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# Equality and anti-discrimination approaches in Germany

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## Introduction

It is an unanimously agreed fact that the struggle against discrimination can only be effective and lead to sustainable social changes towards a more open and just society if this struggle is fought on many levels and with various tools. This report aims at outlining the German anti-discrimination landscape by presenting a four-folded concept which encompasses political, legal and civil societal elements. These four – partly implicit, partly explicit – dimensions of the anti-discrimination approach in Germany are strongly intertwined, but can be analytically differentiated as follows:

- (1) Specific anti-discrimination legislation
- (2) Incorporation of migrants into the general social welfare system
- (3) General negotiation processes of social institutions and lobby groups
- (4) Equality-oriented projects and initiatives

This four-dimensional anti-discrimination approach does not operate in a social vacuum; it is embedded in a social and political climate which constitutes the social “framing” of anti-discrimination and affects the nature and effectiveness of the struggle against discrimination.

## 1. The social framing: weak “culture of anti-discrimination”

The awareness of the extent and impact of (ethnic) discrimination – direct and indirect, individual and institutional – appears weak in broad parts of the German society. Whereas in some European countries, such as France or the UK, a broad public debate on ethnic discrimination has been taking place, in German politics as well as in German society the disadvantaged position of migrants or minorities is hardly perceived as a result of direct discrimination, but primarily as caused by a lack of qualification or “human capital” of the migrants. As a consequence, anti-discrimination provisions are not viewed as a possible solution to the “integration problems” of migrants.

Europe-wide opinion polls underline this particularly weak awareness of discrimination in Germany: According to the findings of the European survey *Eurobarometer* in May 2003, the proportion of Germans who oppose discrimination (on the grounds listed in the EU directive 2000/78/EC) was lower than in any other EU member state. Whereas an average of 82% of all European rejected of discrimination, in Western Germany only 68% of the interviewees expressed the disapproval of discrimination (Eastern Germany: 71%): Almost one third of the Germans seem not to reject discriminatory behaviour.<sup>1</sup>

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<sup>1</sup> EU Commission (2003): Discrimination in Europe. Eurobarometer 57.0. Executive Summary (available at : [http://ec.europa.eu/employment\\_social/publications/2003/cev403001\\_en.pdf](http://ec.europa.eu/employment_social/publications/2003/cev403001_en.pdf))

Several non-governmental organisations and anti-discrimination experts (e.g. the German Federation of Trade Unions; the Cologne-based anti-discrimination Office *ADB Köln*) have described this social climate as “weak culture of anti-discrimination”.<sup>2</sup>

The heated political debates on the transposition of the two EU Equality Directives 2000/43/EC and 2000/78/EC into national legislation illustrate this weak culture of discrimination.

### ***The difficult implementation of the first anti-discrimination law in Germany***

It took Germany almost six years of controversial and very emotionalised debates and three different bills to finally transpose the two EU Equality Directives 2000/43/EC and 2000/78/EC into national legislation in summer 2006. The main reason behind this difficult transposition process was that many politicians, powerful organisations and lobby groups continuously expressed their strict disapproval of and scepticism towards the introduction of comprehensive legal anti-discrimination provisions. This often irrational discourse reflects the lacking societal consensus on the problem of discrimination and the necessity of legal means to combat it.

Every time a new bill was presented (2001, 2004, 2006) the political debates between its supporters and opponents were almost furious. Those who were in favour of anti-discrimination provisions were the majority of the Social Democrats and the Green Party as well as the trade unions and NGOs which were more or less directly affected (e.g. migrant organisations or Muslim community). The strongest opponents were the conservative and liberal parties and the employers’ associations, to some degree also the churches and the lobby organisations of house owners, landlords and insurance companies. It is part of a democratic system that different political and social forces fight about the concept of newly introduced bills – these political (and consequently public) discourses on the anti-discrimination bills, however, were often guided by extremely emotional and cynical arguments. A rational debate about the content of the individual bills was hardly taking place. The opponents of the law clearly dominated the public discourse. Generally speaking, the media and public debates were determined by a very negative attitude towards the bills which were rather perceived as a “bureaucratic monster” which would lead to a strong limitation of one’s personal (contractual) freedom and a high number of court proceedings due to fake complaints (“discrimination hopping”). Some politicians argued that the law would target at a phenomenon that does not exist in German society, other even anticipated that the anti-discrimination law would rather produce inequality and lead to more discrimination. The vast majority did not recognise the anti-discrimination bill as what it was supposed to be – a new legal instrument striving for the protection against discrimination and the protection of certain vulnerable group members.<sup>3</sup>

This public and political debate reflects the weak “culture of anti-discrimination” in broad parts of the German society in which the individual elements of the anti-discrimination approaches are embedded.

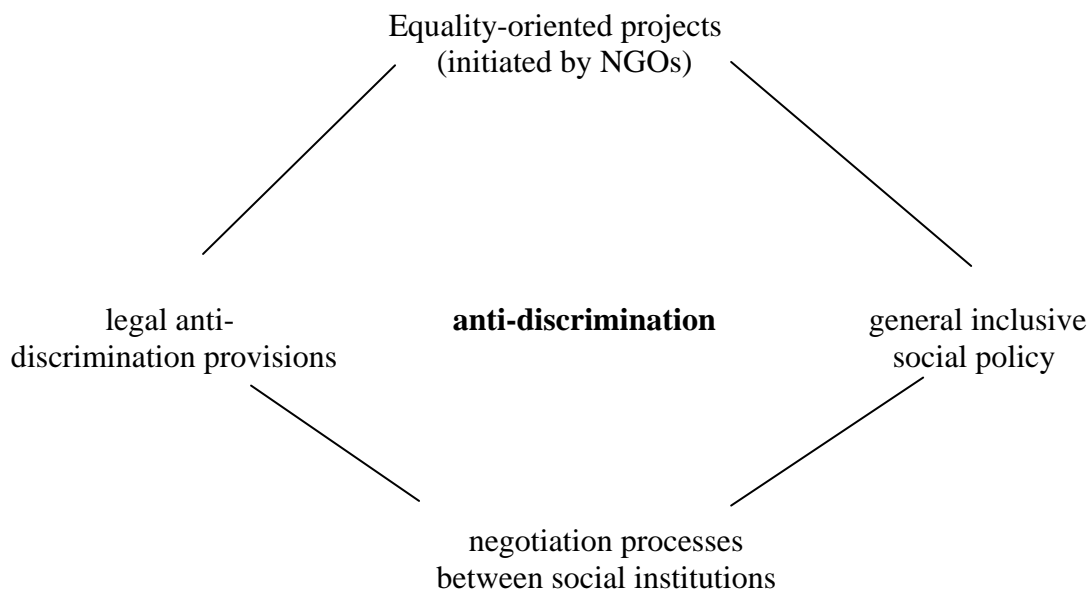
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<sup>2</sup> “DGB fordert eine Kultur der Antidiskriminierung“, in: *einblick* (DGB) No 4/2004, p.5; expert hearing on the antidiscrimination bill in the parliamentary committee “Family Affairs, Senior Citizens, Woman and Youth (March 2005), printed matter 15(12)435; available at: [www.aus-portal.de/aktuell/gesetze/media/Anhoerung\\_070305\\_Verbaende\(1\).pdf](http://www.aus-portal.de/aktuell/gesetze/media/Anhoerung_070305_Verbaende(1).pdf)

<sup>3</sup> Follmar-Otto, P.; Bielefelder, H. (2005) Diskriminierungsschutz in der politischen Diskussion. Policy Paper No. 5, Deutsches Institut für Menschenrechte, Berlin

## 2. The four pillars of anti-discrimination in Germany

Anti-discrimination in Germany encompasses explicit anti-discrimination related instruments (e.g. legal provisions, specific projects and initiatives) and implicit elements which generally aim at reducing inequalities or levelling out divergent interests of social groups. The anti-discrimination approach in Germany is determined mainly by four elements as the following graph illustrates:



In the following these four dimensions are briefly described in terms of basic principles, their individual strengths and their inherent weaknesses; a particular focus will be on the social field of employment.

### 2.1 Specific anti-discrimination provisions in German legislation

Before the transposition of the EU Equality Directives into national law, the legal anti-discrimination framework was rather weak in Germany – despite some individual equality and anti-discrimination provisions scattered over various laws, most of them referring to the sphere of labour law. The legal protection was generally considered as not comprehensive and – in relation to the requirements of the EU directives – clearly insufficient.

#### ***Brief overview on the new anti-discrimination law***

Germany transposed all four EU Equality Directives (2000/43, 2000/78, 2002/73 and 2004/113) with the introduction of one law, the General Equal Treatment Act, which came into force in August 18, 2006. This first comprehensive anti-discrimination law in Germany constitutes a milestone for the legal protection against unjustified unequal treatment of various social groups and – what seems to me the biggest success – avoids to a large extent the creation of a certain hierarchy of different grounds of discrimination. This was from the very beginning an important goal of the Social Democrats and the Green Party, but also one of the most controversial issues in the aforementioned political debate due to the fact that with this avoidance of a “hierarchy of victims of discrimination” the German antidiscrimination law exceeds the minimum requirements of the pertinent EU Directives. The General Equal

Treatment Act now covers all grounds of discrimination listed in Article 13 of the EC Treaty (Amsterdam Treaty) and in the Directive 2000/78/EC (plus gender discrimination) and apply this legal protection not only to the sphere of labour and but also to civil law (in accordance to the Race Equality Directive 2000/43/EC).

Apart from this “extra” protection beyond the minimum standards required, the law makes use of all the exception regulations in the EU directives, for instance, concerning unequal treatment due to occupational requirements or the special status of the churches. In the sphere of civil law, only those contracts and businesses are covered by the new legislation which are usually concluded without respect to the individual person (“mass business”). In the context of housing, an addition exception is incorporated into the law: Unequal treatment concerning the access to housing is legal if it serves the purpose of establishing or maintaining socially stable housing structures and a balanced mixture concerning the economic, social and cultural composition of a neighbourhood. Legal experts like the German Institute for Human Rights and other non-governmental anti-discrimination organisations have argued that this seems not to be in compliance with the EU directives. The regulations concerning the burden of proof are worded similarly as in the EU directive.<sup>4</sup> The specialised anti-discrimination body (installed at the Federal Ministry of Family Affairs) will not have any responsibilities or duties beyond the minimum requirements (Art. 13 of the Race Equality Directive). No additional official bodies at local or regional level are planned – a fact that had also met with criticism.<sup>5</sup>

Apart from this new law, there are individual legal anti-discrimination provisions in force in constitutional, labour and civil law, which will be presented briefly in the following.

### ***The Constitution (Basic Law)***

The most important equality provision in German legislation is the constitutional principle of equal treatment (Article 3): No one must be treated in a disadvantaged or privileged manner due to his/her sex, descent, race, language, origin, faith or religious or political opinion or disability. This Article represents the constitutional guarantee of equal treatment in regards to the relationship between the state and its authorities on the one hand and its citizens on the other hand. The term “citizens” in this context is meant in a very broad sense, i.e. it encompasses German as well as non-German citizens. It is to be emphasised that this strong constitutional principle of equality does not *directly* affect the sphere of civil or labour law. There is no consensus among legal experts to which extent this principle applies to the relationships between citizens.

### ***Labour law***

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<sup>4</sup> The critical assessment of the AGG by non-governmental anti-discrimination organisations are available at: [http://www.verband-binationaler.de/stellungnahme/Stellungnahme\\_AGG\\_2006.pdf](http://www.verband-binationaler.de/stellungnahme/Stellungnahme_AGG_2006.pdf) (10.10.2006)

<sup>5</sup> Bundestag, Parliamentary inquiry, printed matter 16/2829 (28.09.2006); available at <http://dip.bundestag.de/btd/16/028/1602829.pdf>

The main legal source dealing with equal treatment and anti-discrimination in the area of employment is the Industrial Relations Act (*Betriebsverfassungsgesetz, BetrVG*) – a law which regulates the relationship between employer and the employees, represented by the work council and their rights and duties. It applies to private companies with more than five employees. According to this act, the employer and the work council are obliged to take care that all employees are treated equally irrespective of their descent, religion, nationality (unique in German legislation!), origin, political or trade union activities or opinions, gender or sexual orientation.<sup>6</sup>

In 2001, a significant amendment to the Act<sup>7</sup> came into effect which clearly enhanced this struggle against discrimination, racism and xenophobia in companies by incorporating new provisions: The most relevant changes were the following:

- The task of suggesting “measures to combat racism and xenophobia in the company” was added to the list of the work council’s general duties (§ 80 I No. 7 BetrVG).
- Concerning the recruitment of new staff, the work council can refuse its approval if it is concerned – for good reasons – that the job applicant might interfere with the company’s working atmosphere “through racist or xenophobic behaviour” (§99 II No. 6 BetrVG).
- Another important amendment is the creation of a legal framework which offers the opportunity to establish “Voluntary Industrial Relations Agreements” (between work council and employer) dealing with the “integration of foreign employees as well the fight against racism and xenophobia in the company” (§88 No. 4 BetrVG).

With the amendment to the Industrial Relations Act, German politics provided an enhanced legal basis for the struggle against discrimination and xenophobia within the companies. The practical implementation was, however, strongly dependent on the activities of the employer and the work council. The responsibility for non-discrimination at the workplace remained in their range of duties, and legal remedies and sanctions targeting at discriminatory behaviour continued to be relatively weak. As a consequence the low level of institutionalisation of anti-discrimination persisted after the amendment of the BetrVG. The scope of the BetrVG covers primarily discriminatory treatment within the company, especially between employees (horizontal discrimination); labour law experts have been in disagreement to what extent this law also prohibits vertical discrimination, i.e. discrimination by the employer, including the recruitment process.<sup>8</sup>

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<sup>6</sup> Similar, but less comprehensive anti-discrimination provisions can be found in labour law which covers the sphere of the public and the civil service: The Federal Personnel Representation Act operates in place of the Industrial Relations Act banning unequal treatment in the sphere of the public service; in section 67 I, the same grounds of discrimination are covered as in the Industrial Relations Act.

Furthermore, in the area of civil service, a particular law is in force which strives to ban discrimination and unequal treatment within the framework of the job application process (and the nomination of civil servants): Job applicants have to be chosen due to their abilities and qualifications “regardless of their sex, descent, race, faith, religious belief or political opinion, origin or relations” (§ 8 I Federal Civil Service Law).

<sup>7</sup> In the official comments to the amendment, the Federal cabinet explicitly referred to the sharply increased number of xenophobic and antisemitic crimes registered in 2000 and stressed the necessity of counteracting such tendencies, among others, at the workplace. In addition, the cabinet pointed out that “the current development in the field of equal treatment of foreign employees within companies is still not satisfactory despite their legal equality.”

<sup>8</sup> However, whereas §75 BetrVG clearly refers to horizontal discrimination (among employees), labour relations jurists are in disagreement to what extent this provision also prohibits vertical discrimination, i.e. discrimination by the employer, including the recruitment process (Schiek, D. (2003) „Diskriminierung wegen ‚Rasse‘ oder ‚ethnischer Herkunft‘ – Probleme der Umsetzung der RL 2000/43/EC im Arbeitsrecht“, in: *Arbeit und Recht*, No. 2/2003, p. 44-51).

Through the introduction of the new General Equal treatment Act most of these shortcomings of the BetrVG were levelled out. Thus, since August 2006, the legal protection against discrimination in the sphere of labour law seems rather comprehensive.<sup>9</sup>

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<sup>9</sup> Some legal experts still criticise certain aspects of the new law, for instance, that it does not cover the issue of dismissal.

### ***Civil law***

In civil law, only one specific anti-discrimination provision used to be in effect: section 611 (a) of the German Civil Code prohibited all forms of unequal treatment and discrimination against employees due to their sex on the labour market. It was cancelled most recently with the introduction of the new General Equal Treatment Act which bans discrimination on various grounds (including sex) in civil law in accordance with the EU Directive 2000/78/EC (see above).

The Civil Code contains other, very general provisions which have been interpreted as suitable for legally banning discrimination in the sphere of civil law. The provision in section 138 Civil Code prohibits the conclusion of contracts which are against “good manners and morals”; such legal transactions are considered void from the beginning by law. Some legal experts argued that this section would be a sufficient legal basis for banning discrimination in the sphere of civil law and that the EU Equality Directives would not require a specific anti-discrimination law in Germany. The vast majority of legal experts, however, have strongly disapproved of such a broad interpretation of this section 138 Civil Code – the most convincing argument being: Members of a vulnerable group rather face the problem of being refused a “legal transaction” (i.e. contract) than the problem that the contract is “against good manners and morals”.

### ***Additional equality and anti-discrimination provisions***

The law on the Equal Treatment of Disabled Persons came into force in 2002. It contains equality provisions which prohibit discrimination of disabled persons by federal authorities. Furthermore, individual anti-discrimination provisions are spread over some other laws, such as the Public Transport Law and the Insurance Supervision Act.<sup>10</sup>

### ***Interim conclusion on the legal anti-discrimination framework***

Before the introduction of the General Equal Treatment Act, all these anti-discrimination provisions together did not provide a sufficient legal framework for the protection against ethnic discrimination. Constitutional equality is a strong element, however, largely limited to non-discriminatory behaviour of state authorities. The sphere of labour law offers legal opportunities to combat discrimination, but again its scope is restricted (e.g. horizontal discrimination, weak remedies and sanctions) and does not cover the particularly sensitive recruitment process. All other legal equality provisions are more or less of marginal effect regarding the struggle against ethnic discrimination. Particularly the sphere of civil law (i.e. the access to goods and services) was lacking legal provisions banning or protecting against discrimination. In this sense, the new anti-discrimination constitutes a historic milestone in German anti-discrimination law; future will tell how these new equality rights will be implemented into practice.

Apart from these specific anti-discrimination provisions, the struggle against discrimination and the promotion of equality in Germany encompass at least three other elements which have determined the anti-discrimination concept of German politics much more than specific anti-discrimination legislation – at least before the General Equal Treatment Act came into effect in August 2006.

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<sup>10</sup> Brief mention should also be made here to criminal law provisions relevant to the context of racism, xenophobia and antisemitism (e.g. ban of incitement of the people, section 130 StGB); German legislation on combating racist crimes has mainly been assessed positively by international organisations (e.g. ECRI (2004) *Third Report on Germany adopted on 5 December 2003*, Strasbourg: Council of Europe). Discrimination is not explicitly covered by the Criminal Code; in some (rare) legal cases, discrimination against minorities (e.g. refused access to pubs) has been interpreted as a violation of section 185 StGB (insult).



## 2.2 Incorporation of migrants into the general social system

In its efforts to foster equality, German politics have implicitly counted and still count on general mechanisms of social (welfare) policy and social order: The welfare state system intervenes in social processes in order to provide an equal level of social security, contribute to social justice and improve opportunities for disadvantaged groups.<sup>11</sup> This general equality-driven policy approach functions implicitly as a form of anti-discrimination approach.

In the realm of housing, for instance, the state pays housing allowance to low-income household and finance subsidised social housing ('council housing') – with the aim to generally mitigating social inequalities. Migrants who legally live in Germany with a sufficiently strong residence status benefit from these policy measures. Those people who are not granted such a residence status (i.e. asylum applicants, refugees whose asylum application has been rejected and undocumented migrants) are not eligible for these support measures. This reflects the core weakness of the social welfare approach which aims at equality, but at the same time excludes certain particularly vulnerable groups, i.e. discriminate – justified or not – against those group members.

The following example further illustrates the strengths, but also the shortcomings of this general welfare policy approach: According to the principles of social policy all people legally employed in Germany are incorporated into the social insurance and social security system, i.e. as soon as someone has full legal access to the labour market, s/he enjoys basically the same legal rights, benefits and protection irrespective of his/her ethnicity. Unequal treatment or direct discrimination concerning wages, working hours and working conditions due to one's ethnicity is illegal and occurs only rarely in the highly regulated German labour market. Furthermore, minorities also benefit from general social policy measures which aim at increasing the employability of disadvantaged groups (labour market integration measures, such as training programmes).

However, this general social policy approach also reveals significant shortcoming, exemplified by the following two restrictions:

- The access to the labour market is legally restricted for certain immigrant groups (mainly depending on their residence status), asylum seekers, for instance, are fully excluded from the labour market for one year after the submission of their asylum application.
- Depending on their residence status, third-country nationals have limited access due to legal provision which guarantee a privileged access for nationals and EU-citizens. As a consequence, certain less privileged migrants (such as refugees without a strong residence title) hardly have the chance to enter the labour market, even if they have been granted a work permit.

Incorporation into the social welfare system has a significant equality effect, but it also contains restricting elements which contribute to maintain or even produce inequality. These legal forms of unequal treatment – sometimes referred to as “discrimination by law”<sup>12</sup> – are not based on one's ethnicity, but mainly on nationality (German/EU citizen or third country nationals) and on the residence status.

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<sup>11</sup> Heckmann, F. (2003) “From Ethnic Nation to Universalistic Immigrant Integration: Germany”, in: Heckmann, F.; Schnapper, D. (eds.) *The Integration of Immigrants in European Societies. National Differences and Trends of Convergence*. Stuttgart

<sup>12</sup> Gächter, A. (2004) Detecting Discrimination Against Migrants. ZSI Discussion Paper No. 3 (2004), Vienna

### 2.3 General negotiation processes of social institutions and lobby groups

Another element of the implicit anti-discrimination approach is closely linked to the function of social welfare policy. According to Esping-Andersen's typology of welfare state regimes Germany represents a strongly corporatist society<sup>13</sup>: Social institutions representing various social groups are engaged in social negotiation processes to pursue and achieve their particular goals. Politics is either actively involved in these processes (e.g. within the framework of the legislative procedure when external experts or lobby groups are invited to parliamentary hearings), or commission other social institutions to negotiate without any further political interventions (e.g. negotiation processes between social partners). In this sense, politics put confidence in the mechanisms of discourse and participation and the generally fair outcome of these negotiation processes.

Organisations representing migrants or members of religious minorities, the trade unions and social welfare organisations take part actively in these social and political negotiation processes. With their engagement in the area of equal rights for and equal treatment these social non-governmental organisations contribute to the social and political negotiation and decision-making process. This impact is either indirect, for instance, through their voices in the media and public discourse, or direct through their involvement in institutionalised negotiation process.

The following two examples – one on the dialogue between the Government and representatives of the Muslim community, the other one on the negotiation processes within a company between the work council and the employer – illustrate the important role of certain social institution and lobby groups for the anti-discrimination landscape in Germany.

(1) Several Muslim organisations are currently involved in a large-scale nationwide dialogue with governmental authorities (“German Islam Conference”). This communication process recently initiated and coordinated by the Federal Ministry of the Interior aims at, among others, preparing the ground for the recognition of the Muslim community, i.e. the Muslim community should be granted the same or a similarly strong legal status as Christian churches or the Jewish Community (e.g. the right to introduce Islamic education at state schools, the right to run their own graveyards etc.). This institutionalised communication forum, which is expected to continue for two or three years, gathers on a regular basis 15 representatives of the Muslim community and 15 representatives of the government; furthermore several working groups were installed which meet six times a year to jointly develop, among others, measures to foster the integration process of Muslim citizens and address the problem of inequality and discrimination of Muslims.

(2) In numerous companies the work council and the employer have agreed upon implementing specific anti-discrimination measures. Partly based on Section 88 of the Industrial Relations Act which allows the adoption instrument of voluntary agreements on the “integration of foreign employees as well the fight against racism and xenophobia in the company” (§ 88 No. 4 BetrVG), work councils and employers have signed such agreements on anti-discrimination, equal opportunities and partnership behaviour in the workforce. In the meantime some estimated 35 companies have adopted such internal anti-discrimination agreements. Due to the fact that several quite large companies have established those codes of conducts (e.g. Ford, Opel, Thyssen, VW, City of Munich), these agreements apply to a significant number of employees (clearly more than 1 million). In many cases, the trade unions and the work councils were the driving forces for the adoption of such internal anti-discrimination codes of conduct.

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<sup>13</sup> Esping-Andersen, G. (1990) *The Three Worlds of Welfare Capitalism*, Cambridge: Polity Press

***One example:***

The voluntary agreement “Respectful Cooperation” between the work council and the employer at the Steel Company Bremen was introduced in February 2005. This agreement condemns discrimination on the grounds of origin, skin colour, sex or religion; it obliges the company (employer and staff) to promote a climate of respect and to eliminate discrimination. It also contains regulations concerning the processing of complaints, possible sanctions and further support measures. It is to be highlighted that a permanent working group will be established which is commissioned to make everyone in the company aware of the agreement and to develop and suggest concrete measures to implement it effectively. The agreement calls on the entire staff to participate and make suggestions, which should be taken into consideration by the working group. The content of the agreement, respective obligations for supervisors and possibilities of legal protection for people who are subject of unequal treatment will become an integrated part of the internal further education programme.

Negotiations processes between social partners and especially the strong position of trade unions are indispensable for promoting equality and combating discrimination – their “social responsibility” has been explicitly underscored again by the General Equal Treatment Act (see §17). However, they also bear specific shortcomings. Due to the power relation between employees and employer, the well-functioning of these processes depend – at least to some extent – on the cooperation and good will of the employer or the employers’ association respectively. Whereas the new anti-discrimination law is expected to contribute to an enhancement of equality policies of the companies, the enforcement of the voluntary codes of conducts (e.g. sanction mechanism) remain weak. The introduction and effective implementation of such anti-discrimination provisions depends on a strong and active work council in the companies. In many companies work councils have not been established, in others, the level of awareness of discrimination and equality is low – also among the members of the work council.

This points to a general weakness of this equality-oriented “negotiation process” approach: It highly depends on the effective organisation of interests of the particular social groups. Whereas those groups which are organised well and have a stronger say in the public discourse are capable of fighting for their interests rather effectively, other groups are hardly perceived as negotiation partners at all. Due to its great diversity, migrant organisations face obvious difficulties in speaking with “one voice” – in particular on the national level; the same is true for the heterogeneous Muslim community, whereas the Jewish Community is much better organised (e.g. one main national Jewish organisation, the Central Council of Jews in Germany). Besides the level of organisation and the ability to speak with one voice, the negotiation process is not always a process on equal footing, i.e. it often depends on the willingness of the one negotiation partner to recognise the other. One example to illustrate this aspect of power relation: Most recently the German Federal Government decided to invite representative of certain migrant organisation to the “Integration Summit” to discuss future steps to promote the integration process, reduce disparities and provide equal chances to migrants particularly in the educational system and the access to vocational training and the labour market. It was the Government who chose the migrant representatives which were then invited to this high-level meeting and to the subsequent working sessions, which will take place on a regular basis. Thus, the government decided which migrant organisations were recognised as negotiation partners and which were excluded from this process.

## 2.4 Equality-oriented projects and initiatives

Specific projects and initiatives which aim at promoting equality, inter-ethnic understanding and anti-discrimination constitute another vital element of the German anti-discrimination landscape. These (predominantly regional and small-scale) projects are often initiated by civil society organisations.

Since the early 1990s, numerous anti-discrimination and anti-racism organisations were set up by civil society actors. In particular in the years 2000/2001, when the number of violent xenophobic crimes skyrocketed and several extremely violent xenophobic and antisemitic attacks received a great deal of public and political attention, a broad range of anti-racism projects were initiated and new organisations were founded. In particular the trade unions, social welfare organisations, churches, and other nationwide, regional or local (grass-root) non-governmental organisations were and still are the driving forces for initiating and conducting projects which strive to promote equality and combat discrimination in employment, schools and other areas of social life. The range of such projects has become quite broad.

Such projects and initiatives usually depend on financial support which has often been provided by the federal or regional governments or the local municipality. On the federal level several large-scale support programmes have been set up since the beginning of the decade, the most important being the governmental action programme “Youth for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia, and Antisemitism”, which encompasses the following three funding initiatives.

- CIVITAS – initiative against right-wing extremism in the new federal States
- entimon – together against violence and right-wing extremism
- Xenos – living and working in diversity

The support programmes *CIVITAS* and *entimon* play an outstanding role in the prevention of and the fight against racist crimes and violence as well as for the support of victims of right-wing and/or racist violence. For *CIVITAS* and *entimon*, a total of € 19 million have been allotted per annum; both programmes will expire at the end of 2006.

“XENOS - Living and Working in Diversity” pursues the aim of combating xenophobia and intolerance by providing funding to projects that link labour market-related integration measures with approaches of combating xenophobia and discrimination. In the support period between 2000 and 2006, some 250 projects were granted funding. For the implementation of XENOS, the Federal Ministry of Labour has allotted some €75 million for the period 2000 to 2006 from financing provided by the European Social Fund (ESF). Including national co-funding, the XENOS program has a total budget of some €150 million.

All these projects and initiatives represent vital elements for the promotion of equality, diversity and social cohesion and anti-discrimination in Germany. Nevertheless, they also bear specific weaknesses and limitations. Not only that a lot of responsibility is put on the shoulders of a strong civil society and the commitment of social institutions and actors, these projects are also highly dependent on funding and, as a consequence, of the political willingness to continuously provide this financial support. A core problem is that the federal government defines its duty solely as “stimulating new innovative model projects”, i.e. it supports these projects only during their initial phases and refuses to provide funding on a long-term basis. After this initial “project testing” phases the state governments and the municipalities are expected to provide continuous financial support for these initiatives – which often does not happen due to financial or political constraints. Many of these partly very successful anti-discrimination projects and initiatives have to close down after funding is

withdrawn; the crucial step from a temporarily limited model project towards an institutionalised instrument of continuity often fails due to a lack of funding.

Moreover, most of these initiatives are not only temporarily limited, but also limited concerning their regional scope, i.e. no matter how successful and effective the projects are, the number of people who benefit of these activities remain in most cases rather small.

### 3. Conclusion and recommendation

The anti-discrimination approach in Germany is characterised by the almost paradoxical combination of, on the one hand, a generally weak awareness of discrimination in broad parts of the society and, on the other hand, the strong engagement of civil society and non-governmental organisations. It is also determined by the incorporating effects of the general social welfare policy and the strongly corporatist structure of society and the negotiation processes of social institutions and lobby groups.

The significant lack of specific **anti-discrimination provisions** seems to have overcome with the introduction of the new General Equal Treatment Act. This new legislation will not make discrimination vanish in thin air, but it has the potential to contribute to a clear improvement of anti-discrimination approaches in Germany – to which extent this will happen remains open for the time being. There is no doubt that the new law can indirectly lead to more awareness of discrimination – within companies, but also in the society in general. This depends on how the new anti-discrimination body will live up to its duties, how the awareness raising campaigns, the increasing number of court cases and (successful) litigation will be perceived in media and the public debate and to which extent companies will introduce preventive equality provisions (which the employer is obliged to by the new law) or mechanism (e.g. anti-discrimination training for the employees).

To overcome the shortcoming of other elements of the antidiscrimination approach constitutes another step towards the promotion of equality and the mitigation of discrimination: **General legal provisions** concerning the access to social rights and benefits, employment as well as civil and political rights must be reviewed regarding their inclusive or exclusive character.<sup>14</sup>

Furthermore, the support and official recognition of migrant and minority organisations as **negotiation partner** could strengthen their role and improve their participation in the public discourse. This addresses both governments and the migrant and minority communities themselves: On the one hand, governmental institutions must show the political willingness to support and acknowledge the importance of minority organisations; on the other hand, migrant communities must be capable of fulfilling the role of a strong negotiation partner. Due to the large number and high heterogeneity of the migrant communities and ethnic and religious minority originations it has often been difficult to speak with one voice – even when their particular aims were very similar. A temporary (or maybe even long-term) coordination of several of these organisations and with other anti-discrimination NGOs would improve their chances to be heard in the public and political debate. As a consequence, their position as a negotiation partner would be strengthened and their capacity to realise their goals of equal treatment and non-discrimination would increase.

**Projects and initiatives** which strive to promote equality and combat discrimination will continue to be a vital element of anti-discrimination work in Germany. Effective model projects are to be institutionalised and expanded with regard to their time and regional scope, and new project ideas and concepts should be continuously initiated and tested. This requires,

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<sup>14</sup> Waldrauch, H. (2001) Die Integration von Einwanderern. Ein Index der rechtlichen Diskriminierung Europäisches Zentrum. Frankfurt: Campus; Gächter, A. (2005) „Researching Discrimination against Immigrants“, in: UN High Commissioner for Human Rights (ODIHR) (ed.) *Dimensions of Racism*, ODIHR: New York, Geneva, pp. 137-138 (available at: [www.ohchr.org/english/about/publications/docs/dim\\_of\\_rac.pdf](http://www.ohchr.org/english/about/publications/docs/dim_of_rac.pdf))

on the one hand, a systematic scientific evaluation of the projects and solid funding for innovative model initiatives as well as for the institutionalisation of tried-and-tested projects. On the other hand, the active engagement and commitment of civil society is to be supported as an indispensable force in the struggle against discrimination. This is not only a question of funding from the federal, regional or local governments – it also requires the clear acknowledgement of the important contribution of civil society. Moreover, the currently low level of awareness of ethnic discrimination in Germany must be raised among political leaders and in the society as a whole, and discrimination must be understood as what it is: a serious violation of human rights and a hampering factor in the integration process.

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