Combating ethnic discrimination and promoting equality in Germany:: trend and developments 2000-2005

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1. Executive Summary

Germany has not transposed the EU equality directives 2000/43/EC and 2000/78/EC during the period under analysis, and still lacks a comprehensive legal framework on anti-discrimination. This shortcoming negatively affects the data situation on discrimination, the success rate of litigations and the level of public awareness of discrimination.

Ethnic discrimination has not been a regular topic in the public debate on integration in employment, education and housing between 2000 and 2005. Issues of xenophobia and racism received a lot of public and political attention only in late 2000, when leading politicians reacted to the drastically increased number of racist and antisemitic crimes by calling upon all citizens to jointly combat these phenomena. This appeal led to a temporary change in the social climate which constitutes the "framing" of many activities and (legal) initiatives that were started or enhanced in 2000 and 2001 (e.g. the federal action programme "Youth for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia, and Antisemitism").

Employment

Whereas some statistics clearly indicate that disparities between foreigners and Germans in employment *increased* (e.g. unemployment rate), other indicators (e.g. self-employment rate) show that the gap is slowly diminishing. The level of legal protection against discrimination at work remains relatively low; however it is higher than in any other social sphere in Germany due to the Industrial Relation Act which bans (ethnic) discrimination. In 2001, this Act was significantly amended in order to enhance the fight against discrimination and xenophobia in companies – one of the very few relevant legal changes between 2000 and 2005.

The political scheme of combating employment discrimination focuses on funding projects and initiatives which are active in the fight against discrimination in employment. During the period under analysis, the most significant large-scale initiatives have been the nationwide programme *XENOS* and the Community initiative *EQUAL*. Trade unions play a very important role in initiating and conducting such projects against discrimination and promoting integration. Employers appear rather reluctant concerning legal anti-discrimination provisions; however, in a growing number of companies voluntary agreements on equal opportunities and against discrimination have been adopted during the past few years.

Housing

The housing situation of foreigners has slightly improved; however, non-Germans still represent a disadvantaged group. Due to a lack of statistics,

defendable statements on the general development of segregation can hardly be made. However, the correlation between social and ethnic segregation seems to have grown.

Due to the strong municipal autonomy in Germany, municipal policies have most impact on the housing situation. However, migrants also benefit from general *national* policies which aim at improving the support of households most affected by exclusion. On the other hand, migrants suffer from the ongoing cut-back of council flats.

The most important large-scale initiative in the realm of housing is the "Social City" programme, which has shifted its focus on the socio-spatial integration of migrants over the years.

Legislation

During the period under analysis, only minor improvements occurred in the legal sphere (e.g. the amendment of the Industrial Relations Act in 2001). As a consequence, the level of legal protection remains insufficient. Related to this shortcoming, the infrastructure of legal assistance to victims of ethnic discrimination is weak. Some improvements occurred mainly within the framework of the offers of NGOs (specialised anti-discrimination offices) and municipal authorities (specialised departments). However, these anti-discrimination organisations or bodies are still rather rare, and in most cases not capable of offering professional legal assistance. The number of communities which have set up such specialised departments seems to have slightly increased over the past few years.

Education

The responsibility for the education system in Germany lies with the individual federal states. Hence, nationally standardized regulations regarding policies and practices hardly exist.

Since 2000 the data collection mechanisms on xenophobic incidents at school have improved slightly especially in Eastern German states. The level of *direct* discrimination in the German school systems seems low. However, the striking disparities between German and non-German pupils indicate the persistence of a lack of support for migrants, which might be called a form of structural discrimination.

The most significant changes concerning education policies refer to the enhancement of pre-school language support programmes, whereas teachers still seem not sufficiently prepared for the challenges of a multi-ethnic teaching environment. The initiative "*School against Racism – School with Courage*", initiated in 1995, represents a particularly successful non-governmental programme: Currently 280 schools are assisted in developing and conducting projects against violence, discrimination and racism.

Racist Violence/Crime

The police registration system on politically motivated right-wing crimes differentiates between xenophobic, antisemitic and other extreme right-wing crimes as well as between violent and non-violent offences. No consistent development can be identified in the different categories between 2000 and 2005: Whereas the number of all politically motivated right-wing crimes dropped significantly between 2000 and 2003, a drastic increase has been registered between 2003 and 2005. The official statistics on right-wing crimes with a *xenophobic* background show a decreasing tendency from 3,391 in 2001 to 2,493 cases in 2005. In contrast, the number of *antisemitic violent* crimes has continuously increased since 2001. The majority of these politically right-wing crimes seems not to be committed by members of organised extreme right-wing groups, but by skinheads and neo-Nazis who are affiliated to informal extreme right-wing groups.

In addition to the preventive and repressive measures of the police and the Federal and State Ministries of the Interior, the federal support programmes *CIVITAS* (Eastern Germany only) and *entimon* play an outstanding role in attempting the prevention of and the fight against racist crimes and violence. Within these programmes (2001/2002-2006), a very large number of local organisations (e.g. victim support organisation) and mainly community orientated projects were funded.

The most important improvement concerning policing racist crimes during the period under analysis was the modification of the police registration system on extreme right-wing crimes in 2001.

2. Employment

2.1. Patterns of inequality in the labour market

There is no clear trend concerning the disparities between German and foreigners in employment. Whereas some statistics indicate a positive development (e.g. branches, self-employment rate), other figures unveil a growing gap between Germans and non-Germans; this is particularly true for the unemployment rate and the poverty rate. This will be illustrated in the following.

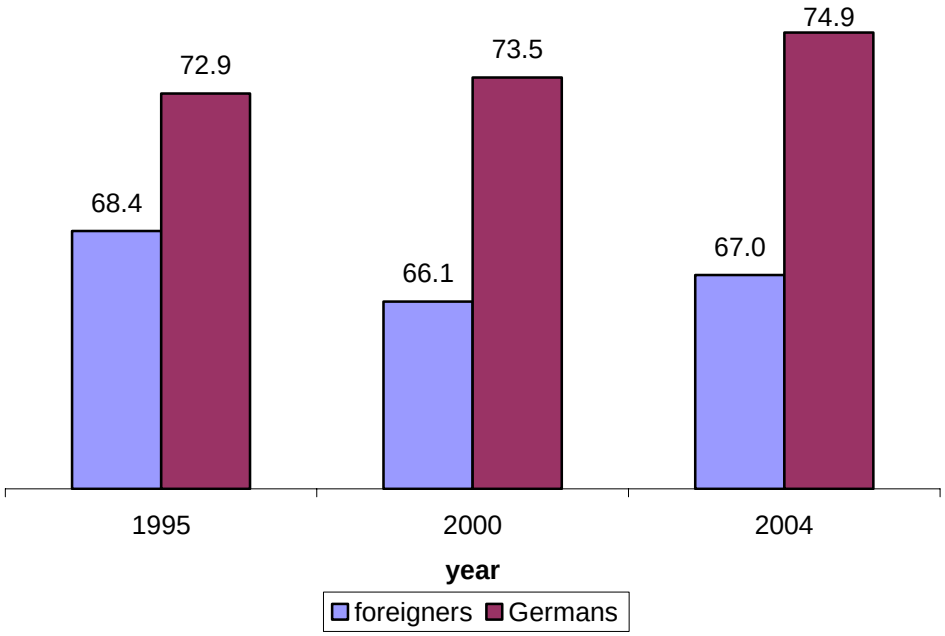
Labour force participation rate

Until 2000 the labour force participation rate (or: activity rate)[1] of foreigners constantly decreased. Between 2000 and 2004 the activity rate for foreigners increased slightly to 67.0%. Nevertheless the discrepancy between the activity rate of foreigners and Germans has increased: in 2000 the activity rate for Germans was about 7.4 percentage points higher than the activity rate for foreigners, in 2004 this difference added up to 7.9 percentage points.[2]

[1] The labour force participation rate (or: activity rate) is calculated as the percentage of labour force (employed + unemployed persons), in relation to all persons between 15 and 64 years of age (working age population).

[2] The disparity between the activity rate of foreigners and Germans is not only due to the disadvantaged position of foreigners regarding the access to the labour market, but also to demographic reasons. From 2000 to 2004, the actual number of foreigners on the labour market (labour force) has increased by some 155,000. The foreign working age population has even increased by around 162,000. Whereas the labour force of Germans has increased by 124,000 persons and the German working age population has even decreased by 820,000 persons. This means that the increase of the German activity rate is more traced by the fact that the working age population has decreased as by the fact that the access to the labour market by Germans – expressed by the increased German labour force – has improved.

Graph 1: Activity rates for foreigners and Germans 1995, 2000, 2004



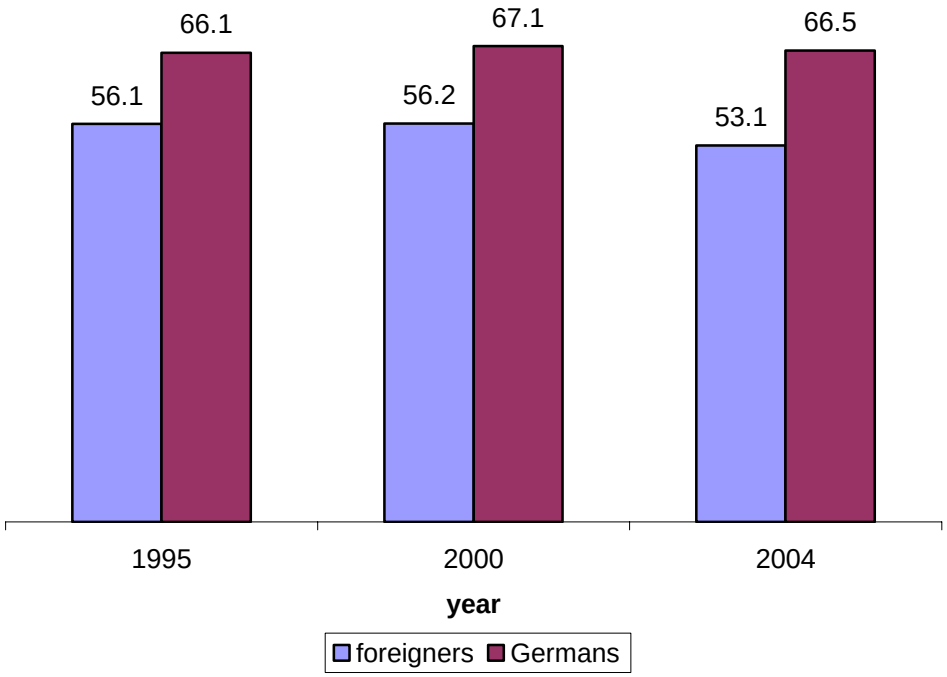
Source: Federal Statistical Office, own calculations

Employment rate

Discrepancies in labour market access between Germans and foreigners become more obvious when one analyses access to real employment. Whereas the employment rate[3] has, for German residents, was constantly around 67%, the employment rate for foreigners decreased from 56.2% in 2000 to 53.1% in 2004.

[3] The employment rate represents the share of employed persons (including self-employed persons) in all persons between 15 and 64 years of age (working age population).

Graph 2: Employment rate for foreigners and Germans 1995, 2000, 2004



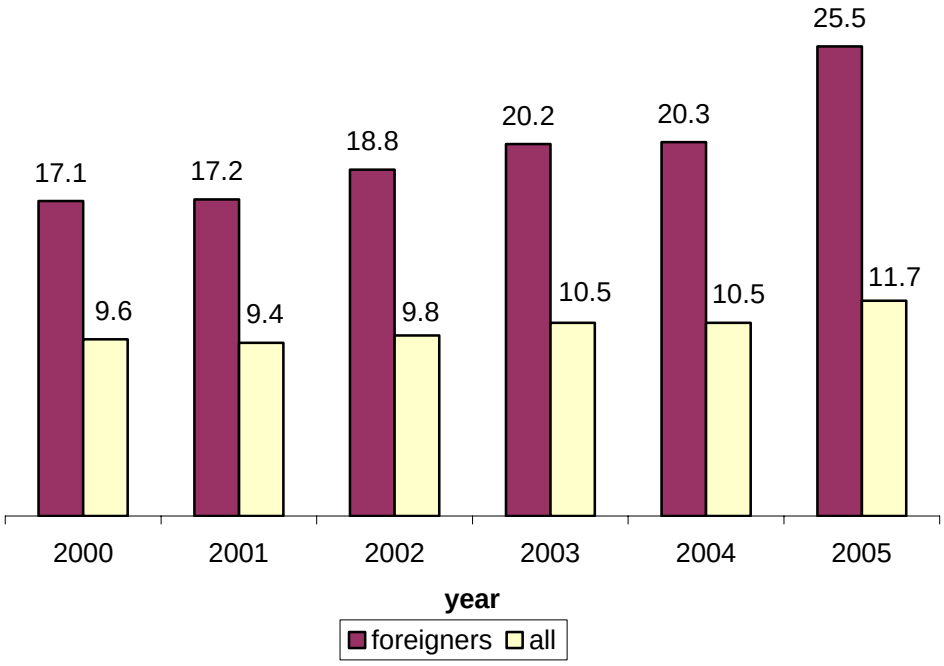
Source: Federal Statistical Office, own calculations

The discrepancy is even clearer taking into account that the total number of employed people has decreased for both, foreigners and Germans, from 2000 to 2004 by 2.6%. But the foreign working age population has increased by 3.0% whereas the German working age population has decreased by 1.6%. This means, foreigners suffer more from the general economic development and the lacking demand on the labour market as Germans do.

Unemployment rate

The development of the unemployment rate of foreigners confirms this conclusion. The unemployment rate has not only increased from 17.1% in 2000 to 25.5% in 2005 but also the difference between the general unemployment rate and the unemployment rate of foreigners has increased: In 2000 the unemployment rate of foreigners was by 7.5 percentage point higher that the general unemployment rate, in 2005 this difference amounted to 13.8 percentage points.

Graph 3: Unemployment rate (foreigners and general rate) in % (2000-2005)

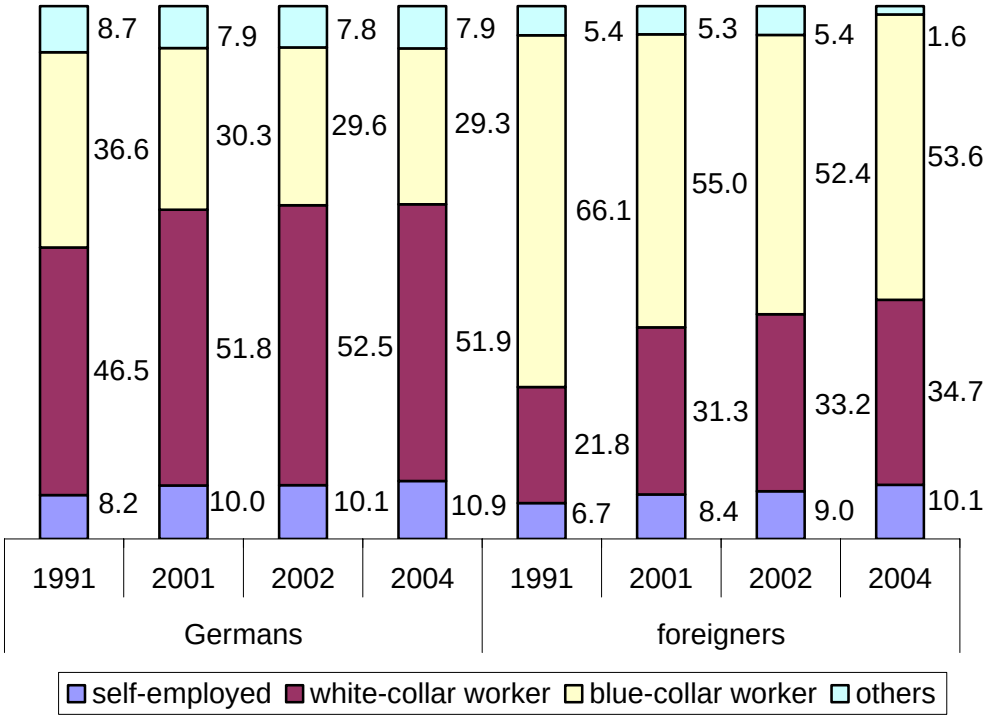


Source: Federal Labour Agency

Types of employment (worker, employee, self-employed)

Despite these disparities, a positive trend can be detected: The proportion of **white-collar employees** among all **employed people** has been increasing – in relative terms – more quickly among foreigners than among Germans; this is also true for the proportion of self-employed people, as the following graph illustrates.

Graph 4: Workers, employees, self-employed; Germans and foreigners in % (1991, 2001, 2002, 2004)

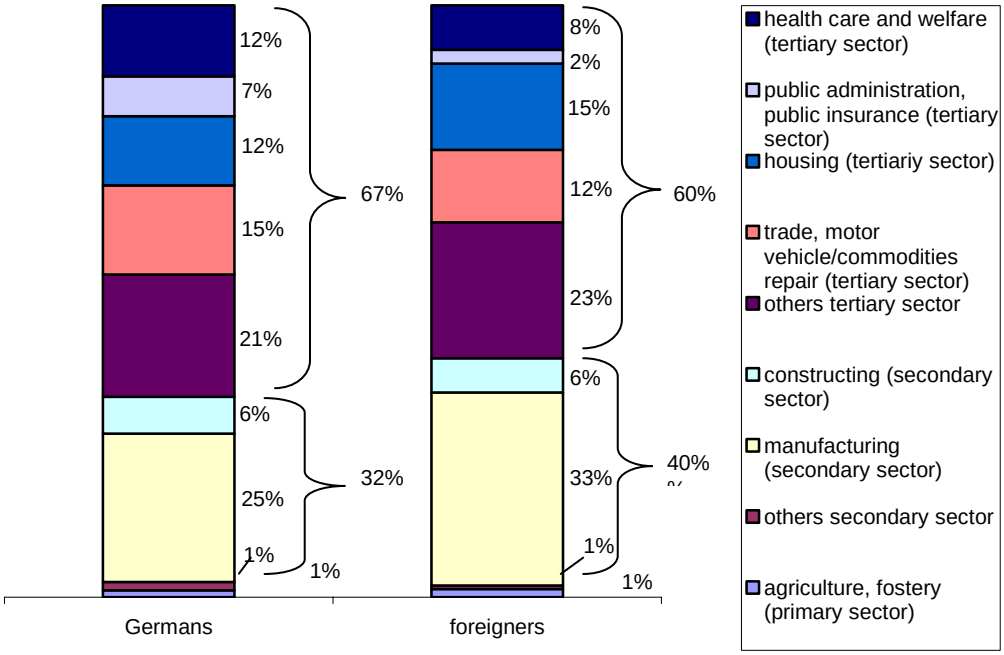


Source: *Federal Statistical Office*

Employees by branches

Disparities continue to occur regarding the distribution of German and foreign **employees by branches**. In 1974, almost 80% of all foreign employees (compared to 56% of all employees) were working in manufacturing. In 1998, respective figures had decreased to 53% (or 40% of all employees). Thus the original margin between foreigners and all employees has narrowed considerably. At the same time, respective figures for employment of foreigners in the service industry have greatly increased. This trend has continued: In 2004, 40% of the foreign employees worked in the secondary sector (Germans 32%) and 60% in the tertiary sector (Germans 67%).

Graph 5: German and foreign employees by branches in 2004



Source: Federal Labour Agency

At a first glance, this could be interpreted positively as a normalisation concerning foreign employment and an improvement of their working conditions. In fact, a closer look at different branches reveals that those foreigners who work in the **tertiary sector** are clearly overrepresented in **service branches** with a lower income and less favourable working conditions: In June 2004, more than 20% of all employees in the hotel and catering business were foreigners; the proportion in the field of cleaning is even higher. On the other hand, in highly skilled professions in the tertiary sector with a higher prestige, e.g. in trade, in banks and in the public service, non-Germans are clearly underrepresented.

This disadvantaged vocational position has hardly changed in the course of the past few years. The proportion of foreigners has decreased very slightly in the

hotel, the restaurant and the cleaning business since 2002 and 2003 respectively, and increased – on a very low level and also very slowly – in the field of education and teaching (Tab. 1).

Tab. 1: Proportion of foreign employees amongst all employees with occupations entailing the payment of insurance in selected branches of the tertiary sector in % (1999 – 2004; on June 30)

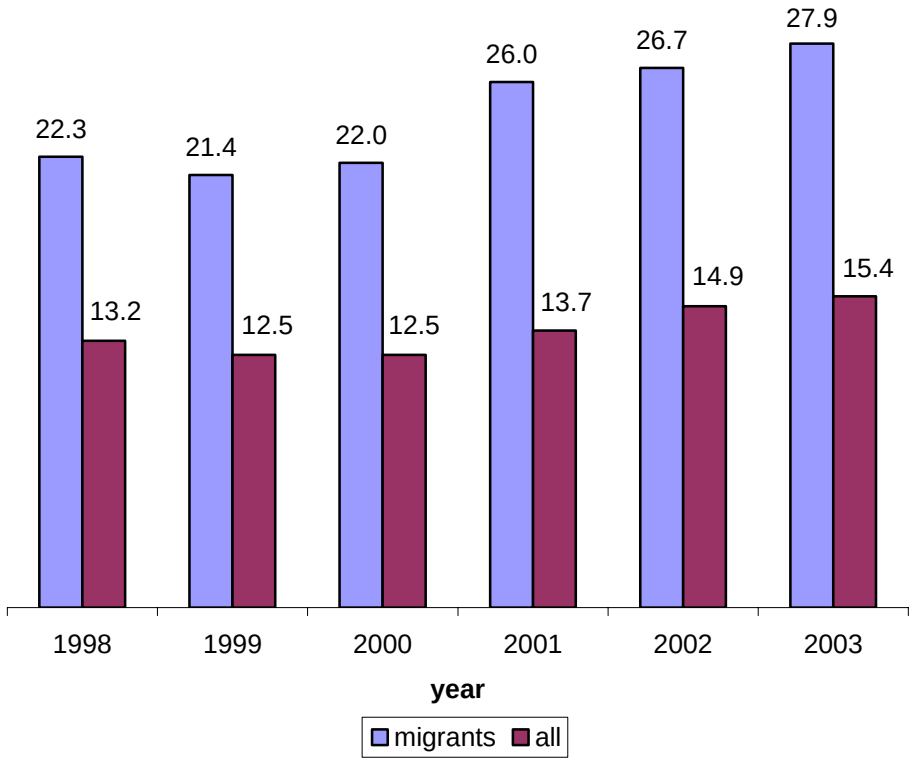
Selected branches in the tertiary sector	1999	2000	2001	2002	2003	2004
Hotel and restaurant business	22.4	22.2	22.3	22.2	21.4	21.1
Cleaning	25.4	26.4	27.2	27.8	27.4	26.5
Education and teaching	4.0	4.2	4.6	4.5	4.8	4.8
Credit business	2.1	2.2	2.3	2.3	2.3	2.2
Insurance business	2.2	2.2	2.4	2.5	2.6	2.5
Public administration, defence, social insurance	2.0	2.0	2.1	2.1	2.1	2.1

Source: Federal Labour Agency

Poverty rate

The disadvantaged position of migrants[4] on the labour market is reflected by their lower income. An analyse of GSOEP data on the distribution of income in Germany reveals that migrants are more often affected by poverty compared to the general poverty rate. The poverty rate[5] of migrants has increased over proportional form 22.3% in 1998 to 27.9% in 2003.

Graph 6: Poverty rates in % (migrants and general population) 1998-2003 (GSOEP)



Source: Hauser/Becker 2004, p. 156 (GSOEP data)

[4] The poverty rate of foreigners is higher than the poverty rate of migrants since among migrants relatively well integrated naturalised people with a migration background are included. The poverty rate of foreigners in 1998 added up to 25.4% and increased to 31.3% in 2003. (Becker, I.; Hauser, R (2004) Verteilung der Einkommen 1999-2003. Bericht zur Studie des Bundesministeriums für Gesundheit und Soziale Sicherung, p. 152)

[5] At-risk-of-poverty rate (60% of the median); old OECD scale

2.2. Awareness of employment discrimination

It appears difficult to detect a clear trend concerning the awareness of employment discrimination during the past few years. Some incidents indicate a positive development, other seem to suggest the opposite. The peak of political and public awareness of the problem of discrimination and xenophobia was reached in late 2000 and 2001 – as a reaction to a drastic increase of xenophobic violence registered in Germany in 2000.

Combating employment discrimination: political will and legislative reaction

Germany has not yet introduced a comprehensive antidiscrimination law; however, individual anti-discrimination provisions are in effect in various legal fields, with most of them being in the realm of employment.[6] Besides the Industrial Relations Act (*Betriebsverfassungsgesetz*) which deals with equality and non-discrimination in the private sectors, the Federal Personnel Representation Act (*Bundespersonalvertretungsgesetz*) and Federal Civil Service Law (*Bundesbeamtengesetz*) are to be mentioned which ban unequal treatment in the public sector and in the civil service.[7] Despite these regulations a comprehensive legal framework against ethnic discrimination in the labour market is still lacking in Germany.[8] The fact that Germany has not yet managed to transpose the **Race Equality Directive 2000/43/EC** and the **Employment Directive 2000/78/EC** reflects the lack of political will – at least on the Conservative and Liberal political spectrum – and indicates a rather low level of political awareness of employment discrimination.

Concerning the changes in the awareness of discrimination and xenophobia in employment during the past five years, the most important incident in the legal sphere was the **amendment of the Industrial Relations Act** (BetrVG), which came into force in July 2001. 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

[6] Brief mention should be made here to the general constitutional principle of equal treatment (Article 3), which, however, refers to the relationship between the state and its citizens and does not (directly) affect the sphere of civil or labour law. There is no consensus among legal experts whether this constitutional principle affects – at least indirectly – other legal spheres.

[7] Both the Federal Personnel Representation Act and Federal Civil Service Law have neither been introduced nor amended in a relevant ways during the period under analysis.

[8] Frings, D (2004) Die Richtlinie 2000/43/EG des Rates zur Anwendung des Gleichbehandlungsgrundsatzes ohne Unterschied der Rasse oder der ethnischen Herkunft, pp. 61, 128; Sachverständigenrat für Zuwanderung und Integration (Zuwanderungsrat) (2004), *Migration und Integration – Erfahrungen nutzen, Neues wagen (Jahresgutachten)*, p. 388

treatment of foreign employees within companies is still not satisfactory despite their legal equality."[9]

The principle of equal treatment irrespective of, among others, the employees' descent, religion, nationality and (ethnic) origin had already been part of the former version of the law (§75 I BetrVG); the amendments, however, enhance the fight against discrimination, racism and xenophobia in companies by incorporating new provisions:

- 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).[10]
- According to the extended regulation of § 43 II BetrVG, the employer has to report at least once a year on the status of the integration of foreign employees in the company.
- 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).[11]

Employers' awareness of employment discrimination

In an increasing number of companies such **voluntary agreements** on anti-discrimination and equal opportunities have been adopted on the initiative of the employer or the work council. These internal agreements represent **stronger and farther reaching policies** for countering discrimination at the workplace. In 2004, the Hans-Böckler-Foundation analysed 28 of these company-based voluntary agreements and similar codes of conducts.[12] In 2005, the number of

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[9] Explanatory comments available at: www.betriebsverfassungsgesetz.com/hintergrundinfos/begruendungendfassung.pdf (16.03.2006); see also: DGB Statement on the Reform of the Industrial Relations Act (2001), in: einblick 5/2001 (19.03.2001), available at: http://www.einblick.dgb.de (16.03.2006; "Hintergrund")

[10] In the 1972 amendment of the BetrVG, the "incorporation of foreign employees into the company" (§ 80 I No. 7) has been added to the list of the work council's general duties. With the 2001 amendment of the law, this Number 7 (§ 80 I No. 7 BetrVG) was significantly extended

[11] Before the amendment of the law, the work council and employers were entitled to sign such voluntary agreements only on the issues of work accidents and health, establishing of internal social institutions or measures to promote individual capital formation.

[12] Akin, S.; Dälken, M.; Monz, L. (2004) Betriebs- und Dienstvereinbarungen. Integration von Beschäftigten ausländischer Herkunft. Analyse und

companies which have adopted such internal agreement policies has further increased. Since several large companies have established those agreements (e.g. Ford, Opel, Thyssen, VW), these codes of conduct apply for a significant number of employees: In 2002, when some 20 equality agreements were in effect, the DGB estimated the number of employees concerned about one million.[13]

It is difficult to identify a clear **trend** concerning the **employers' awareness** of employment discrimination. Whereas the increasing number of voluntary agreements and codes of conducts dealing with equal treatment indicate a positive development, other facts show a lack of awareness on the part of the majority of employers: during the debate on the transposition of the EU Equality Directives, for instance, trade and employers' associations (e.g. the Federal Confederation of German Employers' Associations BDA), stated that existing regulations are sufficient to combat employment discrimination and that the respective anti-discrimination directives of the EU are redundant in Germany. Expressing their disapproval of "any form of discrimination", the BDA, also uttered that discrimination is "no problem" in German companies.[14]

The Federal Association of Medium-sized Enterprise (BVMW) also criticised the anti-discrimination bill – mainly because of its "bureaucratic and financial burden" for the economy. Instead of the legal obligation to adopt anti-discrimination regulations, the BVMW stressed the "principle of voluntariness" and referred to its initiative "Medium-sized businesses open-minded – against Discrimination", a joint project together with the programme *Alliance for Democracy and Tolerance*. Within the framework of this initiative (launched in December 2004) medium-sized companies are encouraged to sign a declaration with which they commit themselves to the principles of equal treatment and to a discrimination-free working environment.[15] However, the rather low number of entrepreneurs who have signed this declaration indicates that the principle of voluntary commitment of employers is not very effective.[16]

According to the findings of the survey *European Diversity Study EDS2* (conducted by the consulting company "*UngleichBesser Diversity Consulting*" in 2004), German companies appear less active concerning the implementation

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Handlungsempfehlungen, p.10; in early 2006, 33 such voluntary agreements were published at the DGB Bildungswerk/Migration website (www.migration-online.de, (23.05.2006))

[13] Bündnis für Demokratie und Toleranz – gegen Extremismus und Gewalt (2003), *Für Demokratie und Toleranz in der Arbeitswelt*. Berlin, pp. 8-9.

[14] Bundesvereinigung der Deutschen Arbeitgeberverbände - BDA (2005) Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung europäischer Antidiskriminierungsrichtlinien. Berlin 25.02.2005. For more information on the reluctance of the employers see also Bielefeldt, H.; Follmar-Otto, P. (2005) „Diskriminierungsschutz in der politischen Diskussion", in: Policy Paper No. 5. Berlin: Deutsches Institut für Menschenrechte.

[15] Businesses that take part in the initiative are allowed to use the logo "Medium-Sized Businesses Open-minded – Against Discrimination" for their public relations work. Press release BVMV and *Bündnis für Demokratie und Toleranz* (8.12.2004)

[16] Triebe, B. (2005) "Verbriefte Fairness zahlt sich aus", in*: taz* (8.8.2005), p. 8

of internal anti-discrimination regulations than companies in other European countries. As a consequence, German companies seem to be less prepared for the implementation of the respective EU equality directives into national law. [17]

Diversity Management

Due to the lack of reliable, quantitative and representative data on the implementation of managing diversity concepts in German companies it is not possible to present the "real" level of awareness of these concepts in Germany. Most relevant data stem from surveys among companies conducted by consultant companies.[18]

Explicit concepts of managing diversity are **not very common** in German companies[19], and the management is only rarely aware of the significance of such concepts.[20] However, according to the head of the aforementioned *UngleichBesser Diversity Consulting*, the importance of such concepts is being acknowledged by an **increasing number of companies** in Germany. Particular since 1998 this increase has accelerated. [21]

According to expert estimations, in 2005, about 50 (mainly large) companies have adopted explicit managing diversity concepts in Germany[22], for instance, Deutsche Bank, Commerzbank, Lufthansa, Deutsche Telekom, FORD Werke Germany, Hewlett-Packard Germany, Deutsche BP, Daimler Chrysler.

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[17] "Ethische Motive wirken stärker als EU-Richtlinie", in: Personalmanagement No. 6/2005; available at: www.diversity-wissen.de/downloads/Div-05-Jun-Persmagazin.pdf (20.03.2006); "Die Mischung macht's", in Randstad Korrespondenz, März 2005, pp. 2-3; available at: www.diversity-wissen.de/downloads/Div-05-Mrz-randstadkorrespondent.pdf (20.03.2006)

[18] A typical methodological problem of such company surveys is the lack of representativeness. The proportion of those companies which respond is often fairly low – resulting in a possible distortion of the sample and in most cases also in a rather low number of responses. In some cases, the surveys focus on companies which are known for their diversity management concepts (pre-selection).

[19] In 2004, the German Expert Council for Immigration and Integration urged to incorporate such concepts and other company-based measures of equal opportunity policies into the curricula of all economy-oriented apprenticeship and university programmes (Sachverständigenrat für Zuwanderung und Integration (2004) Migration und Integration – Erfahrungen nutzen, Neues wagen. Jahresgutachten 2004. Nürnberg, p. 298).

[20] Nazarkiewicz, K. (2004) "Managing Diversity: Interkulturelle Kompetenz für Führungskräfte", in: Seebacher, U.; Klaus,G. (eds.), *Handbuch Führungskräfte-Entwicklung. Theorie, Praxis und Fallstudien*, USP International Publishing; available at: www.consilia-sc.com/Nazarkiewicz%20IKK_FKE_f.pdf (21.03.2006), p. 11

[21] Stuber, M. (2006) "Vielfalt fördern im Unternehmen", in: *Personalmagazin*, no. 2/2006, pp. 66-67.

[22] Vedder, G. (2005) "Denkanstöße zum Diversity Management", in: *Arbeit 14* (1/2005), pp. 34-43

Government supported projects to combat discrimination

The German government financially supports various projects and initiatives which aim at combating ethnic discrimination in employment and fostering the migrants' access to the labour market. The most significant large-scale programmes in employment are:

- The nationwide programme *XENOS - living and working in diversity*
- The Community initiative *EQUAL*

Both initiatives started in the beginning of the period under analysis. Particularly the drastic increase of xenophobic and antisemitic crimes in 2000 led to a temporary increase in public and political awareness of discrimination and xenophobia, and political actors felt urged to react to these negative developments.[23]

"**XENOS - Living and Working in Diversity**" was set up in late 2000 as part of the action programme "Youth for Tolerance and Democracy - against Right-Wing Extremism, Xenophobia, and Antisemitism" established by the Federal Government. The initiative XENOS pursues the aim of fighting xenophobia and intolerance by providing funding to projects that link labour market-related integration measures with approaches to combating xenophobia and discrimination. In the support period between 2000 and 2006, 239 projects were granted funding (January 2006). 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-financing, the XENOS program has a total budget of some € 150 million.[24]

The EU-wide joint initiative **EQUAL**[25]**,** financed by the Federal Government and with ESF means, encompasses a great variety of labour market-related projects striving for new ways of combating employment discrimination. The Federal Ministry of Labour as the national coordinator is responsible for the contents and the financial implementation[26] of the EQUAL programme. Among the five thematic fields of the EQUAL projects the category "employability" is of special relevance.

[23] In addition to these large-scale programmes, there are projects and initiatives which primarily aim at improving the migrants' employability and access to the labour market (e.g. the programme BQN). Such integration-oriented projects are not further considered in the following since they are not – or at least not explicitly or directly – related to the issue of employment discrimination.

[24] www.xenos-de.de/Xenos/Navigation/english.html (05.10.2004)

[25] The Federal Ministry of Labour as the national coordination office is responsible for contents and financial implementation of the EQUAL programme.

[26] Between the support period between 2000 and 2006, about € 1 billion (paid in equal parts by national and ESF means) were allotted to projects in Germany.

This category is further differentiated in:

- Facilitating access and return to the labour market (among others aiming at migrants)
- Combating racism and xenophobia in the labour market
- Asylum Seekers[27]

Within the EQUAL framework Development Partnerships (DP) are supported, i.e. networks in which pertinent bodies or individuals active on the labour market actors cooperate in order to jointly develop integrative concepts to promote integration or counteract discrimination in employment and in vocational training. During the first support period (2002-2005) a total of 109 DPs with some 1,100 sub-projects were supported in Germany. 52 DPs were registered in the support category "employability", of which only six DPs explicitly dealt with the objective of combating racism and xenophobia in the labour market and eight with asylum seekers. Within the second support period, which started on January 1, 2005, 129 DPs are funded altogether; 57 of them in the category "employability", including eight in the realm of fighting racism and xenophobia.

Types of policies to combat discrimination in employment

The political approach to combating ethnic discrimination in employment seems to neglect legal measures (e.g. introducing new legal provisions) and focuses instead on financially supporting respective projects and programmes, i.e. politics play an indirect role by assisting other organisations which are active in the fight against employment discrimination. Key figures in this fight are non-government organisations, such as the welfare organisations and particularly the trade unions which have been active in the promotion of equal treatment of the all employees irrespective of their nationality or ethnic origin since the beginning of the guest worker recruitment in the 1950's and 60's. This policy scheme of combating discrimination by providing funding to pertinent projects seems predominate during the entire period under analysis – with one significant exception: the amendment of the Industrial Relations Act in 2001.

The awareness of ethnic discrimination in the public sector[28]

The severe under-representation of foreigners in the public sectors has been a well-known fact for many years.[29] In 2004, the Expert Council for Immigration and Integration stated that "with regard to discrimination in the labour market

[27] The other topics are Entrepreneurial Spirit, Capability to Adapt, and (gender-specific) Equal Opportunities (see www.equal-de.de/Equal/Navigation/English/thematic-fields.html (05.03.2006)).

[28] The issue of banning Muslim teachers from wearing headscarves at school is also related to the disadvantaged access to the public service. For more information on this issue see chapter 5.2.d.

[29] According to the Micro Census, about 3.6% of all employees in this sector are foreigners (Sachverständigenrat für Zuwanderung und Integration (Zuwanderungsrat) (2004), *Migration und Integration – Erfahrungen nutzen, Neues wagen (Jahresgutachten).* Nürnberg, p. 388)

there is a significant need for action especially in the public sector" and called for special "support programmes" and "more sensitivity" in the recruitment procedures.[30]

The **general awareness** of the problematic under-representation of foreigners in the public sector has slightly increased over the past five years. This positive trend seems to be connected to the general public and political awareness of integration issues which has increased since the late 1990s. This increased awareness has led to numerous conferences dealing with the access to the public sector and to countless public recommendations by political parties and NGOs. However, it has not been translated systematically into concrete measures. One of the few exceptions is the anti-discrimination decree of the City of Frankfurt (introduced in 2003) which explicitly bans discrimination in the municipal administration and all companies run by the City of Frankfurt. This antidiscrimination policy covers (direct and indirect) discrimination due to descent, colour of skin, language, (ethnic) origin and religion. The Federal Commissioner for Integration also mentioned a project (2004-2006) in the city of Duisburg (NRW) which aims at easing the access to the public service for people with a migration background.[31]

Several federal states (e.g. Berlin or Bremen[32]) have acknowledged the benefits of a **multi-ethnic composition of the police forces** – an area where people with a migration background are severely underrepresented. Aiming at increasing the number of migrants in the police, the police authority in Berlin announced their plan to favour job applicants with a migration background provided the applicants have equal levels of qualification. Furthermore, those migrant applicants who have completed a specific training measure for young migrants shall not be obliged to fulfil certain formal criteria regarding the average high-school grade. This announcement of the Berlin police triggered off a great deal of criticism: The trade union of the police GdP, for instance, complained about the privileged treatment of migrants in the recruitment procedure.[33]

The debate on migrants in the public sectors seems to be pushed and guided rather by the altering **demands of a clientele** which becomes more and more ethnically diverse than by the intention to counter discrimination. This is especially true for the public administration. As a consequence, much attention is paid to endeavours to transform the public administration by courses of intercultural competence of the employees. Attempts aiming at increasing the

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[30] Sachverständigenrat für Zuwanderung und Integration (Zuwanderungsrat) (2004), *Migration und Integration – Erfahrungen nutzen, Neues wagen (Jahresgutachten).* Nürnberg, p. 388

[31] Germany, Bundesbeauftragte der Bundesregierung für Migration, Flüchtlinge und Integration (2005) *Über die Lage der Ausländerinnen und Ausländer in Deutschland* p. 92; see also: www.duisburg.de/index.cfm?/raa/start.cfm (23.03.2006)

[32] In 2002, the project "Migrants in the Public Sector" was conduced by the Advisory Centre for Qualifying Young Foreign Personnel (BQN) in cooperation with the Bremen police force.

[33] *Berliner Zeitung* (19.01.2006), *Berliner Morgenpost* (27.01.2006); Press release Gewerkschaft der Polizei - Junge Gruppe (26.01.2006)

proportion of employees with a migration background, however, have been neglected.

Awareness of the need to register/count ethnic origin

The need to register or count ethnic origin has not been an issue in Germany – neither in employment nor in any other context. Within the framework of the transposition of the EU directive 95/46/EC, a new section (§3 IX) was incorporated into the Federal Data Protection Law (*Bundesdatenschutzgesetz* - BDSG)[34] in 2001. This section lists „special categories of personal data", among those data on ethnic origin and religious conviction. Collection, processing and use of these data are subject to specific restrictions (§ 4a III BDSG).

2.3. Are these developments driven by EU, national or local policy?

An immediate impact of EU policy on these developments can hardly be identified. In some cases, a reference is made to the EU directives 2000/43/EC and 2000/78/EC, for instance within the anti-discrimination decree of the City of Frankfurt or within company-based codes of conduct. The trade unions have been playing an important role in encouraging the employers and work council to adopt such codes of conduct. In this context the trade unions often refer not only to the EU directives, but also – and even more so – to the Florence Declaration on Prevention of Race Discrimination and Xenophobia as well as Promotion of Equal Treatment at the Workplace, passed by the European social partners in October 1995.[35]

National incidents have played a more important role than EU policies; at the foremost the drastic increase in xenophobic and antisemitic incidents in 2000. Against the background of this increase and reacting to an arson attack on the Düsseldorf synagogue in October 2000[36] Chancellor Schröder publicly called for a stronger commitment of all citizens in the fight against xenophobia in October 2000. In the aftermath of this appeal, which received a great deal of

[34] Amendment to the BDSG came into effect on May 23, 2001 (Bundesgesetzblatt I, p. 904; 22.05.01, available at: www.bgblportal.de/BGBL/bgbl1f/b101023f.pdf; www.gesetze-im-internet.de/bdsg_1990/index.html; www.dreid.de/v_pdf/HandlungsleitfadenBDSG.pdf (23.03.06)

[35] See, for instance, Dälken, M.; Schiller-Dickhut, R. (2003) "Betriebsvereinbarungen für Chancengleichheit und gegen Diskriminierung", in: Bündnis für Demokratie und Toleranz – gegen Extremismus und Gewalt (ed.) *Für Demokratie und Toleranz in der Arbeitswelt – Sozialpartner sind aktiv! Betriebsvereinbarungen für Chancengleichheit und gegen Diskriminierung*, Berlin, pp. 8-30 (here: p. 9); Deutscher Gewerkschaftsbund - DGB (2001) "Eckpunkte für eine Muster-(konzern-)vereinbarung zur Gleichbehandlung" , in: *einblick 7/2001* (17.04.2001); available at: http://www.einblick.dgb.de (25.05.2006) ("Hintergrund")

[36] The arson attack on the Düsseldorf synagogue was committed – as it turned out later – by two people of Arabic origin.

public attention, issues of ethnic discrimination and racism ranked high on the political agenda and were a regular topic in the media for a certain period of time. This led to a temporary change in the social climate which constitutes the "framing" of many activities and (legal) initiatives that were started or enhanced: The two main examples are (1) the introduction of the amended Industrial Relations Act in 2001 and (2) the governmental action programme "Youth for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia, and Antisemitism", including the XENOS initiative.

3. Housing

3.1. Housing conditions and patterns of segregation

Housing conditions

Statements on the development of the housing conditions of migrants during the period under analysis are limited due to the relatively scarce statistics. The most important data sources are an additional survey of the micro census (*Mikrozenus-Zusatzerhebung*) on housing conditions (the latest in 2002) and the German Social-Economic Panel (GSOEP). The latest analysis of GSOEP data on the housing conditions of foreigners is based data from 2002. In the following we will present data on the housing situation of foreigners, ethnic German migrants (*Spätaussiedler*) and asylum seekers with regard to selected indicators, such as:

- the type of accommodation (e.g. hostels, rented flat, flat/house owner)
- the living space
- the furnishing of the accommodation.

The **types of accommodation** foreigners inhabit reflect the level of security in their living situation. Whereas hostels or sublet accommodation are more or less an interim solution, inhabiting one's own flat or house represents the most secure type of accommodation.

According to an analysis of micro census data from 2002, 6% of the foreign households lived in sublet accommodation or hostels, nearly 80% were regular tenants and 15% home owners. Only about 3% of the Germans lived in sublet accommodation or hostels, 54% were tenants and 43% home owners.[37]

[37] Germany, Federal Statistical Office (2005), Strukturdaten und Integrationsindikatoren über die ausländische Bevölkerung in Deutschland 2003, p.95
The Representative Study 2001 on behalf of the Federal Ministry for Labour and Social Affairs reveals that the proportion of migrants living in hostels decreased considerably from 1980 to 2001: in 1980 11.4% of the Italian and 10.2% of the Turkish population lived in hostels in comparison to 2.1% and 1.6% respectively in 2001. (Germany, Federal Ministry of Labour and Social Affairs (2002) Situation der ausländischen Arbeitnehmer und ihrer Familienangehörigen in der Bundesrepublik Deutschland. Repräsentativuntersuchung 2001. Tabellenband, p. 91)

The proportion of those who are the **owner** of the flat or house which they inhabit has grown in both groups. This is true for Germans (without a migration background) as well as for migrants from Turkey, former Yugoslavia and from EU/Western (industrialised) countries. The opposite tendency can be observed in the category of "other countries of origin".[38]

Tab. 2: Quota of home ownership by population groups (1988, 1995, 2002)

Year	Population without a migration background		Population with a migration background			
				Foreigners from		
	Germany (West)	Germany (East)	Ethnic German migrants	EU, Western countries	Turkey, former Yugoslavia	Other countries
1988	49.3	-	39.3	23.6	7.4	42.8
1995	49.3	31.0	25.5	35.9	11.0	33.7
2002	53.6	39.7	29.1	46.9	22.9	21.2

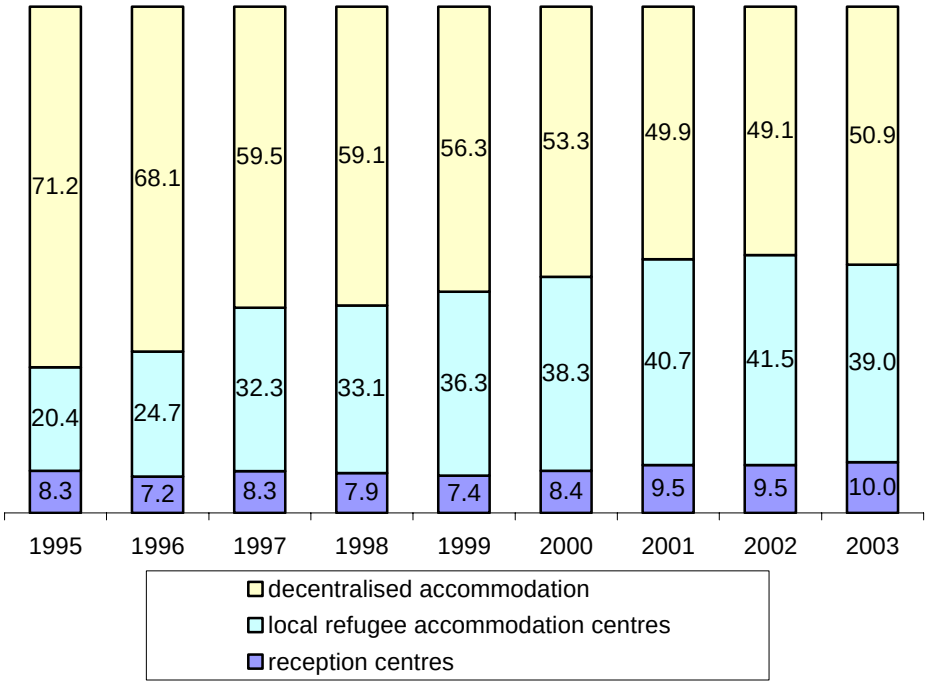
Source: Frick 2004, p. 44 (GSOEP data)[39]

[38] The diminishing rate of home ownership among ethnic German migrants is a result of the decrease in financial support programmes for this (legally privileged) migrant group. (Sachverständigenrat für Zuwanderung und Integration (Zuwanderungsrat) (2004), *Migration und Integration – Erfahrungen nutzen, Neues wagen (Jahresgutachten)*. Nürnberg, p. 306)

[39] Frick, J.R. (2004) Gutachten zur „Integration von Migranten in Deutschland" auf der Basis nationaler und international vergleichbarer repräsentativer Mikrodaten, available at: www.diw.de/deutsch/sop/soeppub/dokumente/gutachten/index.html, (04.10.2005)

Regarding **asylum seekers**, the statistics distinguish between other types of accommodation. Asylum seekers live, after they are housed for at least six weeks in special (preliminary) reception centres, either in decentralised flats or in local refugee accommodation centres. From 1995 to 2002, the proportion of those who are housed in local refugee accommodation centres more than doubled (1995: 20.4%; 2002: 41.5%). The latest data available show a decrease to 39.0% in 2003. Vice versa, the proportion of those asylum seekers who live in decentralised flats dropped from 71.2% in 1995 to 49.1% in 2002 and was at 50.9% in 2003.[40]

Graph 7: Asylum seekers by type of accommodation in % (1995-2003)



*recipients of benefits according to the Asylum Seekers' Benefits Act

Source: Federal Statistical Office 2005, Tab. A 1.1

The increased proportion of asylum seekers living in accommodation centres indicates a deterioration of their housing situation. It is assumed that the living conditions of those who are housed in decentralised flats are significantly better than of those who live in centralised accommodation centres.

[40] Of the total 264,240 asylum seekers (asylum applicants and asylum seekers whose application has been rejected) who sought benefits at the end of 2003 in accordance with the Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz) , 103,104 of them lived in local accommodation centres, 134,597 lived in decentralised accommodation, particularly single flats and 26,539 people lived in reception centres. (Germany, Federal Statistical Office, Sozialleistungen. Leistungen an Asylbewerber 2003. Fachserie 13, Reihe 7, Tab. A. 1.1)

Although the average **living space** has increased for all population groups over the years, migrants still have significantly less space at their disposal than Germans without a migration background as the following table illustrates.

Tab. 3: Living space per capita in m^2 (1988, 1995, 2002)

Year	Population without a migration background		Population with a migration background			
				Foreigners from		
	Germany (West)	Germany (East)	Ethnic German migrants	EU, Western countries	Turkey, former Yugoslavia	Other countries
1988	39.2	-	31.9	28.4	21.3	32.6
1995	43.1	29.9	29.6	32.2	21.8	30.4
2002	46.3	36.3	32.2	34.4	24.4	33.6

Source: Frick 2004, p. 44 (GSOEP data)

The proportion of households which have to deal with crowded living conditions is significantly higher among migrants, especially among Turks or people form former Yugoslavia. However, the proportion within most migrant groups has been decreasing.

Tab. 4: Proportion of households facing crowded living conditions[41] by population groups in percentage (1988, 1995 and 2002)

Year	Population without a migration background		Population with a migration background			
				Foreigner from		
	Germany (West)	Germany (East)	Ethnic German migrants	EU, Western countries	Turkey, former Yugoslavia	other countries
1988	11.1	-	16.9	28.9	59.4	13.7
1995	10.6	19.0	28.9	20.5	58.4	29.8
2002	5.1	7.1	16.4	15.4	50.5	26.6

Source: Frick 2004 (based on GSOEP data)

[41] According to the definition, "crowded living conditions" means that the number of members in the household is higher than the number of available rooms that are larger than 6 m^2 (kitchen and bathroom excluded).

A survey among Turkish households shows that the level of available **furnishing and facilities** in Turkish households improved significantly between 1997 and 2002. The differences between German and Turkish households diminished accordingly, although disparities continue to exist (e.g. central heating).[42]

Tab. 5: Facilities and furnishing available in apartments (in %); German and Turkish households

	1997		2002	
	Germans	**Turks**	**Germans**	**Turks**
Kitchen	98	99	98	100
Bath tub or shower	99	95	99	99
Toilet in the apartment	99	98	99	100
Central heating	93	74	96	84
Balcony, patio	77	54	80	62
Basement	95	97	95	93
Garden	62	26	63	27
Warm water, Boiler	99	95	99	96
Telephone	94	82	99	99

Source: Özcan 2004, p. 37 (GSOEP data)

With regard to the living conditions of foreigners, we can say in summary that their accommodation is better equipped, that they live in larger apartments and that they more often live in their own house or flat than they did in previous years. But in none of these categories have they reached the living standard of Germans.

[42] These differences are, at least in part, the result of the overrepresentation of non-Germans in agglomeration areas. (Özcan, V. (2004) „Aspekte der sozio-ökonomischen und sozio-kulturellen Integration der türkischstämmigen Bevölkerung in Deutschland“, in: Özdemir, C. et. al Die Situation der türkischstämmigen Bevölkerung in Deutschland, available at: www.diw.de/deutsch/sop/soeppub/dokumente/gutachten/index.html, (04.10.2005), p. 27)

Patterns of segregation

Nationwide developments in patterns of segregation can hardly be identified since there is no nationwide monitoring system on ethnic segregation. However, the Statistical Offices provide data on the spatial distribution of foreigners: Foreigners live primarily in Western Germany and more often in densely settled agglomeration areas.[43]

Statistics on the distribution of foreigners within a municipality illustrate that the proportion of non-German residents differs widely in different city districts. In Berlin, for example, in 2004, 27.7% of the inhabitants of the city district Berlin-Mitte were foreigners, whereas the proportion of foreigners in Mahrzahn/Hellersdorf totalled to 3.6%.[44] Despite this large proportion of foreigners in certain districts, ethnically homogeneous quarters are practically non existent in Germany.

According to a survey among experts in NRW, segregation occurs particularly in small spatial units like neighbourhoods, blocks and certain streets. Most municipalities, however, do not survey respective data.[45] An exception to this is the city of Hamburg where data on neighbourhoods reveal huge differences concerning the proportion of foreigners: In the neighbourhood of Billbrook, for instance, 66% of the 1,500 inhabitants were foreigners, in contrast to the neighbourhood of Spandenland where only 0.5% of the 444 inhabitants are foreigners.[46]

Statements on the patterns of segregation are only possible in very exceptional cases. The results of a Social Area Analysis *(Sozialraumanalyse)* of cities in NRW published in 2006, for instance, allow such statements: Analysing three types of segregation – social, ethnic and demographic **segregation** – in NRW

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[43] As a consequence, Western German cities have particular high proportion of foreign residents (2003), e.g. Frankfurt/Main (25.9%), Offenbach (31.4%), Stuttgart (22.3%) and Munich (23.0%). Germany, Bundesbeauftragte der Bundesregierung (ed.) in Zusammenarbeit mit dem efms (2005) *Daten – Fakent – Trends. Strukturdaten der ausländischen Bevölkerung*; available at: www.integrationsbeauftragte.de/download/Modul_2_Strukturdaten.pdf (23.05.2006), p. 11)

[44] It is to be mentioned that these statistics only refer to non-Germans; naturalised citizens or ethnic-German migrants are not included, i.e. a low rate of foreigners is not a clear indicator for the non-existence of ethnic segregation. The Berlin district Mahrzahn/Hellersdorf has the lowest rate of foreigners in Berlin, but struggles with the integration problems of young ethnic Germans. The percentage of ethnic German migrants in this district is estimated at 10-14%. (Ohlinger, R.; Raiser, U. (2005) Integration und Migration in Berlin. Zahlen – Daten – Fakten, p. 49; available at: www.berlin.de/imperia/md/content/sengsv/intmig/doku/zahlen_daten_fakten.pdf (24.05.2006))

[45] Institut für Landes- und Stadtentwicklungsforschung und Bauwesen des Landes Nordrhein-Westfalen (ILS NRW) (ed.) (2006) *Sozialraumanalyse. Soziale, ethnische und demographische Segregation in den nordrhein-wetfälischen Städten*. ILS NRW Schriften 201, p. 8

[46] In the year 2004; see: www.statistik-nord.de/fileadmin/regional/regional.php (24.05.2006)

cities, the most important result is the growing association between these three types of segregation. That means that ethnic minority members predominately live in districts with a high proportion of welfare recipients and families with children.

Regarding socio-economically and ethnically highly segregated areas the study describes two different patterns of segregation. (1) In some cities, there are, on the one hand, large socially disadvantaged and ethnically segregated areas and, on the other hand, large, middle-class areas with a low proportion of migrants. In these cities, new segregated neighbourhoods do not emerge, but existing patterns of segregation have increased over the years. (2) In other cities, segregation emerges on a much smaller spatial level, i.e. a concentration of socially disadvantaged and ethnically highly segregated city districts in specific areas of a city (e.g. the inner city or on the outskirts) can be observed.

3.2. Developments in policy measures on housing exclusion and discrimination

a) Housing-related measures targeting migrants and minorities integrated in National Action Plans and their implementation

The National Action Plans against Poverty and Social Exclusions of the Federal Republic of Germany (NAPs) mention two main political housing-related measures[47], which aim at supporting those households identified by the government as most affected by exclusion:

1. The reform in social housing construction ('council housing') with the new **Housing Assistance Act** (*Wohnraumförderungsgesetz*, WoFG) in force since January 1, 2002
2. An amendment of the **housing allowance** (*Wohngeldnovelle*) in force since January 1, 2001[48]

These measures do not aim explicitly at migrants and minorities. Due to the fact that nationality and the migration background are not documented in relevant statistics (e.g. reception of housing allowances), there is hardly any statistical data on the extent to which migrants benefit from these measures. However, the

[47] In addition, the NAPs mention the national programme "Social City" as an innovative approach of urban development assistance (*Städtebauförderung*). Since "Social City" aims at initiating and implementing innovative projects in disadvantage neighbourhood, it is described in chapter 3.3.

[48] Germany, Federal Government (2001) *Federal Republic of Germany. National Action Plan to Combat Poverty and Social Exclusion (NAPincl) 2001-2003*, available at: http://ec.europa.eu/employment_social/social_inclusion/docs/napincl2001de_en.pdf (25.06.2006), p. 23; Germany, Federal Government (2003) *Strategies to Enhance Social Inclusion. National Action Plan against Poverty and Social Exclusion 2003-2005*, p. 19, available at: http://ec.europa.eu/employment_social/social_inclusion/docs/nap_03_05_en_fassung.pdf (24.05.2006)

proportion of migrants belonging to the target groups of the measures (i.e. low-income household, families with children, inhabitants of disadvantaged neighbourhoods) is above average.

In the following the development of these policy measures will be described more precisely.

Reform of the social housing scheme

The subsidised social housing ('council housing') scheme, financed both by the Federal and State governments, was introduced to combat the serious lack of housing after World War II by supporting construction companies in building new houses with reasonably priced flats, or "council flats". Nowadays, this lack of housing does not exist any longer. Therefore, the new Housing Assistance Act (2002)[49] has been made more flexible with regard to measures eligible for public funding: Not only the construction of new buildings, but also the renovation of existing buildings and the acquisition of occupying rights (*Belegungsrechte*)[50] can be financed. Thus, the number of council flats can be increased without building new houses within the scope of the social housing scheme.

Since the late 1970s, the government has reduced subsidies for publicly supported housing. The regulation of the housing market has been increasingly left to market forces. The supply of inexpensive accommodation has decreased although the demand – due to the increasing number of low-income households – has increased. Therefore the new Housing Assistance Act (2002), no longer aims at providing "broad sections" with housing, but defines main target groups: low income households with children, older people, people with disabilities and homeless people (§1 II No. 1 WoFG).

To ensure that these groups are better provided with housing the new Act, defines higher income boundaries for households with children and people with disabilities.[51] Families with children and a low income who want to build or buy their own houses or flats can receive financial support directly (§ 1 II No. 2 WoFG).

Since 1981, tenants who live in publicly-supported housing, have had to pay a higher rent if their income was above a certain level ("*Fehlbelegungs-abgabe*").[52] This reinforced the tendency that more and more middle-class tenants left areas with a high proportion of council flats. According to the new Housing Assistance Act, under certain preconditions tenants who live in

[49] Replacing the Second Housing Construction Act (*Wohnungsbau- und Familiengesetz – II*. WoBauG)

[50] Germany, Federal Government (2004) Nachhaltige Stadtentwicklung – ein Gemeinschaftswerk. Städtebaulicher Bericht der Bundesregierung 2004, p. 52

[51] Germany, Federal Government (2004) Nachhaltige Stadtentwicklung – ein Gemeinschaftswerk. Städtebaulicher Bericht der Bundesregierung 2004, p. 50

[52] Bremer, P.; Gestring, N (2004 "Migranten – ausgegrenzt?" in: Häußermann, H.; Kronauer, M.; Siebel, W. (eds.) *An den Rändern der Städte: Armut und Ausgrenzung*, pp. 258-285 (here: pp. 281-282)

publicly supported housing and are above the respective income level do not have to pay a higher rent (§§ 34ff WoFG).[53]

Before a public housing agency can offer a flat, the household has to apply for a housing authorisation permit (*Wohnberechtigungsschein*).[54] Whether a household is eligible for such a permit depends not only on its income and on the number of family members, but also on the residence status of the applicant.

According to the Housing Assistance Act (§ 27 II WoFG), only people who permanently live in Germany are eligible to receive a housing authorisation permit. This clause is interpreted differently in the administrative regulations of the federal States. However, the federal states are bound to the laws concerning the residence permits of foreigners.

According to the new Residence Act (§ 44 I (1) AufenthG[55]) permanent residence is generally to be assumed if the foreigner is given a residence permit valid for more than one year or has held a residence permit for more than 18 months, unless the stay is of a temporary nature. This means students and seasonal workers could be excluded from social housing whereas refugees and asylum seekers can be (with reservations) placed in council flats.

The **number of council flats** decreased from some 2.5 million in 2002 to 2.1 million in 2005. By 2010, the number of council flats is estimated to have decreased to 1.4 million.[56] Migrants suffer from this cut-back and the privatisation of the housing market. With the **privatisation** of the housing market the supply of decent and reasonably priced accommodation is becoming harder especially for migrants who are more often in a disadvantaged position and are more often discriminated against by private landlords. The new Housing Assistance Act does not aim at stopping this cutback of council flats and the privatisation of the housing market. However, the new Housing Assistance Act aims at improving the housing situation of low income households and families with children and therefore for many disadvantaged foreigners or migrant families.

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[53] www.schader-stiftung.de/wohn_wandel/828.php (24.05.2006)

[54] Income boundaries: one-person household: 12,000 Euro, two-person household:18,000 Euro, each further household member: 4,100 Euro (WofG, Abschnitt 2, § 9 Einkommensgrenzen), available at: http://www.gesetze-im-internet.de/wofg/BJNR237610001.html (24.05.2006)

[55] in force since January 1, 2005

[56] Germany, Federal Ministry of Transport, Building and Urban Development (2004) *Schätzung auf Grundlage einer Umfragebei den zuständigen Landesbehörden: alle Förderwege nach II. WoBauG sowie Mietwohnungsförderung nach WoFG; in den neuen Länder inkl. Wohungen nach Belegungsbindungsgesetz; Datengrundlage nach ifo-Insitut 2005*

Amendment of housing allowance

The housing allowance is paid to low-income households as a top-up payment for the cost of housing. The housing allowance supports private households with the aim of providing decent housing for low-income households by facilitating the access to accommodation of a low or average level of rent.

The amendment of the housing allowance 2001 has adjusted the housing allowance to developments in rent and income. The main political aim of this latest amendment is to improve the support of families.[57]

Whether a household can apply for housing allowance and how much it can apply for as a subsidy either to the rent or to the mortgage (for house owners) depends on three criteria:

- the number of family members belonging to the household
- the income of all family members belonging to the household
- the rent of the tenant or costs to the house owner[58]

Foreigners have the same legal rights to apply for housing allowance as Germans do[59] provided they live legally in Germany, the flat in question is situated in Germany and the occupant living in this accommodation pays the rent or cost of his accommodation on his/her own.[60]

There is no data available on the number of foreigners who receive housing allowance, but it can be assumed that foreigners benefit from the amendment of housing allowance due to the expanded eligibility of larger families.

At the end of 2003, 8.7% of all private households in Germany received housing allowance.[61] The proportion of households with four or more family members who benefit from the general housing allowance (not including social welfare recipients[62]) decreased from 22.7% in the year 2000 to 19.0% in the

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[57] Haustein, T. (2005) "Wohngeld in Deutschland 2003. Ergebnisse der Wohngeldstatistik", in: Germany, Federal Statistical Office (ed.) *Wirtschaft und Statistik 2/2005*, p. 136; available at: http://www.destatis.de/download/d/wista/wohngeld205.pdf (24.05.2006)

[58] tables for the calculation available at: www.bmvbs.de/Stadtentwicklung_-Wohnen/Wohnraumfoerderung-,1567/Wohngeld.htm (24.05.2006)

[59] According to the administrative construction of the housing allowance (WoGVwV Art. 1.02, Abs. 1), available at: http://www.lexisnexis.de/aedoku?STWT=Abschnitt+1+WoGVwV+2002&rechtsstand_datum=2002-01-01&aenderung=466139#zAbschnitt+1 (24.05.2006)

[60] Egner, B.; Georgakis, N.; Heinelt, H.; Bartholomäi R. C. (eds) (2004): Wohnungspolitik in Deutschland. Positionen, Akteure. Instrumente, Darmstadt: Schader-Stiftung, p 77

[61] Haustein, T. (2005) "Wohngeld in Deutschland 2003. Ergebnisse der Wohngeldstatistik", in: Germany, Federal Statistical Office (ed.) *Wirtschaft und Statistik 2/2005*, p. 137, available at: http://www.destatis.de/download/d/wista/wohngeld205.pdf (24.05.2006)

[62] More than one third of housing allowance recipients (around 1.2 million) have also received social welfare or other forms of social benefits. With the changes in the social welfare system the cities are responsible for the living costs of the social welfare

year 2003. However, larger households benefit more from the housing allowance than other household groups do[63]. The total number of larger households benefiting from the housing allowance clearly increased in the period under analysis: from about 341,000 (2000) to some 422,000 (2003).

b) Monitoring housing discrimination/nature of discrimination and groups affected

Germany has so far failed to set up a national monitoring system registering cases of discrimination. This is partly due to the fact that the EU Directive 2000/43/EC has not been transposed into national legislation. There are no official or non-official institutions which monitor housing discrimination at national level.

There are organisations or bodies in several cities to which victims of discrimination (e.g. in the area of housing) can turn to for assistance or to lodge a complaint. These organisations operate either independently as NGOs (e.g. ADB Berlin, ARIC-NRW, ÖgG (Köln) e.V.)[64] or as specialised departments within the municipal authorities (e.g. in Munich, Frankfurt/Main and Stuttgart). The number of the latter specialised departments slightly increased in the past few years.

In 2005, the first (and until now the only) anti-discrimination body on the *State* level was installed in the State of Berlin.[65] In some communities, other organisations have taken over the function of such centres for complaints and anti-discrimination matters, e.g. welfare organisations.[66]

The increasing sensibility for discrimination of general welfare organisations as well as the increasing number of anti-discrimination bodies as part of the municipal authorities can be assessed positively.

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recipients (Arbeitslosengeld II, in force since 1.1.2005), recipients of other benefits are no longer allowed to apply for housing allowance.

[63] Germany, Federal Government (2003) Wohngeld und Mietenbericht 2002, available at: http://dip.bundestag.de/btd/15/022/1502200.pdf (24.05.2006), p. 35

[64] Krummacher, M. (2004) „Kommunale Integrationspolitik und interkulturelles Quartiersmanagement in multiethnischen Stadtteilen“ in: Treichler, A.; Cyrus, N. (eds.) Handbuch Soziale Arbeit in der Einwanderungsgesellschaft, Frankfurt a. Main: Brandes & Apsel, pp. 269-291, p. 258. In NRW there are many local Anti-Discrimination Offices (ADBs). These can be found on the website www.nrwgegendiskriminierung.de (24.05.2006) by clicking on their respective links.

[65] Berlin, Decision of the Senate, Berlin (25.01.2005), available at: www.berlin.de/imperia/md/content/sengsv/intmig/doku/senatsbeschluss_disk.pdf (24.05.2006)

[66] Clayton, D. (2001) Antidiskriminierungsarbeit in Nordrhein-Westfalen. Ergebnisse der Evaluation der mit Landesmitteln geförderten Antidiskriminierungsprojekte, Solingen: LzZ NRW, p.54. In addition to these predominantly migrant-oriented centres, the tenant and consumer protection agencies (and also the accommodation agencies themselves) serve as counselling and complaint centres (sometimes only for members) in conflicts regarding the housing sector e.g. when seeking accommodation or in disputes over rent. However, these issues will not be discussed any further here.

Anti-discrimination offices and bodies register the cases in which they provide support or which are reported them. However, these statistics do not allow general conclusions to be drawn concerning the extent of discrimination in Germany, due to the fact that they have been compiled locally or regionally and on the basis of different categories and methods. Even though some centres differentiate between different areas of discrimination (e.g. housing, neighbourhood), there is hardly any information on the nature of discrimination or on the groups affected in housing. As a consequence, it is impossible to make defendable statements on the development of housing discrimination.

3.3. Changes in significant good practices

Projects of the programme "Social City"

The joint Federal and State programme "Social City" (*Soziale Stadt*) was established in 1999 with the aim of combating increasing poverty and inequality in German cities connected with the emergence of particularly disadvantaged neighbourhoods. The programme areas are selected in accordance with criteria such as unemployment rate, the proportion of recipients of social welfare and of foreigners in a certain neighbourhood. Between 1999 and 2004 the Federal Government provided financial aid of more than € 400 million. Together with the funding from the federal States and municipalities, supported areas received € 1,200 million. For the year 2005 the Federal Government allotted € 71.4 million for projects and measures within the framework of the Social City programme.[67] By the end of 2005, 392 areas in 267 municipalities were being supported.[68] The programme "Social City" was further institutionalised in 2004 when it was incorporated into the Federal Building Code on Special Urban Development Law (*Baugesetzbuch zum besonderen Städtebaurecht*).[69]

Generally speaking, projects in the programme areas aim at improving the living conditions both regarding their concrete housing and living conditions and their social situation (education and employment).

In the beginning, most projects did not focus on migrants as their main target group. But the practical work in the neighbourhoods has shown that migrants call for specific and explicit approaches. Therefore and due to the fact that the spatial segregation has become a core topic in the public debate on integration of migrants, the projects with an explicit focus on migrants increased between 2000 and 2005. In 2005, the integration of migrants officially became an

[67] Germany, Federal Government (2004) *Nachhaltige Stadtentwicklung – ein Gemeinschaftswerk. Städtebaulicher Bericht der Bundesregierung 2004, p 97*

[68] www.sozialestadt.de/gebiete/ (06.04.2006)

[69] Aehnelt, R. et al. (2004) Interim Appraisal of the Federal-Länder-Programme 'Districts with special development needs – the Social City' ('Soziale Stadt'). Short version, Berlin: Institut für Stadtforschung und Strukturpolitik GmbH – IfS, p. 5, available at: www.sozialestadt.de/en/veroeffentlichungen/evaluationsberichte/zwischenevaluierung-2004/pdf/DF8635-english.pdf (24.05.2006)

explicit focus of the programme.[70] It is to be emphasised that "Social City" projects do not aim directly at combating segregation, but at improving the socio-spatial integration of migrants.

At first these migrant-related projects were predominately focused on conflict management and on intercultural and interactive concepts.[71] But over the years these community-related measures have been associated with educational and employment measures: the extension of neighbourhood schools into integration and meeting centres and the support of the local and ethnic economy are now the focus of the neighbourhood management.

According to the interim evaluation (2004), the socio-economic situation (e.g. unemployment rate and number of social welfare recipients) in the subsidised neighbourhoods has not improved thus far. However, positive changes occurred in the quality of the flats, the neighbourhood environment, the cleanliness and security in public areas as well as in the "mood among the residents"[72] and in their increased level of identification with the neighbourhood.

Other good practices

Whereas the number of projects focusing on the socio-spatial integration of migrants has increased, the number of measures aiming to **avoid segregation** seems to have dropped.[73] Other projects aim at establishing new forms **living together on an intercultural basis**. This was realised, for instance, by a housing company in the project "Habitat: International Living in Kronsberg" or by the private housing cooperative MiKa. In both projects the inhabitants are obliged to agree on the project principles of tolerance, non-discrimination and non-racism.

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[70] Germany, Federal Ministry of Transport, Building and Urban Development (2005) *Verwaltungsvereinbarung über die Gewährung von Finanzmitteln des Bundes an die Länder nach Artikel 104a Absatz 4 des Grundgesetzes zur Förderung städtebaulicher Maßnahmen*, p. 9, available at: http://www.sozialestadt.de/programm/grundlagen/DF9371.pdf (24.05.2006)

[71] The establishment of a pool of mediators among employees of administrative bodies was as successful as the creation of green spaces in the neighbourhood. Neighbourhood offices or houses as intercultural meeting points, neighbourhood festivals on a regular basis as well as neighbourhood newspapers or neighbourhood TV are important measures to improve the mood of the inhabitants, to strengthen social cohesion and the identification with the neighbourhood.

[72] Aehnelt, R. et al. (2004) Interim Appraisal of the Federal-Länder-Programme 'Districts with special development needs – the Social City' ('Soziale Stadt'). Short version, Berlin: Institut für Stadtforschung und Strukturpolitik GmbH – IfS, available at: www.sozialestadt.de/en/veroeffentlichungen/evaluationsberichte/zwischenevaluierung-2004/pdf/DF8635-english.pdf (24.05.2006), p. 12

[73] One good practice project that aimed at avoiding segregation was conducted in Münster: This German-Dutch INTERREG-project aims to ensure that every newly arrived ethnic German finds a place to live in those neighbourhoods which do not display any tendencies of segregation. To reach this aim, the City of Münster offers personal assistance for ethnic Germans which include an individual integration plan. (www.muenster.de/stadt/zuwanderung/interreg.html (24.05.2006)

The **ownership of migrants** in the housing sector is gathering greater awareness in the public debate. But initiatives and measures are rare. There is a considerable lack of advice offered to assure that migrants have access to general financing programmes and credits. A positive example is the project on "Tapping Financial Resources and New Target Groups through Ownership-Oriented Corporation".[74] It aims at assisting the current tenants of four building complexes in Berlin (owned by a municipal housing corporation) that are due to be privatised, to become the owners of the buildings within the framework of a private housing cooperative.

There are no significant measures which strive at counteracting **Roma** housing exclusion in Germany.

3.4. Are these developments driven by EU, national or local policy?

Municipal policy which aims at improving socio-spatial integration on a local level has had the most immediate impact on measures combating ethnic and racial discrimination and promoting equality in the realm of housing. This is also due to the concept of municipal autonomy ("*kommunale Selbstverwaltung*") in Germany. Municipalities have relevant degrees of autonomy to organise their administrative structures, to recruit personnel, to plan and execute social, economic, cultural and migrant integration policies. [75]

However the general framework for the development in the field of housing is often given by national policies, e.g. concerning social housing and housing allowance, but also the programme directives of the Federal and State programme "Social City".

EU-policy has influenced national and local policies rather indirectly. The Urban Community Initiative (URBAN I), first launched in 1994, served – to some extent – as a model for the "Social City" programme, which started in 1999. Furthermore several projects in "Social City" areas are co-financed by means of the ESF[76].

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[74] *Erschließung finanzieller Ressourcen und neuer Zielgruppen durch eine eigentumsorientierte Genossenschaft* (Germany, Federal Office for Building and Regional Planning (ed.) (2005) ExWoSt-Informationen "Modelle genossenschaftlichen Wohnens: Erschließen von Genossenschaftspotentialen", No. 1 05/2005, p. 5)

[75] Unpublished speech by Prof. Friedrich Heckmann held at the expert workshop "Challenges for Local Integration Policy in the U.S. and in Germany" on April 24th, 2006 in Berlin (http://web.uni-bamberg.de/~ba6ef3/taggmf8e.htm (24.05.2006)

[76] e.g. projects financed by "Lokales Kapital für soziale Zwecke" LOS. Programmschwerpunkt "Lokales Kapital in der Sozialen Stadt" supported by the Federal Ministry for Families Affairs, Senior Citizens, Women and Youth and the EU by means of the ESF. (Erfahrungsaustausch im Saarland. Dokumentation Nr. 5: Förderfibel zum Bund-Länder-Programm „Soziale Stadt" (2006), p. 9, available at: www.sozialestadt.de/gebiete/dokumente/DF7607.pdf (24.05.2006))

4. Legislation

4.1. Legal developments addressing racial and ethnic discrimination focusing on the following key issues

a) Legal procedures available to victims of discrimination

Explicit legal procedures available particularly to victims of ethnic discrimination do not exist in Germany. A general law concerning **crime victims** was introduced in 2004: The Law on the Improvement of the Rights of Victims in Criminal Proceedings (*Opferrechstreformgesetz*, OpferRRG)[77], which contains legal amendments mainly in the Criminal Procedure Code (*Strafprozessordnung*, StPO), generally strengthens the legal options of the victims. Human rights experts evaluated the introduction of this law as an important step on the way to more rights for victims of racist crimes.[78] However, victims of (ethnic) discrimination hardly benefit from the amendment since discrimination is hardly covered by the Criminal Code.

In the realm of **employment** the process of dealing with complaints is ruled by the Industrial Relations Act (BetrVG); these regulations also cover cases of racism or ethnic discrimination in the company; however, they have not been introduced during the period under analysis. Since the 2001 amendment of the BetrVG, work councils and employers can adopt **Voluntary Industrial Relations Agreements** on the "integration of foreign employees as well as the fight against racism and xenophobia in the company" (§88 No. 4). Although several companies had introduced such anti-discrimination codes of conducts before 2001, the extension of the law led to a stronger legal basis for such

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[77] *Bundesgesetzblatt*, 2004, Part I, No. 31, pp. 1354-1358, available at: http://www.bgblportal.de/BGBL/bgbl1f/bgbl104s1354.pdf (24.05.2006) the law came into effect on September, 1, 2004.
The amended law expands the victim's legal options to make claims for compensation and damages valid within the criminal proceedings. The possibility of incidental action is extended by the new law; in addition, the possibility of a victim being granted a lawyer is increased. Furthermore, the right to information on the part of the victim (e.g. concerning civil claims or the result of the proceedings) has been strengthened. According to the expanded section 406h StPO (Art.1 No. 22 OpferRRG), the victim shall receive "the possibility to obtain help and support also from victim support institutions". Another relevant amendment concerns the medical examination of victims (§81d StOP; Art. 1 No. 3 OpferRRG): In order to pay attention to the victim's feeling of shame, the victim has to be offered the chance to be examined by a doctor of the same sex.

[78] Unpublished speech by Bernward Ostrop, member of the executive board of Amnesty International Germany, ("*Diskriminierung als gesellschaftliches Problem*") held at the conference "Reform des Diskriminierungsschutzes in Europa – Wo steht Deutschland?" in June 2004 in Berlin.

internal agreements, which contain concrete provisions on how to process complaints of discrimination.

b) Changes in the availability of legal assistance to victims

The infrastructure of legal assistance to victims of either ethnic discrimination or xenophobic violence has been – and still is – weak in Germany.

Over the past ten years some improvements occurred mainly within the framework of the offers and initiatives of some NGOs and municipal authorities. Legal assistance provided by **NGOs** is usually restricted to counselling and support for the victims at court and transferring the victims to professional legal help by lawyers and does not include professional legal assistance. In some cases, like for instance in the antidiscrimination office Cologne (ADB Köln), legal assistance can be brought in from outside, if need. In principle, the same is true for legal assistance offered by public, predominately **local authorities**, though the level of legal assistance seems slightly higher.

During the 1990s specialised **non-governmental** anti-discrimination offices were established in some cities or regions[79], particularly in the Western federal states – partly explicitly referring to the racist riots and the increase of xenophobic incidents in the early 1990s (Rostock, Mölln, Solingen). However, this positive development seems to have slowed down in the new decade: During the period under analysis only very few new anti-discrimination offices which provide (legal) support to victims of ethnic discrimination have been founded; the financial situation of existing offices has remained weak and precarious in most cases. In NRW and Berlin some of these NGOs have set up an anti-discrimination network to make use of synergy effects ("NRW against Discrimination"[80], "Antidiscrimination Network Berlin"[81]).

Apart from these NGOs, **municipal authorities** in several German cities have established a specialised unit or department within the administration which deals with discrimination complaints and offers legal assistance to victims of ethnic discrimination (e.g. Frankfurt, Munich, Hanover). The number of communities which have set up such departments or offices seems to have slightly increased over the past few years.

The Office for Multicultural Affairs (AMKA) in the Frankfurt municipality represents a good practice example due to its high level of institutionalisation, its strong legal basis and its possibility to call in a lawyer from the Legal Department of the City of Frankfurt if professional legal advice is required. The mandate and impact of AMKA in the context of discrimination complaints has

[79] Some examples are: ÖgG e.V. (Cologne), IBIS e.V. (Oldenburg), ARIC e.V. (NRW and Berlin), ADB Berlin e.V. and ADB Sachsen e.V. (Saxony)
[80] www.nrwgegendiskriminierung.de (24.05.2006)
[81] www.adnb.de (24.05.2006)

been increased over the year, especially with the enactment of the Antidiscrimination Decree of the City of Frankfurt in 2003.[82]

In only very few cases (e.g. Brandenburg and Berlin) public bodies in charge of discrimination complaints operate not only at municipal level, but at **federal state level**: In early 2005 the Berlin-based Centre against Discrimination (*Leitstelle gegen Diskriminierung*) was set up as a public authority under the Commissioner of the Berlin Senate for Integration and Migration; up to now, it is the only anti-discrimination body in Germany which is specifically empowered by state legislation.[83] In legally complex cases, the Centre can make use of professional legal advice offered by lawyers. [84]

The offer of legal assistance for victims of racist and extreme right-wing violence (including verbal insults and harassment) has hardly been institutionalised in Germany and, thus, has remained rather **weak** for the relevant period. In East Germany the infrastructure of assistance is clearly better than in Western Germany.

Whereas in Western Germany legal assistance for victims of racist attacks is barely existent and the **general victim support organisations** (e.g. *Weißer Ring¸ Arbeitskreis der Opferhilfen in der Bundesrepublik Deutschland e.V.*) are the only organisations which offer legal assistance to victims of crimes, the situation in the Eastern states has clearly improved since 2001. This improvement is primarily due to the funding opportunities within the action programme "Youth for Tolerance and Democracy - against Right-Wing Extremism, Xenophobia, and Antisemitism" which were established by the Federal government in 2001. One element of this action programme is the

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[82] Established in 1989, AmkA was officially granted the function of an anti-discrimination office in 1993 (Municipal Decree no. 1352; 02.08.1993); with the Antidiscrimination Decree of the City of Frankfurt (2003), the status of anti-discrimination work was further enhanced. (Hesse, Stadt Frankfurt am Main (2003) *Antidiskriminierungsrichtlinie der Stadt Frankfurt am Main*, available at: www.frankfurt.de/sixcms/media.php/738/ADR%20Aktuelle%20Faltblatt%20Oktober%2003.pdf (24.05.2006)

[83] According to the Decision of the Senate on 25 January, 2005 (SB 2359/05), the new Centre is created to pursue the effective fight against discrimination (on the grounds of ethnic origin, religion or belief) in the public and all social spheres. (Berlin, Decision of the Senate, Berlin (25.01.2005), available at: www.berlin.de/imperia/md/content/sengsv/intmig/doku/senatsbeschluss_disk.pdf (24.05.2006)

[84] NOTE: This report was compiled in 2006; the organisational anti-discrimination landscape has changed significantly since 2006: The federal anti-discrimination body ADS (Article 13 equality body) was installed in August 2006, and the Berlin State Centre against Discrimination was transformed into the new *Landesstelle für Gleichbehandlung – gegen Diskriminierung* [State Body for Equal Treatment – against Discrimination] in April 2007. Furthermore, other NGO anti-discrimination bodies have been founded, most importantly the non-governmental association advd, which constitutes the first nation-wide umbrella association currently composed of ten independent non-governmental anti-discrimination and migrant organisations and other institutions engaged in this field

programme CIVITAS which provides financial means to projects and initiatives against right-wing extremism, xenophobia and antisemitism in Eastern Germany. "Support for Victims of extreme right-wing crimes and violence in Eastern Germany" is listed as one particular funding field. Within the framework of CIVITAS, eight **victim support organisations** in Eastern Germany have been supported since 2001. Their support offer encompasses, among others, "legal and psycho-social assistance and counselling (…) for people concerned by right-wing violence"[85].

In late 2000, two organisations or networks of lawyers were founded with the objective to offer specialised and professional legal assistance to victims of extreme right-wing crimes:

On December 2000, the German Lawyers' Association (DAV) established the foundation **"DAV against Rightwing Extremism and Violence"[86]** which set up a special fund to financially support legal assistance and legal representation of the victims. The foundation helps the victims to find specialise lawyers and covers the costs of the legal proceeding. Since 2001, the foundation was approached in 140 cases reaching from racist insults to murder. In 2005, 25 cases were brought to the foundation, of which 18 were granted financial support. According to its Activity Report 2005, xenophobic incidents play a quantitatively important role in its work.[87]

The network **"Lawyers against Right-wing"** was also set up in late 2000 with the aim to counteract right-wing and xenophobic tendencies with legal means. Several lawyers agreed upon a list of commitments, for instance, to offer legal assistance to victims of right-wing violence (including racial insults and discrimination) free of charge. However, this network ceased to operate in 2003 due to a lack of funding and time capacity of the people engaged.[88]

It is also to be mentioned that, since 2004, the police is obliged by law (*OpferRRG*, see above) to provide information on specialised victim counselling and victim protection organisations. Victims of *racist* crimes are, however, not explicitly mentioned.

c) Success rates of litigation due to the new aspects introduced by the Race Equality Directive

The Race Equality Directive has still not been transposed into national law. Consequently the impact of the directive on litigation is very slim. There has been at least one court case in which the indirect validity – in particular the

[85] www.jugendstiftung-civitas.org/index.php?action=opferberatung.htm&es=10_9 (07.04.2006)

[86] www.anwaltverein.de/03/02/2000/32_00.html (08.04.2006)

[87] DAV Stiftung gegen Rehtsextremismus und Gewalt (o.J.), Tätigkeitsbericht 2005 available at: www.anwaltverein.de/01/Taetigkeitsbericht2005.pdf (20.04.2006)

[88] Response to a NFP inquiry (April 10, 2006), the person in charge of the „Lawyers against Right-wing" informed the NFP Germany that the the members of the network are planning to put more time into the network and reactivate it again (Email by Horst Roosen, April 10, 2006).

concept of "instruction to discriminate" – of the un-transposed, but overdue EU Directive played a decisive role at a German court. [89] According to the respective ruling of a court of second instance, the orders by a superior not to employ any more Turks were not legal as the EU anti-discrimination directive is already valid, although it has not been transposed into national law yet.[90]

d) Legal understanding of the approach to racial harassment

Racist harassment is still no common legal concept in Germany.[91] Only very rarely, the ban of racial harassment is explicitly mentioned in Voluntary Industrial Relations Agreements, e.g. the agreement of the galvanisation company Vogt & Müller (30.11.2001) or of the catering company EUREST Deutschland (25.06.2004).

The aforementioned public Centre against Discrimination established under the Commissioner of the Berlin Senate for Integration and Migration in 2005 explicitly uses the definition of harassment in accordance with the EU anti-discrimination directives.[92]

e) Number of legal procedures regarding racial or ethnic discrimination.

No statistics on or systematic collections of legal procedures regarding racial or ethnic discrimination are (publicly) available in Germany. Generally speaking, the number of court cases which deal with ethnic discrimination is very low due to the lack of clear antidiscrimination provisions in the German law. However, there are official figures on the number of preliminary proceedings related to supposedly extreme right-wing and/or xenophobic offences.

The following table shows the quantitative development of such proceedings regarding §§ 86 and 86a Criminal Code (distribution of propaganda material and usage of anti-constitutional symbols) and §§ 130 and 131 Criminal Code (Agitation of the people and Representation of violence):

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[89] The validity of un-transposed, but overdue EU directives for public bodies, including the national courts, is based on the ruling of the European Court of Justice C-397/01 to C-403/01 (Pfeiffer).

[90] Germany, Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration (2005) Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration zur Lage der Ausländerinnen und Ausländer in Deutschland. Berlin, pp. 323-324

[91] Some legal sources contain provisions which aim at banning insults in general or – more specific – sexual harassment; the Criminal Code (*StGB*), for instance, contains a provision which aims at banning sexual harassment (§177) and insult (§185).

[92] Berlin, Leitstelle gegen Diskriminierung (2005) *Guidelines concerning the processing of complaints on discrimination*, Berlin; available at: www.berlin.de/sengsv/auslb/leitstelle_beschwerden.html (18.07.2005)

Tab. 6: Preliminary proceedings related to supposedly extreme right-wing and/or xenophobic offences

	1999	2000	2001	2002	2003
§§ 86, 86 a StGB	10,966	15,824	19,875	14,171	12,554
§§ 130, 131 StGB	2,533	5,672	4,746	3,334	3,123

Source: Germany, Bundestag, printed matter 14/8703 (26.03.2002) and 16/1353 (27.04.2006)

In some of the companies which have adopted voluntary agreements or codes of conducts on antidiscrimination a reporting system has been established and cases of (discrimination) complaints are registered (e.g. Fraport AG, EUREST). However, these reports, statistics or documentation are not publicly available.

The availability of information is slightly better in the case of public antidiscrimination bodies within the municipal authorities: In some cases, annual reports are published (e.g. AmkA in Frankfurt) in which the number of discrimination complaints are made publicly available. However, these cases are usually not related directly to legal procedures, but to various forms of intervention and assistance by the public body.

4.2. Are these developments driven by EU, national or local policy?

EU policy has a low impact on these developments mainly due to the fact that Germany has not yet transposed the respective EU directives. In some cases a reference is made to these directives. The most significant examples are the two public antidiscrimination bodies in Frankfurt (AmkA) and Berlin (Centre against Discrimination): The Antidiscrimination Decree of the City of Frankfurt (2003) explicitly refers to the directive 2000/43/EC; furthermore the Frankfurt decree closely follows the definitions of direct and indirect discrimination from the directive. The Berlin Centre against Discrimination is legally based on a Senate Decision which also explicitly refers to, among others, the EU Race Equality Directive. The Centre itself uses a definition of direct and indirect discrimination as well as harassment which is in accordance with EU policy.

The foundation of some anti-discrimination offices, such as the *ADB Sachsen* in Leipzig (set up in spring 2004), was driven by the expectation that the EU directives will be transposed soon.

In addition, some Voluntary Industrial Relations Agreements contain a reference to the directive 2000/43/EC, to Art. 13 of the EU Treaty and/or to the Florence Declaration[93].

Local and – even more – national incidents seem to have a much bigger impact. The increase of xenophobic and racist violence in 2000 has led to a (temporary) shift in the public awareness of discrimination and xenophobia. As a result, the federal government launched its action programme "Youth for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia, and Antisemitism" which contribute to set up a series of relevant initiatives with sustainable impact, e.g. the CIVITAS-supported victim support organisations in Eastern Germany.

[93] Florence Declaration / UNICE, EGB, CEEP (1995) "Joint Declaration of the European Social Partners on the Prevention of Race Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace, Signed on 28 October 1995", available at: http://ec.europa.eu/employment_social/social_dialogue/docs/3001_19951021_jointopinion_empl1995_en.pdf (24.05.2006)

5. Education

The responsibility for the education system in Germany lies with the responsibility of the federal States. Hence, nationally standardized regulations regarding policies and practices hardly exist.

5.1. Official/non-official data collection mechanisms on incidents of racism/discrimination

During the period under analysis, the mechanisms on data collection concerning xenophobic incidents at school have slightly improved. Nevertheless, the data situation on incidents of racism and – even more – on cases of discrimination in education remains weak.

Extreme right-wing incidents at schools are only registered and published in two federal states. In **Brandenburg**, incidents with an extreme right-wing background have had to be gathered by every school and reported to the state school board since 2001.[94] The Berlin Senate Administration for Education, Youth and Sports requires all **Berlin** schools to report cases of violence and extremism (since 1992). These figures, which also contain information on antisemitic and xenophobic incidents, are published on an annual basis.[95]

Most recently, in some federal States the official police statistics on politically motivated crimes are used to gain information on xenophobic incidents at school. In Saxony (2005) and Saxony-Anhalt (2006) respective data were analysed and made public through parliamentary inquiries.[96]

[94] The obligation of Brandenburg schools to collect such information is based on the circular on 'Regulatory principles referring to the concept against violence, right-wing extremism and xenophobia' (2001) from the Ministry of Education, Youth and Sport, Brandenburg, Ministerium für Bildung, Jugend und Sport, *Rundschreiben 03/01 (16.01.2001) Ordnungsrechtliche Grundsätze zum schulischen Konzept gegen Gewalt, Rechtsextremismus und Fremdenfeindlichkeit*

[95] Berlin, Senatsverwaltung für Bildung, Jugend und Sport (2005), *Bildung für Berlin. Gewaltsignale an Berliner Schulen 2004/2005*. Berlin, available at: http://www.sensjs.berlin.de/schule/gewaltpraevention/verstehenundhandeln_7.pdf (16.11.2005)

[96] Sachsen, Parliamentary Inquiry, printed matter 4/1170 (04.05.2005); Sachsen-Anhalt, Parliamentary Inquiry, printed matter 4/2675 (06.03.2006)

The Federal Ministry of Education and Research publishes the results of a survey on **further education** in Germany every three years. This reporting has been significantly improved during the period under analysis: After having introduced nationality specifications in 1997, the official report on further education has offered additional information on the migration background since 2005.[97]

The criterion of migration background is also taken into account in the (international) OECD study PISA which is an important source of information for the analysis of educational attainment and inequalities in the educational system.

5.2. Major trends regarding policies or practices discriminating against vulnerable groups

The general level of *direct* discrimination in the German school system seems quite low, nevertheless, the striking disparities between German and non-German pupils and between pupils with and those without a migration background indicate the persistence of a lack of support for migrants, i.e. *indirect* discrimination. This assessment was confirmed most recently by the special analysis of the PISA study conducted by the OECD.[98]

Roma children are also subject to these indirectly discriminatory mechanisms in the education system; however, due to a lack of data, it is not possible to prove that Roma are more affected than other migrant or minority groups. However, certain groups of refugee children face additional unequal treatment in a few federal states.

a) Access to education, educational attainment, drop out rates

Access to education for refugee children

Between 2000 and 2005, five federal states amended their school laws in order to expand the obligation of school attendance to all refugee children.[99] As a consequence, in late 2005, all children – including refugees whose asylum application has not yet been decided upon and children with a toleration status – are legally obliged to attend school in almost all federal states, except from the following.

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[97] Germany, Federal Ministry of Education and Research (2005), *Berichtssystem Weiterbildung IX.*, available at: www.bmbf.de/pub/berichtssystem_weiterbildung_9.pdf, (05.10.2005)

[98] OECD (2006) *Wo haben Schüler mit Migrationshintergrund die größten Erfolgschancen. Eine vergleichende Analyse von Leistung und Engagement in PISA 2003. Kurzzusammenfassung*, available at www.oecd.org/dataoecd/52/53/36702236.pdf (16.05.2006)

[99] Harmening, B. (2005a) "Schulpflicht …nur noch 3 Länder ohne" in: *Infodienst des Arbeitskreis Asyl Rheinland-Pfalz*, Dezember 2005, Nr. 64, p. 28, available at: www.asyl-rlp.org/infodienst-online/infodienste/Infodienst64_web.pdf (24.05.2006)

In **Hesse**, children with a toleration certificate have the right to attend school, but are not obliged to do so. In **Baden-Württemberg**, children of asylum applicants and those with a *short-term* toleration status are not subject to compulsory schooling. In **Saarland**[100], children whose parents' asylum application has been rejected and who have only been granted a *short-term* toleration certificate do not even have the right to attend school.[101]

Discriminatory effects of the German education system

Despite the low level of direct discrimination, the German education system "produces" clear disparities between German and non-German pupils. This is reflected by the foreign pupils' over-representation in secondary modern schools (*Hautptschule*), their lower level of educational attainments and higher drop-out rates.

[100] Saarland, Parliamentary Inquiry, printed matter 13/716 (30.12.2005)

[101] Regulations which deny compulsory schooling (can) have a restrictive impact on access to schooling. Individual schools can more easily refuse to accept those children for "reasons of school capacity" or exclude them from class (e.g. for disturbing the class). (Klingelhöfer, S.; Rieker, P. (2003) Junge Flüchtlinge in Deutschland. Expertise zu vorliegenden Informationen, zum Forschungsstand und zum Forschungsbedarf. Halle: DJI, p.18) In addition, refugee families may have to pay for school books or for their children's use of public transport to travel to school, whereas pupils who are obliged to attend school usually enjoy the right of teaching materials free of charge and receive financial support (Harmening, B. (2005b) "Wir bleiben draußen". Schulpflicht und Schulrecht von Flüchtlingskindern in Deutschland, Osnabrück: terre des hommes)

Tab. 7: Qualifications achieved by Germans and migrants upon leaving schools providing a general education from 2000 to 2004

Type of qualification	2000		2001		2002	
	Germans	migrants	Germans	migrants	Germans	migrants
	in %	in %	in %	in %	in %	in %
without *Hauptschule* qualification	8.3	19.9	8.7	20.2	8.2	19.5
Hauptschule qualification	24.1	40.2	24.2	39.6	24.1	40.8
Intermediate school leaving certificate	40.8	28.9	41.7	28.9	41.3	28.8
A- level	26.9	11.0	25.5	11.4	26.4	10.9
Total	100.0	100.0	100.0	100.0	100.0	100.0

Type of qualification	2003		2004	
	Germans	migrants	Germans	migrants
	in %	in %	in %	in %
without *Hauptschule* qualification	7.9	19.2	7.4	18.1
Hauptschule qualification	24.5	41.5	23.5	40.9
Intermediate school leaving certificate	41.6	29.1	43.7	30.8
A- level	26.0	10.2	25.5	10.2
Total	100.0	100.0	100.0	100.0

Source: Federal Statistical Office

The reasons for these disparities are complex: the pupils' social background plays an important role, and migration-related issues (e.g. low proficiency in German) seem to further aggravate their education achievement. Furthermore, language support programmes for migrant pupils with a lower proficiency in German still seem to be insufficient – despite significant improvements.

This complexity of intertwined reasons for the low educational attainment has been confirmed by various studies – most recently by the special analysis of the 2003 PISA study[102] This analysis also indicated that "institutional factors may play a role, including grade retention, tracking decisions [and] referral to special

[102] OECD (2006) *Wo haben Schüler mit Migrationshintergrund die größten Erfolgschancen. Eine vergleichende Analyse von Leistung und Engagement in PISA 2003. Kurzzusammenfassung*, available at http://www.oecd.org/dataoecd/52/53/36702236.pdf (16.05.2006)

education programmes"[103]. In the German education system, the early tracking decisions (after the fourth grade) are assessed negatively due to the fact that it leads to a high concentration of socially disadvantaged pupils and migrant pupils in the lowest educational track – the secondary modern school – where these pupils can hardly be supported effectively.

The rigid education system in Germany has been made partly responsible for the disadvantaged position of migrant pupils before. The study on "Institutional Discrimination" by Gomolla and Radtke (2002) identified several major educational intersections in the school system where migrant pupils often face "institutional discrimination", one of them being the transition between primary to secondary education.[104]

b) Segregation (special schools, separate classes, etc.)

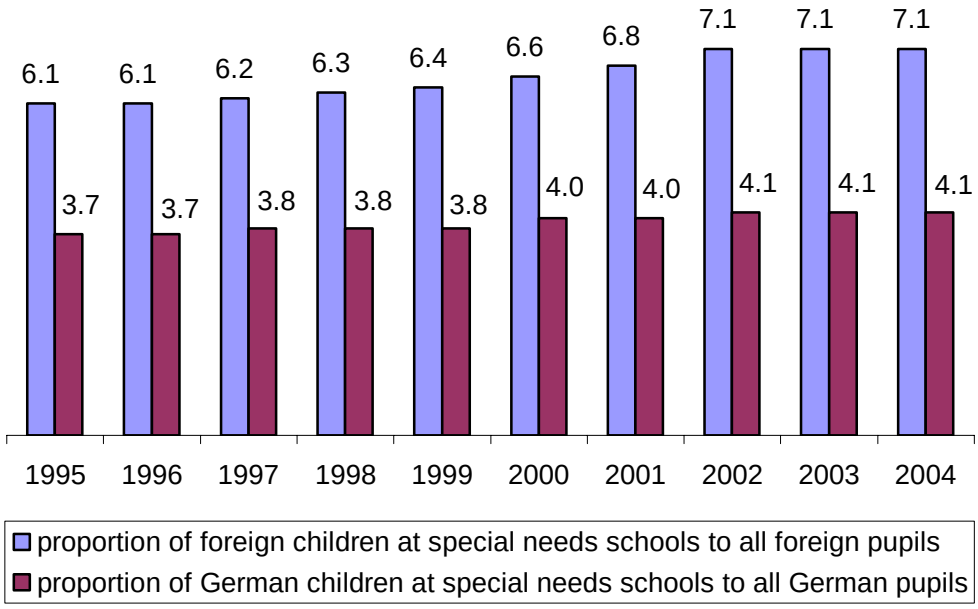
The fact that non-German pupils have been (and still are) severely over-represented **in special needs schools** (see Graph 8) is often referred to as a result of a discriminatory practice. According to Gomollo and Radtke this practice represents one aspect of "institutional discrimination" within the German education system.[105] It is likely that migrant pupils are often referred to special needs schools on the basis of migration related difficulties in school (e.g. lack of language proficiency and related problems).

[103] OECD (2006) *Where immigrant students succeed. A comparative review of performance and engagement in PISA. OECD briefing note for Germany*, pp. 7, 10-11; Tegtmeier, S. (2006) „Das Armutszeugnis", in: *taz* (16.05.2006), p. 3

[104] Gomolla, M., Radtke, F-O. (2002) Institutionelle Diskriminierung. Die Herstellung ethnischer Differenz in der Schule, Opladen: Leske+Budrich. The other two crucial intersections in the educational career is when starting school (with a higher risk of migrants to be turn down for school enrolment) and – in some cases – when pupils are transferred to special needs school (often for language-related education failure in the regular school).

[105] Gomolla, M., Radtke, F-O. (2002) Institutionelle Diskriminierung. Die Herstellung ethnischer Differenz in der Schule, Opladen: Leske+Budrich

Graph 8: Proportion of all pupils (Germans and foreigners) at special needs schools in %



Source: Federal Statistical Office

Special classes for migrant pupils with insufficient German proficiency do exist in most federal States. Migrant pupils are referred to these classes only for a limited period of time with the intention of improving their German skills more effectively and, by doing so, fully integrate them into the regular classes again.

c) Mother tongue instruction

In order to address the pressing problem of migrant pupils' insufficient German proficiency some federal states have decided to put more effort in imparting German language skills and simultaneously to reduce or even cease mother tongue instruction. Whether this shifted focus of language support measures can be described as discriminatory remains open to interpretation.[106] Whereas some federal States continue their mother tongue instruction programmes (e.g.

[106] Frings, D. (2004) Die Richtlinie 2000/43/EG des Rates zur Anwendung des Gleichbehandlungsgrundsatzes ohne Unterschied der Rasse oder der ethnischen Herkunft. Regelungsdefizite im Recht der Bundesrepublik Deutschland und Umsetzungsanforderungen nach europäischem Recht, p. 97 available at: http://www.aric-nrw.de/de/docs/pdf/gutachtenwebversion.pdf (23.05.2006)

NRW[107]), there seems to be an overall development towards a cutback of these mother tongue programmes.[108]

d) Other policies and/or practices

Whereas instruction in Christian religions is a regular school subject, Islamic instruction is not taught in any federal state as a "part of the regular curriculum in state schools" in the sense of Art. 7 III Basic Law. Islamic instruction is often offered within the framework of optional teaching in the pupils' mother tongue.[109]

In NRW Islamic religious instruction has already been taught as part of the regular curriculum in which grades are given since 1999 – however, only within the framework of an unlimited school project. In 2005, 120 schools offered the subject Islamic instruction; the NRW Ministry of Education announced its intention to further expand this subject. Meanwhile, several federal states (e.g. Lower Saxony, Bremen, Baden-Württemberg, Hesse, Bavaria) launched (model) projects to introduce Islamic education as a regular subject. During the past three years many of these projects have been or are about to be expanded.[110] Islamic religious education is mostly offered by imparting knowledge about Islam, i.e. the Islamic faith itself is not taught. However, Baden-Württemberg is planning to introduce Islamic instruction which imparts Islamic faith in 2006.[111]

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[107] NRW reorganised their offer in 2003 in order to maintain it as far as possible. (www.bildungsportal.nrw.de/BP/Schule/System/Faecher/Muttersprache/index.html (24.05.2006))

[108] The Bavarian government decided in 2004 to discontinue mother tongue instruction within five years and to intensify German language courses instead. (www.km.bayern.de/km/schule/schularten/allgemein/migrantenfoerderung/muetterergaenz/thema/01994/index.shtml (24.05.2006)) In Hesse, mother tongue instruction was transformed from obligatory into voluntary lessons in 2000; since 2002, responsibility for mother tongue instruction lies no longer with the Hessian state, but is given to the consulates (Hessen, Parliamentary Inquiry, printed matter 16/4311, 28.09.2005). In Lower Saxony, the number of lessons in mother tongue instruction will be drastically reduced in 2006 (*taz*, (04.04.2006)).

[109] According to a statutory exemption of the State of Berlin pertaining to Article 7 (33) Basic Law ("Bremer Clause"), in Berlin, the Islamic Federation is allowed to offer religion education within the state schools. According to its own figures, the Islamic Federation registered a rising number of participating pupils most of them being of Turkish nationality. (Gesemann, F.; Kapphan, A (2000) „Islamunterricht an Berliner Schulen", in: *Forum Recht* No. 2/2000, available at: www.forum-recht-online.de/2000/200/200rkgesemann.htm (17.05.2006))

[110] Press release Ministry of Education NRW, (32.02.2005), available at: www.bildungsportal.nrw.de/BP/Presse/Meldungen/PM_2005/PM_13_LP/pm_23_02_2005.html (24.05.2006)

[111] Closely linked to the introduction of Islamic education at state schools is the aspect of special university programmes to qualify teachers. Until 2002 programmes for teachers of Islamic religious education were lacking. Similar to the establishment of a chair for "Religion of Islam" at the University of Münster in 2003 (www.uni-

5.3. Changes regarding policies on particular issues related to discrimination or exclusion in education

During the past five years there have been public debates on issues related to discrimination or exclusion in education. In particular the publication of the PISA results by the OECD triggered off broad discussions. Despite these discussions, no systematic policies against exclusion in education were adopted – except the strengthened emphasis on pre-school language support programmes. Very few federal states also recognised the importance of an enhanced information system on right-wing and/or xenophobic or antisemitic incidents at school and adopted respective collection mechanisms (see 5.1.).

Religious symbols and headscarves

Until the beginning of 2004, no legal provisions which ban teachers displaying any religious symbols had been in force in Germany. On September 24, 2003, the Federal Constitutional Court ruled that state governments are entitled to ban Muslim teachers from wearing a **headscarf** at state schools if the state legislature has passed a "sufficiently clear" legal foundation.[112]

Subsequent to this court decision, several state governments have introduced such legal provision, which can be categorised as following:

- In many federal States (e.g. Bavaria, Bremen, Baden-Württemberg[113], Lower Saxony, Saarland) wearing a Muslim headscarf whilst teaching is banned; Christian and Jewish symbols remain allowed.
- In Hesse, wearing a headscarf is banned for state officials in public service as a whole whilst Christian and Jewish symbols are still allowed.
- In Berlin, in some areas of public service (e.g. justice, police service, teaching) the wearing of all noticeable religious symbols – no matter whether Muslim, Christian or Jewish – is banned in general.

In June 2004, the Federal Administrative Court confirmed the respective law in Baden-Württemberg, but pointed out that the ban on religious expression has to be valid for all religions. Unequal treatment for religiously motivated clothing (e.g. a nun's habit) would not be in accordance with the Constitution.[114]

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muenster.de/ArabistikIslam (24.05.2006)), the Universities of Erlangen and Frankfurt introduced temporary chairs for Islamic Religious Education in 2002/03 which were transformed into permanent ones in 2005. (Press release University of Erlangen No. 3996 (27.01.2005))

[112] Germany / BVerfG / 2BvR 1436/02 (24.09.2003)

[113] In Baden-Württemberg Parliament this legal ban of headscarves will be expanded to Muslim employees of pre-schools and kindergarten in 2006 (Press release Baden-Württemberg State Parliament (19.01.2006))

[114] Germany / BVerwG / 2 C 45.03 (24.06.2004)

5.4. Good practice initiatives and/or measures

In the period under analysis measures and initiatives combating discrimination and supporting migrants to improve their success in education have gained increasing importance. [115] In the following we present selected initiatives in education; the vast majority of these measures aim at awareness raising or on pupil, parental or teacher support.

a) Awareness raising

The initiative ***"School against Racism – School with Courage"*** encourages pupils in an increasing number of schools (currently around 280, see graph) to develop and conduct project against violence, discrimination and racism. "Schools against Racism" was initiated by the association *AktionCourage* in 1995 and represents a very successful nationwide anti-racism initiative.[116]

The initiative aims at making young people sensitive to all forms of discrimination and racism as well as promoting their commitment for equality. In addition, the children's and young peoples' democratic attitude and behaviour shall be supported and racist tendencies shall be reduced.

To be awarded the title "School without Racism", at least 70% of all the pupils and teachers of the applying school commits themselves (with their signature) that it will become a central task in their school to develop initiatives and projects against violence, discrimination and racism. The pupils receive information material and assistance by a co-operation network on how to developing their activities. To increase public attention, each awarded school is represented by a celebrity.

Since the year 2000 the number of "Schools without Racism" has strongly increased particularly since 2000/2001. At the end of 2005, there were 259 "Schools without Racism" in Germany.[117]

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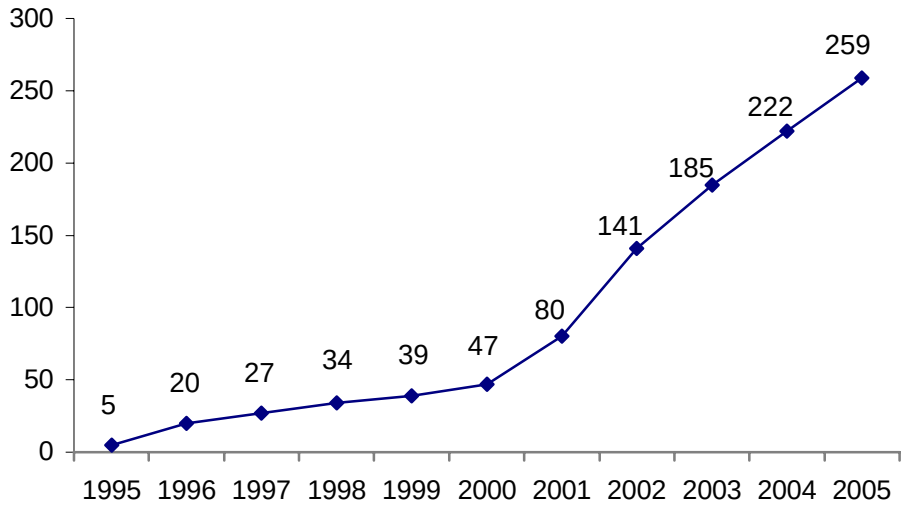
[115] Some federal States issued comprehensive concepts for the integration of migrants in education. In 2005, the State of Lower Saxony issued the decree „Integration and Support of Pupils with a non-German Mother Tongue" which integrates all existing decrees on relevant issues, including some amendments. (http://cdl.niedersachsen.de/blob/images/C9234938_L20.pdf (24.05.2006)) On August 23, 2005, the Berlin Senate agreed on the comprehensive integration concept "Promote Diversity – Strengthen Cohesion", which combines all initiatives of the Senate administration concerning integration policy in Berlin and describes existing and future integration guidelines. The implementation of the programme "Integration through Education" is one core element of the concept (Berlin, Beauftragter für Integration and Migration in Berlin (2005), *Vielfalt fördern – Zusammenhalt stärken*).

[116] The programme is supported by the Federal Ministry for Labour and Social Affairs with funds from the European Social Fund.

[117] www.schule-ohne-rassismus.org/sor-smc-schulen.html (19.05.2006)

Graph 9: Number of "Schools without Racism" (1995-2005)



Source: www.schule-ohne-rassismus.org/sor-smc-schulen.html (25.05.2006)

b) Pupil support

In the period under analysis, the main focus of pupil support measures has been on promoting German language competences.

Pre-school language support programmes of the Federal States

Several federal states have introduced regulations expanding pre-school language support.[118] What all these state regulations have in common is that between six months and one year before schooling begins the children's German language skills are tested. In the case of deficits, the children are recommended or obliged to attend special pre-school language courses.[119]

In Hesse, the first federal state where such a programme was introduced (2002), well above 90% of the children for whom language support was recommended after measuring their linguistic level took part in such a course. According to the Ministry of Education in Hesse, more than 95% of these children managed to "achieve the prescribed linguistic requirements for entering the first grade at school"[120]. The Hesse State government has continuously increased the budget for these pre-school support programmes.[121]

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[118] e.g. Hesse (2002), Hamburg (2003), Lower Saxony (2003), Berlin (2004), Bremen (2005)

[119] In some federal states, the new school laws rule that a child who does not have sufficient German skills at the time when schooling regularly begins has to start school later and is obliged to attend pre-school language courses (e.g. Hesse (§ 58 School law - *HSchuG*), Lower Saxony (*NSchG*, § 54 a II) and Berlin (*SchulG* § 55 II).

[120] Press release Hesse Ministry of Education (17.07.2003)

[121] Hessen, State Government (2005) Entschlossen die Zukunft gestalten – Erfolgreiche Politik für ein modernes Hessen, available at:

National model programme to improve existing language support programmes

The large-scale national model programme "Support of Children and Young People with a Migration Background" (FörMig) supports federal states in improving their existing language support programmes. FörMig is coordinated by the University of Hamburg and funded for a five year period (2004-2009).[122]

The programme aims at promoting innovative projects and approaches in the field of language support and education, evaluating them and facilitating the transfer of good practice in the federal states. FörMig covers three areas:

- Language support based on individual language assessment
- Continuous language support (e.g. linking familial and institutional language education)
- Vocational training and transposition to the labour market

All projects within FörMig pay special attention to language aspects and to the "points of transition" in the education system. The implementation of the programme is built upon "basic units", i.e. local networks ("development partnership"), which involve schools and other institutions. In additional to the project work itself, it is part of all the basic units' task to contribute actively to the transfer of their expertise and experiences, e.g. by specific training measures for multipliers or the establishment and maintenance of Internet access points.[123]

c) Teacher support

Subjects like "intercultural education" and "teaching German as a second language" are not regular elements of the curriculum of the university training for teachers. However, further training measures for teachers on these issues have been developed and conducted. There seem to be a positive trend towards greater awareness of the importance of the special competence of teachers in a multi-ethnic teaching environment.

The most institutionalised regulations for further training on intercultural competence of teachers have been adopted in the State of Hamburg. Since August 2003, teachers in Hamburg have been obliged to take part in further training on the topic of "Intercultural Education". The teaching material used in these courses has been developed within the trans-national COMENIUS

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www.sozialministerium.hessen.de/irj/zentral_Internet?cid=1533b74b6c9014205ca792fd1a9de4d7&DisplayIndex=10 (18.05.2006)

[122] FörMig is funded by the Bund-Länder Commission for Educational Planning and Research Promotion (BLK) with financial support from the Federal Ministry of Education and Research and the ten participating federal states (total amount €12.5 million).

[123] BLK pilot programme "Support for Children and Young Persons with a Migration Background" FÖRMIG, available at: www.blk-foermig.uni-hamburg.de/cosmea/core/corebase/mediabase/foermig/pdf/FoerMig_Programmueberblick_englisch.pdf (24.05.2006)

programme[124]. This material is meant to assist teachers in encouraging pupils to realise the cultural diversity in Europe and to reflect on multilingualism and intercultural communication.

Besides, there are numerous **further educational seminars** are carried out and **teaching material** is being developed on intercultural education either fostering the integration of migrant children in education or combating xenophobia and antisemitism.[125]

Projects which pursue the objective of improving the teachers' competence to actively support the migrant children's proficiency in German mainly concentrate on pre-school teachers. The model project "***frühstart*** German and Intercultural Education in Kindergarten" [126] is one successful example of such a pre-school initiative which aims at supporting pre-school teachers. Pre-school teachers are trained to use innovative methods for promoting language skills amongst migrant and German children. The second module, "Intercultural Education", imparts fundamental knowledge of the children's cultural references and competence of intercultural behaviour. Both pre-school teachers and "parent companions" (*Elternbegleiter*)[127] take part in this training.

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[124] COMENIUS is a part of the Europe-wide SOKRATES programme and aims to improve the quality of school education in the EU member states, to strengthen its European dimension, amongst others, by fostering intercultural awareness, and to combat xenophobia. The further development of teacher training plays a major role in achieving this aim. http://europa.eu.int/comm/education/programmes/socrates/comenius/moreabou_de.html (05.10.2004)

[125] For instance, the Regional Offices for Foreigners' Affairs (RAA) Brandenburg provides teaching material and further training for teachers regarding the examination of right-wing extremism in school (www.raa-brandenburg.de/index.html?/angebote/bb/einfuehrung.html (24.05.2006). Within the framework of the project "Fit machen für Demokratie und Toleranz – Young people deal with Antisemitism", further education programmes for teachers have been offered by the Friedrich-Ebert Foundation and a CD-ROM with teaching materials was developed by the Berlin-based Centre of Research on Antisemitism. (www.tu-berlin.de/~zfa/ (24.05.2006) and Koch-Langwitz, U.; Rump-Räuber, M. (eds.) (2005) Standpunkte 2005. Demokratie stärken. Pädagogische Strategien zur Auseinandersetzung mit Anitsemitismus, Bonn: Friedrich-Ebert-Stiftung, available at: www.fes-landesbuero-berlin.de/doku/InlinefassungStandpunkte2005.pdf (16.05.2006))

[126] www.projekt-fruehstart.de/frames.php (24.05.2006); *taz* (20.01.2004)
The frühstart Project is implemented by the Hertie Foundation, the Herbert Quant Foundation and the German-Turkish Health Foundation and is financed with approximately 500,000 Euro; the research institute efms is conducting the evaluation of the project. Partners in the cooperation are, in addition to the three participating cities (Frankfurt/Main, Wetzlar, Gießen), the Ministries of Education and Social Affairs in Hesse.

[127] These "parent companions" give advice to parents on questions of education (e.g. importance of pre-school and the German education system). They aim to foster the cooperation between teachers and parents and to involve the parents more actively in the educational process of their children. Therefore *frühstart* represents also a "good practice" initiative regarding parental support.

d) Parental support

Various initiatives on parental support aim at improving the language competence of the parents so that they can better support their children in school. The goal of such measures is not only to enable the parents to improve German with their children but also to understand the German education system[128] and to empower migrant parents to have stronger cooperation within the school system (teachers, other parents etc.). The most important initiatives focus on pre-school education. In the following we will present one exemplary good practice project on pre-school parental support:

HIPPY (*Home Instruction for Parents of Preschool Youngsters*) is an approach that is offered in many German cities (e.g. Berlin, Bremen, Munich, Nuremberg), mostly by charitable organisations. The programme is about assisting parents in teaching their pre-school children at home. Supported by the HIPPY teaching material, home visits and group meetings, HIPPY parents are encouraged to learn German at home with their children. The parents are trained by volunteers (who often also have a migrant background and the same mother tongue). The parents teach their children about 15 minutes per day with the material provided by HIPPY. During the weekly meetings with the volunteers or in regular meetings with other parents experiences can be exchanged and problems can be discussed, i.e. HIPPY also promotes social contacts for the parents.

e) Financial aid for pupils

Financial aid for migrant pupils is rare and only given within the framework of one of the very few scholarship programmes for migrants.[129]

Within the ***START*** project[130], initiated by the *Hertie* Foundation in 2002, participants are not only supported by special educational training courses and contacts to universities and companies, but they also receive €100 per month for educational material and a computer. This scholarship programme targets at young migrants (grade 8 to 13) who display an above-average performance at school and a remarkable social engagement, and come from families with low financial and education-relevant resources. By the end of 2005, more than 120 young migrants have been supported by the scholarship programme. The support period is one or a maximum of two years. The programme has proved

[128] Concerning parental support on a local level, there are numerous services which offer information and assistance on education-related questions to parents. These general information services, which are often provided by non-governmental organisations, are also open to migrant parents. The special needs of migrant parents have increasingly been recognised and the offers have been modified accordingly.

[129] e.g. Talentschuppen. Wie die Robert-Bosch-Stiftung durch Schülerstipendien für begabte Zuwandererkinder die Integration fördert, available at: www.bosch-stiftung.de/talent_im_land/download/20032006_Artikel_Sozialcourage.pdf (18.05.2006)

[130] www.start.ghst.de (06.10.2005)

to be a successful way to develop the educational potential of young migrants who are in a disadvantaged social position.[131]

f) Affirmative action

German integration policy does not apply the concept of affirmative action. Very rarely can support measures for migrants be observed which contain affirmative action-*like* elements:

Aiming at increasing the number of migrants in the public sector, training measures for young migrants were offered, e.g. in Berlin and Bremen in 2005. In Berlin, participants of these training measures who apply for a job at the Berlin police forces were not obliged to fulfil certain formal application criteria regarding the average high-school grade (see also 2.2). [132]

g) Anti-segregation measures

There are no explicit anti-segregation measures for education in Germany

h) Measures to establish/improve data collection

In 2004, the Federal and the State Governments agreed on starting joint educational reporting and appointed a scientific advisory committee commissioned to suggest improvements concerning the educational reporting in Germany. The aim of generally improving the nationwide data situation is expected to have a positive effect also on the data available on migrants in the German education system: The first report on education on behalf of the Federal Government together with the federal states will focus on the "Integration of children, adolescents and gainfully employed persons with a migration background into the education system".[133]

5.5. Are these developments driven by EU, national or local policy?

An immediate impact of EU policy on these developments in education cannot be identified. Even regarding access to school for refugee children, the EU directive 2003/9/EG does not have any impact on the introduction of school attendance obligation for refugee children in the federal states.[134]

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[131] Önen, K. (2005) „Die Integrationsprojekte der Gemeinnützigen Hertie-Stiftung", in: *ZAR* No. 1, pp. 27-28

[132] Press release Gewerkschaft der Polizei - Junge Gruppe (26.01.2006), available at: www.gdp.de/gdp/gdpbercms.nsf/id/jg_presse_1 (24.05.2006)

[133] www.bmbf.de/en/1558.php (17.05.2006)

[134] Harmening, B. (2005b) "Wir bleiben draußen". Schulpflicht und Schulrecht von Flüchtlingskindern in Deutschland, Osnabrück: terre des homes, p. 19

As in Germany the responsibility of the education system lies with the individual federal states, most developments in education are driven by federal state policies. However, these federal state policies were often influenced by topics discussed on the national level. For instance, the publications of the PISA results, which revealed large failings of the German education system, especially regarding the support of migrant pupils, evoked such broad discussion. In the aftermath of these debates several federal States established or expanded their (pre-school) language support programmes. The nationwide debate on banning Muslim teachers from wearing headscarves was triggered by the ruling of the Federal Constitutional Court, i.e. a decision on the national level. Pertinent legal provisions were introduced, however, on the federal state level.

Nationwide non-governmental organisations or foundations also play a role in initiating educational support projects which are implemented at local level. In addition, there are countless small-scale projects (e.g. pupils or parental support) on the local level – often initiated and conducted by local organisations or committed individuals in a neighbourhood.

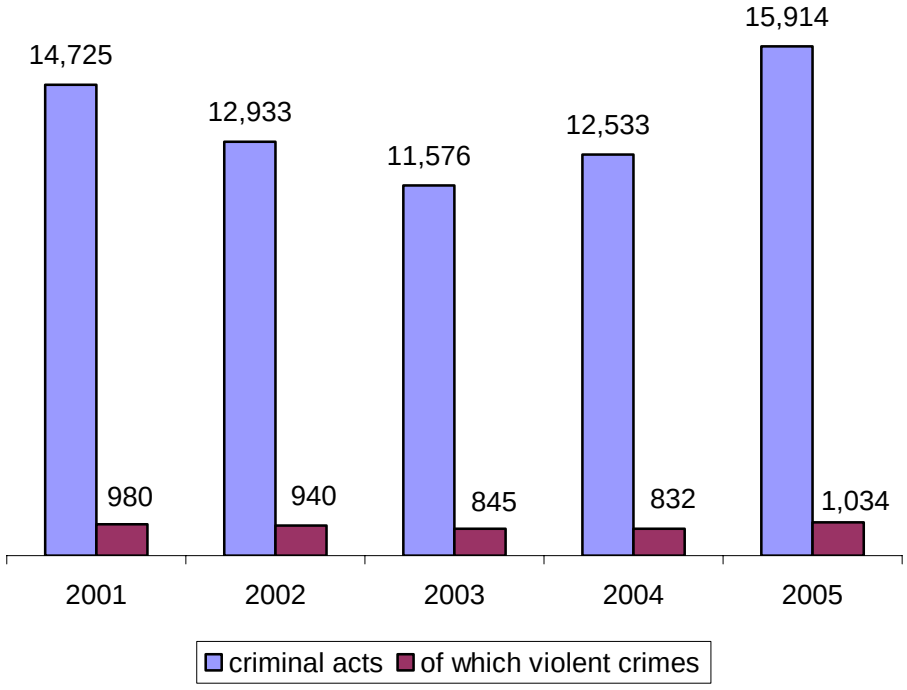
6. Racist Violence/Crime

6.1. Official or unofficial data sources on racist violence and crime

The **official statistics on politically motivated right-wing crimes** (PMK), published by the Federal Ministry of the Interior on an annual basis, displayed a significant decrease between 2001 (when the new registration system KPMD-PMK was introduced) and 2003. After 2003 the figures rose again to 12,533 in 2004 and – very drastically – to 15,914 in 2005, which represents the highest number since the modification of the registration system.

The number of *violent* crimes in the category "PMK/right-wing" also increased in 2005 - for the first time since the introduction of the new registration system in 2001, and reached a historic peak (1,034). Between 2001 and 2004, the police registered continuously less violent PMK/right-wing crimes. In 2003, "only" 845 such crimes were counted (see graph 10).

Graph 10: All PMK right-wing (violent) crimes

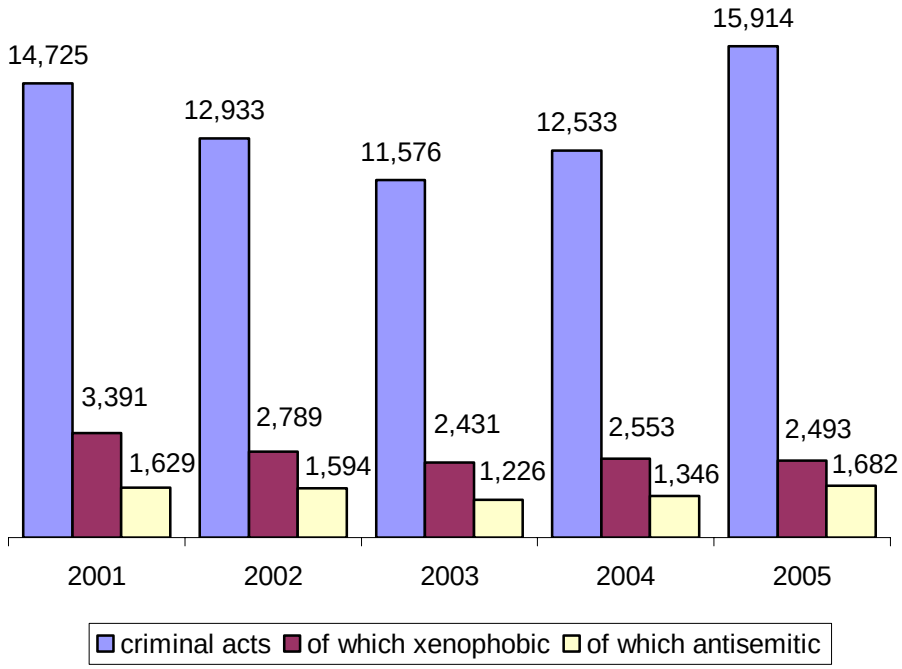


Source: VerfS Reports

The number of PMK/right-wing crimes with a **xenophobic** background dropped from 3,391 in 2001 to 2,431 in 2003. After a moderate increase in 2004, the number dropped again slightly in 2005 to 2,493 cases.

The number of right-wing crimes deemed to be **antisemitic** also decreased between 2001 (1,629) and 2003 (1,226). In 2004 and 2005 the figures show a rising tendency; in 2005, the figures reached the highest level (1,682) since the modification of the registration system (2001).

Graph 11: All PMK right-wing crimes

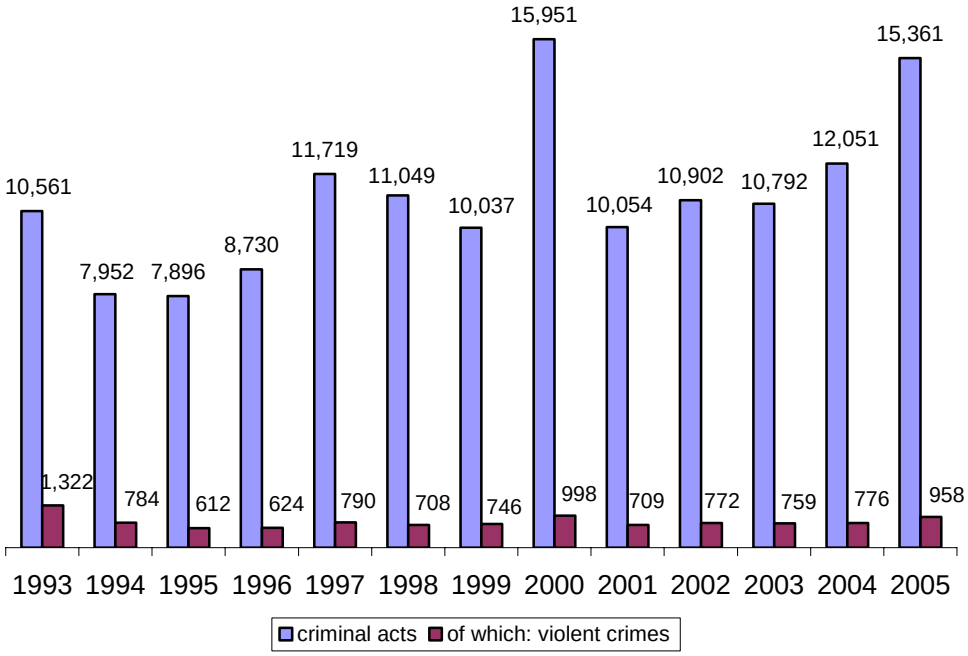


Source: Press releases BMI 14.05.2002, 13.05.2004, 09.05.2005, and 10.05.2006

Right-wing extremist crimes

The statistics on right-wing *extremist* crimes (i.e. crimes aiming at overcoming the state) presented by the Federal Office on the Protection of the Constitution, it becomes apparent that a significant peak in the year 2000 was followed by a clear drop in right-wing extremist offences and violent crimes after the introduction of the new registration system in 2001 (10,054). After 2003, the figures for right-wing extremist crimes increased drastically again to 12,501 in 2004 and 15,361 in 2005. The number of such crimes which were registered as "violent" displayed a similar tendency: Whereas the police counted 998 such violent crimes in 2000 and 709 in 2001, these figures rose again in 2004 (776) and – even more drastically – in 2005 (958).

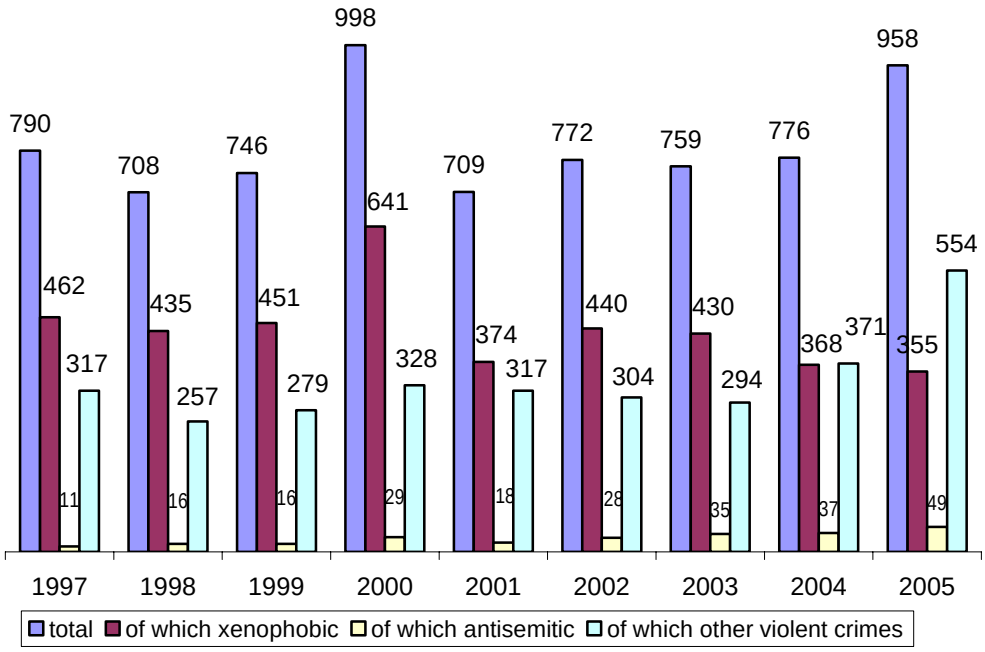
Graph 12: Right-wing extremist (violent) criminal acts (1993-2005)



Source: VerfS Reports

The number of politically motivated **violent** crimes with a **xenophobic** background dropped from 641 (2000) to 374 (2001). After an increase in 2002 (440), the figures display a continuous downward trend (2005: 355). In contrast, the number of extremist violent crimes with an **antisemitic** background has shown a continuous increase since 2001 – from 18 such crimes in 2001 to 49 in 2005.

Graph 13: Right-wing extremist violent crimes 1997-2005



Source: VerfS Reports

Unofficial statistics on right-wing and racist violence

Several victim support organisations supported within the federal programme CIVITAS (see 6.2. a) collect data on right-wing violence in Eastern Germany. These unofficial annual statistics based on the organisations' research (compiled by the association *Opferperspektive*) display a clear increase in acts of extreme right-wing violence for 2005 in Eastern Germany. Whereas in 2003 and 2004 some 800 victims were counted, the number of victims increased to 910 in 2005.

Tab. 8: Unofficial annual statistics: CIVITAS victim support organisations

	2003	**2004**	**2005**
Total number of right-wing attacks (based on the organisations' research)	563	551	614
Number of victims	808	805	910
among those:			
victims of racist violence	*337*	*285*	*360*
victims of antisemitic violence	*8*	*5*	*6*

Source: Press releases Opferperspektive 20.02.2004, 09.02.2005; 13.02.2006

a) Role of extreme right-wing groups or other groups, in the manifestation of racist violence and crime

The official figures on right-wing extremist groups or organisations provided by the Office for the Protection of the Constitution (*VerfS*) do *not* allow a direct conclusion on the group membership of the perpetrators. The official estimations on the number of people who are categorised as belonging to the extreme right-wing milieu and – more specifically – those "with a disposition to use violence" only provide indirect information on *potential* perpetrators.

According to the *VerfS*, more and more right-wing extremist individuals are not affiliated to a formal extreme right-wing organisation. Informal groups or cliques appear quantitatively much more – and increasingly – important: According to estimations of the *VerfS*, the majority of those extreme right-wing people who display a disposition to use violence against people perceived as foreigners, migrants or minorities belong to the **skinhead** milieu.[135] Skinheads usually do not have a closed and explicit right-wing extremist attitude in a political sense; they rather belong to a sub-culturally dominated and aggressive milieu which is mainly characterised by a strong stance against society and

[135] The Bavarian VerfS estimates that 80% of all right-wing extremist violent crimes are committed by Skinheads (Bayern, Staatsministerium des Innern, Landesamt für Verfassungsschutz (2005) *Neonazismus und Rechtsextremistische Gewalt*, p. 29)

minorities. Skinheads are, however, **barely organised** in structured groups or associations.[136]

The number of people who are officially categorised as "sub-culturally dominated and other right-wing extremists with a disposition to use violence" (mainly skinheads) rose continuously from 8,200 in 1998 to 10,400 in 2005 (see table 9). In recent years, only one or two "groups" were registered in this category.

The much more political **neo-Nazis** also have a strong disposition to use violence against minority groups. The organisation structure of the neo-Nazi scene is characterised by so-called *Kameradschaften*; an estimated 160 of these rather **weakly organised** groups (usually no or hardly any association-like structure) exist in Germany, most of them without formal statute and membership.[137] The tendency of establishing such *Kameradschaften* is interpreted as a reaction of right-wing extremists to the high number of legal bans on right-wing extremist associations and other organisation in the first half of the 1990s (based on Art. 9 II Basic Law)[138]; these *Kameradschaften* have changed the structure of the neo-Nazi scene in Germany significantly: today there are no large neo-Nazi organisations anymore.[139]

[136] Germany, Federal Office for the Protection of the Constitution, Verfassungsschutzbericht 2004, pp. 27-28, 42-43

[137] Germany, Federal Office for the Protection of the Constitution, Verfassungsschutzbericht 2000, p.25 as well as Verfassungsschutzbericht 2002, p. 48 and Verfassungsschutzbericht 2004, p. 51

[138] A list of right-wing extremist organisation which have been prohibited since 1992 is available at: www.mi.niedersachsen.de/cda/pages/printpage.jsp?C=459577&N=456287&L=20&D=0&I=522 (03.05.2006)

[139] According to the Lower Saxony Office for the Protection of the Constitution there is only one exception: the association "Hilfsorganisation für nationale politische Gefangene und deren Angehörige" (HNG); Lower Saxony VerfS available at: www.verfassungsschutz.niedersachsen.de/master/C10398629_N375615_L20_D0_I541.html (04.05.2006)

Tab. 9: Rightwing extremist persons and groups (1998-2005)

	1998	1999	2000	2001	2002	2003	2004	2005
Sub-culturally dominated and other right-wing extremists with a disposition to use violence – mainly **skinheads**	8,200	9,000	9,700	10,400	10,700	10,000	10,000	10,400
Number in brackets: "groups"	(5)	(5)	(3)	(1)	(1)	(2)	(2)	(2)
Neo-Nazis (persons)	2,400	2,200	2,200	2,800	2,600	3,000	3,800	4,100
Neo-Nazis (groups)	41	49	60	65	72	95	87	105

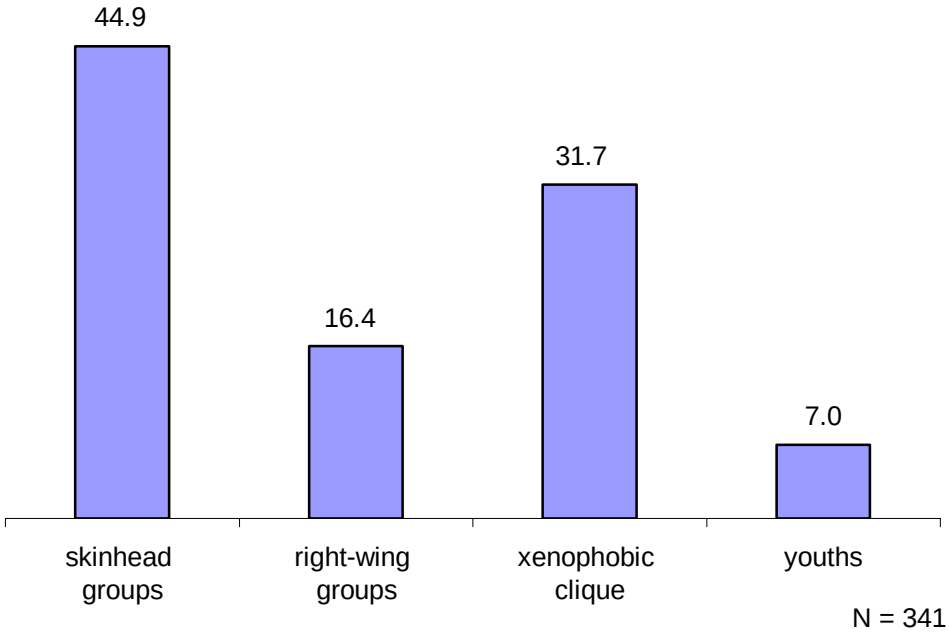
Source: Based on the estimations of the VerfS (VerfS Reports 2000, 2002, 2004 and 2005)

Several **research studies** have come to the conclusion that the majority of racist crimes are not committed by members of organised extreme right-wing groups, but by skinheads, and neo-Nazis who are affiliated to rather loose and informal extreme right-wing groups. The most recently published report "Right-wing Extremism in Potsdam 1992-2005" identifies – in addition to skinheads and neo-Nazis – people of an extreme right-wing dominated youth culture as the largest group of perpetrators, which "partly tend to extremely brutal violence" and are barely (politically) organised.[140] The research study by Willems and Steigleder (2003; based on an examination of police investigation files) confirmed that the majority of perpetrators are not directly affiliated to an extreme right-wing organisations, but belong to more informal skinhead group or other xenophobic cliques (see graph 14).[141]

[140] Forschungsgruppe Rechtsextremismus at the University of Potsdam (2006) Rechtsextremismus in Potsdam 1992 bis 2005. Eine Chronologie, Potsdam, p.16

[141] Willems, H. and Steigleder, S. (2003a) "Jugendkonflikte oder hate crime? Täter-Opfer-Konstellationen bei fremdenfeindlicher Gewalt", in: *Journal für Konflikt- und Gewaltforschung*, Vol. 5, No. 1/2003, pp. 5-28 (here: pp.13-14) The research study on right-wing extremist and xenophobic crimes conducted by the German Youth Institute is based on data stemming from 1997 and is therefore not presented here (Peucker, C.; Gaßebner, M; Wahl, K. (2001) "Analyse polizeilicher Ermittlungsakten zu fremdenfeindlichen, antisemitischen und rechtsextremistischen Tatverdächtigen", in Wahl, K. (ed.) *Fremdenfeindlichkeit, Antisemitismus, Rechtsextremismus. Drei Studien zu Tatverdächtigen und Tätern*, Berlin, pp. 12-88).

Graph 14: Group membership of alleged criminals in %



Source: Willems/Steigleder 2003b[142]

b) Changes with respect to the main victim groups targeted

Due to a lack of systematic information on the victims of racist crimes[143], it is difficult to identify changes in the main victim groups.

In its second and third country report on Germany (published in 2001 and 2004), **ECRI** identified two main groups of victims vulnerable to xenophobically motivated violence and crimes: members of the Jewish community and visible minorities.[144] In both reports, ECRI detected an increase of "antisemitic violence against individuals and against property" as well as "a marked increase in antisemitic propaganda cases"[145]. No statements are made on the development of racist violence against members of ethnic and/or visible minorities.

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[142] Willems, H. and Steigleder, S. (2003b) Täter-Opfer-Konstellationen und Interaktionen im Bereich fremdenfeindlicher, rechtsextremistischer und antisemitischer Gewaltdelikte, Trier

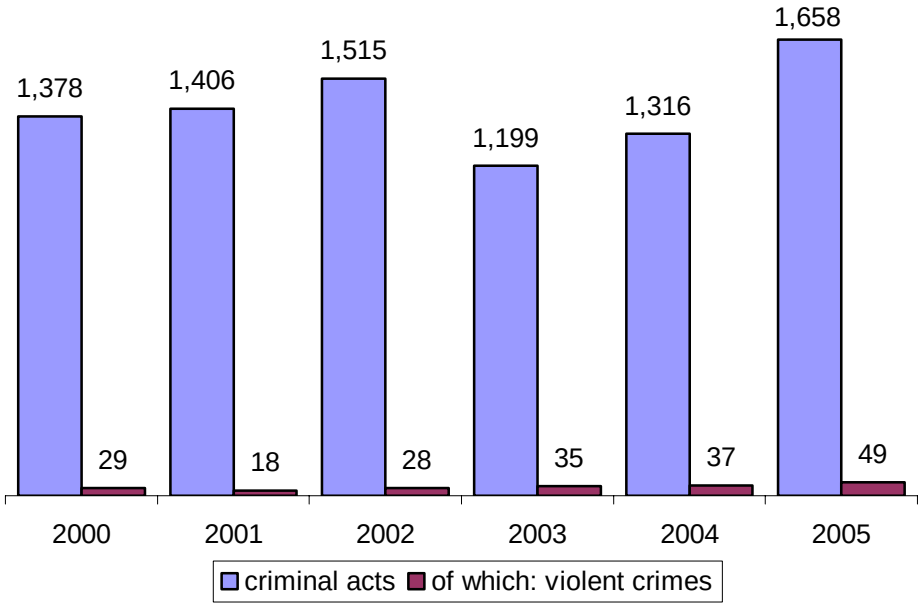
[143] Willems, H. and Steigleder, S. (2003b) Täter-Opfer-Konstellationen und Interaktionen im Bereich fremdenfeindlicher, rechtsextremistischer und antisemitischer Gewaltdelikte, Trier, p. 138

[144] ECRI, Second report on Germany adopted on 15 December 2000, in: ECRI (2004) *ECRI'S country-by-country approach. Compilation of second round reports 1999-2003*, Strasbourg: Council of Europe, p.139; ECRI (2004) *Third Report on Germany adopted on 5 December 2003*, Strasbourg: Council of Europe, pp. 22-23

[145] ECRI (2004) *Third Report on Germany adopted on 5 December 2003*, Strasbourg: Council of Europe, p. 22

The **official statistics on antisemitic crimes** support the assessment concerning antisemitic crimes. According to the Annual Reports of the *VerfS* (2000-2005), the number of right-wing extremist crimes with an antisemitic background increased between 2000 and 2002, then dropped significantly in 2003 and increased again in 2004 and 2005. Antisemitic violent crimes has continuously increased since 2001 (Graph 15).

Graph 15: Right-wing extremist crimes with antisemitic background 2000-2005



Source: VerfS Reports

6.2. Developments in policy responses to racist violence and crime

a) Initiatives adopted to address and combat racist violence and crime?

According to a recent parliamentary inquiry, the Federal Government tackles right-wing extremism with preventive and repressive means. "In order to stem right-wing extremist violence numerous state measures against right-wing extremism have been adopted": Particularly the ban on extreme right-wing associations – 23 such bans have been declared by the Federal or State ministries of the Interior since 1992 – is mentioned as an important tool in the government's fight against right-wing extremism. Furthermore, the Offices for the Protection of the Constitutions (*VerfS*) are described as an essential instrument in this struggle.[146] The Federal Ministry of the Interior lists the following *VerfS* initiatives[147]:

- **Monitoring** the extreme right-wing milieu; this information contributes to more effective criminal prosecutions
- The publication of **information** brochures and of the **annual reports** on the Protection of the Constitution, including statistical information on right-wing crimes and incident
- Programmes to encourage right-wing extremists to **leave the milieu** by directly approaching activists of the extreme right-wing milieu and by setting up a "contact phone line" which offers help to those who are considering leaving this scene.
- Organisation of **exhibitions** (e.g. "Brown trap – an extreme right-wing career")

In addition, the "Forum against Racism" (i.e. National Round Table), founded in 1998, and the educational programmes and information campaigns on right-wing extremism, xenophobia and antisemitism offered by the Federal Agency for Civic Education (BpB) are described as "measures of the Federal Ministry of the Interior to combat right-wing extremism". Of particular importance is the "**Alliance for Democracy and Tolerance – against Extremism and Violence**"[148], which was initiated by the Federal Ministries of the Interior and of Justice on May 23, 2000. This Alliance represents the most important

[146] Germany, Bundestag, printed matter 16/1113 (03.04.2006)

[147] Germany; Federal Ministry of the Interior, Maßnahmen des Bundesministeriums des Inneren zur Bekämpfung des Rechtsextremismus; available at: www.bmi.bund.de/cln_028/nn_165140/Internet/Content/Themen/Extremismus/DatenundFakten/Massnahmen__des__Bundesministeriums__des__Innern__zur__Bek_C3_A4mpfung__des__Rechtsextremismus.html (08.05.2006)

[148] "Bündnis für Demokratie und Toleranz – gegen Extremismus und Gewalt" (www.buendnis-toleranz.de; 23.05.2006)

nationwide initiative which pursues the aim of combating xenophobic, racist and antisemitic tendencies.[149]

Since 2001, the main programme under the Alliance's umbrella has been the action programme "**Youth for Tolerance and Democracy – against Right-wing extremism, xenophobia and Antisemitism**"[150] which particularly supports local activities and the creation of local networks.[151] This action programme, which will expire on December 31, 2006[152], encompassed three support programmes:

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 (see 2.2.)

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.

The main goal of the support programme ***CIVITAS*** is to tackle extreme right-wing, xenophobic and antisemitic developments by strengthening the civil society in Eastern Germany. Through this community-oriented approach, the work and structures of respective advice organisation should be professionalized and local initiatives should be strengthened. The perspective of victims of extreme right-wing violence is particularly emphasised. Two important elements of *CIVITAS* programme are the "Mobile Advice Teams" (*Mobile Beratungsteams*) and "Victim Support Organisation".[153]

Mobile Advice Teams offer professional assistance to various – mainly local – actors which are engaged in combating right-wing extremism (e.g. schools, municipal administration, associations or other NGOs), they act as mediators in local conflicts, develop concrete concepts and initiate projects and local

[149] Functioning as an umbrella initiative, this Alliance has been bundling the efforts and activities of 1,300 civil organisations or individuals engaged in the fight against (right-wing) extremisms and violence. More than 3,600 projects and measures have been financially supported with more than € 154 million during the past five years.

[150] „Jugend für Toleranz und Demokratie - gegen Rechtsextremismus, Fremdenfeindlichkeit und Antisemitismus"

[151] The ministry primarily in charge of the action programme is the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. The website www.idaev.de/projektarchiv.htm (25.05.2006) offers a database with printed and audio-visual material developed within the framework of the action programme.

[152] A follow-up programme called "Support of Diversity, Tolerance and Democracy" is currently being developed and will start in January 2007 (Germany, Bundestag, printed matter 16/1113 (03.04.2006)).

[153] www.jugendstiftung-civitas.org/index.php?action=foerderprojekte.htm&es=10_0 (05.05.2006)

networks. Since 2001, six such teams have been funded in Thuringia, Saxony, Berlin, Mecklenburg-West Pomerania.

Victim support organisations offer legal, psychological and social assistance and advice to victims of right-wing violence, the majority of them being of non-Germans origin. Eight such organisations have been supported by *CIVITAS* funds[154]:

- Opferperspektive e.V. in Brandenburg
- LOBBI e.V. in Mecklenburg-West Pomerania
- ARIBA e.V./ReachOut in Berlin
- Multikulturelles Zentrum Dessau e.V. and Miteinander e.V. in Saxony-Anhalt
- RAA Sachsen and AMAL e.V. in Saxony
- Drudel 11 e.V. in Thuringia

Between 2001 and 2006, the Federal government will have allotted a total of € 52 million to the *CIVITAS* support programme. According to the evaluation of the programme, *CIVITAS* has been successful – provided the individual projects have reached a certain level of professionalism – and sustainable civil societal structures and networks on the local level have been developed.[155]

The support programme ***entimon*** applies a prevention-oriented approach and aims at tackling right-wing extremism and violence by promoting democratic attitudes and tolerance. This should be reached mainly by political education programmes. Since 2002, more than 830 projects have been supported; by the end of 2006, a total of € 65 million will have been allotted.[156] The programme has been positively evaluated: The majority of the *entimon* projects have successfully established sustainable structures and significantly improved the pedagogical work in the field of anti-racism and the prevention of right-wing extremism.[157]

Despite the generally positive assessment of the action programme "Youth for Tolerance and Democracy", the fact has been negatively assessed that the federal government refuses to support such local initiatives on a long-term basis – arguing that local or regional measures do not lie with the responsibility of the federal government.[158] This **time limitation** of financial support is **assessed negatively** by many experts due to the fact that the effectiveness and sustainability of initiatives against right-wing extremism depend on continuity.

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[154] Between 2001 and August 2005, the victim support organisations receive almost € 6.2 million within the framework of CIVITAS (www.jugendstiftung-civitas.org, (07.05.2006))

[155] Germany, Bundestag, printed matter 16/1113 (03.04.2006)

[156] www.entimon.de/content/e9/e21/index_ger.html#e239 (05.05.2006)

[157] Germany, Bundestag, printed matter 16/1113 (03.04.2006)

[158] The government rather interprets its function as "stimulating", i.e. regional initiatives are only supported if deficits in certain areas occur and/or impulses to further develop appear necessary (Germany, Bundestag, printed matter 16/1113 (03.04.2006)).

ECRI urged the German authorities to ensure long-term support of local initiatives against right-wing extremism, racism and antisemitism.[159]

b) Is improved data collection on racist violence and crime being promoted?

The registration system applied by the police to register racist and antisemitic crimes was significantly improved in 2001. Following the resolution of the Standing Committee of the Federal and State Ministers of the Interior in May, 2001, the new definition system "Criminal Investigation Registration Service – Politically Motivated Criminality" (KPMD-PMK) came into effect on 1.1.2001 (backdated) replacing the former KPMD-State Security (KPMD-S), which had become increasingly unsuitable for dealing with extreme right-wing and racist crimes adequately.[160]

In the former KPMD-S an antisemitic or racially motivated crime[161] was only registered if the police assumed that the perpetrator "had the intention of disturbing fundamental democratic principles of the state" (i.e. aimed at "overcoming the state"). Furthermore, the former definition of xenophobic crimes was based on the concrete intentions of the perpetrator. This definition system had led to a "deficient practice in registering the extent and the victims of extreme right-wing, antisemitic and xenophobic attacks"[162] (e.g. differing applications of criteria due to the fact that the real intentions of the perpetrator often remain unknown).[163]

With the introduction of KPMD-PMK the registration system was significantly improved by more precise definitions of racist crimes.[164] Since 2001, the central registration criterion has been the **politically motivated criminal act**[165], independent of whether this was evaluated as extremist or not (i.e. with the aim

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[159] ECRI (2004) *Third Report on Germany adopted on 5 December 2003*, Strasbourg: Council of Europe, p. 32

[160] Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin , p. 263)

[161] 'Racially' motivated crimes have been registered as such since 1992. Since July 1, 1993, antisemitic crimes have also been registered by the police in a differentiated manner (Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, pp. 269-270)

[162] Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, p. 268

[163] According to the Federal Criminal Office, it "often" happened that a xenophobic background was not registered although the perpetrator was clearly affiliated to the skinhead milieu or neo-Nazi groups – just because the perpetrator refused to admit his (racist) motives (Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, p. 270).

[164] Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, p. 270

[165] The category "politically motivated crime" is divided in three sub-categories: extreme left-wing, extremism by foreigners and extreme right-wing, only the latter category contains information on antisemitic and xenophobically motivated crimes.

of "overcoming the state"). Furthermore, the strong emphasis on the xenophobic or antisemitic motivation of the perpetrator was reduced: Now "criminal acts are considered politically motivated particularly if the circumstances of the crime or the attitude of the perpetrator imply that the crime was directed against a person because of his or her political opinion, nationality, ethnicity, race, skin colour, religion, ideology, origin, sexual orientation, disability or because of his or her outward appearance or social status"[166]. This introduction of the "hate crime" concept, including the sub-categories of "xenophobic crimes" and "antisemitic crimes", into the police registration system should ensure that all relevant indicators of the offence are registered and assessed in a nationwide more harmonized way[167] – even if the perpetrator refuses to admit his motives and if the offence is not categorised as extremist.

To promote the effective adoption of the new registration system by all police forces, "detailed instructions for action" were distributed in 2002[168]. Training measures on the correct application of the new registration system have been offered and internal printed matter was circulated within the police force detailing the correct application of the KPMD-PMK.

Despite clear improvements, the police registration system continues to display certain **weaknesses**. The basic problem seems to be related to the assessment of the offence as "extreme right-wing" or "xenophobic" by the police officer in charge; in many cases – particularly if the perpetrator is not clearly recognisable as "extreme right-wing" – this assessment is difficult. This problem is aggravated by a lack of awareness of xenophobia[169] and – according to official sources – xenophobic attitudes within the police forces themselves.[170] There are also technical shortcomings within the registration and documentation procedure (e.g. correction of the initial assessment if the investigations of the

[166] Germany, Federal Office for the Protection of the Constitution, Verfassungsschutzbericht 2003, p. 28

[167] Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, p. 268

[168] Germany, Federal Office for the Protection of the Constitution, Verfassungsschutzbericht 2002, p. 31. The exact nature of these instructions is not publicly available.

[169] In Brandenburg a "modern concept of action for combating politically motivated criminality" was introduced on 19.01.2003. This concept is intended, amongst others, to increase the sensitivity of the police offers in evaluating the respective motives for a crime (Polizei Brandenburg - Info 110, No. 2/2003, p. 15)

[170] The BKA itself and the Federal Ministries of the Interior and of Justice (Germany, Federal Ministry of the Interior (*BMI*); Federal Ministry of Justice (BMJ) (2001) *Erster Periodischer Sicherheitsbericht*, Berlin, p. 291) have noted such xenophobic attitudes as problems within the police service (Neidhardt, K (2001) "Polizeiliche Bekämpfungsansätze gegen Rechtsextremismus und Fremdenfeindlichkeit", in: BKA (ed.) *Kriminalprävention. Rechtsextremismus – Antisemitismus – Fremdenfeindlichkeit.*, Luchterhand: BKA, pp. 93-107; here: pp. 106/107)

public prosecutor or the judge come to the conclusion that the crime was motivated by racism).[171]

c) Are any initiatives victim-focused, offender-focused and/or community focused?

The majority of initiatives against right-wing extremism, racism and antisemitism seem to pursue preventive and **community-related** goals. Basically all 830 *entimon* supported projects and initiatives (mainly education programmes dealing with promoting democratic attitudes and tolerance) bear such a community-oriented character. In additional, many *CIVITAS* supported organisations, namely the Mobile Advice Teams, follow similar goals. Various i**nformation campaigns** initiated by the Federal or the State Ministries of the Interior[172] also employ such a preventive community-oriented approach.[173]

Some initiatives and concepts are characterised by a clearly **offender-focussed** approach; these are either rather repressive (e.g. ban on right-wing extremist associations and demonstrations) or aim at encouraging right-wing extremists to leave their racist milieu. Not only the *VerfS* has initiated such a "re-integration" programme; in 2000, the initiative "EXIT – Deutschland" was founded[174]. This CIVITAS co-funded initiative operates only in Eastern Germany. Within the EXIT initiative, former right-wing extremists are offered practical help (e.g. new flat or a job) to start a "new life" outside of the right-wing milieu.[175] By the end of 2005, 225 people had been assisted in leaving the extreme right-wing scene, only six of them returned to the right-wing milieu afterwards.[176]

Victim-focused initiatives exist almost exclusively in Eastern Germany, the most significant being the eight *CIVITAS* funded victim support organisations. Furthermore, financial assistance has been made available to victims of extreme right-wing attacks: based on a parliamentary decision in 2001, victims of such

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[171] Kleffner, H.; Holzberger, M. (2004) "War da was? Reform der polizeilichen Erfassung rechter Straftaten", in: *Bürgerrechte + Polizei/CILIP*, No. 77 (1/2004), pp. 56-64 (here: pp. 62-63)

[172] e.g. the comic "Andi"– a successful information campaign in NRW www.andi.nrw.de (18.04.2006)

[173] The nationwide information campaign on new forms of right-wing extremism, which was unanimously decided upon by the Federal and the State ministers of the Interior in late 2005, is also to be mentioned as a significant example for such awareness raising activities particularly targeting teachers and pupils: Teachers should be provided with information material, and the pupils should be encouraged to participate in a competition called "TV spot against Right-wing" (Decision of the Standing Committee of the Federal and State ministers on December 9, 2005 (chapter 10, p. 16); available at: www.stmi.bayern.de/imperia/md/content/stmi/ministerium/imk/beschluesse/051209_imk.pdf (09.05.2006).

[174] EXIT is also supported by the Amadeu Antonio and the Freudenberg Foundation.

[175] www.exit-deutschland.de (09.05.2006)

[176] www.buendnis-toleranz.de/cln_029/nn_580664/SharedDocs/Artikel/2005/05-12-06-Exit.html (09.05.2006)

crimes can apply for financial support from a specific "hardship fund" from the Federal Public Prosecutor.[177]

d) Legislation, policy documents, action plans and practical initiatives

Only minor **legal changes** referring to racism and right-wing extremism occurred during the period under analysis in Germany.

Besides the introduction of the **Law on the Improvement of the Rights of Victims in Criminal Proceedings** (*Opferrechstreformgesetz, 2004*)[178], the parliamentary decision on setting up a **hardship fund** particularly for victims of extreme right-wing attacks is to be mentioned (see 6.2.c). Furthermore, the federal government passed amendments of the **Public Meeting Act** in March 2005 aiming at stricter regulation concerning demonstrations by extreme right-wing groups (e.g. expanded protection of the dignity of the victims of the Nazi regime); the amendments also enhanced the section on the agitation of the people in the Criminal Code (§130 IV StGB): Someone who publicly violates the dignity of the victims by justifying, glorifying or endorsing the NS regime now faces a prison sentence of up to three years.

German legislation on combating racist crimes has mainly been assessed positively.[179] However, it is to be mentioned that **proposals to further enhance the legal provisions** have been rejected by the government: Several national and international organisations (e.g. ECRI) as well as the State of Brandenburg[180] urged the legislators to define racially motivated crimes or other extreme right-wing "hate crimes" as a specific offence in the Criminal Code and to pass legal provisions according to which xenophobic motivation is to be taken into account as an aggravating factor by the courts. Until now, the government has rejected these requests.[181]

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[177] In 2002, 131 people applied for this financial aid, 100 of them were granted financial support (in total €358,000). In 2003, € 277.000 was paid to victims of extreme right-wing attacks (SPD Bundestagsfraktion (2005) *Rechtsextremismus in Deutschland. Eine Handreichung*, Berlin, p. 36).

[178] Germany / OpferRRG (22.06.2004) / Bundesgesetzblatt I, No. 31, pp. 1354-1358, available at: http://www.bgblportal.de/BGBL/bgbl1f/bgbl104s1354.pdf (24.05.2006) For more information, see chapter on legislation.

[179] ECRI (2004) *Third Report on Germany adopted on 5 December 2003*, Strasbourg: Council of Europe, pp. 9-10

[180] Brandenburg proposed a pertinent bill in the German *Bundesrat* on September 2000 (Germany, Bundesrat, printed matter 577/00 (26.09.2000)).

[181] Germany, Federal Ministry of the Interior (2004) *Zweiter Bericht der Bundesrepublik Deutschland, gemäß Artikel 25 Abs. 2 des Rahmenübereinkommens des Europarats zum Schutz nationaler Minderheiten*, p. 288-289
Another shortcoming of the Federal government's fight against racism is related to the development of the National Action Plan against Racism (Durban follow-up). The working group at the Forum against Racism (National Round Table) has been struggling to come up with such an Action Plan – until now, without success (ENAR,

During the period under analysis, several state governments (e.g. Saxony-Anhalt, Brandenburg) have developed **state programmes against right-wing extremism** which generally purse the aim of providing a coordinating framework for various activities against right-wing extremism and xenophobia. The most advanced programme is the action concept "Tolerant Brandenburg – for a Strong and Vital Democracy"[182]. This action concept has been functioning as an umbrella programme in Brandenburg since 1998 for numerous initiatives and organisations which are active in strengthening civil society and in combating violence, right-wing extremism and xenophobia. The action concept aims at promoting, coordinating and enhancing networks and cooperation of local actors such as schools, associations, churches, trade unions, companies etc. Numerous official institutions (e.g. State *VerfS*, State Ministry for Education, Youth and Sports) and NGOs (e.g. the victim support organisation *Opferperspektive*) cooperate within the framework of the action concept.

Furthermore, **local alliances** have been established in numerous municipalities (e.g. Wunsiedel, Verden, Dessau, Pößneck)[183] – in many cases as a reaction to extreme right-wing developments (e.g. regular Nazi demonstrations) or xenophobic incidents.

There are countless **practical initiatives** in various areas which aim at combating racism and xenophobia: some of them are briefly presented in this chapter as well as in other chapters (particularly chapter 2 and 5).

e) Are these developments driven by EU, national or local policy?

None of the aforementioned policies and initiatives was driven by EU policy. In most cases **national** and – to a certain extent – **local** developments encouraged or pushed policy-makers or civil society to become active.

The two most significant changes during the period under analysis are related to national incidents: (1) the modification of the police registration system concerning politically motivated, xenophobic and antisemitic crimes in 2001 and (2) the federal action programme "Youth for Tolerance and Democracy – Against Right-wing Extremism, Xenophobia and Antisemitism" (2000). In both cases, the national context, i.e. a drastically increased number of xenophobic and antisemitic incidents in 2000, urged the national government to react.[184]

Schattenbericht 2004 Deutschland, p. 66; available at: www.enar-eu.org/en/national/germany/germany2004_deOK.pdf (09.05.2006))

[182] www.tolerantes.brandenburg.de/sixcms/detail.php/lbm1.c.262317.de (07.05.2006); within the Brandenburg programme €1.15 million have been provided to support initiatives.

[183] See, for instance, the article on various local initiatives against right-wing extremism: Prantl, H. (2006) "Lichter aus im Schützenhaus", in: *Süddeutsche Zeitung* (06.05.2006)

[184] Concerning the modification of the police registration system another nationwide incident played a role: The publication of (unofficial) figures on the number of people

Most local initiatives, mainly activities of NGOs or cooperation between the civil society and official bodies and political parties, are driven by **local** developments, such as regular extreme right-wing demonstrations (e.g. in Wunsiedel, Bavaria) or an increase in xenophobic incidents (e.g. in Dessau, Saxony-Anhalt).

6.3. Developments in the area of policing racist violence and crime

The main change in the area of policing racist crime occurred in 2001 when the police **registration system** (KPMD-PMK) on politically motivated crimes was modified and improved. This modification contributed to an enhancement of the police response to racist crimes (see 6.2.b).

There seem to be a positive development in the context of awareness raising. Throughout the country, subjects such as **racism and (right-wing) extremism** are officially considered important elements of initial and further training.[185] In the programme of the Police Officers' Academy in Münster[186] the subjects of effective protection against and efficient pursuit of extremist and racist offences are on the training syllabus for the second year of study.[187] Furthermore, many State police authorities have developed pertinent training measures, such as the "Joint Further Training Programme for Preventative Measures against Extremism and Violence" (2004 in Thuringian), which includes subjects dealing with "recognising racism and extremism". In generally, however, the issues of racist violence and xenophobia still seem to be **neglected** within the regular police training programmes.[188]

Another relevant issue is the promotion of **intercultural competence** and the reduction of prejudices among police officers. In some federal States, such issues have become part of the regular police training. In Brandenburg, for instance, issues of ethnic discrimination and dealing with minorities have been

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who had been killed as a result of a xenophobically motivated attack since 1990 released by the two national newspapers *Frankfurter Rundschau* and *Tagesspiegel.*

[185] Germany, Inspekteur BPdL (2004), *16.-18. Staatenbericht der Bundesrepublik Deutschland über Maßnahmen zur Durchführung des Internationalen Übereinkommens von 7. März 1966 zur Beseitigung jeder Form von Rassismus (ICERD)*, p. 9
For more on this subject see: Schulte, W. (2003) "Das Thema Rechtsextremismus in der Aus- und Fortbildung der Polizei", in: Ahlheim, K (ed.) *Intervenieren, nicht resignieren. Rechtsextremismus als Herausforderung für Bildung und Erziehung*, Schwalbach: Wochenschau Verlag, p. 209-216

[186] The Police Officers' Academy in Münster offers training for executive police officers at the federal and the state level

[187] www.pfa.nrw.de/Studiennet/index.htm (09.05.2006)

[188] Police officers in specialised units (e.g. SOKO REX etc.) which were set up mainly in the 1990s to professionalize the investigations of alleged right-wing extremist crimes, seem to be trained more thoroughly and professionally on these issues.

part of the police training curriculum since the 1990s. In addition, numerous good practice projects have been conducted, particularly since the late 1990s.

The following three projects aiming at promoting **intercultural competences** within the police forces are considered good practice examples due to their sustainability:

- The EU project "NGOs and the Police against Prejudice (NAPAP); the police of the City of Frankfurt/Main and of the State of Berlin participated in the project (1998). In Frankfurt, police officers are trained in dealing with ethnic diversity; the subjects of the eight teaching units for the participating police officers are, amongst others, xenophobia and racism, right-wing extremism and discrimination.[189]
- The follow-up project of NAPAP, "Police for Intercultural Understanding (PiViB)", in Berlin and Brandenburg, which ended in 2003, was institutionalised by incorporating the intercultural training into the regular curriculum of the vocational training and the university study (for executive police officers). In Berlin, the Senate officially decided that the project is to be continued on a long-term basis.
- Between 2002 and 2005, the NGO *Dien Hong e.V.* (Rostock) conducted the XENOS supported project "W.I.R. – On the Way to Intercultural understanding and Mutual Respect" aiming at contributing to sustainable awareness for the xenophobia and racism and to impart intercultural competences to employees in public administrations and teachers. Intercultural trainings were conducted with, among others, police officers.

In many federal States (e.g. Bavaria, Bremen, Berlin), the benefit of a **multi-ethnic composition** of the police force has been increasingly recognised. Individual projects have been initiated to increase the number of police officers with a migration background (see 2.2.).

[189] Weiß, N. (1999) "NGOs and Police Against Prejudice – NAPAP", in: *MenschenRechtsMagazin* No. 3/1999

7. The public debate

During the period under analysis, the public debate *explicitly* on equality and (anti-)discrimination mainly referred to (1) the government's attempts to pass an anti-discrimination bill and (2) the disadvantaged position of migrant pupils in the education system. Much more public and political attention was given to issues of integration (particularly of Muslims) and immigration. The problems of right-wing extremism and xenophobia received a great deal of public attention mainly in late 2000.

The federal government's attempts to introduce an **antidiscrimination law** in order to transpose the EU Equality Directives has provoked controversial public debates, which have often been guided by ideological and emotional arguments. The first bill, which was presented by the Federal Minister of Justice, Däubler-Gmelin, in late 2001, received a great deal of criticism from the Churches as well as from employers' associations, housing and insurance companies. The public debate and the media were dominated by those voices which spoke up against the bill and against the government's intention to exceed the minimum protection standards required by the EU. When the Chancellor announced that the bill would not be introduced into the legislation procedure before the federal election in autumn 2002, the public debate ended instantly. In December 2004, the Federal Minister of Justice, Zypries, presented the new anti-discrimination bill, thus re-igniting the public debate anew. The opponents of the law – mainly the Liberal and the Conservative parties and trade and employers' associations – clearly dominated the public discourse. Generally speaking, the media and public debate has been characterised by a negative attitude towards the bill which were rather perceived as a limitation of one's personal (contractual) freedom than as a legal means of protection against discrimination. This negatively dominated debate went on until the Conservative-dominated *Bundesrat* rejected the bill in early July 2005.[190]

Broad public debates related to **equality of migrant children in education** have taken place several times during the period under analysis – mostly triggered of by the publication of the results of the PISA studies. The findings of PISA 2000, published in December 2001, and of PISA 2003, published in December 2004, as well as the results of the comparative analysis of the PISA results ("PISA-E") in the individual federal States (in June 2002 and November 2005) all revealed a very high correlation between social background and education performance, i.e. the performance of children of socially disadvantaged families and those with a migration background was severely below average performance. Apart from the rather negative assessment of the general educational situation and system in Germany, the debates have focussed on the general lack of equal opportunities provided by the German school system and the disadvantaged position of pupils from a low social stratum

[190] The public debate started again when the federal Cabinet agreed on a new bill which largely follows the former proposal of the red-green government in April 2006.

(which is even aggravated by language problems of migrant children). Some politicians called for a limitation of the proportion of migrant pupils at schools (e.g. through bussing or quotas). Common consensus was reached concerning improvements of (pre-school) language support programmes, which have been implemented in an increasing number of federal States since 2002.[191]

In late 2000 and early 2001, a great amount of public attention was given to the issue of **xenophobia and antisemitism**. The background of this temporary focus on theses issues was the drastic increase of xenophobic and antisemitic incidents in 2000.[192] What triggered off this public debate was the arson attack on the Düsseldorf synagogue in October 2000[193]: To show his strong condemnation and to underline his solidarity with the Jewish Community, Chancellor Schröder visited the synagogue and called upon all citizens to jointly fight xenophobia and antisemitism. His appeal ("Aufstand der Anständigen") received widespread support in the public debate and reinforced the political debate on how to tackle theses tendencies. This public and political debate seems to have positively affected – directly or indirectly – the adoption of the action programme "Youth for Tolerance and Democracy – against Right-wing extremism, xenophobia and Antisemitism" in 2001 and the amendment of the Federal Industrial Relations Act (2001).

Integration and immigration issues have been regular topics of the public debate during the period under analysis. The long way to the first German **Immigration Law** has been accompanied by a great deal of public attention between 2000 and 2005 the law finally came into force. This debate on immigration has not been related to issues equality and discrimination directly; nevertheless, the debate affected the situation of migrants to some extent: With the introduction of the law, a broad political consensus was reached that Germany is a country of immigration. Furthermore, the Immigration Law contains provisions which aim at fostering migrants' integration, mainly through language courses. In addition, the law expanded the legal possibilities to expel foreigners.

During the period under analysis, the issue of **integration** – particularly the complaints about "failed integration" – attracted much public attention. These debates have often borne a specific focus on the integration problems of **Muslims**, evoked, for instance, by the murder of van Gogh in the Netherlands in 2004 or the "honour murder" of a young woman of Turkish origin in Berlin in February 2005; the climate of the debate was also affected by the fear of Islamist terrorism especially after 9/11 and the attacks in Madrid[194]. The

[191] www.integrationsbeauftragte.de/gra/presse/presse_244.php (18.05.2006); *taz Berlin* (9.4.2002), p. 2

[192] Compared to 1999, the number of xenophobically motivated crimes increased by 57% to 3,594; the number of antisemitic crimes rose from 817 (1999) to 1,378 (2000).

[193] As it turned out later, the attack was committed by two people form Palestine and Morocco.

[194] After the 9/11 attacks several legal amendments were passed which encompassed security measures aiming particularly at radical Islamist individuals or organisations (e.g. facilitated ban of radical Islamic associations). The Madrid bombing in 2004

integration problems have often led to political arguments on, among others, ethnic (self-)segregation and withdrawal into the ethnic or religious community ("parallel societies"). A rather sceptical attitude towards Muslims seems to be predominant in this public debate.[195]

One aspect of the integration debate on Islam was the issue of whether teachers should be legally banned from wearing a **headscarf** whilst teaching. This issue has been controversially discussed on a broad public level after the ruling of the Federal Constitutional Court (September 2003) according to which state governments can ban the wearing of Muslim headscarves. Particularly during 2004, when many federal states introduced respective legal amendments, this issue occurred in the media on a regular basis.

affected the political debate on a future immigration law; finally the ruling parties agreed with the Conservatives to also incorporate security aspects into the law (e.g. facilitated expulsion of radical Muslims who agitate against Germany).

[195] According to an opinion poll in December 2004, only 29% of the interviewees stated that "peaceful co-existence of the Christian and Islamic faith" is possible; 55%, however, think that both religious groups are too different and severe conflicts will occur again and again. (Köcher, R. (2004) "Die Mehrheit erwartet immer wieder Konflikte", in: *FAZ* (15.12.2004), p. 5)

8. Conclusion

After the Social Democratic and Green government came into office in 1998, the official denial of the de facto immigration situation has been corrected. With this shift towards a self-definition as an "immigration country", issues of **integration** (e.g. language deficits, ethnic segregation, naturalisation) gained more importance in the political and public debate. The problems of **discrimination** and its negative impact on the integration process, however, have only played a subordinate role in these debates. Issues of racism, xenophobia and antisemitism, which occurred in the political debate particularly in late 2000 and 2001, have been discussed as an issue of its own hardly linked to integration.

There are countless indicators that show that the **level of awareness of ethnic discrimination** is low in the German society. According to the findings of the *Eurobarometer* (57.0) in May 2003, the proportion of those German interviewees who disapprove of discrimination (on the grounds listed in the EU directive 2000/78/EC) was lower than in any other EU member state. The very controversial debates on the government's endeavours to transpose the EU equality directives by passing a comprehensive anti-discrimination law also indicates that there is a widespread scepticism towards legal anti-discrimination regulations. This is particularly true for employers' representatives and the Liberal and Conservative parties, but also for the general public. In some companies voluntary agreements on anti-discrimination, equal opportunities and partnership behaviour in the workforce were adopted. However, companies with such codes of conducts are rather the exception than the rule.

This lack of awareness is also due to the **lack of information** on the extent of discrimination in Germany. Systematic monitoring or data collection mechanisms on discrimination are not in place in Germany – neither in the education system nor in housing or in the sphere of employment. Although proxy data clearly show the disadvantaged position of foreigners in various social spheres, these statistics are hardly suitable for unveiling the "real" extent of ethnic discrimination.

The low **educational** achievements of non-German or migrant pupils have been discussed a lot during the period under analysis. The international OECD study PISA, which triggered off these debates on the education system and on (the failure of) educational integration, pointed out that very often pupils from socially disadvantaged families and those with a migration background are not supported sufficiently. As the significantly lower level of educational attainments is interpreted as the main reason for the disadvantaged position of foreigners in **employment**, discrimination is hardly explicitly identified as a barrier to the labour market.

In the realm of **housing**, issues of discrimination have not received much attention either, the debate rather focus on spatial integration and segregation, which is often described as a voluntary withdrawal into the ethnic community.

Reliable information which proves discriminatory practices concerning the access to housing does not exist.

The **legal basis** for banning and effectively combating discrimination remains weak in Germany. The federal government has not transposed the EU directives 2000/43/EC and 2000/78/EC yet; as a consequence, Germany has failed to develop a comprehensive legal framework to ban direct and indirect discrimination. This affects, on the one hand, the ongoing lack of pertinent data collection mechanism and, on the other hand, the low level of legal protection against discrimination. Consequently, the number of litigations remains very low and so does the level of public awareness for discrimination. Since 2000, only minor improvements have occurred in the legal sphere, the most significant being the amendment of the Federal Industrial Relations Act in 2001 which enhanced the struggle against discrimination at the workplace.

Despite this lack of legal initiatives, German politics promote the fight against discrimination by developing funding programmes (e.g. action programme "Youth for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia, and Antisemitism") to **support projects and initiatives** which are predominately conducted by NGOs, such as welfare organisations and the trade unions. Whereas this policy scheme of financially supporting numerous projects seems suitable for strengthening civil structures and engagement, it also bears some shortcomings: For instance, this policy depends on a strong commitment of civil society and NGOs, and it can hardly compensate for the deficits in the legal sphere. Furthermore, the time limitation of such funding is often assessed as an obstacle for the projects' sustainability.

In contrast to the legal framework on discrimination, the German legislation in the realm of combating **right-wing extremism, xenophobic and antisemitic crimes** is generally assessed in a positive way. In addition, the registration system applied by the police to register extreme right-wing, xenophobic and antisemitic crimes has been significantly improved in 2001 and is functioning rather well – despite some persistent weaknesses, which are related to some technical problems, but also to a lack of awareness within the police forces concerning xenophobia and right-wing extremism.

The struggle against right-wing extremism, xenophobia and antisemitism has improved and is based on

(1) the repressive as well as prevention-oriented work of official institutions such as the Federal or State Ministries (of the Interior) or the Offices for the Protection of the Constitution and

(2) on mainly local projects and initiatives developed and conducted by NGOs and financially supported by federal or state funding (e.g. the federal support programme *CIVITAS* or *entimon*).

The significant decrease of right-wing and xenophobic tendencies between 2000 and 2003 indicates that the effectiveness of the struggle against extreme right-wing, xenophobic and antisemitic developments depends on a combination of immediate **state measures** (e.g. law enforcement) and the long-term development of **social control mechanisms** in the society (e.g. awareness

rising). It is essential that police authorities enforce the law by consistently registering and forcefully combating such incidents and that the perpetrators are punished adequately. Furthermore, the strong public condemnation of these phenomena by official actors, such as leading politicians and other opinion leaders, affects the perception of racism and xenophobia in the media and in the society in general. In addition, the fight against xenophobia and antisemitism depends on the commitment and active involvement of civil society, particularly through local initiatives (e.g. round tables), projects and other activities (e.g. demonstrations against xenophobia or educational programmes). These activities of civil society strengthen mechanisms of social control and the condemnation of right-wing violence, xenophobia and antisemitism.

In order to ensure the sustainability of the struggle against xenophobia and antisemitism – and this seems to be a shortcoming in Germany – respective good practice initiatives and projects (e.g. victims support organisation) are to be supported on a long-term basis and continuously institutionalised.

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