatastrophe 2002 – Helfer und Hilfen aus Sicht der Betroffenen*. Der Hallesche Graureiher 2003-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Birkel, Christoph; Thome, Helmut, 2004: *Die Entwicklung der Gewaltkriminalität in der Bundesrepublik Deutschland, England/Wales und Schweden in der zweiten Hälfte des 20. Jahrhunderts*. Der Hallesche Graureiher 2004-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Schnitzer, Anna, 2004: *Zum Bedeutungswandel von Geburt und Mutterschaft. Betrachtungen eines sozialen Ereignisses*. Der Hallesche Graureiher 2004-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Petermann, Sören; Täfler, Susanne, 2004: *Bürgerumfrage Halle 2003*. Der Hallesche Graureiher 2004-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Sahner, Heinz, 2004: *Empirische Sozialforschung: Von der Schwierigkeit die Wahrheit zu sagen. Illustriert mit Beispielen aus der Transformationsforschung und der Stadtsoziologie (Halle/Saale)*. Der Hallesche Graureiher 2004-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg (Abschiedsvorlesung, gehalten an der Martin-Luther-Universität Halle-Wittenberg am 5. Mai 2004)
- Huber, Joseph, 2004: *Reform der Geldschöpfung. Wiederherstellung des staatlichen Geldregals und der Seigniorage durch Vollgeld*. Der Hallesche Graureiher 2004-5. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Birkel, Christoph, 2004: *Zur langfristigen Entwicklung von Einkommensgleichheit, Armut und Umverteilungseffizienz in Westdeutschland, dem Vereinigten Königreich und Schweden*. Der Hallesche Graureiher 2004-6. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

- Huber, Joseph, 2005: *Technological Environmental Innovations*. Der Hallesche Graureiher 2005-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Sahner, Heinz, 2005: *Alter als soziale Konstruktion. Altersprobleme heute: Ursachen und Konsequenzen*. Der Hallesche Graureiher 2005-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Heuer, Jan; Hils, Sylvia; Richter, Anika; Schröder, Brunhild; Sackmann, Reinhold, 2005: *Der außergerichtliche Einigungsversuch im Verbraucherinsolvenzverfahren. Inkasso-Unternehmen als Datenquelle für Verschuldungsuntersuchungen*. Der Hallesche Graureiher 2005-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Thome, Helmut; Birkel, Christoph, 2005: *Basisindikatoren der ökonomischen Entwicklung in Deutschland, Großbritannien, Schweden, USA – 1950 bis 2000*. Der Hallesche Graureiher 2005-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Sackmann, Reinhold, 2006: *Graffiti zwischen Kunst und Ärger. Empirische Studien zu einem städtischen Problem*. Der Hallesche Graureiher 2006-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Schroth, Andreas, 2006: *Silberhöhe-Entwicklung einer Großwohnsiedlung im innerstädtischen Vergleich*. Der Hallesche Graureiher 2006-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Petermann, Sören; Susanne Täfler, 2006: *Bürgerumfrage Halle 2005*. Der Hallesche Graureiher 2006-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Kreckel, Reinhard, 2006: *Soziologie der sozialen Ungleichheit im globalen Kontext*. Der Hallesche Graureiher 2006-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Bayer, Michael, Jaeck, Tobias, 2006: *Qualitätsmanagement im Krankenhaus – Organisationsbindung von Mitarbeitern und Zufriedenheit von Patienten*. Der Hallesche Graureiher 2006-5. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Petermann, Sören (Hg.), 2007: *Erwerb und Nutzung des sozialen Kapitals in Vereinen und Gemeinschaften*. Der Hallesche Graureiher 2007-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg
- Sören Petermann, 2008: *Bürgerumfrage Halle 2007*. Der Hallesche Graureiher 2008-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.
- Christoph Birkel, 2008: *Gewaltkriminalität: Zur Bedeutung von Politikproduktion und parteipolitischer Färbung der Landesregierungen*. Der Hallesche Graureiher

2008-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

Heinz Sahner, 2008: *Halle im Spiegel der Statistik und im Urteil der Bürger und Außenwahrnehmung (Städteranking)*. Der Hallesche Graureiher 2008-3. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

Conrad Kunze, 2008: *Die postsozialistische Transformation der deutschen Elite*. Der Hallesche Graureiher 2008-4. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

Walter Bartl, 2009: *Ost-West-Unterschiede bei der Studien- und Hochschulwahl. Ergebnisse der Studienanfängerbefragung an der Martin-Luther-Universität Halle-Wittenberg im Wintersemester 2008/09*. Der Hallesche Graureiher 2009-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

Roswitha Eisentraut (Hrg.), 2009: *Alternde Räume: Soziales Kapital und ländlicher Raum Sachsen Anhalts. Ergebnisse eines Studentischen Lehrforschungsprojektes*. Der Hallesche Graureiher 2009-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg

Harm, Katrin; Jaeck, Tobias; Naß, Alexander; Sackmann, Reinhold, 2010: *Bürgerumfrage Halle 2009*. Der Hallesche Graureiher 2010-1. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg.

Sackmann, Reinhold; Kopycka, Katarzyna, 2010: *International anti-ageist policy versus national context?* Der Hallesche Graureiher 2010-2. Forschungsberichte des Instituts für Soziologie. Martin-Luther-Universität Halle-Wittenberg