

RAXEN National Report: 2004 Data Collection ; European Racism and Xenophobia Information Network ; national focal point for Germany

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2004 Data Collection

RAXEN National Report

European Racism and Xenophobia Information Network

National Focal Point for GERMANY

european forum for migration studies (efms)
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According to Article 2. h. of Council Regulation (EC) No 1035/97 of 2 June 1997 the European Monitoring Centre on Racism and Xenophobia has set up and coordinates the European Racism and Xenophobia Information Network (RAXEN) composed of National Focal Points in each EU Member State in order to collect objective, reliable and comparable data and information on phenomena of racism, xenophobia and antisemitism. This report has been compiled by the National Focal Point of the European Monitoring Centre on Racism and Xenophobia (EUMC). The content of this report does not bind the EUMC and does not necessarily reflect its opinion or position. The EUMC accepts no liability whatsoever with regard to the information contained in this document. No mention of any authority, organisation, company or individual shall imply any approval or disapproval as to their standing and capability on the part of the EUMC.

1 Executive Summary

Employment

Labour market statistics show that non-German labour still constitute a **disadvantaged group** on the labour market compared to German labour (e.g. higher unemployment rate, poorer working conditions, lower income). According to statistical analysis, these disparities are mainly explained by the foreigners' lower **human capital**, i.e. lower level of education and qualification. Additionally, **discriminatory practices** seem to have some negative impact on the labour market situation of non-Germans. This assumption is supported, on the one hand, by local antidiscrimination offices which register cases of (perceived) discrimination and, on the other hand, by several studies (e.g. discrimination testing) and surveys on discrimination experiences.

The **Industrial Relations Act** (*Betriebsverfassungsgesetz*) serves as an important legal basis for equal treatment of employees irrespective of their, among others, origin, religion or nationality. According to this law, promoting measures of combating racism and xenophobia within the company is also part of the work councils' duty. Furthermore, the Industrial Relations Act contains regulations on how complaints within the company are lodged and processed; these regulations also apply to complaints that refer to unequal treatment. Based on this law, some companies have additionally introduced voluntary agreements explicitly aiming at fighting ethnic discrimination and promoting partnership behaviour at the workplace. There are numerous other **good practice** initiatives with the objective to combat discrimination against migrants and to reduce their disadvantaged positions on the labour market. The EU (co-)funded programmes EQUAL and XENOS play a central role in promoting and financing numerous of such projects.

Education

Official statistics and information on xenophobic incidents in schools hardly exist; only in a few federal states (e.g. Brandenburg) schools are required to report all cases of violence and right-wing extremism. More information is provided by official statistics concerning the **disparities** between Germans and non-Germans in the education system: In general, children from migrant families attain **lower educational qualifications** in the German education system than Germans of the same age. They are overrepresented in secondary modern schools (*Hauptschulen*) and special need schools (*Sonderschulen*) and underrepresented at higher secondary schools (*Realschule* and *Gymnasium*) and they leave school more often without any certificate.

There is a large number of **projects** in Germany which aim at reducing discrimination in schools and promote tolerance, to improve the methods in dealing with cultural heterogeneity in the field of school and to support young people with a migration background in integrating into school. Besides these projects, all federal states offer supportive measures for children of migrant backgrounds to foster the integration into the school system, mostly through language training.

Legislation

At the time of reporting the Federal Government of Germany had still not implemented the two **EU Directives on Equal Treatment** 2000/43/EC (irrespective of racial or ethnic origin) and 2000/78/EC (in employment and occupation) in national law, although the transposition was due by July or December 2003 respectively.

The **immigration law** was passed in June 2004, coming into force by January 1, 2005. Among other aspects, the law contains regulations on the immigrants' right (and, in certain cases, their obligation) to participate in integration courses.

In September 2003, the Federal Constitutional Court ruled that a Muslim teacher can only be banned from wearing a **headscarf** whilst teaching if there were a "sufficiently certain" legal basis. A number of federal states reacted to that ruling by amending their state school law in order to ban headscarves; according to most of these amendments, Christian and Jewish expressions would be still allowed in class. The Federal Administrative Court, however, ruled that the ban on religious expression is valid for all religions. Exceptions for certain forms of religiously motivated clothing, such as a nun's habit, could thus not be considered.

Housing

All statistics on the situation of non-Germans concerning the housing market show their – on average – **disadvantaged position** compared to Germans. The **causes** for these inequalities are manifold: Besides the average lower income of non-Germans' (which is identified as the core reason for their disadvantaged position), **discriminatory treatment** and practices seem to have an aggravating impact on the housing situation of foreigners. This is confirmed by several studies and surveys (mainly on perceived discrimination) as well as by the experiences of local bodies, which are consulted by people who feel discriminated against.

The **procedure of dealing with cases of complaints** concerning discrimination in the realm of housing is not uniformly regulated in Germany. In some cities independent antidiscrimination bureaus or special offices of the municipal authorities have been established, where victims of discrimination can turn to for assistance or to lodge a complaint. Provided such local offices exist, counselling, arbitration and mediation are typical elements of the processing of cases of discrimination in the housing market. There is a large number of **initiatives** that aim at combating segregation and discrimination against migrants in the area of housing by preventive and intercultural concepts. Most of these projects are not initiated in order to fight discrimination directly, but to foster and support cooperative contacts between Germans and non-Germans in the neighbourhood, i.e. using a more indirect approach to reduce discrimination.

Racist violence

According to official sources, the number of **extreme right-wing, xenophobic and anti-Semitic** crimes dropped slightly in 2003, compared with the previous year. 2,209 crimes with an extreme right-wing background were registered as “motivated by xenophobia” and 1,199 as “motivated by anti-Semitism”. However, the number of violent anti-Semitic crimes rose from 28 to 35. As no official definition of **islamophobia** exists, almost no information on islamophobic assaults are available.

Various organisations, especially victim support centres, also report on violent crimes with a xenophobic background. The figures and trends reported by such organisations are mostly above those of official sources. These **unofficial data** and information supplement the official statistics.

Concerning the **vulnerable groups** of xenophobic violence it can be stated that particularly asylum seekers and people with certain ethnic origins and visible minorities are most frequently subjected to xenophobic assaults.

Over the last years, there has been a significant rise in **measures, initiatives and projects**, both by the government and by non-governmental organisations, to fight right-wing extremism, xenophobia and racism, and foster Germany's democratic culture. These range from the fields of prevention, work with (potential) perpetrators and advice for victims.

2 Table of contents

| | | |
|---------------|---|-----------|
| 1 | Executive summary | 2 |
| 2 | Table of contents | 4 |
| 3 | Definitions and sources | 6 |
| 3.1 | Definitions of vulnerable groups to racism and xenophobia | 6 |
| 3.2 | Data and information sources | 7 |
| 4 | Analysis of the five main areas | 8 |
| 4.I. | Employment | 8 |
| 4.I.A | Publicly available evidence of racism and discrimination in employment during 2004 | 8 |
| 4.I.A.1 | <i>Labour market-related statistics: Disparities between non-Germans and Germans</i> | 8 |
| 4.I.A.2 | <i>Discrimination testing</i> | 9 |
| 4.I.A.3 | <i>Registered complaints</i> | 9 |
| 4.I.A.4 | <i>Studies and surveys on reported discrimination</i> | 9 |
| 4.I.A.5 | <i>Court cases</i> | 10 |
| 4.I.B | Process for receiving, recording and processing complaints of racism or discrimination in employment | 10 |
| 4.I.C | Good Practice | 12 |
| 4.I.D | Issues concerning undocumented migrant workers | 14 |
| 4.II. | Education | 16 |
| 4.II.A | Publicly available evidence of racism and discrimination in education | 16 |
| 4.II.B | Inequalities in educational performance and attainment by migrant and minority groups | 17 |
| 4.II.B.1 | <i>Schools offering a general education</i> | 17 |
| 4.II.B.2 | <i>Vocational Schools</i> | 17 |
| 4.II.B.3 | <i>Apprenticeships</i> | 18 |
| 4.II.B.4 | <i>University</i> | 18 |
| 4.II.C | Initiatives and good practices against racism and discrimination in education | 19 |
| 4.II.D | Main state provisions for minority education | 21 |
| 4.II.D.1 | <i>Special support classes</i> | 21 |
| 4.II.D.2 | <i>Special instruction</i> | 21 |
| 4.II.D.3 | <i>Additional instruction in the migrants' mother tongue</i> | 22 |
| 4.II.D.4 | <i>Pre-school language support</i> | 22 |
| 4.II.D.5 | <i>Islamic religious education</i> | 22 |
| 4.II.D.6 | <i>Regulations on school attendance</i> | 23 |
| 4.II.E | Religious symbols in schools | 23 |
| 4.II.F | Court cases related with the wearing of religious symbols | 24 |
| 4.III. | Legislation | 26 |
| 4.III.A | New legal provisions or developments concerning the EU Directive, esp. regarding the creation of a specialised body | 26 |
| 4.III.B | Other relevant provisions or jurisprudence est. in 2004 | 27 |
| 4.III.C | Court cases concerning racism and discrimination in 2004 | 29 |
| 4.III.D | Initiatives for further developing of legal provisions against racism, discrimination, or anti-Semitic or Islamophobic acts | 30 |

| | | |
|--------------|--|-----------|
| 4.IV. | Housing | 31 |
| 4.IV.A | Evidence of racism and discrimination (including evidences of segregation) in the housing sector | 31 |
| 4.IV.A.1 | <i>Spatial Distribution of the Migrant Population</i> | 31 |
| 4.IV.A.2 | <i>Causes of disparities in the housing market</i> | 34 |
| 4.IV.A.3 | <i>Studies and surveys</i> | 35 |
| 4.IV.A.4 | <i>Cases of (perceived) discrimination and xenophobic resentments</i> | 36 |
| 4.IV.A.5 | <i>Discriminatory allocation processes in the housing market</i> | 37 |
| 4.IV.B | How are cases of discrimination in housing handled? | 37 |
| 4.IV.C | Good practices against racism and discrimination in housing, or against housing segregation have taken place during 2004 | 39 |
| 4.V. | Racist violence and crimes | 41 |
| 4.V.A | Publicly available evidence of racist violence and crimes | 42 |
| 4.V.A.1 | <i>Official Sources</i> | 42 |
| 4.V.A.2 | <i>Unofficial Sources</i> | 46 |
| 4.V.B | Anti-Semitism | 47 |
| 4.V.C | Islamophobia | 48 |
| 4.V.D | Most vulnerable groups | 49 |
| 4.V.E | Important incidents and court cases | 49 |
| 4.V.F | Initiatives and good practices against racist violence and crimes | 50 |
| 5 | References | 53 |
| 6 | Annex | 63 |
| 6.1. | Employment | 63 |
| 6.1.1 | <i>Labour market-related statistics: Disparities between non-Germans and Germans (incl. tables)</i> | 63 |
| 6.1.2 | <i>Model Works Agreement</i> | 66 |
| 6.2. | Education | 69 |
| 6.2.1 | <i>Tables</i> | 69 |
| 6.2.2 | <i>Brief description of further good practice projects</i> | 71 |
| 6.3. | Housing | 72 |
| 6.3.1 | <i>Description of the living situation of migrants</i> | 72 |
| 6.3.2 | <i>Further studies and surveys on discrimination experiences</i> | 74 |
| 6.3.3 | <i>Further good practice initiatives in housing</i> | 74 |
| 6.4. | Racist violence and crimes: Tables | 76 |
| | Update of the Report October – December 2004 | 77 |

3. Definitions and Sources

3.1 Definitions of vulnerable groups to racism and xenophobia

In Germany there are concrete legal provisions concerning “foreigners”, “asylum seekers“, “refugees” and “ethnic German migrants” (*Spätaussiedler*). The legal definitions for these categories are briefly described in the following.

People who are referred to as **foreigners** are those who do not hold German nationality; **asylum seekers** are people having submitted a petition for political asylum in Germany with their application still pending, whereas **refugees** are those who are granted residence in Germany according to international law (i.e. Geneva Refugee Convention), or for humanitarian and political reasons. Finally, the **ethnic German migrants** (*Spätaussiedler*) are a specific migrant group. These migrants are recognised as German nationals. The respective legal requirements are that they are of German descent and live in one of the areas recognised by the Federal Law on Displaced Persons (*Bundesvertriebenengesetz*) as former German settlement areas.

However, not every foreigner, refugee, asylum seeker and ethnic German migrant automatically belongs to a socially vulnerable group affected by racism, xenophobia and discrimination. It can be assumed that a foreigner, for example, from Sweden or France is less affected by discrimination than a foreigner from an African country. Simultaneously, some people are more likely to experience discriminatory treatment without belonging to one of the groups mentioned above. This is especially valid for **naturalized persons** who are of non-German origin and who belong to visible minorities¹, but also for ethnic Germans who have the German nationality, but are frequently perceived as non-Germans (foreigners, “Russians”). This means that a person’s outward appearance is more likely to make him or her a target of discrimination rather than his or her legal status.

The main criteria for defining a vulnerable group is not the belonging to one of these groups in the first place, but how these persons are perceived in public. Consequently the legal definitions of foreigners, refugees, asylum seekers and ethnic German migrants do not cover the issue of vulnerable groups appropriately. The basic criteria for discriminatory acts is not the nationality and not even the ethnic origin itself (due to the fact that this is usually not known by the one who discriminates), but the **ascription** of characteristics like “foreign”, “not belong to this society”² usually based on various criteria like language, skin colour. As a consequence, members of “visually recognizable minorities” (e.g. black people or Turks) – irrespective of their nationality – are most likely to be discriminated against and to be affected by racism and xenophobia.³ This is also valid for **religious minorities**: Those Muslims or Jews⁴ who are recognisable as members of the respective religious group are more likely to be affected by discrimination. **Asylum seekers**, too, constitute a socially vulnerable group affected by discrimination due to the fact that they are often, according to their outward appearance, perceived as “foreigners”. Additionally, asylum seekers have a weak legal status and a legally limited access to parts of the main societal institutions (e.g. labour market, education system, housing), which can reinforce the perception as “not belonging to the majority”.

Finally, the **Sinti and Roma** should be mentioned as a “severely socially disadvantaged” group affected by discrimination and prejudice.⁵ This is valid for Romany refugees (e.g. from the Kosovo) as well as for German Sinti and Roma, who have the status of an officially recognized national minority according to the Framework Convention for the Protection of National Minorities (Council of Europe).

¹ Cf. Deutschland, ECRI (2004) *Dritter Bericht über Deutschland*. CRI (2004), p.25; PUBDE 1269

² Schiek, D. (2003) „Diskriminierung wegen ‚Rasse‘ oder ‚ethnischer Herkunft‘ – Probleme der Umsetzung der RL 2000/43/EG im Arbeitsrecht“ in: *Arbeit und Recht (AuR)*, No.2 p. 44-51 (here: p. 45); PUBDE 1381

³ Cf. ECRI 2004, p. 25

⁴ In the third ECRI Report on Germany (2004), Jews and Muslims are considered as two of the “groups affected by discrimination in particular” (besides Sinti and Roma, visually recognizable minorities and women as victims of human trafficking) (cf. ECRI 2004, pp. 23-25).

⁵ Cf. ECRI 2004, p. 24

3.2 Data and information sources

On the one hand, a wide range of official data on the situation of non-Germans in the fields of employment, education and housing exists. Those data mainly stem from the micro-census the official representative statistics of the population, involving every year 1% of all households in Germany (continuous household sample survey), and are provided by the Federal Statistical Office (*Statistisches Bundesamt*). On the other hand, there are hardly any official statistics on cases of ethnic and racial discrimination since no systematic registration system has been implemented in Germany yet. However, individual cases are collected and provided by NGOs (e.g. anti-discrimination offices, victim support centres) which are consulted by people subject to discrimination. These unofficial data and information supplement the official statistics and help put them into perspective. Additionally the media (articles, press releases) are used to gather further information on discrimination, racism and xenophobia. Other sources are the results from different research studies that deliver information mainly on the basis of statistical analysis and surveys on perceived discrimination. These data and information can shed light on a part of the phenomenon of racism and discrimination, for example, regarding the backgrounds or the specific situation in a region. Attention must be drawn to a general problem of most official statistics, such as on employment, education or housing: They only register the characteristic of “nationality” and thus underestimate the proportion of people with a migration background (e.g. naturalised people, ethnic German migrants)

In the field of *employment* the data sources mentioned above are supplemented by statistics (e.g. on unemployment) from the Federal Employment Office (*Bundesagentur für Arbeit*). Furthermore, information from the trade unions are used to illustrate anti-discrimination measures in companies. Concerning the area of *education*, in Berlin and Brandenburg data relating to xenophobic incidents in schools are available. Use is also made of publications from the Conference of Ministers for Education and Culture (*Kultusministerkonferenz, KMK*).

The area of *legislation* calls for a specific approach to alternative data due to the fact that statistical information are less relevant than in the other fields. Therefore, the media, law magazines, judicial verdicts and court rulings as well as laws and bills are analysed. Especially rulings from high courts (like the Federal Constitutional Court and the Federal Administrative Court) which interpret and clarify existing legal provisions.

The most important data sources that register *racist crimes* are the police crime statistics as only the official authorities record extreme right-wing, xenophobic and anti-Semitic criminal offences systematically and extensively.⁶

However, the official statistics by their very nature only register incidents which are regarded as crimes; the relevant forms that constitute criminal acts of right-wing extremism, xenophobia, anti-Semitism and racism represent only a part of xenophobic phenomena. The whole range includes racist, ethnic-cultural or religiously-founded prejudices as well as various forms of discrimination⁷. In order to do justice to an extended definition of racist violence, it is vital to also take unofficially collected data regarding racially motivated incidents into account.

⁶ This does not mean that the police crime statistics are free of deficits and inconsistencies.

⁷ Cf. Federal Commissioners for Migrant Questions (*Beauftragte der Bundesregierung für Ausländerfragen*) (2002) Report of the Federal Commissioners for Migrant Questions on the Situation of Migrants in the Federal Republic of Germany (*Bericht der Beauftragten der Bundesregierung für Ausländerfragen über die Lage der Ausländer in der Bundesrepublik Deutschland*), Berlin, p. 264; PUBDE0096.

4. Analysis of the five main areas

4. I. Employment

A. Publicly available evidence of racism and discrimination in employment during 2004

Regarding the phenomenon discrimination in employment one is dealing with “an object of analysis that can only be approached with great difficulties”⁸, as stated by the *International Labour Organisation ILO*.⁹ As cases of discrimination are not systematically recorded yet, there are consequently no statistics available, which could provide information on discrimination in employment. As one of the reasons for this lack of registration one can state that Germany has still not established anti-discrimination bureaus as laid down in the EU Directive 2000/43/EC.¹⁰

1. Labour market-related statistics: Disparities between non-Germans and Germans

In Germany, a wide range of data related to the labour market is collected with regard to Germans and migrants.¹¹ In general, the analysis of these data clearly shows that non-German labour still constitute a disadvantaged group on the labour market, compared to German labour: Unemployment rate among non-Germans is almost twice as high as among the rate of all employees, non-Germans are overrepresented in the secondary sector (manufacturing and construction) and underrepresented in the tertiary sector (services); they work disproportionately as blue collar workers in branches and positions with bad payment, a low (professional) prestige and bad working conditions and since the occupational position is reflected in the income, the average income of non-Germans is lower than that of Germans.

The question, however, is: Can these disparities be interpreted as evidence of discrimination of foreign employees (or job-seekers) or are there alternative explanations? Several surveys and statistical analyses come to the conclusion that ethnic discrimination¹² can hardly explain the occupational situation of non-Germans. According to Kalter and Granato, the “general finding is that ethnic inequalities (...) seems to be mainly a matter of human capital, i.e. of educational qualifications (...), rather than a matter of discrimination in the labour market”.¹³ Another recent research project on the labour market situation in Berlin comes to similar results: Status allocation on the labour market happens mainly based on social structural differences like gender or education; “therefore discrimination based on national origin hardly exists”.¹⁴

However, most researchers speak of “hardly” any signs of ethnic discrimination and of human capital as the “main” – but not the only – reason for the disparities on the German labour market. After taking into account all the factors related to the human capital, the disadvantaged situation can not be explained completely; a “residual factor” remains, and this factor can be interpreted as a possible sign

⁸ International Labour Organisation, ILO-Nachrichten 1 – 2003, p. 3 (ILO-Vertretung Bonn).

⁹ This was stated by the ILO on the occasion of the presentation of its report “Equality at work – The needs of the moment“ last year (ILO (2003) *Gleichheit bei der Arbeit – das Gebot der Stunde. Gesamtbericht im Rahmen der Folgemaßnahmen zur Erklärung der ILO über grundlegende Prinzipien und Rechte bei der Arbeit* (91. Internationale Arbeitskonferenz). Genf; PUBDE 1338)

¹⁰ Germany has still not translated the two EU Directives on Equal Treatment (2000/43/EC and 2000/78/EC) into national law. A law draft has been announced for the end of 2004 (see chapter legislation).

¹¹ The main data sources are the Federal Employment Office (*Bundesagentur für Arbeit*) and the Micro-census (a representative questionnaire-based sample survey).

¹² Ethnic discrimination defined as unequal treatment solely on the basis of ethnic origin, religion, country of origin or other characteristics which do not play any objective role for their ability to fulfil their job duties

¹³ Kalter, F.; Granato, N. (2002) “Ethnic Minorities’ Education and Occupational Attainment: The Case of Germany. Working papers“, No. 58 (Mannheimer Zentrum für Europäische Sozialforschung.; see also Granato, N. (2003) *Ethnische Ungleichheit auf dem deutschen Arbeitsmarkt*. Opland: Leske + Budrich, p.27ff; PUBDE 1235 The core idea of the Theory of Human Capital is that success on the labour market depends on the productivity of the labour force, which is determined by its human capital (measurable by education and training on-the-job). More about the Theory of Human Capital see: Becker, G. S. (1964) *Human Capital: A Theoretical and Empirical Analysis, With Special Reference to Education*. New York: Columbia University Press.

¹⁴ Verwiebe, R.; Wunderlich, K.; Münzinger, Ch. (2003) „Die Einkommenssituation transnational mobiler Europäer auf dem Berliner Arbeitsmarkt. Zählt nationale Herkunft oder sozialstrukturelle Position?“ (The Income Situation of Transnationally Mobile Europeans in the Berlin Labour Market. What Counts: National Origin or Social Position?) In: *Zeitschrift für Soziologie*; Vol. 32, No. 5, pp. 418ff.; PUBDE 1364

of ethnic discrimination.¹⁵ This assumption is supported by the results of discrimination testing, registered complaints and survey results on discrimination experiences.

2. Discrimination testing

The Centre for Studies on Turkey (*Zentrum für Türkeistudien; NFPDE 0239*) conducted an empirical study, using the method of controlled experiments, on employers' recruitment practices and possible discrimination against non-German staff in 1994. This study included preliminary job interviews via telephone where applicants with identical qualifications, but with either German or Turkish names, applied for the same vacancy. The Turkish applicants presented themselves as second-generation migrants who had gone through the German education and training system. The result was that "one fifth of all vacancies were closed to them because of discriminatory practice". The researchers come to the conclusion that their discrimination testing study "provides clear evidence that the unfavourable labour market position of migrants (...) is, to a considerable extent, attributable to the discrimination they face when they apply for jobs"¹⁶.

The Commissioner for Foreigners of the federal state Brandenburg also recently reported of a similar Discrimination Test. Her office tried to collect information on non-German students in Brandenburg and whether they had equal opportunities in finding a typical student temporary job. For that purpose 54 job offers were tested via telephone, a similar proceeding as described above. In eight cases the reaction was described as "clearly discriminatory".¹⁷

3. Registered complaints

The association *Öffentlichkeit gegen Gewalt (Köln) e.V.* published statistical data at the end of 2003 which showed that the workplace is an area of life which is least affected by discrimination: only 3% of all discrimination-relevant complaints that the association had registered referred to the workplace. The Anti-discrimination Bureau Berlin reports of only two cases of discrimination in employment in its annual report 2002, of about 75 cases in total (dismissal, mobbing for racist motives).¹⁸ On the other hand, the municipal complaint office in Munich, which was established in August 2003, reports that the workplace is an area where discrimination is very common (13% of all complaints).¹⁹

In general, in cases of discrimination at the workplace the victims can directly approach their superior, the works committee or special counselling offices and do not necessarily need to ask for assistance at external offices. However, there are no publications of registered complaints by the companies available at the moment.

4. Studies and surveys on reported discrimination

Various studies and surveys also support the assumption that non-Germans are affected by discrimination at their workplace or when accessing the labour market. In the latest Multi Topic Survey 2003 of the Centre for Studies on Turkey, which interviewed 1,000 Turkish migrants in North-

¹⁵ Cf. Alba, R.; Handl, J.; Müller, W. (1994) „Ethnische Ungleichheit im deutschen Bildungssystem“ (Ethnic dissimilarities in the German education system), in: *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, No. 2/1994, pp. 209-237 (here: p. 210); PUBDE 0063; Suntum, U. van; Schlotböller D. (2002) *Arbeitsmarkt-integration von Zuwanderern -Einflussfaktoren, internationale Erfahrungen und Handlungsempfehlungen* (Integration of immigrants on the labour market – factors of influence, international experience and advice for actions), Gütersloh: Bertelsmann-Stiftung, p. 43; PUBDE 0683.

¹⁶ Goldberg, A.; Mourinho, D. (2000) "The Occurrence of Discrimination in Germany" in: ILO (ed.) *Documenting Discrimination against Migrant Workers in the Labour Market. A Comparative Study of four European Countries*. Geneva: ILO, pp. 53-63 (here p. 63); PUBDE1195

¹⁷ „Clearly discriminatory“ means that the applicants with Turkish names were told either that the job has already been taken by somebody else or they should send a written application, whereas the German applicants were either accepted right away or were invited to a job interview. Cf. Berger, A. (2003) *Diskriminierung – ein Alltagsproblem in Brandenburg? Tagungsdokumentation „Interkulturelle Verständigung – (nicht nur) ein Standortvorteil“* am 20. März 2003 in der Industrie- und Handelskammer (IHK) Potsdam, pp. 4-9; PUBDE 1345; available at: www.brandenburg.de/media/1333/broschuere.pdf (05.10.2004)

¹⁸ Cf. Antidiskriminierungsbüro Berlin e.V.(2003) *Diskriminierung 2002. Jahresbericht des Antidiskriminierungsbüro Berlin e.V. zu rassistisch motivierter Diskriminierung*; available at: <http://www.adb-berlin.org/jahresbericht2002.doc> (05.10.2004)

¹⁹ *Süddeutsche Zeitung (SZ)* (24.05.2004). To qualify this information it should be noted that the number of cases in the Munich office are very low (about 50 between August 2003 and Mai 2004).

Rhine Westphalia (NRW), more than 50% of the interviewed Turkish migrants stated that they experienced discrimination while they were trying to find a job and even more than 55% of the interviewees expressed their feeling of being discriminated against at their workplace. That made the workplace the area where discrimination is most common.²⁰

Another standardized survey of a smaller scale, which was carried out with about 100 employees with migration background in an industrial plant, asked for individual experiences of discrimination. It reached the conclusion that cases of subjectively perceived discrimination in employment are not rare: a third of the interviewees stated that he or she had very frequent (15.3%) or frequent (17.6%) personal experiences with discrimination at the workplace. The respective figure concerning discrimination in the search for a job was slightly lower (almost 25% frequently or very frequently).²¹

5. Court cases

Only one case received public attention during the last year. At the end of 2003, the labour relations court in Wuppertal dealt with the claim of a manager of a cosmetics firm who was dismissed because he had refused to follow the orders from his superior; the latter had instructed the manager, who was responsible for personnel, **not to employ any more Turkish women**. As the manager saw the order from his superior to be “unjustified discrimination of a whole population group”, he saw it as “his civil duty” to refuse to implement this order and ignore it.

In the oral proceedings the lawyer representing the manager referred to Article 3 of the German Constitution and to the directive 2000/43/EC, according to which “the instruction to discriminate against a person (...) is discrimination” (Art. 2 (4)). The managing director of the cosmetics firm defended his orders and justified this with his freedom as an entrepreneur to employ staff according to his own wishes.²²

The labour relations court initially dismissed the claim and ruled that the grounds for dismissal and hence a timely dismissal was legal. The judge stressed that there was no anti-discrimination law in Germany as yet; every entrepreneur could decide whom to employ and whom not.²³ However, the verdict was rejected by the court of second instance, the district court Düsseldorf. The orders by the superior not to employ any more Turks were not legal, according to the judges, as the EU anti-discrimination directive is already in force, although it has not been translated into national law yet. There was no new verdict as the plaintiff accepted the offered compensation payment by his former superior.²⁴

B. Process for receiving, recording and processing complaints of racism or discrimination in employment

As there is a lack of a clear legal basis for combating ethnic discrimination and as there are no central complaints offices and anti-discrimination bureaus in Germany, it is not surprising that there are no nationwide standards in the receiving, recording and processing of complaints of discrimination in employment. As mentioned above, there are **local anti-discrimination bureaus** in numerous towns, which serve as a first contact point for victims of (ethnic) discrimination in all areas of life, including employment.²⁵ However, there is no standardized processing of cases in these local bureaus.

Apart from these general anti-discrimination bureaus, victims of discrimination can also complain about discrimination at their workplace. The Industrial Relations Act (*Betriebsverfassungsgesetz: BetrVG*) rules in §84 (1) that *every* employee is entitled to “lodge a complaint at the responsible department in the company if he or she feels discriminated against or treated unfairly by the employer or other employees of the company”. The employee must not be disadvantaged as a consequence of

²⁰ Stiftung Zentrum für Türkeistudien (ed.) (2004) Türkei-Jahrbuch der Stiftung für Türkei-Studien 2004/2005. Münster: Lit Verlag, p. 117

²¹ Birsl, U. et al. (2003) Migration und Interkulturalität in Großbritannien, Deutschland und Spanien. Fallstudien aus der Arbeitswelt, Opladen: Leske + Budrich, pp. 248-249; PUBDE 1336

²² Frankfurter Rundschau (FR) (11.12.2003); Forum gegen Rassismus/Arbeitsgruppe Gleichbehandlung: „Umsetzung der EU-Antidiskriminierungsrichtlinien“ in: *Info-Brief*, No. 4, Januar 2004, p. 31; PUBDE 1278.

²³ SZ 28.06.2004; Wuppertal / Arbeitsgericht / 3 Ca 4927/03

²⁴ dpa 07.09.2004; die tageszeitung (taz) 08.09.2004

²⁵ For more information on these offices see chapter on housing.

his complaint. If the employer considers the complaint as justified he is obliged to take remedial action (§84 (2)). The works council (*Betriebsrat*) can also be approached in cases of complaints. If it considers the complaint as justified, it should “urge the employer to take remedial action” (§85 (1)). In case the works council and the employer disagree on whether the complaint is justified, the works council can call for a mediator to reach a final decision. From the list of the general duties of the works council according to §80 (1) No. 7 it can even be deduced that the works council has to „protect the victims of labour-related forms of discrimination and racism”.²⁶

According to §45 BetrVG, matters of the integration of non-German colleagues and therefore also cases of xenophobia and racism can be discussed at company meetings, “in order to disclose concrete cases in the company, or in order to influence the working climate in a positive way as a prevention measure”.²⁷ The fundamental legal basis for combating discrimination at the workplace is §75 (1) BetrVG. It states: Employers and works councils have to ensure that all persons working in a company are treated according to the principles of law and equality, particularly preventing unequal treatment of persons on the basis of their descent, religion, nationality, ethnic origin, active participation in trade unions or political parties, their views or their sex or sexual identity.

The Industrial Relations Act applies mandatory to most companies (apart from very small companies). It therefore secures the right to complain for all employees – also in cases of (ethnic) discrimination at the workplace. However, whereas §75 BetrVG clearly refers to horizontal discrimination (among employees), labour relations jurists are in disagreement to what extent this provision also prohibits vertical discrimination (discrimination by the employer, incl. recruitment).²⁸

In addition to the generally applied Industrial Relations Act, some companies issued **voluntary Industrial Relations Agreements**, together with the work councils, on the basis of this law. These additional agreements regulate “measures of combating racism and xenophobia at the workplace” (§88 (4) BetrVG). In many of these special agreements for “partnership behaviour at the workplace” or “protection from discrimination”, the first persons to contact in cases of discrimination-relevant complaints are the superiors, the works council or the personnel department, in some cases a specially established commission or company counselling service.²⁹ The responsible instance has the task to consult and support the victims. In many cases, the individual cases are documented, too. Most Industrial Relations Agreements decree that the processing of the case has to be carried out as soon as possible and should not cause the victims further problems. In most of these agreements for the protection from discrimination, company-related and legal sanctions are also provided for. These sanctions range from instruction and a formal letter of caution to dismissal with or without notice in cases of direct discrimination. In addition, claims for compensation might be directed to the company in cases of indirect discrimination.³⁰

In the industrial relations agreement by the Ford plants AG on “*Partnership behaviour at the workplace*” (January 14, 2002) the right for complaints within the company with the various stages of complaints is elaborated; it should serve as one example to illustrate what the concrete implementation of the right for complaints of industrial relations agreements might look like: In general, victims of discrimination are explicitly encouraged not to accept or tolerate any discriminating behaviour, but to react immediately. To every employee, who lodges a complaint of discrimination, a discussion with the other conflict party, chaired by a member of the counselling office, is offered. This discussion must take place within two weeks. If no agreement is reached, a second mediating talk will take place within the ensuing two weeks, with the superior of the next level participating. If this meeting also fails, the matter will be transferred to the company counselling service, which will recommend

²⁶ Zimmer, R. (2001) „Fremdenfeindlichkeit und Rassismus im Betrieb“ (Xenophobia and racism at the workplace) in: *Arbeitsrecht im Betrieb*, No. 5/2001, pp. 256-258 (here p. 257); PUBDE 1387

²⁷ Zimmer 2001, p. 257.

²⁸ Schiek, D. (2003) „Diskriminierung wegen ‚Rasse‘ oder ‚ethnischer Herkunft‘ – Probleme der Umsetzung der RL 2000/43/EC im Arbeitsrecht“, in: *Arbeit und Recht*, No. 2/2003, p. 44-51 (here p. 49f.); PUBDE 1381

²⁹ Cf. Akin, S.; Dälken, M; Monz, L (2004) Betriebs- und Dienstvereinbarungen (Industrial Relations Agreements). Integration von Beschäftigten ausländischer Herkunft. Analyse und Handlungsempfehlungen. Frankfurt/Main: Bund-Verlag, S. 23f; PUBDE 1375; some Industrial Relations Agreements are available at: www.igmetall.de/betriebsraete/betriebsvereinbarungen (05.10.2004)

³⁰ Cf. Akin/Dälken/Monz 2004, p. 28-32; 51, see also the Industrial Relations Agreement by Voigt & Müller; available at: www.igmetall.de/betriebsraete/betriebsvereinbarungen/voigt.html (05.10.2004)

measures to solve the conflict. The members of this counselling service will be trained accordingly and are bound to confidentiality about their activities.³¹

C. Good Practice

Such voluntary agreements are also a good practice example for the combat of discrimination at the workplace. On the basis of the Florence Declaration on “Prevention of Race Discrimination and Xenophobia as well as Promotion of Equal Treatment at the Workplace”, which was passed by the European social partners in October 1995, the trade union IG Metall has presented a model industrial relations agreement. Since then this agreement has served as a model for many companies.³² The core elements of the IG Metall suggestions are:

- Foundation of an „equal commission“ in the company in order to monitor and improve the measures and information of the staff
- Recruitment of personnel without discriminating selection criteria
- Non-discriminatory selection of staff for further education programmes
- Equal treatment in the allocation of company apartments
- Establishment of a system of control and sanctions (also with a preventive approach)³³

Since early 2004, **AktionCourage** has been carrying out the project „Companies for Integration - Against Discrimination“, which encourages especially medium-sized companies in North-Rhine Westphalia to implement measures within the company that reduce ethnic discrimination and to foster partnership relations at the workplace. As part of the project, AktionCourage encourages employers and works councils to close agreements on combating discrimination and to foster equal treatment, e.g. in the form of industrial relations agreements. The companies are counselled and assisted in planning and implementing these measures. For that purpose, a sample industrial relations agreement was drawn up³⁴, and AktionCourage offers seminars and trainings to staff of the medium management, the works council and trainees. These seminars are dealing with the causes of racism and discrimination and ways to deal with them (e.g. intercultural conflict management). These trainings are conveying the message that the combating of discrimination is also important for the company’s business success.³⁵

There are numerous other projects with the objective to improve the integration of non-Germans in the working life and to reduce disadvantaged positions on the labour market. Some of these projects will be presented as good practice examples in the following.

The nationwide programme “**XENOS - living and working in diversity**” pursues the aim of fighting racism, xenophobia and intolerance by means of concrete measures and projects; above all, the focus is on measures against marginalisation and discrimination in the workplace. The XENOS programme is part of the Federal Government’s action programme “Jugend für Toleranz und Demokratie” (Young

³¹ Industrial Relations Agreement of the Ford plant AG, available at: http://www.verdi.de/0x0ac80f2b_0x01144437# (05.10.2004)

³² The Hans-Böckler-Foundation which is close to the DGB (Association of German Trade Unions) analysed 28 industrial relations agreements in 2004 (cf. Akin/Dälken/Monz 2004, p.10).

³³ The IG Metal model industrial relations agreement is presented in the appendix. Cf. Campos, M. (1998) „Die Verhinderung von Ausländerdiskriminierung und Förderung der Chancengleichheit am Arbeitsplatz – Handlungsmöglichkeiten des Betriebsrats“, in: *Arbeitsrecht im Betrieb*, No. 1/1998, pp. 14-18 (here p. 15); PUBDE 1388

³⁴ The industrial relations agreement is available at: www.aktioncourage.de/betriebe2004/dok/musterbv.htm (05.10.2004)

³⁵ Information on the project is available at: www.aktioncourage.de/betriebe2004/index.htm (05.10.2004).

The argument that combating discrimination and the positive evaluation of cultural diversity in the company will result in an economic added value for the companies can be found in many good practice projects. Under the motto “Managing Diversity“ many companies have changed their ways of dealing with cultural diversity in the staff. This does also include measures of an active fight against ethnic discrimination and by promoting tolerance (see e.g.. Stuber, M. (2004) Diversity. Das Potenzial von Vielfalt nutzen - Den Erfolg durch Offenheit steigern (Diversity. Using the potential of heterogeneity-increasing success by openness), Neuwied/Kriftel: Luchterhand; PUBDE1371; www.ungleich-besser.de (05.10.2004); www.diversity-gesellschaft.de (05.10.2004)).

people for Tolerance and Democracy), which also includes two other major initiatives being CIVITAS and ENTIMON. All three stand together under the umbrella of the “Bündnis für Demokratie und Toleranz – gegen Extremismus und Gewalt” (Alliance for Democracy and Tolerance – against Extremism and Violence).

XENOS is funded by the European Social Funds and coordinated by the Federal Ministry of Labour which is in charge of the implementation of the programme. The initiative XENOS functions as an umbrella programme for 225 single projects (per April 1, 2004) and involves the Federal Government, the federal states, local governments and other institutions. For the implementation of XENOS, the Federal Ministry of Economics and Labour has allotted some 75 Mio. EUR for the period 2000 to 2006 from financing provided by the ESF. XENOS concentrates its assistance on:

- integrated local projects, mobile advisory teams, and pools of experts,
- the training of multipliers,
- measures in schools, professions, and plants, and
- information and awareness enhancement.³⁶

The project in Brandenburg **FriZZ** („Free access to goods and services for immigrants. Reducing discrimination in employment and society”) is one of these 225 XENOS projects. FriZZ wants to initiate measures to reduce prejudices and feelings of resentment against non-Germans and to prevent discrimination against migrants at the workplace. The project addresses multipliers who either work as members of the works councils, in counselling services or as teachers in further education, in trade unions, companies or the police. For these persons courses are developed and carried out, which provide information on topics such as xenophobia, problems of the intercultural co-existence or instruments against discrimination at the workplace. The courses also focus on the implementation of concrete anti-discrimination measures. By doing this, the establishment of anti-discriminatory “codes of good practice“ within the companies is encouraged.³⁷

Another target group of FriZZ are young people in (vocational) schools and job training as well as young members of trade unions. These young people shall be encouraged in “low threshold information and sensitization seminars” to reflect on intercultural topics and discrimination and to learn ways of solving the conflicts without using violence.

In addition to these measures, the project promotes a dense network and intensive cooperation with the social partners, the Police University for Applied Science, various NGOs, foreigners’ offices and migrant organizations. The concept of FriZZ is scheduled for three years (October 2001 to September 2004) and it is evaluated by the Centre for Human Rights at Potsdam University.³⁸

The joint initiative **EQUAL**³⁹ is an EU-wide programme, which includes a great variety of labour market-related projects of good practice. Financed by the Federal Government and co-funded with ESF means, the EQUAL programme looks for new ways of combating discrimination and unequal treatment of employees and job-seekers on the labour market. Among the five topic areas EQUAL projects relate to, two are of special relevance: on the one hand the area of “asylum-seekers”, on the other hand the area “employment capability – combating racism and xenophobia on the labour market”.⁴⁰ As part of EQUAL so-called **development partnerships (EP)** are promoted, i.e. networks in which relevant labour market actors cooperate in order to jointly develop integrative concepts against discrimination and inequality at the workplace and in vocational training. At the moment, 109

³⁶ www.xenos-de.de (05.10.2004) (ACTDE 0098)

³⁷ As one of the successes of the project the development of the Police University for Applied Science in Brandenburg can be interpreted: In this university – which is still unique in Germany - four so-called “intercultural trainers” have been employed recently who contribute to the reduction of prejudices against non-Germans and to promote the “intercultural competence” of the future police officers. This is taught in a separate subject (cf. FR 01.09.2004, Märkische Allgemeine 01.09.2004)

³⁸ All information on FriZZ (including quotations) are taken from: www.frizz-brandenburg.de (05.10.2004); ACTDE 0051

³⁹ The Federal Ministry for Economy and Labour as the national coordination office is responsible for contents and financial implementation of the EQUAL programme (ACTDE 0294).

⁴⁰ The other topics are Entrepreneurial spirit, Capability to adapt and (gender-specific) Equal Opportunities (see www.equal-de.de/contents.php?site=themenbereiche (05.10.2004)).

of such EPs⁴¹ are cooperating in the implementation of EQUAL. In **Bremen and Bremerhaven** three EPs were founded which aim at improving the labour market access of migrants. For that purpose, qualifying, counselling and employment projects are carried out that are especially designed for the needs of immigrated persons (e.g. by including course elements such as “German as a job-related expert language”). The labour office of Bremen has, together with the *Paritätisches Bildungswerk*, carried out training courses for non-German nurses, in which the nurses were prepared successfully for the final exam for the recognition of their job qualification.⁴²

The basic idea of the **EP Osnabrück** “*Intercultural Competence Centre (iKK)*” is to empower and use the migrants’ potential for “societal growth and for stimulating the labour market”. The iKK project consists of several sub-projects and entails measures such as further education courses for migrants (e.g. reduction of information deficits about the German labour market, language tuition), training of conflict mediators within the companies, intercultural training of the staff in personnel departments and the works councils and a mentor programme for migrants who work in the municipal administration.⁴³

Beside the EPs funded by EQUAL and the 225 XENOS projects, there are numerous other good practice examples with the objective to reduce discrimination against migrants in employment and to provide them with better access to the German labour market. We will now present some brief examples of such projects.

The project „Basic vocational qualification of young employees with migration background“ (**BQN II**), which started in March 2003, aims at increasing the number of young migrants in vocational training. This is done, for example, by increasing the number of companies that are managed by persons with a migration background.⁴⁴ A similar approach is reported by the Commissioner of Foreigners in Berlin. Here, company owners with a migration background participated in a three-month-course for trainers and are now entitled to train apprentices. This resulted in the creating of 200 new apprenticeship positions.⁴⁵

The program “Vocational qualification for target groups with special needs for assistance” (**BQF**), which is funded by the Federal Ministry for Education and Research, includes the element “Qualification of migrants”. As part of this programme, projects are funded which develop and carry out assisting measures for young migrants in vocational training or preparatory courses and new models for further education for migrants.⁴⁶ To improve the networking of these projects, the Federal Institute for Vocational Training established the “Initiative office Vocational Qualification of Migrants”.⁴⁷

D. Issues concerning undocumented migrant workers⁴⁸

On July 23, 2004 the **Act on Intensifying the Fight against Illegal Employment and related Tax Evasion** („*Gesetz zur Intensivierung der Bekämpfung von Schwarzarbeit und damit zusammenhängender Steuerhinterziehung*“)⁴⁹ was passed. This contains, among others, regulations

⁴¹ A list of all 109 development partnerships can be found at: www.equal-de.de/download/EP_Adressen.xls (05.10.2004)

⁴² www.euqual-hb.de (05.10.2004)

⁴³ www.euqual-osnabrueck.de (05.10.2004)

⁴⁴ www.bqn2.de (05.10.2004), more on the BQN II Programme (and the previous programme BQN): *Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit*, Saarbrücken: Isoplan, Vol. 20, No. 2004/3 p. 17.

⁴⁵ Berlin, Beauftragte für Integration und Migration des Senats von Berlin (2004) *Integrationspolitische Schwerpunkte 2003-2005*, p. 7; PUBDE 1392; available at: www.berlin.de/sengessozv/auslaender/Integrationspolitische_Eckpunkte.pdf (05.10.2004)

⁴⁶ www.kompetenzen-foerdern.de (05.10.2004)

⁴⁷ <http://www.bibb.de/de/11839.htm> (05.10.2004)

⁴⁸ With „undocumented migrant workers“ we mean persons who reside in Germany illegally, meaning undocumented, and who are illegally employed. Their employment necessarily is illegal as one can only apply for a work permit with a valid legal residence status.

⁴⁹ Printed in: *Bundesgesetzblatt* (2004) Part I, No. 39 (issued in Bonn on July 18, 2004)

against the employment of non-Germans without work permit. There are no *direct* regulations concerning the employment of migrants without legal residence status in the new law, but *indirect* consequences can be expected for this group as undocumented migrants who want to work in Germany have no other choice than working illegally.

Combating illegal employment – and therefore also illegal employment of migrants – is enforced by that law and the sentences for employers hiring migrants without permission were increased. On the one hand, policy makers aim at decreasing the demand for illegal employment by increasing the risk and therefore reducing the attractiveness of it. By doing that, the market for undocumented migrants may be reduced. On the other hand, the law increases the sentence for employers who hire migrants without working permit to work “under conditions that show a great discrepancy to working conditions of German employees in the same or a similar job” (§10). The law, in particular, aims at the combating of exploitation of undocumented workers.⁵⁰

The second important issue concerning undocumented migrant workers, is the foundation of the **European Migrant Workers Union** in Germany in September 2004, which was initiated by the trade union *IG Bau*. The primary objective of this union is to assist the migrant and seasonal workers in Germany, who mostly work in agriculture and who mainly come from Eastern Europe. The union wants to secure their legal rights and their wage agreed by trade union settlements (e.g. minimum wage and wage payments, but also accommodation) and to protect them from exploitation.⁵¹ For undocumented migrants the foundation of this union plays an important role as it serves explicitly as a contact address and lobby partner for non-Germans without valid residence documents.⁵²

Finally, a **verdict** by the Labour Court Hanover should be mentioned, in which a (formerly) illegally employed female migrant won legal proceedings against her former employer for the first time in Germany. The court decided in October 2003 that the formerly illegally employed Polish cleaning woman, who was injured during her work in a private household in August 2001 and returned to her home country, was entitled to the wage which was held back, to continued wage payments in the case of sickness as well as interest.⁵³

Further cases of **wage deception** of illegally employed migrants were made public during the last months. The trade union *IG Bau* dealt with the case of a young Serb who had been recruited in his home country by a German owner of a construction company in Frankfurt. The promised wage was not paid to the Serbian worker in full, extra hours were not paid and when he asked for his annual vacation, he lost his job.⁵⁴

In a case of **professional illegal migrant employment** in July 2004 a businessman was sentenced to more than three years in jail and a 72,000 EUR fine for professional smuggling and illegal hiring of migrant workers to German slaughter-houses. In the same legal proceedings, two managing directors of a slaughter-house were accused of employing Romanian workers illegally and under appalling working conditions. These court proceedings are still ongoing. The trade union *NGG* tries to assist the Romanian workers in getting their wages which are still due – the *NGG* talked about a sum of 800,000 Euro.⁵⁵

⁵⁰ The argument of exploitation of illegal (undocumented) migrants was mentioned, for example, in the first discussion of the law draft on March 5, 2004 (95th plenary session) by Federal Minister for Finance Hans Eichel (SPD); see www.bundestag.de/bic/plenarprotokolle/plenarprotokolle/15095.html (05.10.2004)

⁵¹ The foundation of this trade union is in accordance with the ILO resolution on its annual conference in June 2004. On that occasion an action plan for fair treatment of foreign migrant workers was decided which asks for the “equal treatment of foreign and local employees in wage, social security and maintenance of industrial health and safety standards” (FR 18.06.2004).

⁵² Cf. DGB Bildungswerk (2004) Migration. Aktiv gegen Rassismus (Migration. Active against racism), Sept./2004, S. 3; FR 27.08.2004; FR 06.09.2004; taz 27.08.2004; taz 02.09.2004; for more information on that, also in English and Polish, can be found on the trade union’s website at www.migrant-workers-union.org (05.10.2004).

⁵³ Hannover / Arbeitsgericht / 13Ca268/02

⁵⁴ FR 11.06.2004

⁵⁵ FR 10.07.2004; Osnabrücker Zeitung 09.07.2004; press release Landgericht Oldenburg (03.06.2004)

4.II. Education

A. Publicly available evidence of racism and discrimination in education

It is only in exceptional cases that **data relating to xenophobic incidents in schools** are available. Thus, for example, in the federal state of Brandenburg, on the basis of a circular sent by the Ministry of Education, incidents with an extreme right-wing background are to be reported to the state school board (*Schulamt*)⁵⁶. It then became apparent that the number of reported incidents with an extreme right-wing background at schools in Brandenburg dropped from 179 for the school year 2001/02 to 117 in the school year 2002/03⁵⁷.

In a circular from 16 April 2003, the Berlin Senate Administration for Education, Youth and Sport also drew attention to the requirement to report all cases of violence and extremism⁵⁸. In the statistics of the Berlin Senate School Administration, 23 extreme right-wing incidents were registered for the school year 2002/03⁵⁹.

In research on discrimination, “*perceived discrimination*” is frequently used as a category which can be measured in interviews. In cases of perceived discrimination, an individual experience of discrimination is researched, independent of the fact whether it has actually occurred or not⁶⁰.

There is a number of studies in which people with a migration background were asked whether they had personally ever experienced discrimination in different areas of life, for example, in school.

In the aforementioned study by Birsl et al. (cf. I.A.), approximately a third of the interviewees stated that they had very frequently (14.7%) or frequently (20.0%) personally experienced discrimination at school⁶¹.

Mention should also be made of the results of a survey of pupils from a secondary school in Berlin: 54% of the pupils interviewed stated that they had already experienced xenophobia in their school. 32% of those pupils described witnessing physical violence, 58% had witnessed verbal attacks and provocation⁶².

Furthermore, there is one case which draws public attention. Since the beginning of the year, extreme right-wing groups have been preparing the “Project Schoolyard” (*Projekt Schulhof*), as they call it, aiming at distributing CDs with right-wing music. For that purpose, large numbers of a CD with extreme right-wing music have been produced for distribution throughout Germany to young people for free, especially in the vicinity of schools. According to information from the initiators, the aim of the campaign is to offer “ideologically amenable young people” the opportunity to identify themselves with this music. Thus, for the first time, extreme right-wingers intend to actively address young people outside their scene in large numbers with the intention of arousing their interest in extreme right-wing music and, moreover, interest in the corresponding ideology. They are obviously banking on the experience that skinhead music with its extreme right-wing, racist and anti-Semitic content provides

⁵⁶ Cf. Brandenburg, Ministerium für Bildung, Jugend und Sport (2001) Rundschreiben 03/01 vom 16. Januar 2001: Ordnungsrechtliche Grundsätze zum schulischen Konzept gegen Gewalt, Rechtsextremismus und Fremdenfeindlichkeit, p. 6.

⁵⁷ Cf. Gorholt, M. (2004) “Die Aufgaben der Schule in Umbruchsituationen”, in: Deutsch-Russischer Austausch e.V. (ed.) *Macht Demokratie Schule – macht Schule Demokratie?*, Berlin, p. 7; PUBDE1339.

⁵⁸ Berlin, Senatsverwaltung für Bildung, Jugend und Sport (2003) *Rundschreiben I Nr. 41/2003*

⁵⁹ Berlin, Senatsverwaltung für Bildung, Jugend und Sport (2003) *Gewaltsignale an Berliner Schulen 2002/2003*, p. 10.

⁶⁰ Perceived discrimination, even if actual discrimination has not occurred, plays a major role for the feelings and behaviour of migrants: “If the host society is perceived as ‘closed’ and prejudiced, this may lead to a reinforcement of ethnic ties with negative consequences for the cultural, social and identificational processes” (Heckmann, F.; Lederer, H.; Worbs, S. (2001) Effectiveness of National Integration Strategies towards Second Generation Migrant Youth in a Comparative European Perspective. Final Report to the European Commission, Bamberg, p. 63; PUBDE0086).

⁶¹ Birsl, U. et al. 2003, p. 249 ; PUBDE 1336

⁶² OPOS-Projekt (2003) *Auswertung der zweiten Umfrage zur Fremdenfeindlichkeit an der Olof-Palme-Oberschule. Durchführungsjahr 2003*, available at: <http://www.opos.cidsnet.de/umfrage/jgXX.pdf>, (12.10.2004); PUBDE1338.

an attraction to young people in particular to become part of the extreme right-wing milieu⁶³. Nevertheless, the planned distribution of the CDs produced for this so-called “Project Schoolyard” did not occur because the relevant security authorities became aware of these plans early on and initiated countermeasures, which continue to this day. At any rate, had the CDs been distributed, they would have been seized on the basis of a court order.

B. Inequalities in educational performance and attainment by migrant and minority groups

1. Schools offering a general education

In the school year 2003/04, about 21.1% of all migrant pupils at schools providing a general education took classes in the *Hauptschule* (secondary modern schools) and 7.1% attended *Sonderschule* (special needs schools) while the corresponding proportions for German pupils were 10.1% and 4.1% respectively. The risk that a migrant child will attend a special needs school with a focus on supporting learning is twice as high as for a German child; in some federal states (e.g. Baden-Württemberg), it is even more than three times as high⁶⁴.

In contrast, migrant pupils (especially from Serbia and Montenegro, Turkey, and Italy⁶⁵) are underrepresented at higher secondary schools. In 2003/04, 9.6% (2002/03: 9.4%) of migrant pupils attended *Gymnasium* (grammar schools). The quota for the German pupils was 25.4% (2002/03: 25.0%) (cf. table 1 in the annex).

In the year 2003, 19.2% of the migrant pupils and 7.9% of the German pupils left school without a school degree. 41.5% of migrant pupils left school with the *Hauptschule* certificate. In comparison, 24.5% of Germans who finished school left with a *Hauptschule* certificate. 26.0% of German pupils (2002: 26.4%), but only 10.2% of migrant pupils (2002: 10.9%) obtained the right to study (cf. table 2 in the annex).

Another group that is often disadvantaged in the education system are Sinti and Roma; this, however, is not reflected in official statistics. In its report on the situation of Sinti and Romany people in Germany, the Open Society Institute (2002) stated that it is “further reported that children of Sinti and Roma people are over-represented in special needs schools and that a very high proportion of the children drop out of school early. Only few Sinti and Romany people achieve a higher level of school education”⁶⁶.

2. Vocational Schools

The *distribution of migrant pupils among the various vocational school types* also differs from that of German pupils (cf. table 3 in the annex). Young migrants are underrepresented particularly at the *Berufsoberschule* (vocational secondary school) and the *Fachoberschule* (secondary technical school), with a percentage of 6.3% of all migrant pupils, as well as at *Fachschulen* (technical schools) with a percentage of 3.5% (German pupils: 8.6% and 6.0% respectively). Migrant pupils are overrepresented in the vocational preparatory year or vocational foundation year with 9.8% (German pupils: 4.1%). The high percentages of migrants at this school type is a sign that many pupils of foreign nationality

⁶³ Bayern, Bayerisches Staatsministerium des Innern, Verfassungsschutzinformationen Bayern 1. Halbjahr 2004, p. 16.

⁶⁴ Cf. Diefenbach, H. (2004) *Relative-Risiko-Indizes für die Über- bzw. Unterrepräsentation von ausländischen Schülern an allgemein bildenden Schulen des gegliederten Schulsystems im Bundesgebiet und in den einzelnen Bundesländern im Jahr 2002*, available at: <http://leb.bildung-rp.de/info/presse/2004/2004-06-25b.pdf>, (12.10.2004), p. 12; PUBDE 1394; Gewerkschaft für Erziehung und Wissenschaft (GEW) (2004) *Ausländerkinder werden systematisch benachteiligt!*, available at: http://www.gew.de/GEW_Auslaenderkinder_werden_systematisch_benachteiligt.html, (12.10.2004)

⁶⁵ A current analysis of micro-census data also shows that migrant children, especially Italian and Turkish children, are faring worse in the education system than others (cf. Kristen, C.; Granato, N. (2004) “Bildungsinvestitionen in Migrantenfamilien”, in: *IMIS-Beiträge 23/2004*, pp. 123-141; PUBDE1258).

⁶⁶ Cf. Open Society Institute (2002) *Monitoring des Minderheitenschutzes in der Europäischen Union: Die Lage der Sinti und Roma in Deutschland*, p. 96; PUBDE0035.

either do not find apprenticeships immediately after leaving school or increasingly switch to shorter training programmes not leading to a professional qualification⁶⁷.

If one examines the distribution of migrant pupils among the various school types differentiated according to their *countries of origin*, it becomes apparent that particularly young people from Serbia and Montenegro and Turks are over-represented in the lower vocational school types and underrepresented in the higher ones⁶⁸.

In addition, it becomes apparent that a significantly higher number of migrant pupils (38.2%) in vocational schools left school without qualifications than was the case for German pupils (20.0%) (cf. table 4 in the annex).

3. Apprenticeships

The proportion of migrant apprentices among the total number of apprentices as a whole sunk continually from 8% in 1994 to 5.0% in the year 2003 (cf. table 5 in the annex)⁶⁹.

Young migrants are clearly underrepresented in the dual system of apprenticeships. In addition, a strong reduction in the apprenticeship quota⁷⁰ for young migrants can be determined for the past ten years, which turned out to be over-proportional to the reduction in the case of young Germans. In 2002, the apprenticeship quota stood at 34% for young migrants (1994: 43.5%); for young Germans, by contrast, it was 63.5% (1994: 69.7%)⁷¹.

Apprentices with a foreign nationality are employed in industry and trade with a percentage of 46.4% and in craft professions with a percentage of 36.1%. It is obvious that migrant apprentices are particularly underrepresented in public service (cf. table 6 in the annex). This often has a great deal to do with the regulations relating to becoming a civil servant, which in many fields of public service require the employee to be a German citizen.

Furthermore, migrant apprentices are concentrated in a limited number of jobs. Young women most often found apprenticeships as hairdressers or assistants to doctors or dentists and young men found positions as car mechanics, painters or car sprayers⁷². Young migrants were underrepresented in the information and communication sector as well as in more demanding service positions⁷³.

4. University

One must differentiate between two groups of “foreign students”, those who come from abroad to study in Germany (*Bildungsausländer*)⁷⁴ and those who have grown up in Germany but are not yet German citizens (*Bildungsinländer*)⁷⁵. The proportion of the *Bildungsinländer* lies at around 26.7% of all students of foreign nationality in the winter term 2003/2004 (cf. table 7 in the annex). The percentage of *Bildungsinländer* among all students was 3.3%. The majority of these belong to the second and third generation of migrants. However, they are still clearly underrepresented in the *Fachhochschulen* and universities compared with their proportion in the total population of the corresponding age group.

⁶⁷ Jeschek, W. (2001) „Schulbesuch und Ausbildung von jungen Ausländern – kaum noch Fortschritte“, *DIW-Wochenbericht*, No.10/01, Berlin, p. 4; PUBDE0050.

⁶⁸ Similarly over-proportionally represented in the vocational preparatory year or vocational foundation year are pupils from the Russian Federation included among which are “newcomers entering education at a later stage” (family members of ethnic German migrants as well as Jewish refugees). The Russian pupils are also represented proportionally higher in the higher types of vocational schools, however.

⁶⁹ On the connection between (a lack of) training and unemployment, see chapter employment.

⁷⁰ The number of apprentices in relation to the number of persons in the age group between 15 and 18.

⁷¹ Germany, Bundesministerium für Bildung und Forschung, *Berufsbildungsbericht 2004*, p. 172.

⁷² Germany, Bundesministerium für Bildung und Forschung, *Berufsbildungsbericht 2004*, pp. 173-174.

⁷³ Cf. also chapter employment.

⁷⁴ *Bildungsausländer* are persons who have obtained the right to study abroad and come to Germany for the purpose of studying.

⁷⁵ *Bildungsinländer* are persons who have obtained the right to study in Germany but who don't have the German citizenship: educational nationals are mostly members of the second generation of migrants.

It is methodologically very difficult to assess the extent to which the aforementioned *disparities in educational achievements* can be traced back to forms of discrimination or to other factors, such as different social backgrounds (e.g. level of education of the parents).⁷⁶ A current study⁷⁷ researching the causes of the poorer educational position of children and young people from migrant families came to the conclusion that, when controlling relevant third variables, the effect of ethnic origin disappears. Of prime importance for the educational success of children is particularly the experience of education gathered in the family, the professional position of the parent to whom the child relates and the financial situation of the parents.⁷⁸ A decisive factor for limited success in education for children and young people from migrant families is their worse “initial provision with migrant-specific human capital”⁷⁹. This study thus confirms the link between social origin and success in education – which was also identified by the PISA study⁸⁰.

In another study, the question was explored as to whether the different levels of attainment in education of German and migrant children possibly could be traced back to forms of *institutional discrimination*. The study came to the conclusion that discrimination can occur in schools above all at three points: during initial enrolment for school, when assigning a pupil to a special needs school (*Sonderschule*), and at the point of transition from primary into secondary education. The extent to which individual or institutional discrimination is involved here is not sufficiently apparent from the study, however⁸¹.

The so-called IGLU study finds that the chances of a child whose parents were both born in Germany receiving a recommendation for *Realschule* (secondary schools leading to intermediate qualifications) are 2.73 times greater than those of a child whose parents were both born abroad – disregarding other influencing factors. The chances for recommendation to *Gymnasium* (grammar school) are 4.69 times higher⁸². However, in the weighting and control of the various variables on the teachers’ recommendation for the pupil’s school career, the study comes to the conclusion, with the help of multiple regression analysis, that the recommendation “is clearly dominated by the grades in German – followed by those in mathematics”. A significant influence is also exerted by the socio-economic status (income, educational background of the parental home, etc.). In conclusion, “whether a child comes from a family with migrant history or not is almost negligible”⁸³.

C. Initiatives and good practices against racism and discrimination in education

There are numerous projects in Germany which attempt to reduce discrimination in schools and promote tolerance, to improve the methods in dealing with cultural heterogeneity in the school and to support young people with a migration background integrating into school. In the following passages, some of these projects from very different areas will be presented as examples.

⁷⁶ Cf. Alba, R.; Handl, J.; Müller, W. (1994) “Ethnische Ungleichheiten im deutschen Bildungssystem“, in: *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, No.2, pp.209-237; PUBDE0063.

⁷⁷ Kristen/Granato, 2004; PUBDE1258. For this research, the data of various micro-censuses were used.

⁷⁸ Kristen/Granato 2004, p. 141.

⁷⁹ Kristen/Granato 2004, p. 127.

⁸⁰ Baumert, J./Schümer, G. (2001) “Familiäre Lebensverhältnisse, Bildungsbeteiligung und Kompetenzerwerb”, in: Deutsches PISA-Konsortium (ed.) *PISA 2000 – Basiskompetenzen von Schülerinnen und Schülern im internationalen Vergleich*, Opladen: Leske + Budrich, pp. 323-407; PUBDE0047.

⁸¹ Gomolla, M./Radtke, F.-O. (2002) *Institutionelle Diskriminierung. Die Herstellung ethnischer Differenz in der Schule*, Opladen: Leske + Budrich; PUBDE0002; Radtke, F.-O. (2004) “Die Illusion der meritokratischen Schule. Lokale Konstellationen der Produktion von Ungleichheit im Erziehungssystem”, in: *IMIS-Beiträge 23/2004*, pp. 143-178, PUBDE1259.

⁸² Bos, W. et al. (2004) „Schullaufbahneempfehlungen von Lehrkräften für Kinder am Ende der vierten Jahrgangsstufe“, in: Bos, W. et al. *IGLU. Einige Länder der Bundesrepublik Deutschland im nationalen und internationalen Vergleich*, Münster: Waxmann, p. 212; PUBDE1401.

⁸³ Bos, W. et al. 2004, pp. 217-218.

In the nation-wide project “School without Racism – School with Courage “, which has been coordinated by AktionCourage since 1995, children and young people are to be made resistant against xenophobic attitudes and their awareness for democracy is to be promoted. The programme is supported by the Federal Ministry for Labour with funds from the ESF.

The project’s objectives are sensitising young people to all forms of discrimination and racism as well as promoting their commitment to integration and equal opportunities. In addition, the project supports children’s and young peoples’ democratic patterns of acting and thinking and tries to reduce racist tendencies and violence with a lasting effect.

In order to be awarded the title “School without Racism” it is required that at least 70% of all people who learn or work in a school commit themselves with their signature to develop initiatives and projects against violence, discrimination and racism in their school. The pupils receive a starting set which includes all the necessary information on the project. Furthermore, they are assisted by a cooperation network. The development of ideas for initiatives and their implementation, however, are in the hands of the pupils.⁸⁴

The Hesse model project, “*frühstart*. German and Intercultural Education in Kindergarten” represents an initiative which aims at laying the foundation stone for migrant children’s success in school whilst already at the kindergarten stage. The project comprises the three core elements fostering linguistic competence, intercultural education and the activation of parents.

In an intensive programme of training, kindergarten personnel is trained to use innovative methods for promoting language skills amongst migrant and German children.⁸⁵ The second module of training, “Intercultural Education”, imparts fundamental knowledge on the children’s cultural references and competence of intercultural behaviour and sensitises them for cultural conflict situations. Both kindergarten teachers and “parent companions” take part in this module. The latter advise parents on questions of education, explain the significance of the kindergarten and the German education system. These “parent companions” are to foster the cooperation between teachers and parents and to involve the parents more actively in the educational process of their children.⁸⁶

A method of promoting language skills which is unique in Europe to date, but widespread in the USA was employed in the summer of 2004 in a model project in Bremen. On the initiative of the Bremen Senate, “summer camps” were organised for pupils from 23 primary schools in Bremen; 150 children with a particular need for linguistic support took part during the summer holidays. Children with a migrant background were to be assisted for developing their language skills in these summer camps – often in a playful manner. The intention was to counter the “summer setback”, i.e. a fall in linguistic competence during the time outside school in the summer months.⁸⁷

In teacher training, the topic of “dealing with cultural diversity” is taking on increasing importance; since the late 90’s, several education commissions at the national and local government levels have

⁸⁴ www.aktioncourage.de/www.schuleohnerassismus.org/index.html (05.10.2004); taz (16.09.2004)

Currently more than 200 German schools (per June 2004) have been awarded the title “Schools without Racism.” At the moment, the project coordinators are trying to encourage more eastern German schools to participate in the programme.

⁸⁵ This concept of language learning was developed by Elke Schlösser, (cf. Schlösser, E. (2001) *Wir verstehen uns gut - Spielerisch Deutsch lernen. Methoden und Bausteine zur Sprachförderung für deutsche und zugewanderte Kinder als Integrationsbeitrag in Kindergarten und Grundschule*, Münster: Ökotopia Verlag)

⁸⁶ <http://www.projekt-fruehstart.de/frames.php> (05.10.2004); 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 by 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.

⁸⁷ *Weser-Kurier* (06.8.2004); *Die Zeit* (12.8.2004), p. 33

The project is financed by approx. 500,000 Euro from the Zurich Jacobs Foundation and evaluated by the Berlin Max Planck Institute for Educational Research. If the project is assessed as successful in the evaluation at the end of 2004, the Bremen Senator of Education has announced that similar “language camps” will be offered in the coming year for more primary school pupils in Bremen.

come to the conclusion that “intercultural education is indispensable” and ought to be anchored “as a cross-section task in all subjects and all phases of the training and further training”⁸⁸ of teaching staff. Thus, the Hamburg Commission for Teacher Training, in its recommendation to the Senate, declares “dealing with cultural and social heterogeneity” to be one of the three “priority topics of teacher training”.⁸⁹

The realisation of “intercultural education” at Hamburg’s schools – which has been explicitly anchored in the state’s school law since 1997 – now forms a central aim; along with intercultural teaching, this includes training programmes for pupils in coming to terms with prejudices, discrimination, marginalisation and in dealing with intercultural conflicts⁹⁰. Since August 2003, teachers in Hamburg have been obliged to take part in further training on the topic of “Intercultural Education”; in these training courses, some teaching material is used, which is based on a transnational COMENIUS programme⁹¹ with which teachers can encourage pupils to realise the cultural diversity in Europe and to reflect on multilingualism and intercultural communication.

In addition to the good practice projects on the combating of discrimination and on the positive evaluation of cultural diversity in the education system which have been selected as examples here, there is a great variety of further initiatives which range from kindergarten, to school and vocational training into the area of the further education of adults with a migrant background.

D. Main state provisions for minority education

According to the German Constitution, the responsibility for the system of education in Germany lies with the individual federal states. For that reason no nationally standardized legal provision for minority education exist. Nevertheless, the disadvantaged educational situation of non-German pupils has been recognized as a problem by all federal states; consequently, supportive measures for children and young people of migrant backgrounds are offered in all federal states. These measures vary greatly with respect to their legal basis, target group and organisational implementation.⁹² The most common measures are described briefly in the following.

*1. Special support classes*⁹³

Special support classes are generally found at the outset of primary education, but are also found in primary schools and secondary modern schools for “newcomers entering education at a later stage” (*Seiteneinsteiger*). In these classes, children and young people who cannot yet take part in regular teaching due to lacking language skills are prepared for a transition into the regular classes. They mainly learn German, but they also receive subject-related teaching. They should be in position to join regular classes after a year in such a special class. The period of attendance can be reduced or, in exceptional cases, extended for a maximum of two years. This model is currently the most predominant in all federal states.

⁸⁸ Krüger-Potratz, M. (2001) „Integration und Bildung: Konsequenzen für Schule und Lehrerbildung“, in: Bade, K. J. (ed.) *Integration und Illegalität in Deutschland*, Osnabrück: IMIS, pp. 31-40 (here: p. 36); PUBDE 0032

⁸⁹ Hartung, R.; Brügel, D. (2004) „Umgang mit kultureller und sozialer Heterogenität als ein Schwerpunkt der Hamburger Lehrerfortbildung“, in: Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration (ed.) *Förderung von Migrantinnen und Migranten in der Sekundarstufe I. Fachtagung am 3. Dezember 2003*, Berlin, Bonn, pp. 101-129 (here: pp.102-106); PUBDE 1298

⁹⁰ <http://www.li-hamburg.de/bf.1433/index.html> (05.10.2004)

⁹¹ 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.

Cf. http://europa.eu.int/comm/education/programmes/socrates/comenius/moreabout_de.html; (05.10.2004).

⁹² Cf. Gogolin, I; Neumann, U.; Reuter, L. (2001) *Schulbildung für Kinder aus Minderheiten in Deutschland, 1989-1999*, Münster: Waxmann; PUBDE 0638

⁹³ The terminology used for this educational measure differs in the various federal states. For example, some states refer to preparatory classes or courses or transitional classes.

2. *Special instruction*

If the formation of a special support class is not possible due to a low number of participants⁹⁴, then special instruction is offered as an accompanying measure on an individual base. As with special support classes, learning German and receiving some instruction in other subjects, such as mathematics, is the main purpose of the teaching. Special instruction is conceived of as a temporary measure to facilitate integration into the regular classes and to reach the level of the class.⁹⁵

3. *Additional instruction in the migrants' mother tongue*

Additional instruction in the migrants' mother tongue is mainly offered in the Western federal states, primarily for children from the former recruitment countries. Teaching in the respective mother tongue is primarily carried out by foreign teachers employed by the federal state concerned. In other federal states, by contrast, teaching is offered by the consulates, but within the school buildings, however. Participation in instruction in the migrants' mother tongue is voluntary.⁹⁶

4. *Pre-school language support*

Since the end of 2002, in some federal states (such as Hesse, Hamburg and Lower Saxony), new regulations relating to the introduction of pre-school language support have been incorporated into the school laws. Common to all programmes is that, initially, approximately a year before schooling begins, the German language skills of the future pupils are tested and, in the case of deficits, participation in pre-school language courses, which are free of charge, are either recommended or made obligatory. 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 could start school later.

In Hesse, where this support programme was introduced in 2002, the first results are meanwhile available, evidencing the positive effect of such courses. 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". Only 19% of the few children who, despite such a recommendation, did not take part in pre-school courses managed to reach the required level.⁹⁷

5. *Islamic religious education*

In the period under review, Islamic religious education is not taught in any federal state as a "part of the regular curriculum in state schools" in the sense of Art. 7 (3) Basic Law. The main reason for this is that there is no legitimate institution on the part of the different Islamic communities to represent them and to negotiate an agreement with the public authorities.⁹⁸

Although the Prime Ministers of the Federal States unanimously confirmed at the end of 2001 "that religious education in schools for pupils of Muslim faith is an obligation of schools"⁹⁹, to date only "provisional models" exist. Thus, "Islamic instruction" is often offered within the framework of optional teaching in the pupils' native tongue, which is organised in some federal states (such as

⁹⁴ As a general rule, special classes are created when an average of 10 children cannot immediately be integrated into regular classes.

⁹⁵ Cf. Schroeder, J. (2001) „Länderbericht: Baden-Württemberg“, in: Gogolin, I.; Neumann, U., Reuter, L. (eds.) *Schulbildung für Kinder aus Minderheiten in Deutschland 1989-1999*, Münster: Waxmann, p. S. 11-28; PUBDE0638

⁹⁶ Cf. Germany, Beauftragte der Bundesregierung für Ausländerfragen (2001) *Mehrsprachigkeit an deutschen Schulen: ein Länderüberblick*; PUBDE0632

⁹⁷ Cf. press release of the Ministry of Education in Hesse from 17.07.2003.

⁹⁸ Cf. Germany, Bundesministerium für Familie, Senioren, Frauen und Jugend (2000) *Familien ausländischer Herkunft in Deutschland. Leistungen, Belastungen, Herausforderungen. Sechster Familienbericht*, p. 171; PUBDE1176.

The Upper Administrative Court Münster confirmed this interpretation of Art 47 (3) Basic Law and rejected, as a consequence, a joint appeal by the Central Council of Muslims in Germany and the Islamic Council, which appealed for legal entitlements to Islamic religious instruction at public schools in North-Rhine Westphalia, (Ref.: 19 A 997/02).

⁹⁹ Germany, Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (2002) *Bericht „Zuwanderung“*, p.19; PUBDE 0043

Baden-Württemberg or Schleswig-Holstein) by the consulates of the countries of origin and, in other states, financed by the respective Ministry of Education¹⁰⁰. There has been Islamic religious instruction in North-Rhine Westphalia since 1999 in German in which this subject is offered as part of the regular curriculum in which grades are given; however, it is explicit that there is no required confessional bond, i.e. knowledge is imparted about Islam, but the Islamic faith itself is not taught.¹⁰¹

6. Regulations on school attendance

Due to the responsibility of the federal states for education the rules on school attendance for refugee children¹⁰² are not unified on a national level. Although all federal states generally require school attendance in their school laws, refugee children are exempted from this requirement in some federal states. Whilst in Bavaria, Berlin and, since May 2004, also the North-Rhine Westphalia¹⁰³, for example, attendance is expressly compulsory for refugee children; in other states (e.g. Baden-Württemberg) there is no such obligation. However, refugee children have the legal right to attend school in all federal states.¹⁰⁴ Nonetheless, the right to schooling, according to an expert study by the German Youth Institute, can in some cases lead to the actual case of pupils not entering school education if, for example, entry to school is refused for ‘capacity reasons’. In addition, according to the DJI report, social welfare offices could refuse to place “the necessary material support for attending school”¹⁰⁵ (e.g. financial means for purchasing school books) at the refugee children’s disposal.¹⁰⁶

E. Religious symbols in schools

Until the beginning of 2004, no single state school law had a regulation which expressly forbade teachers wearing religious symbols. This changed, however, in the course of the year 2003: After the Federal Constitutional Court ruled at the end of 2003 that Muslim teaching staff could only be banned from wearing headscarves on the basis of a state law, legislators in some federal states introduced corresponding amendments into the legislative process. Some states (e.g. Baden-Württemberg) attempted to secure a ban on wearing headscarves in the law while allowing teachers to wear Christian and Jewish symbols. Only the Berlin Senate passed a law (“Neutrality Law”) in October 2004 which banned the wearing of *all* religious symbols in large areas of public service, including schools. In other states, however, the governments see no need for legal action; conflicts related to wearing religious symbols in school are to be dealt with, as before, on a case-by-case basis and on the basis of existing employment regulations¹⁰⁷.

What effect the new school laws will have and whether the Federal Constitutional Court will have to rule on unequal treatment regarding Muslim symbols, on the one hand, and Christian and Jewish symbols, on the other, is still open. In the meantime, there has been a decision by the Federal Administrative Court on the reforms in the school law of Baden-Württemberg which, although it

¹⁰⁰ Bielefeldt, H. (2003) *Muslimen im säkularen Rechtsstaat. Integrationschancen durch Religionsfreiheit*, Bielefeld: transcript p.112; PUBDE 1402

¹⁰¹ Cf. Bielefeldt 2003, p. 113; Press release from the Ministry of School, Youth and Children North-Rhine Westphalia (*Ministerium für Schule, Jugend und Kinder (NRW)*) from 29.06.2004. A important role for the training of the respective teachers is played by the first course of study in Germany for Islam religious education at the University of Münster. After the chair of “Religion of Islam” was filled in July 2004, students can be trained to become religious education teachers for Islam (<http://www.uni-muenster.de/ReligioeseStudien/welcome.htm>; 05.10.2004).

¹⁰² Children of asylum seekers and tolerated refugees, but also underage, unaccompanied refugees.

¹⁰³ Cf. *Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit*, Saarbrücken: Isoplan, Vol. 20, No. 2004/2, p. 19

¹⁰⁴ The withholding of the general requirement to attend school is justified with the fact that the case of refugee children, due to their uncertain resident status, is not one of „usual residence“, which in most federal school laws is a condition of the requirement to attend school. (cf. Stiegeler, K. (2003) *Bildung und Ausbildung für Flüchtlinge: einige ausgewählte rechtliche Probleme*, in: *Informationsverbund Asyl / ZDWF e.V. Asylmagazin*, Nr. 9/2003, pp. 10-14; PUBDE 1404).

¹⁰⁵ Klingelhöfer, S.; Rieker, P. (2003) *Junge Flüchtlinge in Deutschland. Expertise zu vorliegenden Informationen, zum Forschungsstand und zum Forschungsbedarf*. Halle: DJI, p. 18; PUBDE 1403

¹⁰⁶ The newspaper taz reported of such cases in Nordhausen in Thuringia (taz 23.06.2004).

¹⁰⁷ More on the legal questions on dealing with religious symbols, particularly Muslim headscarves, in schools can be found in Chapter legislation.

confirms the ban on wearing Muslim headscarves by law, at the same time points out that the ban on religious expression in schools is valid for all religions. Exceptions for certain forms of religiously motivated clothing, such as a nun's habit, could "thus not be considered".¹⁰⁸

There is consensus between the federal states that a ban on religious symbols should definitely not apply to pupils; i.e. Muslim schoolgirls, for example, should not be banned from wearing a headscarf.

F. Court cases regarding the wearing of religious symbols at school

A lot of public attention was devoted to the question as to whether **Muslim teachers** should be banned from wearing **headscarves** whilst teaching despite the fact that there were only a limited number of individual cases of conflict in practice regarding this issue.

The cause of this controversial debate on general principles relating to wearing a headscarf was a legal dispute between a German woman originating from Afghanistan, Fereshta Ludin, and the state of Baden-Württemberg. Ludin had been refused acceptance into state schools by the state authorities because she refused to remove her headscarf whilst teaching. Ludin went to court, but was unsuccessful at all levels. In the last instance, however, at the Federal Constitutional Court, she had a partial success. The highest German court ruled in September 2003 that a Muslim teacher can only be banned from wearing a headscarf whilst teaching if there were a "sufficiently certain" legal basis. As this was not the case in the matter at hand, the plaintiff should not have been refused further employment in state schools because of her wearing a headscarf. The court thus avoided determining whether a Muslim teacher should be banned from wearing a headscarf on principle and assigned the state governments the task of finding an "acceptable compromise" in the "unavoidable conflict" between the religious freedom of teachers, the duty of the state to be neutral, the parents' right to educate their children and the negative religious freedom of pupils.

Although the court emphasised the constitutional "requirement for strict, equal treatment of different faiths", it permitted the individual state governments to establish their own legal regulations, "because in the process of finding a middle way, the school traditions, the religious composition of the population and the relative strength of its religious roots should be taken into account".¹⁰⁹

A number of federal states reacted to this ruling by the highest German court with subsequent legislative procedures to ban the wearing of headscarves by Muslims. In Baden-Württemberg, Lower Saxony and Saarland, such laws have since been passed; in Berlin, Bavaria and Hesse broad agreement has been reached on similar bills so that it is very likely that such a law will soon be passed by the state parliaments. The remaining federal states see either no legal reason to act in the question of banning headscarves (e.g. in the eastern German states or Schleswig-Holstein) or have not yet reached agreement on a concrete bill (e.g. North-Rhine Westphalia).

In the meantime, three basic forms of a legal ban on headscarves can be identified:

1. The wearing of a Muslim headscarf whilst teaching is banned; Christian and Jewish symbols are still allowed (e.g. in Baden-Württemberg, Lower Saxony and Saarland).¹¹⁰
2. Wearing a headscarf is banned for state officials in public service as a whole whilst Christian and Jewish symbols are still allowed (in Hesse).¹¹¹

¹⁰⁸ Germany / BVerwG / 2 C 45.03 (24.06.2004); Spiegel online (09.10.2004); available at: www.spiegel.de/unispiegel/wunderbar/0,1518,322384,00.html

¹⁰⁹ Ruling by the Federal Constitutional Court; Germany BVerfG / 2 BvR 1436/02 (24.09.2003); PUBDE 1306; available at: <http://www.bundesverfassungsgericht.de/cgi-bin/link.pl?entscheidungen>

¹¹⁰ Reforms in school law were passed on this matter which, in their wording, were very open and "nebulous" (Rux, J. (2004) "Ring frei für die nächste Runde: 'Kopftuchgesetz' in Baden-Württemberg verabschiedet", in: *Zeitschrift für Ausländerrecht (ZAR)*, Vol 24, No. 5/6, pp. 188-190; here: p.189; PUBDE 1302) to be able to ban the wearing of the Muslim headscarf and still to allow Christian and Jewish symbols. In the reform in Lower Saxony, Baden-Württemberg and Saarland, reference is made to a ban on "religious manifestations" which are harmful for the "neutrality of the federal state" or "peace within the school" (Gesetz zur Änderung des Schulgesetzes des Landes Baden-Württemberg; GBl. p. 178, Nr. 6; Gesetz zur Änderung des Niedersächsischen Schulgesetzes; Landesparlament von Niedersachsen; Drucksache 15/720; Gesetzentwurf zur Änderung des Gesetzes zur Ordnung des Schulwesens in Saarland; Landesparlament des Saarlandes; Drucksache 12/1072).

¹¹¹ In the bill proposed by the CDU in Hesse similar wording is chosen as in Lower Saxony and Baden-Württemberg (no question of the "neutrality of exercising the office" and no endangering of "political, religious

3. In some areas of public service (e.g. justice, police service, teaching) the wearing of noticeable religious symbols – no matter whether Muslim, Christian or Jewish – is banned in general (in Berlin).

Whilst the state governments were working on the bills, **criticism** was levelled at a general ban on Muslim teachers wearing headscarves and at a legally sanctioned inequality in dealing with Muslim clothing and symbols on the one hand and Christian and Jewish on the other. In a statement by the Central Council of Muslims in Germany (ZMD) on the reform of school law in Lower Saxony, complaints are made, for example, that such a law makes a sweeping judgement of Muslims wearing headscarves and that it goes against their fundamental right to personal expression and access to public offices.¹¹² In the view of the Federal Commissioner for Migration, Refugees and Integration, Marieluise Beck, a general ban on wearing headscarves sends a “message of exclusion, is harmful to integration and plays into the hands of Islamists”.¹¹³

Supporters of a legal ban argue against this with the negative religious freedom of pupils, the requirement for teachers to show restraint and the obligation for neutrality by state officials; the latter are required to support unequivocally the constitution and hence the equality of men and women”¹¹⁴. Since the headscarf may be seen as a political symbol of religious “fundamentalism, intolerance and suppression of women”¹¹⁵, a legal ban is necessary, even at the cost of impinging the freedom of religion.

The Federal Administrative Court confirmed the corresponding reform of the school law in Baden-Württemberg in June 2004 as constitutional and as sufficient legal basis for a ban on headscarves for Muslim teachers.¹¹⁶ However, the judges support – opposite to the Baden-Württemberg legislator’s intention – the view that the law does not mean any preferential treatment of Christian religions since “the general regulation of law affects all faiths and ideologies to the same extent”¹¹⁷. It was made clear, that this ban of religious manifestations applies to all religions and that exceptions, e.g. for Christian symbols like the traditional clothing of Catholic nuns, are not legal.¹¹⁸

Meanwhile, the **European Commission** has also become involved in the German debate on banning the wearing of headscarves. The concern of the EU authorities is that the laws of the different federal states on banning the wearing of headscarves may not be compatible with the EU ban on discrimination.¹¹⁹

or ideological peace”; the “Christian and Humanist influenced occidental tradition” is to be “appropriately taken into account”). However, the reform in Hesse does not only affect school law, but it is also to be incorporated in the law on state employees (cf. Gesetzesentwurf der Fraktion der CDU für ein Gesetz zur Sicherung der staatlichen Neutralität; Hessischer Landtag; Drucksache 16/1897 neu, 10.02.2004).

¹¹² Zentralrat der Muslime in Deutschland e.V.: Stellungnahme des ZMD zur geplanten Gesetzesänderung in Niedersachsen in Sachen Kopftuch (27.02.2004)

¹¹³ Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration: Islam einbürgern. Fünf Thesen über den Umgang mit religiöser Vielfalt unter dem deutschen Verfassungsbogen. (Press release, 20.03.2004; Speech given at the *Evangelische Akademie Tutzing*; PUBDE 1304); available at: http://www.integrationsbeauftragte.de/download/Beitrag_TutzingPressefassung.pdf

¹¹⁴ Süßmuth, R. (2004) „Das Kopftuchverbot für Lehrerinnen in Schulen – Beabsichtigte Wirkungen und unbeabsichtigte Folgen“, in: ZAR, Vol. 24, No. 1, pp. 3ff; PUBDE 1303. Süßmuth lists central arguments from supporters and opponents of a legal ban.

¹¹⁵ Justification of the Reform in School Law in Saarland (*Begründung zur Novellierung des saarländischen Schulgesetzes*) (SZ 24.06.04; die tageszeitung 24.06.04)

¹¹⁶ Germany / BVerwG / 2 C 45.03 (24.06.2004)

¹¹⁷ Press release from the Bundesverwaltungsgericht (24.06.04)

¹¹⁸ cf. Germany / BVerwG / 2 C 45.03 (24.06.2004; released: 08.10 2004); Spiegel online 09.10.2004; available at: www.spiegel.de/unispiegel/wunderbar/0,1518,322384,00.html

¹¹⁹ SZ (28.06.2004)

4.III. Legislation

A. New legal provisions or developments concerning the EU Directive, esp. regarding the creation of a specialised body

In 2004, Germany had still not incorporated the EU directives 2000/43/EC (Equal treatment between persons irrespective of racial or ethnic origin) and 2000/78/EC (Equal treatment in employment and occupation) into national law. Since the deadlines for this change had passed in July and December 2003, the EU Commission started proceedings against Germany and five other EU member states at the European Court in July 2004.¹²⁰

At present, the federal government is preparing a law containing the following elements:

- a law relating to establishing anti-discrimination offices,
- an anti-discrimination law with regard to employment,
- regulations in civil law with regard to protection against discrimination, as well as
- resulting changes, for example, amongst others, in civil service law, social law.¹²¹

According to the Federal Minister of Justice (SPD) the planned national law will implement the anti-racism directive 2000/43/EC entirely¹²²: thus, for example, the protection provided by existing legal regulations for victims of discrimination is to be improved and the burden of proof is to be altered in favour of the victim. In the case of discrimination, it is also to be made possible that claims for compensation and injunction can be made valid¹²³. There is broad agreement in the federal government with regard to establishing one or more anti-discrimination offices, as prescribed by directive 2000/43/EC in article 13. As far as can be ascertained at this stage, the intention is to establish, on the basis of a law relating to establishing anti-discrimination offices, *one* central office with all functions foreseen in the directive; that is, (1) support for victims of discrimination, (2) implementing independent research and surveys and (3) publishing independent reports and recommendations. As yet, no corresponding bill has been put forward, however, with the consequence that no additional information is available with regard to the details of this law.

Although the legal basis for the establishment of such offices is still lacking to date, offices with similar functions have already been set up in many German cities. These anti-discrimination offices are organised either as part of the local government administration (e.g. in Munich, Frankfurt/Main, Cologne and Stuttgart) or as independent NGOs (e.g. ADB Berlin, ARIC North-Rhine Westphalia, Öffentlichkeit gegen Gewalt (Köln) e.V.). They fulfil, at least in part, the same functions as intended by the EU directive¹²⁴. In spring 2004, the Senate of Berlin established an Office for Supporting Equal Treatment (*Stelle zur Förderung der Gleichbehandlung*) as the first state to do so and with direct reference to the EU directives. It accepts complaints regarding discrimination and conflicts due to ethnic origin, race, ideology or religion and follows them up; in addition, the office carries out the task of providing reports and recommendations on all aspects relevant to discrimination.¹²⁵

In the context of the legal provision regarding the EU directives, mention must be made that the city of Frankfurt/Main as the only German city so far has passed its own **local government anti-discrimination directive**. With direct reference to the EU directives, the city of Frankfurt thus commits itself to combating all forms of discrimination. The directive is valid for all public offices in the city of Frankfurt.¹²⁶ The institutional responsibility for dealing with problems of ethnic

¹²⁰ Cf. press release of the EU Commission IP/04/947 (19.07.2004)

¹²¹ <http://www.bmfsfj.de/Politikbereiche/gleichstellung.did=12350.html> (11.10.2004)

¹²² Zypries, B. (2004) Diskriminierungsschutz mit Augenmaß. Speech given by the Federal Minister of Justice on the conference „Reform des Diskriminierungsschutzes in Europa – Wo steht Deutschland?“ on June 24, 2004 in Berlin; available at: <http://www.bmj.bund.de/enid/0,0/nh.html?druck=1>, PUBDE 1370

¹²³ <http://www.bmfsfj.de/Kategorien/aktuelles.did=12348.html>

¹²⁴ These offices and organisations mostly see their function in offering supportive advice as well as dealing with, documenting and, in part, publishing cases of discrimination. More on these offices can be found in the chapters “employment” and “housing” in this report.

¹²⁵ cf. press release of the Commissioner of the Berliner Senate for Migration and Integration (31.03.2004); available at: www.berlin.de/sengessozv/auslaender/pm_gesetz.html.

¹²⁶ Cf. Stadt Frankfurt am Main; AMKA (2004) Integrationsbericht 2003. Förderung von Integrationsmaßnahmen und Ausländervereinen durch die Stadt Frankfurt am Main, p. 17; PUBDE 1236;

discrimination was given to the Office for Multicultural Affairs (*Amt für multikulturelle Angelegenheiten (AMKA)*) which has since been responsible not only for publicising these directives, but for “dealing with and documenting complaints and reports of discrimination relating to race, skin colour, language, country of origin, faith or religion, political opinions or ideology.”¹²⁷

B. Other relevant provisions or jurisprudence est. in 2004

The passing of the “Law on the Control and Limitation of Immigration and on the Regulation of Residence and Integration of EU Citizens and Migrants (**Immigration Law**)” can be described as the central event within the timeframe of this report with regard to migration and integration policy. After years of political debate, for the first time in its history Germany has an immigration law and officially recognizes that there has been immigration and that there will be immigration in the future.

The immigration law passed is based upon the bill agreed upon by the coalition of the SPD and the Green Party in March 2002. This law did not come into effect as planned at that time because the Federal Constitutional Court formally declared the vote on the bill in the Upper House (*Bundesrat*) “not conform with the Constitution”. After lengthy negotiations between the ruling coalition and the opposition, the original bill was modified and finally passed in June 2004 so that the law can come into effect on January 1, 2005.

The main differences between the original coalition bill and the immigration law which has been passed are mainly connected with the lack of a system for labour migration and with the incorporation of regulations relating to security policies such as, for example, the tightening of offences resulting in extradition. In addition, the age until which children may join their parents in the host country has not been set at twelve – as originally planned – but left at the present age of 18 or 16 respectively. Within the sphere of humanitarian immigration non-state and gender-specific persecution will be accepted as a basis for a refugee status in accordance with the EU Qualification Directive. As already planned in the original government bill, the number of residence titles will be reduced to two, namely (limited) right of residence and (unlimited) right of settlement. The former ‘Federal Office for the Recognition of Foreign Refugees’ will be granted increased responsibilities, especially in the sphere of integration. Its new name is ‘Federal Office for Migration and Refugees’.¹²⁸

According to the Immigration Law, the “**integration** of legal migrants living permanently within federal territory into economic, cultural and social life”¹²⁹ shall be supported. After the law comes into force on January 1, 2005, new migrants who legally come to stay in Germany permanently will for the first time be awarded the legal right to participate in integration courses¹³⁰. The course programme comprises language training and an orientation course to impart knowledge of the legal system, culture and history of Germany. In addition to these integration courses for new migrants, measures are planned for migrants who have already been living in Germany for a longer period. Thus, course participation for an additional 50,000 to 60,000 people will be created. To qualify participants have to receive social security payments or “are in particular need of integration”.¹³¹ If a migrant who is obliged to attend such a course does not fulfil his obligations, this may have consequences for the extension of his/her right of residence; in addition, a reduction in social security payments by 10% may ensue.

anti-discrimination directive available at: www.stadt-frankfurt.de/amka/deutsch/projekte/deutsch_projekte_e2_anti_frame.htm.

¹²⁷ Stadt Frankfurt am Main; AMKA (2004) Ausführungsbestimmungen über das Verfahren und die Feststellung von Verstößen gegen die Antidiskriminierungsrichtlinie der Stadt Frankfurt am Main; available at: www.stadt-frankfurt.de/amka/deutsch/projekte/deutsch_projekte_e2_anti_frame.htm.

¹²⁸ A summary of the most important new regulations can be read at: http://www.bmi.bund.de/Anlage25594/Einzelheiten_des_Zuwanderungsgesetzes.pdf

¹²⁹ Germany /ZuwG (30.06.2004); Law on the Control and Limitation of Immigration and on the Regulation of Residence and Integration of EU Citizens and Migrants (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*) (PUBDE 1301); § 43 (1) ZuwG

¹³⁰ § 44 (1) ZuwG; New migrants who “cannot express themselves in a simple manner in German” are obliged to participate in such courses. (§ 44a (1) ZuwG).

¹³¹ § 44 (1) ZuwG; the number of 50,000 to 60,000 additional places is not contained within the law itself, but has been frequently mentioned in the reporting on this matter (cf. e.g. SZ 14.06.2004; FAZ 18.06.2004)

The Federal Ministry of Justice proposed a law aiming to strengthen the rights of victims of crimes within criminal proceedings, which came into force on September 1, 2004. Although the Law on the Improvement of the Rights of Victims in Criminal Proceedings (*Gesetz zur Verbesserung der Rechte von Verletzten in Strafverfahren*) does not contain any explicit regulations regarding violent crimes motivated by prejudice, extended rights are given to the victims of these crimes in the criminal proceedings against the perpetrators.

The amended law expands the legal options of the victim to make claims for compensation and damages valid within the criminal proceedings. The possibility of incidental action is extended by the change in 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, offers of support by victim support organisations, the result of the proceedings) has been greatly expanded.¹³²

Human rights experts such as the member of the executive board of AI Germany, Bernward Ostrop, evaluate this amendment as an important step on the way to more rights for victims of racist violence.¹³³

C. Court cases concerning racism and discrimination in 2004

In this section, important verdicts or court cases within the context of xenophobia, discrimination and equal treatment will be briefly presented.¹³⁴

The Upper Administrative Court in Münster rejected a joint appeal by the Central Council of Muslims in Germany (ZMD) and the Islamic Council for these organisations' legal entitlement to **Islamic religious instruction** at state schools in North-Rhine Westphalia.¹³⁵

The court ruled that such an entitlement could not be justified by the Basic Law, Germany's federal constitution, neither by Art. 7 (3), which classifies religious instruction as "part of the regular curriculum in state schools", nor by the constitutional principle of religious and ideological neutrality. The court rejected the appeal due to the fact that it was submitted by two organisations which do not constitute religious denominations as such. Under German law, the members of religious denominations have to be "natural persons", whereas the complainants constitute umbrella organisations consisting of other Muslim organisations.¹³⁶

The Hamburg administrative court ruled in January 2004 that female Muslim students cannot be exempted from **sex-education lessons** at school.¹³⁷ In the case, a Turkish mother of two 14- and 15-year old girls requested that her daughters be exempted from sex-education lessons. In her appeal, she argued that her daughters would not need any sex-education lessons since, according to Islamic rules, sex may only be practised by married couples. In addition, she stated that the sex-education lessons would create a crisis of conscience for her daughters.

Judges at the Hamburg-based administrative court rejected her appeal, stating that state school-laws make sex-education lessons compulsory for all pupils. Consequently, parents have no say in the matter. The court also explained that, even though parents are free to decide in which form to educate their children about sexual matters, the topic does still have social relevance "over and above the private sphere of families". Consequently, sex education at school is in the public interest, and, furthermore, any exemption for religious reasons would also foster "feelings of separateness" and thus counteract integration. Muslim and Turkish organisations welcomed the ruling and expressed the view that all students have to attend sex-education lessons if such lessons are laid down in school law.

¹³² The law is printed in the *Bundesgesetzblatt*, Year 2004, Part I, No. 31, pp. 1354-1358; see also: press release of the Bundesjustizministerium (14.05.2004)

¹³³ Unpublished speech by Bernward Ostrop ("*Diskriminierung als gesellschaftliches Problem*") held within the conference "Reform des Diskriminierungsschutzes in Europa – Wo steht Deutschland?" in June 2004 in Berlin.

¹³⁴ Further court rulings relevant to discrimination and xenophobia see chapters "employment" and "racist violence and crimes" in this report

¹³⁵ Nordrhein-Westfalen / OVG / 19 A 997/02 (date); see also chapter "education" in this report.

¹³⁶ Press release from the NRW Justizportal 02.12.03; FR (03.12.2003); taz (03.12.2003)

¹³⁷ Hamburg / VG / 15 VG 5827/2003 (date)

In February 2004, the Kassel administrative court ruled that Muslim women are entitled to wear a **headscarf on passport photographs**, provided that they can still be identified “without any doubt”¹³⁸. In the underlying case, the local authorities of Baunatal had rejected a passport application of a German citizen of Turkish origin on the grounds that the woman was wearing a headscarf on the passport photograph. The woman had appealed against the administrative decision on the grounds of her religious beliefs. Her appeal was upheld by the 3rd Senate of the court in Kassel (Hesse). The court has ruled that, according to the constitutional principle of religious freedom, the claimant has the right to religious freedom.¹³⁹

In a verdict by a District Court in Berlin in December 2003, for the first time in German legal history, members of an **extreme right-wing music group** were convicted of forming a criminal association and of incitement to hatred. The court sentenced the leader to three years and four months imprisonment; the other two defendants received suspended sentences of 18 and 22 months respectively.

The Berlin court ruled that there had been sufficient evidence that, between 1997 and 2001, the defendants were members of the neo-Nazi band “Landser” and had produced and sold CDs propagating extreme right-wing ideology. In this way, they had fuelled hatred against migrants and Jews. The group had been “the most important German cult band in the radical right-wing spectrum”; according to the court, their “political message of xenophobia, the mostly unconcealed incitement to commit crimes did not necessary trigger such offences directly, but they supported the perpetrators in carrying them out”¹⁴⁰. In his oral justification of the verdict, the presiding judge called the band a “political group with a commitment to fight”, and a “determination that is harmful to society”.¹⁴¹ The Federal Prosecutor Joachim Lampe agreed to the verdict and described it as “pointing the way” and as “helping to combat right-wing extremism”. The verdict followed recommendations of the European Commission against Racism and Intolerance (ECRI) which, in its Third Report on Germany 2004, recommends “particular efforts in the struggle against the milieu of the extreme right-wing music of hatred”¹⁴².

D. Initiatives for further developing of legal provisions against racism, discrimination, or anti-Semitic or Islamophobic acts

The fact that the federal government has still not yet implemented the EU directives on equal treatment, even after the deadlines have expired, led to a number of statements and initiatives which demand the **implementation of the EU directives** as soon as possible. Many groups in society are making demands which exceed those of the minimum standards required by the European side and advocate more comprehensive regulations on anti-discrimination. Examples of such statements and demands follow.

The **European Commission against Racism and Intolerance (ECRI)** in its Third Report on Germany repeated its demand for a law against racial discrimination that should also incorporate provisions relating to civil and administrative law. These legal regulations should “be valid for all public offices as well as for all natural and legal persons, in the public as well as in private sphere”.¹⁴³ In some matters, the demands made by the ECRI exceed those of the minimum provisions required by the two EU directives. For example, ECRI stresses that an anti-discrimination law should not just forbid unequal treatment on the grounds of “race” or ethnic origin, as intended in the EU directive 2000/43/EC, but must additionally take the criteria of skin colour, language, religion and nationality

¹³⁸ Kassel / VG / 3 G 1916/03 (date)

¹³⁹ taz (05.02.2004); FR (06.02.2004), *Ausländer in Deutschland (AiD) / Integration in Deutschland*. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 20, No. 2004/2, p. 19

¹⁴⁰ Berlin/ Ss / 2 Ss 02-02; the complete ruling is available at: www.kammergericht.de.

¹⁴¹ www.verfassungsschutz.de/de/aktuell_thema/meldungen/me_031222_skinhead_band_landser_verurteilt.html (05.10.2004); FR (23.12.2003); taz (23.12.2003)

¹⁴² Deutschland, ECRI (2004) *Dritter Bericht über Deutschland*. CRI (2004) 23, p. 35; PUBDE 1269 (published: 08.06.2004).

¹⁴³ ECRI 2004, p. 11

into account.¹⁴⁴ Unequal treatment on the grounds of nationality is explicitly *not* recognised by the EU directive in Article 3 (2).

The **German Institute for Human Rights** welcomed the recommendations formulated by the ECRI report and renewed its demands for a German anti-discrimination law and a systematic registration of cases of discrimination.¹⁴⁵

The **Federation of German Trade Unions** (DGB) also supports the implementation of the EU directives on equal treatment and also exceeds the minimum requirements of the EU with its suggestions. For example, the DGB demands that such a law should not only give individuals the right of legal action to individuals, but also to associations (*Verbandsklage*).¹⁴⁶ With regard to the demand for a specialised body (Art. 13; 2000/43/EC), the DGB advocates “the creation of independent offices with regional access and the establishment of a commission for equal treatment which is composed proportionately of the social partners”.¹⁴⁷

At their national conference in May 2004, the **Commissioners for Migrants and Integration from the Federal Government, States and Districts** repeated their call to implement the anti-discrimination law. Their demands also exceeded those of the minimum EU standard. Thus, the Commissioners argued that, in addition to “race” and ethnic origin, discrimination on the grounds of religion should be banned as well. For an “effective combating of structural and institutional discrimination”, they advocated incorporating a general right of legal action for associations into the law, that is, associations should also receive the opportunity “to take legal action in their own right”.¹⁴⁸

In addition to these official demands for the implementation of the EU directives on the part of various institutions and organisations, of which only a limited number were mentioned as examples here, attention must be drawn to a national **petition** in which an “independent and comprehensive anti-discrimination law” was demanded. In this initiative, which was organised and implemented by the campaign in North-Rhine Westphalia “Life without Racism – Anti-Discrimination Now!”, the trade union ‘ver.di’ as well as two homosexual and lesbian organisations, collected 15,000 signatures; these were handed over to the Parliamentary Secretary of State at the Ministry of Justice.¹⁴⁹

In comparison to the various demands for an anti-discrimination law, other initiatives for the advancement of legal regulations in the field of discrimination and racism have received less public attention, but they are nonetheless of importance. Two of these initiatives and recommendations are briefly described in the following.

In the context of the prosecution of racist, xenophobic and anti-Semitic violent crimes by the police and judicative, **ECRI** recommends in its current report on Germany that judicial authorities should be put in a better position “to illuminate the racist background to crimes”. The ECRI suggests, amongst other measures, changes in the law. It should be “expressly stated in the law that racist motivation is to be evaluated as a reason to increase punishment for all criminal deeds”.¹⁵⁰ In the opinion of ECRI, such legal regulations can contribute to “exposing the racist background to crimes and also acts of violence”.¹⁵¹

Representatives from the 55 OSCE member states passed the “**Berlin Declaration**” at their conference on anti-Semitism at the end of April 2004 in Berlin. In this declaration, “all manifestations of anti-

¹⁴⁴ cf. ECRI 2004, p. 11

¹⁴⁵ Press release from the *German Institute for Human Rights* (07.06.2004); taz (09.06.2004)

¹⁴⁶ DGB 2004, p.5. In a similar way, the ‘Landeszentrum für Zuwanderung NRW’ (LzZ) also advocates a right of action for associations (cf. press release from the LzZ: Diskriminierung bekämpfen – Chancengleichheit fördern: Deutschland braucht ein Antidiskriminierungsgesetz (24.09.2003); available at: http://www.lzz-nrw.de/docs/Pressemitteilung_24.09.2003.pdf).

In the two EU directives on equal treatment, in contrast, only the vague wording can be found that associations “can take part in the court and/or administrative proceedings” (Art 9 (2) 2000/78/EC; Art. 7 (2) 2000/43/EC), from which a separate right of action for associations cannot be assumed.

¹⁴⁷ DGB 2004, p. 5.

¹⁴⁸ Resolution of the Ausländer- und Integrationsbeauftragten von Bund, Ländern und Gemeinden (18./19.05.2004); available at:

www.integrationsbeauftragte.de/download/Resolution2004ADG.pdf (05.10.2004)

¹⁴⁹ Press release from ‘ver.di’ (30.01.2004); available at:

www.verdi.de/0x0ac80f2b_0x008b67b2;internal&action=verdi_show_nachricht.action#; 05.10.2004)

¹⁵⁰ ECRI 2004, p. 10.

¹⁵¹ ECRI 2004, p. 34.

Semitism and all acts of intolerance or violence against people due to their ethnic background or religious beliefs”¹⁵² were condemned without reservation. Furthermore, with their declaration, the member states committed themselves to concrete measures in the **fight against anti-Semitism**. For example, national legislation is to be examined and, if necessary, revised to be able to prosecute cases of anti-Semitism in a better way; educational programmes on combating anti-Semitism should be supported, anti-Semitic propaganda in the media and Internet should be combated more consistently and “reliable information and statistics on crimes motivated by anti-Semitism and other hate crimes” should be systematically collected and made “publicly available”.¹⁵³

4.IV. Housing

A. Evidence of racism and discrimination (including evidences of segregation) in the housing sector

1. Spatial Distribution of the Migrant Population

The spatial distribution of the migrant population varies greatly from region to region. The **percentage of migrants** in the entire population, which stands at 8.9% nationally, is clearly higher in densely settled agglomeration areas than in rural areas. According to the socio-political experts, the percentage of migrants in western German cities is on average 15%.¹⁵⁴ In some metropolitan areas the percentages are much higher: in Frankfurt am Main, for example, the proportion of migrants is 27.6%, in Stuttgart about 24% and in Munich around 23%. In eastern Germany, on the other hand, there are hardly any regions or cities where the percentage of migrants has exceeded the 5% mark¹⁵⁵

These statistical data do not as such contain any information on the actual distribution of non-German residents **within these municipalities**. A closer look at the individual city districts reveals huge differences in the percentages of migrants there. In Hamburg, where the average percentage of migrants is 15.3%, there are city districts in which over two-thirds of the inhabitants are migrants while there are other neighbourhoods where the share of migrants is below 2%.¹⁵⁶

Even if Hamburg is an extreme example for the disparate inner-city distribution of the migrant population, it reflects something which is true of all large urban areas: migrants are not distributed

¹⁵² OSCE (2004) Berlin Declaration of 29.04.04 (PC.DEL/347/04) (available at: http://www.osce.org/documents/cio/2004/04/2828_de.pdf; 05.10.2004)

¹⁵³ cf. OSCE 2004; Rafael, S. (2004) Berliner Erklärung: Antisemitismus in jeder Form bekämpfen! OSZE-Konferenz verabschiedet Manifest; available at: <http://www.mut-gegen-rechte-gewalt.de/artikel.php?id=5&kat=39&artikelid=1044> (05.10.2004). Similar demands also come from the ECRI which supports “the German authorities vehemently in their attempts to gain an overview of racist, xenophobic and anti-Semitic crimes and, above all, of violent crimes, too” (ECRI 2004, p. 34). Although such crimes are already registered in the German crime statistics, the manner in which they are registered is described in part as open to improvement (cf. chapter “racist violence and crimes”).

¹⁵⁴ cf. Krummacher, M. (2004) “Kommunale Integrationspolitik und interkulturelles Quartiersmanagement in multiethnischen Stadtteilen“, in: Treichler, A.; Cyrus, N. (eds.): *Handbuch Soziale Arbeit in der Einwanderungsgesellschaft*. Frankfurt/Main: Brandes & Apsel, pp. 269-291 (here p. 271); PUBDE1324.

Other authors come to a migrant total of 12.7% in western German agglomeration areas and 16.8% in the core cities of these agglomeration areas (cf. Bucher, H. J.; Kocks, M.; Schlömer, C. (2002) „Künftige internationale Wanderungen und die räumliche Inzidenz von Integrationsaufgaben“, in: *Informationen zur Raumentwicklung*, No. 8/2002, pp. 415-430 (here: p. 423); PUBDE1555)

¹⁵⁵ www.schader-stiftung.de/wohn_wandel/460.php (05.10.2004); cf. Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 19, No. 2003/2, p. 11

One has to keep in mind that all these statistics only include residents of non-German nationality. If ethnic German immigrants (*Spätaussiedler*) and naturalised citizens were included in the statistics, the percentage of residents with a migration background would be significantly higher. According to Krummacher (2004, p.271) about 15 million persons (i.e. 18% of the total population) with a migration background are currently living in Germany.

¹⁵⁶ Cf. Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 20, No.2/2004, p.14; die tageszeitung (taz) 25.07.03.

evenly, but rather are concentrated in certain districts. These multi-ethnic areas, in which the share of migrants is often between 25 and 40%, are generally regarded as spatially and socially disadvantaged and display a higher concentration not only of migrants, but also of underprivileged groups (e.g. the long-term unemployed, those receiving social welfare).¹⁵⁷

These districts can be assigned to one of two types of area: they are either inner-city areas, often former working-class areas with predominantly run-down buildings, or large housing estates of the 1960s and 70s on the outskirts of cities with a high (but decreasing) rate of socially bound living areas.¹⁵⁸ Furthermore, these districts are characterised by:

- Very high density of buildings
- Few parks and green areas
- Tendencies towards dereliction of buildings
- Ecological deficits (pollution, litter, the impact of traffic)
- Disinvestment in production, building-construction and retailing.¹⁵⁹

The uneven distribution of the residential areas of different social groups, which involves spatial inequality in addition to social inequality, is discussed under the term **segregation**¹⁶⁰. Despite the unequal inner-city distribution of the migrant population, the current level of segregation in German cities is still relatively low.¹⁶¹ There are conflicting opinions regarding the question of whether or not **tendencies towards segregation** will increase in future. Empirical data do not allow for such unequivocal statements one way or the other. In its analysis of social space in the Ruhr Basin, the ILS came to the conclusion that “socio-spatial inequality replicates itself”. The ILS report for the “Enquetekommission” “The Future of Cities in North-Rhine Westphalia” similarly discusses “a high persistence of patterns of social-space segregation”¹⁶². Häußermann and Siebel voice their expectation that social segregation in German cities will increase. Goldberg, Sauer and Halm, on the other hand, claim that “there could be no talk of segregation being on the increase” and they substantiate this with different longitudinal studies which reveal “results of a cautious deconcentration” of the migrant population in cities like Frankfurt/Main, Berlin or Cologne.¹⁶³

In the public discussion, the prevailing opinion is that ethnic segregation is to be seen as inhibitory to integration or even as a sign of unsuccessful integration. In the social sciences, however, there is a **differentiated evaluation**, in which both advantages and disadvantages of the phenomenon are accounted for.¹⁶⁴

Districts with ethnic colonies can act as “toeholds” and as a “jump-start” for new migrants in the society they are entering, insofar as the human resources are in place which help in coping with the initial problems caused by migration. From this viewpoint, ethnic colonies offer not only purely

¹⁵⁷ Cf. Krummacher 2004, p. 273f.; PUBDE1324.

¹⁵⁸ Cf. Krimmacher 2004, p. 273f.; Institut für Landes- und Stadtentwicklungsforschung des Landes NRW (ILS) (2003) : *Sozialraumanalyse – Soziale, ethnische und demografische Segregation in den nordrhein-westfälischen Städten. Gutachten für die Enquetekommission „Zukunft der Städte in NRW“ des Landtags NRW*. Dortmund/Bochum: pp. 9f; PUBDE1556. (available at: http://www.landtag.nrw.de/WWW/GB_I/I.1/EK/EK1/Sozialraumanalyse-ILS.pdf; 05.10.2004); Bremer, P. (2000) *Ausgrenzungsprozesse und die Spaltung der Städte. Zur Lebenssituation von Migranten*, Opladen: Leske + Budrich, pp. 160/161; PUBDE0037

¹⁵⁹ Cf.. Krummacher 2004, p. 275; Häußermann, H.; Siebel, W. (2001) *Soziale Integration und ethnische Schichtung. Zusammenhänge zwischen räumlicher und sozialen Integration*. Gutachten im Auftrag der Unabhängigen Kommission „Zuwanderung“, Berlin/Oldenburg, p. 36f.; PUBDE0039.

¹⁶⁰ Segregation is not only understood as a description of a static condition, but rather as a process of (increasing) separation. The definition of segregation used comes from ILS 2003, p. 3 (according to Friedrichs, J. (1995) *Stadtsoziologie*. Opladen: Leske + Budrich).

¹⁶¹ Cf. Goldberg, A.; Sauer, M.; Halm, D. (2003) „Migration und Stadtentwicklung im Ruhrgebiet“, in: *ibid.* (eds.) *Migrationsbericht der Stiftung Zentrum für Türkeistudien 2003*. Münster, Hamburg, London: Lit Verlag, pp. 177-225; here p.181f; PUBDE1557.; Krummacher 2004, p. 276; PUBDE1324; Häußermann/Siebel 2001, p.41

¹⁶² ILS 2003, p. 13; PUBDE1556

¹⁶³ Goldberg/Sauer/Halm 2003, p. 182.

¹⁶⁴ The following remarks about the advantages and disadvantages of segregation are mainly based on Häußermann/Siebel 2001, p. 45ff; PUBDE0039.

practical support (e.g. access to gainful employment or the housing-market), but they also have a psychosocial stabilizing effect, they reduce culture shock and promote integration processes.¹⁶⁵

Nevertheless, ethnic segregation also bears risks for integration, which the sociologist Esser paraphrases with the term “the mobility trap”¹⁶⁶: Although migrants have better chances of social advancement within their ethnic community, the attainable (peak) positions in their ethnic communities are, however, mostly much worse than those in society in general. Those who remain in the ethnic colony, particularly where extensive institutional and social networks exist, bear the risk of “ethnic self-sufficiency which prevents contact with people from outside of the ethnic group and hinders entry to universal competition, thus hindering social mobility¹⁶⁷.” The desired access to the structures of the majority society is therefore not eased by the ethnic colony, but rather made more difficult.¹⁶⁸

An unanimous position on questions of segregation has not yet emerged in the social sciences.¹⁶⁹ A position taken by many urban sociologists is that segregation per se is not the problem, as long as the migrants affected choose it of their own free will.¹⁷⁰ Krummacher, like Häußermann and Siebel, sums up that “voluntary segregation should not be hindered, but that forced segregation, often due to the state of the housing market, should be fought and the transition into general society should be promoted.”¹⁷¹

¹⁶⁵ cf. Esser, H. (2000) *Soziologie. Spezielle Grundlagen. Band 2: Die Konstruktion der Gesellschaft*. Frankfurt a. Main/New York: Campus Verlag, p. 301.

¹⁶⁶ Cf. Esser 2000, p. 301. The term “mobility trap” dates back to Norbert F. Wiley.

¹⁶⁷ Heckmann, F. (1992) *Ethnische Minderheiten, Volk und Nation. Soziologie der inter-ethnischen Beziehungen*, Stuttgart: Enke, p.115; PUBDE1201.

¹⁶⁸ In 2001, a broad study which examined the withdrawal of migrants into ethnic colonies came to the conclusion that partition tendencies are simply the exception. (cf. Salentin, K. (2004) „Ziehen sich Migranten in ‚ethnische Kolonien‘ zurück?“, in: Bade, K. J.; Bommers, M.; Münz, R. (eds.) *Migrationsreport 2004. Fakten – Analysen – Perspektiven*). Frankfurt a. Main/New York: Campus Verlag, pp. 97-116; PUBDE1563.

¹⁶⁹ Cf. Dangschat, J.S. (2004) “Segregation – Indikator für Desintegration?”, in: *Journal für Konflikt- und Gewaltforschung*, Vol. 6, No 2/2004, pp. 6-31. PUBDE 1363

¹⁷⁰ Esser, on the other hand, also regards unforced segregation as problematic, since, in his opinion, there is no possibility to turn back later once one has “voluntarily walk(ed) down the dead-end street” (Esser 2000, p. 302) And Heitmeyer and Friedrichs also evaluate segregation as evidence of social distance and therefore as something negative (cf. Dangschat 2004, p. 20).

¹⁷¹ Krummacher 2004, p. 275; PUBDE1324.

2. Causes of disparities in the housing market

All statistics on the situation of non-Germans concerning the housing market show their – in average – disadvantaged position compared to Germans: Although migrant households consists of more people, they live in smaller flats, they are less frequently owner of the house or flat they live in, and their flats are more poorly equipped then (esp. concerning modern heating). Above all, the average gross rent for their less attractive flats is – again, in average - higher than that of Germans.¹⁷²

The causes for these inequalities of Germans and migrants as well as for ethnic segregation are manifold. “Discrimination is undoubtedly a central factor for the explanation of the living situation of migrants”¹⁷³. However, there are also other aspects which are of importance.

Legal restrictions and unequal treatment of certain migrant groups

Most migrants are not subject to legal residence or housing restrictions. However, there are three migrant groups who face legal obligations concerning their allocation and their access to housing. **Asylum seekers** are subject to very strict regulations on their housing situation. After handing in their asylum applications they are distributed among the German states according to fixed quotas and housed in special (preliminary) refugee accommodation centres. After a maximum of three months they are housed in flats or local refugee accommodation centres.

Ethnic German immigrants (*Spätaussiedler*) and Jewish immigrants originating from the territories of the former Soviet Union form the other two groups of migrants whose residence entitlements are initially restricted. After entering Germany, they are also distributed among the German states in accordance with fixed quotas.¹⁷⁴

Lower human capital of migrants

“The provision of accommodation in Germany is organised on a market economy basis, i.e. the quality and size of the apartment is dependent on household income”¹⁷⁵. Therefore the fact that migrants have on average lower **human capital** (e.g. lower levels of education¹⁷⁶) than Germans -and thus work in more poorly paid positions, are more likely to be unemployed and to obtain a disproportionate amount of social welfare benefits - means that it has direct effects on their living conditions. Therefore, in the private housing market, it is more often migrants, rather than Germans for whom “only apartments at the lower end of the market come into question.”¹⁷⁷ The poorer living situation of migrants results therefore “not primarily from their migrant background or their nationality” but rather from their lower household income¹⁷⁸ and therefore does not automatically mean that there is ethnic discrimination in the housing market. The on average lower human capital of migrants therefore also has effects on the scale and the development of segregation. Based on this “connection between socio-economic

¹⁷² For more details on their living situation see annex

¹⁷³ Bremer 2000, p. 167; PUBDE0037.

¹⁷⁴ On March, 17, 2004, the Federal Constitutional Court ruled that the administrative practice of allocation of newly arrived *Spätaussiedler* is in accordance with German law, and that the Residence Allocation Act is constitutional (BVerfG, 1 BvR 1266/00). In the case at hand, two ethnic German migrants had submitted a constitutional appeal against those regulations, claiming that they had been discriminated against, as other welfare recipients are entitled to choose their place of residence without any restrictions. The judges conceded in their ruling that the practice of residence allocation “infringes considerably” on the constitutional right of free movement, however, this is justified by a significant public interest. Nevertheless, the court called on legislators to pass hardship regulations allowing ethnic German immigrants to change their place of residence under certain conditions (cf. ZAR, Issue 7, Vol. 24, pp. 225-231). As a reaction, the federal government introduced such amendments concerning hardship regulations in the Residence Allocation Act on September, 22, 2004 (cf. press release from the Federal Ministry of the Interior, 22.09.04.).

¹⁷⁵ Bremer 2000, p. 155; PUBDE0037. This market logic has become increasingly valid since the State withdrew from the construction of social housing in the early to mid 1980s.

¹⁷⁶ Cf. Germany, Statistisches Bundesamt (2004) *Datenreport 2004. Zahlen und Fakten über die Bundesrepublik Deutschland*, p. 68; PUBDE1318; for more on the human capital theory see Chapter employment.

¹⁷⁷ Bremer 2000, p. 190; PUBDE0037.

¹⁷⁸ ILS 2003, p. 26; PUBDE1556.

inequality and ethnic differentiation¹⁷⁹”, it is problematic to clearly distinguish between ethnic segregation and social segregation.¹⁸⁰

Discrimination experiences

There is hardly any doubt about the fact that discriminatory practices lead to an additional disadvantage for migrants in the housing market.¹⁸¹ Various studies (see below) showed that migrants themselves report of discriminatory treatment. A problem with this, however, is that these cases are primarily the personal assessments of migrants who have a subjective perception of discrimination in cases in which there was possibly no actual discrimination.¹⁸² However, one has to assume that there are also cases of actual discrimination which remain below the surface and instead are explained away by other bogus reasons. Therefore, the real influence of discrimination is difficult to assess.

3. Studies and surveys

Some scientific analyses and studies have come to the result that migrants are not only disadvantaged in the housing market because of their lower human capital, but also because they are confronted with discriminatory practices.¹⁸³

The **Multi-Topic Survey**, which interviewed 1,000 Turkish migrants in North-Rhine Westphalia in 1999, found that the housing market was the most frequent source of perceived discrimination. A quarter of all interviewees has experienced discrimination. Among those 45% of those under thirty years stated that they have been discriminated against on the housing market.¹⁸⁴ In the latest Multi Topic Survey 2003 almost 55% stated that they experienced discrimination while they were trying to find a flat and about one third of the interviewees expressed their feeling of being discriminated against in their neighbourhood.¹⁸⁵

Another **survey** conducted by Birsl et al. (see above), in which about 100 employees with a migrant background were questioned about their personal experiences of discrimination, showed that cases of perceived discrimination when looking for a flat were listed particularly often. When looking for a flat, almost 45% of those surveyed felt discriminated against “very often” (27.1%) or “often” (16.5%). Furthermore, over one third of them reported of (very) frequent discrimination in their neighbourhoods. When questioned about the type of discrimination, 16.6% of those surveyed replied that they had (very) frequently been refused accommodation.¹⁸⁶

¹⁷⁹ Häußermann/Siebel 2001, p. 30; PUBDE0039.

¹⁸⁰ In the ILS study, the criterion of the percentage of migrants is described as the “(statistically) most important distinguishing feature of the districts”, since it also serves as a “poverty indicator” (cf. ILS 2003, p. 41; PUBDE1556.)

¹⁸¹ For examples see: ILS 2003, p. 25; Planerladen e.V. (2004a) Diskriminierung im Wohnbereich bekämpfen. Freizügigkeit von Zuwanderern sichern. Dokumentation des Experten-Workshop vom 1. Oktober 2003, pp. 16-23; PUBDE 1296; Häußermann/Siebel 2001, p. 33f.; Bremer 2000, p. 169

¹⁸² Of course, perceived discrimination also constitutes an important factor concerning how migrants define themselves in view of the majority society. The migrant who feels discriminated against does not differentiate between perceived and real discrimination; from a personal point of view, he does experience discrimination. Consequently, most antidiscrimination offices (run by NGOs) follow the basic rule that perceived discrimination should be taken seriously – even in cases when real discrimination is difficult or impossible to prove (cf. Wehrhöfer, B. (2002a) “*Aufbau und Arbeit von Antirassismusbüros. Erfahrungen aus den Kommunen. Vortrag anlässlich der Tagung ‚Rassismus und versteckte Fremdenfeindlichkeit. Perspektiven für die lokale Antirassismusbearbeitung‘*“ on 26 October 2002 in Münster, Solingen: LzZ, p. 10; available at: www.lzz-nrw.de/docs/Muenster%2026.pdf (05.10.2004)

¹⁸³ Further two studies and surveys are listed in the Annex.

¹⁸⁴ Cf. Sen, F.; Sauer, M.; Halm, D.; (2001) Intergeneratives Verhalten und (Selbst)Ethnisierung von türkischen Zuwanderern, Essen: Zentrum für Türkeistudien 38ff.; PUBDE0516

¹⁸⁵ Stiftung Zentrum für Türkeistudien (ed.) (2004) Türkei-Jahrbuch der Stiftung für Türkei-Studien 2004/2005, p. 117.

¹⁸⁶ Birsl, U. et al. (2003) Migration und Interkulturalität in Großbritannien, Deutschland und Spanien. Fallstudien aus der Arbeitswelt, Opladen: Leske + Budrich, pp. 248-249; PUBDE1336.

The core notion of these studies are confirmed by the **analysis of SOEP** (*Sozio-oekonomisches Panel*) data which delivers statistical evidence that migrant-resident status has by itself a negative impact on the average living space that residents have at their disposal.¹⁸⁷

4. Cases of (perceived) discrimination and xenophobic attitudes.

There is no systematic documentation of cases of (perceived) discrimination. Nevertheless, many regional and local anti-discrimination offices record the complaints of migrants¹⁸⁸. Some concrete cases should be presented briefly.

In an article about the “anti-racist telephone”, a helpline run by a Marburg aid agency, the *Frankfurter Rundschau* reports about the case of a young Moroccan woman who had already been promised a flat, but when she arrived to sign the contract she was told by the landlord that the apartment had already been let. To explain his change of mind, he said he had no desire to give his flat “to Moroccans or other niggers”. In the same article, there are reports about classified advertisements in the regional press in which ads for available accommodation specify “for Germans only”¹⁸⁹. A similar case is cited in the magazine “Mieterschutz”: The communal accommodation “Grüne Mitte” in Berlin placed an advertisement for an apartment in a number of national newspapers stating they were looking for “only German speaking tenants with a regular income”.¹⁹⁰

The anti-discrimination office in Cologne reports of the case of a woman of Turkish origin who did not make the short list of applicants who wanted to view an apartment. When asked about the reason for his decision, the landlord said that she was, “first of all a foreigner and secondly divorced. We don’t rent to such people”.¹⁹¹

In Halle-Neustadt, tenants prevented an Iranian family with four children from moving into their apartment, despite the fact that they had already been given the green light by the landlord. The tenants threatened to move out and to file a complaint with the public utility housing enterprise, with the justification that they did not want “to live in a house with foreigners”. As a result, the housing enterprise withdrew its initial oral agreement. Only after public protests did the housing enterprise regret its decision “to capitulate to xenophobic attitudes” and let the Iranian family move into the apartment.¹⁹²

In Dortmund an action group was set up to oppose a plan by a Turkish Cultural Society to establish a housing development with a mosque and an Islamic community centre in a south Dortmund district. To that end, around 3,000 signatures were collected from citizens. The spokesperson of the action group accused the members of the Turkish Cultural Society of not wanting to integrate in Germany, saying that the housing project was “totally counterproductive”¹⁹³ as far as integration was concerned. The chairperson of the Turkish-Islamic Cultural Society, on the other hand, sees the reasons for the critical to hostile mindset of parts of the population differently. At a meeting of the “Planerladen e.V” he suggested, “it’s more about people being against the fact that Turks are now the realty

¹⁸⁷ cf. Clark, W.; Drever, A. (2001) „Wohnsituation von Ausländern: Trotz Verbesserung immer noch großer Abstand zu deutschen Haushalten“ in: *DIW-Wochenbericht*, No.30, Berlin; PUBDE0529

¹⁸⁸ The Anti-Discrimination Office in Cologne and the society “*Öffentlichkeit gegen Gewalt e.V.*” published a statistic in their collective newsletter 1/2003 /December 2003; p.3) which shows the housing market as the third most common area of discrimination (comprising 11% of all registered cases of discrimination, after employment (37%) and education (23%). The Anti-Discrimination Office in Berlin listed nine cases of discrimination from the housing sector in its annual report for 2002 (cf. Antidiskriminierungsbüro Berlin (2003) *Diskriminierung 2002. Jahresbericht des Antidiskriminierungsbüro Berlin e.V. zu rassistisch motivierter Diskriminierung*; PUBDE0502 available at: <http://www.adb-berlin.org/jahresbericht2002.doc> (05.10.2004). In its Integration Report 2003, the City Office for Multicultural Affairs (AMKA) in Frankfurt/Main mentions seven cases of discrimination in the housing sector which were registered as part of a project on conflict mediation (cf. Stadt Frankfurt am Main; AMKA (2004) *Ausführungsbestimmungen über das Verfahren und die Feststellung von Verstößen gegen die Antidiskriminierungsrichtlinie der Stadt Frankfurt am Main*; p. 16.; PUBDE1236).

¹⁸⁹ FR (28.08.2004)

¹⁹⁰ Linde, Christian (2002) „Migranten auf den Wohnungsmarkt. Von Integration noch weit entfernt“ in: *Mieterschutz*, No.2002/4; available at <http://www.wohnungslos-in-berlin.de/texte/ms0204.htm> (05.10.2004)

¹⁹¹ *Leben ohne Rassismus* (2003) *Antidiskriminierungsarbeit in NRW*, p. 4; PUBDE1134 available at: www.nrwgegendiskriminierung.de/de/docs/pdf/broschuere6-7.pdf (05.10.2004)

¹⁹² Wehrhöfer 2002a, p. 6.; Memorandum from the Tenants’ Alliance (*Mitteilung des Mieterbundes*); available at: www.mieterbund.de/zeitungen/mz/2000/0200/starke_stuecke_body.html. (05.10.2004)

¹⁹³ FR 04.08.04.

developers”.¹⁹⁴ The housing project is supported by the association Planerladen. According to the organisation the project is a “striking example of the opening up of areas of south Dortmund to migrant families”¹⁹⁵ which are willing to settle” where up to now only relatively few migrants live.

5. Discriminatory allocation processes in the housing market

Based on what are known as “secret quotas”, with which building societies limit the number of migrants in social housing, migrants are further disadvantaged in their search for an apartment, even if this practice is denied by the organisations themselves. Such unofficial and legally inadmissible quotas in social housing lead to the fact that many migrants (despite their on average lower incomes) have to “look for housing on the open market and often have to settle for bad flats for horrendous rent”¹⁹⁶. Urban sociologists assume that on the open market, because of what are known as “discriminatory surcharges”, migrants have to pay higher rents for flats which are on a par with those of Germans or even for those which are qualitatively worse.¹⁹⁷

B. How are cases of discrimination in housing handled?

Although strategies for the processing of such cases have been developed and implemented at a communal level, one cannot speak of a national uniform concept. This is due in no small part to the fact that the EU Directive 2000/43/EC has not been put into national legislation, with the result that official “bodies for the promotion of equal treatment”, the establishment of which was prescribed in the directive, are still absent in Germany.

Despite these institutional deficits, there are centres in many cities where victims of discrimination (e.g. in the area of housing) can turn to for **assistance or to lodge a complaint**. These centres are either a part of the communal authorities (e.g. in Munich, Frankfurt/Main and Stuttgart), the state government (in Berlin¹⁹⁸) or are organised as independent antidiscrimination bureaus (ADB) (e.g. ADB Berlin, ARIC North-Rhine Westphalia, Öffentlichkeit gegen Gewalt (Köln) e.V.)¹⁹⁹. In some communities other organisations take over the function of such centres for complaints and anti-discrimination matters, like charities with their migration and social services and their refugee counselling centres.²⁰⁰

The procedure for the **processing of cases** of discrimination is not uniformly regulated. Nevertheless individual elements of the procedure can be presented schematically, as is typical of many such centres which deal with complaints. These institutions usually serve as the (first) contact point for people who feel discriminated against.²⁰¹ Individual counselling is central and usually begins with the

¹⁹⁴ Planerladen e.V. 2004a, p. 21; PUBDE 1296.

¹⁹⁵ Cf. Planerladen e.V. (2004b) *Anti-Diskriminierungsprojekt im Wohnbereich. Sachstandsbericht 2003*, p. 3; PUBDE0133 (available at: www.nrwgegendiskriminierung.de/de/docs/pdf/Planerladensachstand2003.pdf; 05.10.2004).

¹⁹⁶ Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 19, No. 2003/2, p. 4; PUBDE0011.

¹⁹⁷ Cf. Bremer 2000, p. 158; PUBDE0037.c.f. Häußermann/Siebel 2001, 22; PUBDE0039.

When renting accommodation to migrants, a surcharge on top of the normal cost of rent in the area based on the fact that the tenant is a migrant is not legally admissible according to a judgement by the Stuttgart Higher Regional Court (*Oberlandesgericht*) (8 REMiet 5/81) The District Court in Cologne also decided that surcharges for migrants were not allowed. (LG Köln, 12 p 146/ 79) (cf. MieterMagazin, December 2001; PUBDE0559; available at: www.berliner-mieterverein.de/magazin/online/mm1201/120129.htm#text2 (05.10.2004)

¹⁹⁸ Cf. Press Release from the Representative of the Berlin Senate for Migration and Integration from 31.03.2004; available at: www.berlin.de/sengessozv/auslaender/pm_gesetz.html; 05.10.2004

¹⁹⁹ Cf. Krummacher 2004, p. 258; PUBDE1324. In NRW there are many local Anti-Discrimination Offices (ADB). These can be found on the website www.nrwgegendiskriminierung.de by clicking on their respective links.

²⁰⁰ Cf. Clayton, D. (2001) *Antidiskriminierungsarbeit in Nordrhein-Westfalen. Ergebnisse der Evaluation der mit Landesmitteln geförderten Antidiskriminierungsprojekte*, Solingen: LzZ NRW, p.54; PUBDE0142. 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 here any further.

²⁰¹ Written contact is also possible. The AMKA provides a discrimination-registration form for that very purpose (see http://www.stadt-frankfurt.de/amka/deutsch/projekte/deutsch_projekte_e2_anti_frame.htm; 05.10.2004)

person who is seeking counselling being given the opportunity to describe his/her case²⁰². However, an evaluation of different anti-discrimination projects in North-Rhine Westphalia showed that almost 45% of those who sought counselling with the ADB had already taken other measures prior to taking up contact with them (e.g. filing suit, calling the authorities or writing to the person who had aggrieved them).²⁰³

After the initial contact with the ADB, the next step depends on the individual case. An examination of the counselling practice of ADBs, particularly in North-Rhine Westphalia, showed that many of those seeking counselling “were already helped by the fact that they had the chance to discuss their concerns with someone else”²⁰⁴. If desired, intervention strategies are developed with them. These can take many forms. ADBs sometimes have “the character of clearing centres, i.e. they give information about further action or they put those seeking counselling in contact with further counselling centres”²⁰⁵, e.g. tenant advisory centres. In other cases, the ADBs themselves intervene by contacting the person alleged to have been guilty of discrimination and trying to mediate between the parties involved (e.g. the management of the property). The civic anti-discrimination centres in Frankfurt/Main (AMKA) and Göttingen (*Integrationsrat*) describe arbitration and mediation as two of their central tasks – particularly in conflicts with authorities, the police and other (also private) institutions²⁰⁶. In the experience of the ADBs in North-Rhine Westphalia, however, real conflict mediation between two parties only works if the ADB staff member is suitably qualified and there is a willingness to cooperate from all involved and thus the ADBs do not constitute the most common form of resolving conflicts.²⁰⁷

Such mediation and arbitration strategies for small-scale conflict resolution have been developed and applied effectively in some German cities in recent years. These concepts are also being promoted and supported from the political side. For example, in its Third Annual Report on Immigration and Integration, the state government of North-Rhine Westphalia calls explicitly for “measures for the improvement of intercultural communication and conflict resolution in the city districts”.²⁰⁸

This **conflict management** at a district level offers people the chance to deescalate conflicts arising from housing-related discrimination experiences (e.g. neighbourhood conflict, problems with the landlord) and helps them to find a lasting solution, in that both parties come to an amicable agreement themselves, without the necessity for the involvement of the police or the courts²⁰⁹. The methodological basis of these low-threshold strategies is mediation, a reconciliation process, in which a neutral third person (the mediator) organises a voluntary meeting (“round table”) with all parties who are involved in the conflict and assists in the discussion to find a solution which is satisfactory for all concerned. The mediator should basically conduct as comprehensive a conflict analysis as possible in advance, but the actual mediation procedure itself depends on the actual case at hand.

In Frankfurt, where this concept has been offered by the Office for Multicultural Affairs since 1997 under the name “District Mediation”, “there are now 25 people of different origin who are active in the treatment of conflicts”. These district mediators receive regular further training and supervision²¹⁰. The

²⁰² Cf. Wehrhöfer 2002a, p. 7.

²⁰³ Clayton 2001, p. 51f; PUBDE0142.

²⁰⁴ Wehrhöfer 2002a, p. 7.

²⁰⁵ Wehrhöfer 2002a, p. 7; cf. Clayton 2001, p. 50; PUBDE0142.

²⁰⁶ Cf. (for Frankfurt) AMKA 2004, p. 17; PUBDE1236; cf. (for Göttingen) www.integrationsrat.de (05.10.2004)

²⁰⁷ Cf. Clayton 2001, p. 52; PUBDE0142.

²⁰⁸ Nordrhein-Westfalen, Ministerium für Gesundheit, Soziales, Frauen und Familie des Landes NRW (2004) *Zuwanderung und Integration in Nordrhein-Westfalen. 3. Bericht der Landesregierung* p. 155; PUBDE1321

²⁰⁹ Discrimination experiences do not count among the predominant cases of conflict. However, they do play a relevant role in neighbourhood conflicts (cf. AMKA 2004, p.16; PUBDE1236). In addition, normal neighbourhood conflicts between migrants and Germans are often ethnicised by those involved.(cf. Müller, D.; Yetik, Z. (2002) „Konfliktvermittlung in der Dortmunder Nordstadt“ in: Stadt Dortmund, Ministerium für Arbeit und Soziales NRW, Ministerium für Städtebau und Wohnen NRW (eds.) *Konfliktmanagement in Stadtteilen mit besonderem Erneuerungsbedarf*. Dortmund, p. 40-44; PUBDE1343 available at: <http://www.ils.nrw.de/publik/pdf/konfliktmanagement.pdf>; 05.10.2004).

²¹⁰ Wolf-Almanasreh, R. (1998) „Wir sind alle überfordert...!“ Konfliktmanagement und Problemlösungs-strategien in multi-ethnischen Stadtteilen“ in :Forschungsinstitut der Friedrich-Ebert-Stiftung (ed.) *Ghettos oder ethnische Kolonien? Entwicklungschancen von Stadtteilen mit hohem Zuwandereranteil*, Bonn: FES, pp. 103-123here: pp. 109-111; PUBDE0126.

fact that also mediators with a migrant background participate in the mediation of conflicts between Germans and immigrants is regarded as particularly important²¹¹ by the Dortmund conflict mediation project, which has been successfully run by the *Planerladen* since 2000 and which will continue until the end of 2004. Furthermore, the qualification of mediators and conflict counsellors has been emphasised as a central element of such intercultural and district-related conflict mediation concepts.²¹²

C. Good practices against racism and discrimination in housing, or against housing segregation have taken place during 2004

There is a large number of initiatives that aims at combating segregation and discrimination against migrants in the area of housing by preventive and intercultural concepts. Most of these projects are not initiated in order to fight discrimination directly, but to foster and support cooperative and constructive contacts between Germans and non-Germans in the neighbourhood, i.e. using a more indirect approach to reduce discrimination.

Since 1997 the Dortmund Planerladen e.V. has been carrying out the “**Anti-discrimination project in the area of housing**”, which was financed by the Federal State of North-Rhine Westphalia until 2001²¹³ and is now receiving financial means from the EU program URBAN II (until 2004). It is the objective of the project to systematically record the living situation of migrants living in the Nordstadt of Dortmund, a city district with a reputation of a “social hot spot” and to contribute to combat forced segregation.²¹⁴ In addition, various measures against the discrimination of migrants on the housing market are developed and actively tested. These measures include information campaigns, counselling for housing benefits and organisational assistance of inhabitants’ initiatives and a neighbourhood forum.²¹⁵

Particular significance within the project is given to the **neighbourhood forums**, which are supposed to contribute to the establishment of small scale intercultural dialogues in districts²¹⁶. By now these neighbourhood meetings have become established as contact points for Germans and migrants in Dortmund-Nordstadt. It is not only district-related problems (e.g. problems with refuse, urban-planning suggestions) which are discussed in the regular meetings which take place within the framework of these neighbourhood forums²¹⁷. There are also weekly sessions of social counselling for the inhabitants of the district. Such institutionalised neighbourhood meetings, in which migrants and Germans come together to discuss their interests and concerns, are now quite common in many cities.

The Munich project “**Active together in Neuperlach**” (**ZAK**) is on the cutting edge of improvement of living environments and social integration. This project initially started without any ambitions relating to integration policy. Its aims were simply to improve the quality of live in the area through the acquirement and care of “residents’ gardens”. The gardens which came about as a result are now

²¹¹ Cf. Wehrhöfer, B. (2002b) „Modellprojekt ‚Sozialkulturelles Stadtteilmanagement‘“ in: Stadt Dortmund; Ministerium für Arbeit und Soziales NRW; Ministerium für Städtebau und Wohnen NRW (eds.) *Konfliktmanagement in Stadtteilen mit besonderem Erneuerungsbedarf*, Dortmund, pp. 25-27; description of the project available at: www.sozialestadt.de/praxisdatenbank/suche/ausgabe.php?id=196 (05.10.2004)

²¹² Cf. Wolf-Almanasreh 1998, p. 109; PUBDE0126.; Wehrhöfer 2002b, p.8; Hegele, G.; Springmann, R. (2002) „Interkulturelle Mediation in Stuttgart“ in: Stadt Dortmund, Ministerium für Arbeit und Soziales NRW, Ministerium für Städtebau und Wohnen NRW (eds.) *Konfliktmanagement in Stadtteilen mit besonderem Erneuerungsbedarf*, Dortmund, pp. 53-55; PUBDE 1343

²¹³ Between 1999 and 2001, as part of its Socio-cultural District Management model, the state government of NRW sponsored projects in five multiethnic neighbourhoods with particular need for modernisation in Dortmund (Nordstadt), Wuppertal (Ostersbaum), Detmold (Hakedahl), Cologne (Kalk) and Solingen (Fuhr); ACTDE 0083.

²¹⁴ As mentioned above, the Planerladen e.V supports, for example, the Grimmelsiepen accommodation and settlement project organised by the Dortmund Turkish-Islamic Cultural Society in Dortmund-Horde, which the Planerladen sees as a “striking example for the opening up of areas of south Dortmund to migrant families which are willing to settle.” The society claims to have been essential in making this project possible (Planerladen e.V. 2004b, p. 3 PUBDE0133)

²¹⁵ Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 19, No. 2/2003, p.5

²¹⁶ www.planerladen.de/fset_projekte.html (05.10.2004)

²¹⁷ www.planerladen.de/fset_projekte.html, (05.10.2004); www.quartiersmanagement-nordstadt.de (05.10.2004); cf. Wehrhöfer 2002b, p. 5f.

the sites of communal activity between Germans and migrants living in the neighbourhood, and they serve as a place of “unforced integration and communication between people of different social, national or ethnic background”²¹⁸. The largest garden in Munich-Neuperlach, the International Garden, is now run by about 50 members from twelve different countries. Thus, according to the ZAK association, many constructive personal contacts come about between Germans and non-Germans. The project now also integrates environmental education work with children, and there are ZAK district meetings, a ZAK café, computer courses for children, language and nutrition courses and many other activities typical of a citizens’ group. It describes its aims as follows: ZAK wants to make the district of Neuperlach. “a friendlier place to live and wants to improve social and cultural relations.”²¹⁹

A further example of good practice from the housing sector is the Hanover project “**Habitat: International Living in Kronsberg**”, which was initiated in 2000 by an accommodation company with the aim “to better integrate immigrants into the German host society through organised spatial proximity in a area of social housing.”²²⁰ As part of the project, a multiethnic neighbourhood with around 90 council flats was planned and built specifically for international tenants. Beforehand, a comprehensive study about the specific living needs of migrants was commissioned by the Institute for Developmental Planning and Structural Research. Over 400 local migrant households were questioned, the majority of whom called for “an international neighbourhood” with an equal mix of Germans and migrants from each of the other nationalities. During the construction of the housing, consideration was taken regarding the particular wishes of Muslim migrants concerning certain structural aspects of the buildings (e.g. a visible separation of the toilet and the hand basin). As a result, 10% of the flats were constructed in accordance with this Muslim faith. Most migrants, however, desired “normal-looking living quarters” The desired allocation of the apartments with 1/3 migrant and 2/3 German families was generally realised. The planning and layout of outside facilities (e.g. a playground, a boule area, residents’ gardens) and communal buildings (e.g. launderette, common house²²¹) is also determined by aims of getting people into contact with each other. After some neighbourhood meeting and parties in the autumn of 2000, a Habitat tenants association was also founded which gives community life additional impulses.

New steps were taken in the selection of residents. People who were interested in the high quality, but reasonably priced flats had to make an application and fill out a questionnaire, which “among other things, asked about the willingness of the migrant and German families to find mutual tolerance and to consciously strive for an international neighbourhood”. A **clause was added to the rental contract** (after agreement with the German Tenants’ Society), which “as a precautionary measure” made “racist behaviour and harassment of neighbours a reason for the termination of the contract.”²²²

The general assessment is that the project has reached its aims to a very great degree - the Schader Foundation describes the Habitat project as a successful example of intercultural living put into practice²²³. An “open, multiculturally reflective group of tenants has established itself in Habitat”²²⁴ and this “living together which promotes integration is characterised by the residents’ independent initiative and desire to help themselves.”²²⁵

²¹⁸ <http://www.stiftung-interkultur.de/prop0n.htm> (05.10.2004)

²¹⁹ <http://www.zak-neuperlach.de/pages/info/info.htm> (05.10.2004); cf. Ausländer in Deutschland (AiD) / Integration in Deutschland. Aktueller Informationsdienst zu Fragen der Migration und Integrationsarbeit, Saarbrücken: Isoplan, Vol. 19, No. 04/2003 (available at: <http://www.isoplan.de/aid/2003-4/integration.htm>; 05.10.2004).

²²⁰ Hansen, P. (2003) Habitat – Ein Beispiel für internationales Stadtleben, p.1; PUBDE 1374; available at <http://www.stadtteilarbeit.de/Seiten/Projekte/hannover/habitat.htm> (05.10.2004)

²²¹ In addition to the (sporting) free-time activities in the common house, there is also a prayer room which is used on Fridays by Muslims and on Sundays by Christians (cf. Hansen 2003, p.6).

²²² Hansen 2003, p. 5.

²²³ http://www.schader-stiftung.de/wohn_wandel/474.php (05.10.2004)

²²⁴ Hansen 2003, p. 4.

²²⁵ Hansen 2003, p. 6.

4.V. Racist violence and crimes

A. Publicly available evidence of racist violence and crimes

1. Official Sources

a) Developments in 2003

The number of crimes with an extreme right-wing background, since its high in 1997, has again reached over 10,000 crimes per annum with a peak in the year 2000²²⁶ (see Graph 1). If one regards the **quantitative development of extreme right-wing, xenophobic and anti-Semitic crimes** since the introduction of the new registration “Politically Motivated Criminality” (*Politisch motivierte Kriminalität* (PMK)) on 1.1.2001²²⁷, it becomes apparent that there was a drastic drop in those offences and violent crimes which were evaluated as extremist in comparison with the previous year.²²⁸ 10,054 crimes were evaluated as extremist in the area “politically motivated crime – right-wing”, amongst them 709 violent crimes²²⁹. After an increase to 10,902 crimes with an extreme right-wing background was again to be registered in the following year (amongst which were 772 violent crimes, including 8 attempted homicides²³⁰ and 646 cases of bodily harm), the number again dropped slightly in 2003 to 10,792 crimes²³¹ (amongst which were 759 violent crimes, including 7 attempted homicides and 637 cases of bodily harm). In total, it can be determined that the proportion of violent crimes in all offences since 1995 lies at between 6-8%.

²²⁶ In 2000, 15,951 crimes with an extreme right-wing background were registered, including 998 violent crimes.

²²⁷ Following a resolution by the Standing Committee of Ministers and Senators of the Interior for the Federal Government and States (*Ständige Konferenz der Innenminister und –senatoren des Bundes und der Länder*) from 9./10.5.2001, a new definition system called the KPMD-PMK: "Kriminalpolizeilicher Meldedienst – Politisch motivierte Kriminalität" (Criminal Investigation Registration Service - Politically Motivated Criminality) came into effect on 1.1.2001. The central registration criterion of the new registration system is the politically motivated criminal act, independent of whether – as the formerly used definition of crimes relevant to state security intended - this was evaluated as extremist or not, that is, with the aim of “overcoming the state”. “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” (Germany, Federal Ministry of the Interior, *Verfassungsschutzbericht* 2003, p. 28; PUBDE1150). The new system offers, on the one hand, the opportunity to clearly categorise crimes by right-wing perpetrators which were either insufficiently or not at all portrayed since extremist crimes only represent a fraction of the PMK. On the other hand, it permits a differentiated registration of the characteristics of perpetrators, crimes and victims.

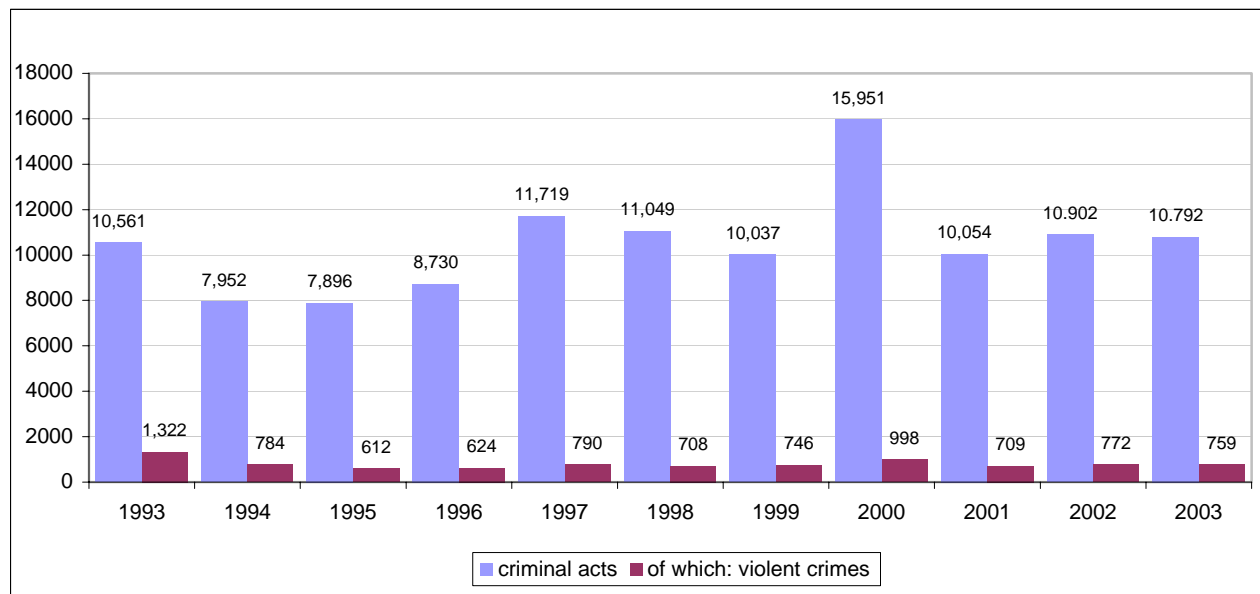
²²⁸ It must be mentioned, however that, due to the introduction of a new registration system, the figures from 2001 onwards cannot be compared with the previous years.

²²⁹ Violent crimes include, in addition to assaults on people (actual and attempted homicide, bodily harm), also kidnapping, extortion, breaches of the peace as well as arson and attacks using explosives. In contrast, criminal damage, intimidation and threat (in addition to propaganda and incitement crimes) are counted amongst the other criminal acts.

²³⁰ Cf. Germany, Federal Ministry of the Interior, *Verfassungsschutzbericht* 2002; PUBDE0166). However, in a report which was submitted by the newspapers *Frankfurter Rundschau* and *Tagesspiegel*, 5 homicides were registered for 2002 for which the circumstances of the crime point to extreme right-wing motives and which were not registered in the official statistics as extreme right-wing crimes.

²³¹ The great majority of crimes were propaganda crimes (7,551 offences). Other additional crimes which were registered were: 2,138 cases of incitement of the people, 225 cases of damage, 93 cases of extortion/threat as well as 26 cases of disturbing the peace of the dead or desecration of Jewish graveyards and memorials (cf. Germany, Federal Ministry of the Interior, *Verfassungsschutzbericht* 2003).

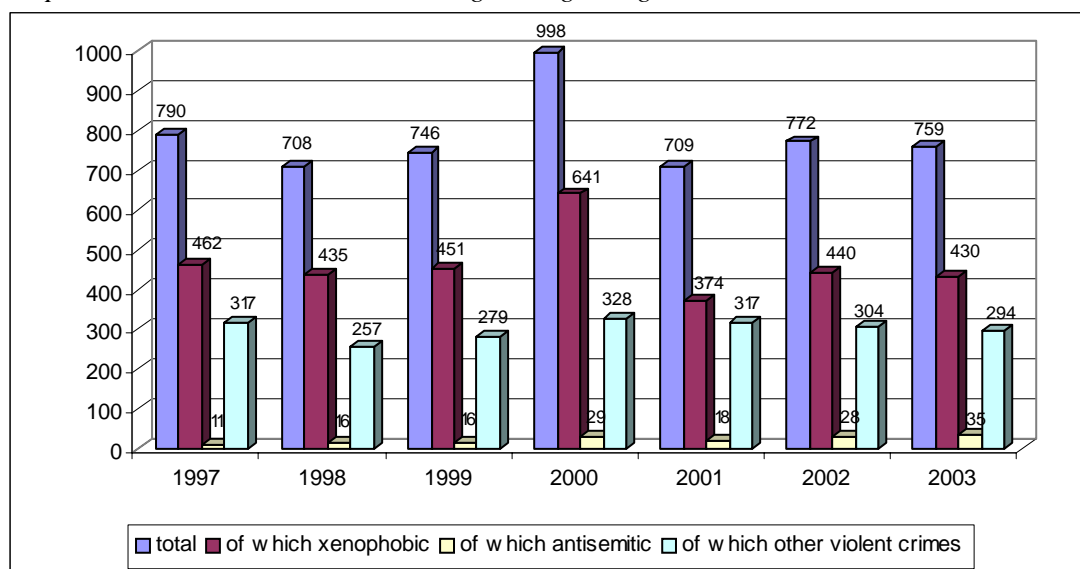
Graph 1: Extreme right-wing, xenophobic and anti-Semitic criminal acts 1993-2003



Source: Bundesamt für Verfassungsschutz (Federal Office for the Protection of the Constitution)

Of the crimes with an extreme right-wing background, in 2003, 2,209 were motivated by xenophobia (2002: 2,337) and 1,199 (2002: 1,515)²³² by anti-Semitism (cf. Table 1). However, whilst the number of violent xenophobic crimes with an extremist background also slightly reduced in 2003 compared with the previous year (from 440 to 430)²³³, the number of violent anti-Semitic crimes rose from 28 to 35 (see Graph 2).

Graph 2: Violent crimes with extreme right-wing background 1997-2003



Source: Bundesamt für Verfassungsschutz

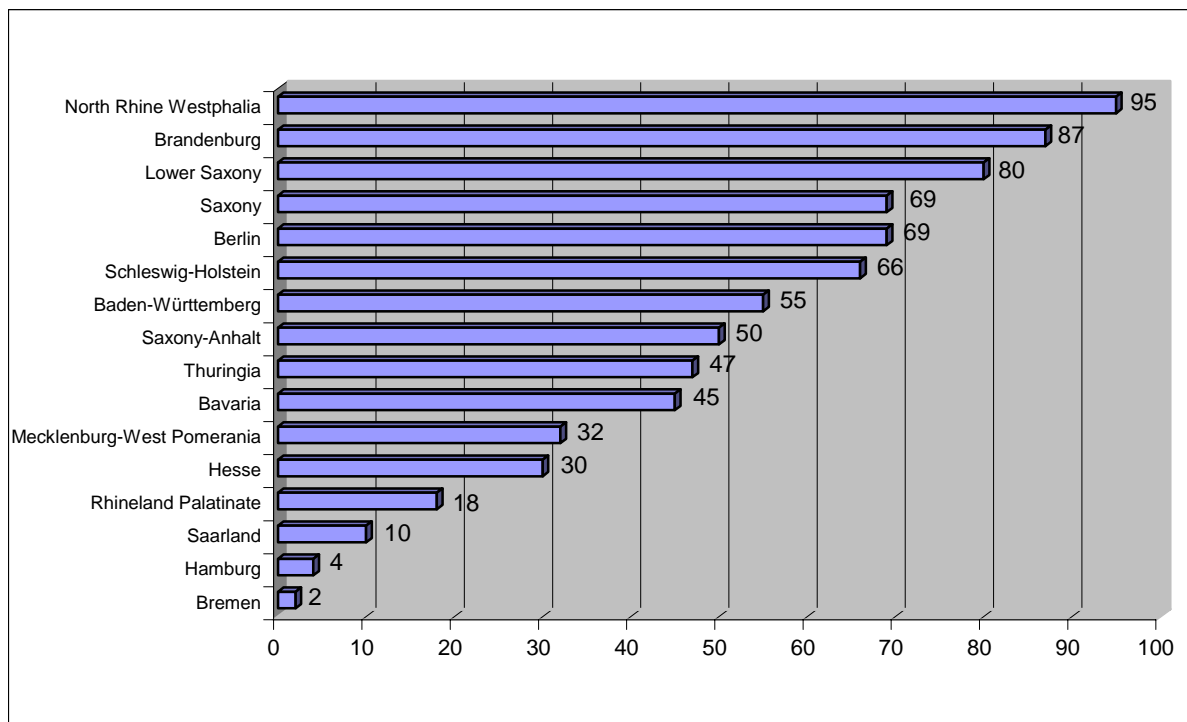
²³² If one looks at the development in anti-Semitic crimes over the past years, it is apparent that they do not reach their peak in 2000 – as is the case with crimes with an extreme right-wing background in total – but that they rise in the following two years up to 1,515 in 2002 (see graph 5).

²³³ It must be noted that the proportion of violent xenophobic crimes amongst all extreme right-wing violent crimes in 2003 was around 57%, whilst the proportion of xenophobically motivated crimes amongst all crimes with an extreme right-wing background was only 20.5%. Amongst the violent xenophobic crimes in 2003, 5 attempted homicides (2002: 6), 377 cases of bodily harm (2002: 388) and 19 cases of arson (2002: 20) were registered.

Violent crimes with an extreme right-wing background according to federal states

If one examines the violent crimes with an extreme right-wing background committed in 2003 differentiated according to the federal states, the following picture appears: most violent crimes happened in North-Rhine Westphalia, with 95 registered violent crimes, ahead of Brandenburg (87), Lower Saxony (80), Saxony (69) und Berlin (69) (see Graph 3).

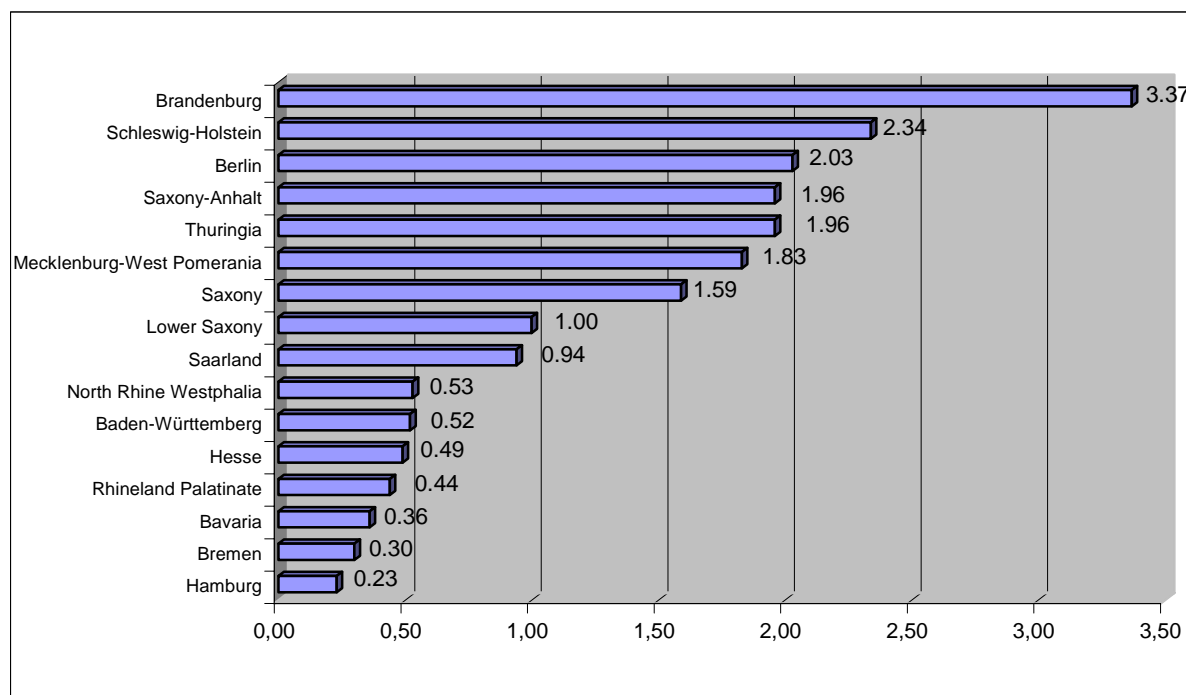
Graph 3: Violent crimes with an extreme right-wing background according to federal states 2003



Source: Bundesamt für Verfassungsschutz

Related to the respective numbers of inhabitants, however, it is apparent that more such crimes are committed in the new federal states (see Graph 4). On average, with 2,08 violent crimes per 100,000 inhabitants, more than three times as many offences are registered than in the old federal states (0,62).

Graph 4: Violent crimes with an extreme right-wing background according to federal states per 1,000 inhabitants 2003



Source: Bundesamt für Verfassungsschutz

In dividing the crimes within the field of “politically motivated criminality – right-wing” according to the federal states, attention must be paid to the fact that, firstly, the state police forces are principally independent and thus the practice of registration can vary from state to state and, secondly, a regionally different-sized grey area can exist. In addition, along with the power of definition displayed by the first police officers recording the crime, the willingness to report crimes amongst the population can be regionally very different.

The Development of Politically Motivated Criminality - Right-Wing in Total

If one regards the development in crimes within the field of “politically motivated criminality - right-wing” in total – that is, not only those crimes which are deemed extremist²³⁴ - then it becomes apparent that, since the introduction of the new registration system, the number of offences has fallen from 14,725 in 2001 to 12,933 (2002) and 11,576 in 2003 (see Table 1 in the annex). The number of violent crimes dropped from 940 in 2002 to 845 in the following year. Analogous to the developments in crimes within the field of “politically motivated criminality - right-wing” in total, the number of crimes motivated by xenophobia fell in the same period of time from 2,789 to 2,431 and the crimes with an anti-Semitic motivation dropped from 1,594 to 1,226. The number of violent anti-Semitic crimes, in contrast, has risen from 30 to 38.

b) Developments in the first six months of 2004²³⁵

In the first six months of 2004, 3,814 crimes were registered in the field of “politically motivated criminality - right-wing” nationally, including 238 violent crimes. 719 offences were deemed as xenophobic, including 120 violent crimes (cf. Table 2 in the annex)²³⁶. In the comparable period of the

²³⁴ Only this type appears in the Report on the Protection of the Constitution (*Verfassungsschutzbericht*); however they only represent a fraction of those offence and violent crimes registered in the field of “Politically motivated criminality - right-wing”. Thus, every extreme offence is also a political crime, but not every politically motivated crime is an extremist offence (cf. here Singer, J. P. (2004) “Erfassung der politisch motivierten Kriminalität”, in: *Kriminalistik*, No. 1/2004, p. 34; PUBDE1359).

²³⁵ It is important to mention that the figures (added-up monthly figures) for 2004 do not represent final figures as they can still increase – possibly to a great extent - due to the later reports coming in from the federal states.

²³⁶ Cf. here Printed Matter of the German Parliament (*Bundestagsdrucksachen*) 15/2710, 15/2913, 15/3145, 15/3284, 15/3577 and 15/3632.

previous year, “only” 632 xenophobic offences were reported; however, in contrast, 154 violent crimes were registered.

It is difficult to assess the extent to which the new registration criteria have been accepted and applied in a similar way everywhere. It must be said that, more than three years after the new registration system “Politically Motivated Criminality” was introduced, not all problems with the police registration of right-wing offences and violent crimes seem to have been solved²³⁷ as, after the new registration has been implemented, the Federal Office of Criminal Investigation (*Bundeskriminalamt*) (BKA) - apart from a few exceptional cases of individual responsibility - “relies on the states responsible for the registration correctly recording the offences by their police officers and sending the information on time”²³⁸. Considerations could also play a role on the part of the police officers of not allowing their own federal state or area be seen in a too negative light – by deeming a high number of crimes to be motivated by right-wing extremism. Moreover, there could also be a lacking consciousness of the problem in the case of some police officers which hinders the correct locating of a crime within the field of “politically motivated criminality”²³⁹.

2. Unofficial Sources

Additionally to those official data sources, several victim support organisations in the eastern German states (including Berl

in) also collect information on right-wing violent acts, among those also racially and xenophobically motivated acts. The following eight organisations, which have been financially supported within the government programme CIVITAS since 2001, have cooperated to compile annual statistics on extreme right-wing violent acts in Eastern Germany²⁴⁰:

- “Reach Out” in Berlin (www.reachoutberlin.de)
- “Opferperspektive e.V.” in Brandenburg (www.opferperspektive.de)
- “Lobbi e.V.” in Mecklenburg-Vorpommern (www.lobbi-mv.de)
- ABAD in Thuringia (www.abad-th.de)
- „Mobile Beratung für Opfer rechtsextremer Gewalt“ in Saxony-Anhalt (www.mobile-beratungs.de)
- „Beratungsstelle für Opfer und potenzielle Opfer rechtsextremer Gewalt Dessau“ also in Saxony-Anhalt
- „Amal Sachsen“ in Saxony (www.amal.sachsen.de)
- „Beratungsstelle für Opfer rechtsextremer Gewalt der RAA Leipzig“ also in Saxony (www.raa-leipzig.de/opferberatung)

The data collection of these victim support organisations is mainly based (1) on the organisations’ own practical support of victims of racist violence and (2) on their research which includes not only the local and regional press, different internet sources and relevant newsletter and mailing lists, but also obtaining information on racially attacks from, for instance, journalists, representatives of the police and the offices of public persecutors.²⁴¹

In 2003, these eight CIVITAS supported victim support centres registered (based on their own research) 551 attacks in the new federal states and Berlin which had been motivated by right-wing extremism with at least 808 victims; 337 of them were categorised as victims of racially motivated attacks and eight were victims of anti-Semitic attacks. In their own support work for victims of right-wing attacks the eight organisations have counted altogether 1,211 clients, 782 of them being victims

²³⁷ Cf. here Kleffner, H./Holzberger, M. (2004) “Was There Something? Reform of the Police Registration of Right-Wing Crimes” (*War da was? Reform der polizeilichen Erfassung rechter Straftaten*), in: Civil Rights + Police/CILIP (*Bürgerrechte + Polizei/CILIP*), 77 (1/2004), pp. 56-64; PUBDE1311.

²³⁸ Singer 2004, p. 36.

²³⁹ Cf. Kleffner/Holzberger 2004.

²⁴⁰ Presse release Opferperspektive 20.02.2004

²⁴¹ Koordinator der CIVITAS-geförderten Beratungsstellen für Opfer rechtsextremer Straf- und Gewalttaten (ed.) (2003) *beraten – informieren – intervenieren. Die Arbeit der Beratungsstellen für Opfer rechtsextremer Straf- und Gewalttaten*, Berlin, p. 7

of right-wing attacks. According to that unofficial annual statistics, more than half of them (407) have been attacked for racist reasons (mainly asylum seekers, migrants and ethnic German migrants).²⁴²

In most (Eastern) federal states, the unofficial data indicate a higher level of right-wing violence than the official PMK statistics due to the differences in the applied definitions and registration criteria. For instance, the police can only register those crimes that have been reported to them, whereas the NGOs do research themselves to collect more such incidents. Furthermore the definition of “right-wing extremist” used by the police in accordance with the registration system KPMD-PMK/right-wing is different (i.e. more narrow) to the definition applied by the victim support centres, which have a rather broad definition approach to categorise a violent act as “right-wing motivated”; furthermore, the definition of “violent acts” used by the victim support centres partly differs from the official definition applied by the police.²⁴³

A comparison between the unofficial and the official data clearly shows that both sources are not fully suitable of reflecting the real extent of right-wing and xenophobic violence and crimes: In the federal state of Saxony-Anhalt, for instance, the Mobile Victim Support Centre compared their (unofficial) data on extreme right-wing violent acts with the LKA statistics for 2003 and determined that 28 of the cases presented by the LKA were unknown to the victim support centre; conversely “32 violent crimes were missing on the LKA list that were deemed to have been motivated by right-wing extremism by the Mobile Victim Support Centre”²⁴⁴.

That leads to the conclusion that both sources have their specific strengths, but also their limits; therefore, the combination of both, official and unofficial sources based on different collection methods and definitions, contribute to give a more accurate picture of the situation as a whole

In addition to statistics on extreme right-wing and xenophobic assaults, individual action groups, among those several of the aforementioned victim support organisation, also compile constantly updated **chronicles** on the basis of press reports and information from NGOs in which occurrences and attacks with an extreme right-wing background are collected²⁴⁵.

In addition to these statistics and chronicles, two reports have been published since the end of last year that described alleged assaults by police officers on migrants.

²⁴² Cf. Opferperspektive (2004) *Schattenberichte – Nachrichten aus der Opferperspektive*, March 2004, p. 3; PUBDE1289.

²⁴³ The Brandenburg victim support organisation *Opferperspektive*, for instance, evaluates violent crimes as extreme right-wing “if they are directed towards typical victim groups, which, for example, due to their nationality, ideology or sexual orientation are not accepted by the perpetrators” (Opferperspektive (2004) *Jahrbuch Opferperspektive 2004*, p. 8; PUBDE1389). Concerning the definition of “violent acts”, the victim support centre AMAL (Saxony), for instance, also counts acts of threat/coercion, whereas the police categorise such acts as “other (non-violent) offences”.

²⁴⁴ Press release from the Mobile Beratung für Opfer rechtsextremer Gewalt), available at: <http://www.mobile-opferberatung.de/index.php?bc=158>; 05.10.2004).

²⁴⁵ Some of the chronicles of extreme right-wing, xenophobic and anti-Semitic offences and violent crimes which are available in the Internet are listed in the following:

- <http://www.mut-gegen-rechte-gewalt.de/artikel.php?id=5&kat=78&artikelid=855> (05.10.2004)

- <http://www.reachoutberlin.de/de/> (05.10.2004)

- <http://www.opferperspektive.de/chrono2000.html> (05.10.2004)

- <http://www.lobbi-mv.de/chronolo/index.htm> (05.10.2004)

- <http://www.mut-gegen-rechte-gewalt.de/artikel.php?id=78&kat=78&artikelid=911> (05.10.2004)

In this chronicle of the Internet platform against right-wing extremism, to date a murder has been listed for 2004 for which an extreme right-wing motive can be assumed. On 21 January an ethnic German (*Spätaussiedler*) migrant was murdered by four youths who are said to belong to the extreme right-wing milieu of the city of Gera.

In January 2004, Amnesty International (AI) submitted a report which documented claims of police mishandling and the use of unnecessary force in Germany. Twenty cases researched by AI were listed as examples in the report. AI pointed out that “a significant proportion of claims of mistreatment were submitted by migrant citizens or Germans of foreign origin”²⁴⁶. Twelve of the cases cited involved people with a migrant background. The true extent of mistreatment is not known, claims AI, “since Germany scandalously still does not register unified and comprehensive statistics”²⁴⁷ as AI has been demanding for many years.

Shortly beforehand, the documentation “Police Assaults on Migrants in Germany 2000-2003” (*Polizeiübergriffe auf Ausländerinnen und Ausländer in Deutschland 2000-2003*)²⁴⁸ had been presented by AktionCourage. This organisation documented, on the basis of “newspaper reports and research results”²⁴⁹, 70 cases of alleged mistreatment of migrants by the police.

Due to such reports, various organisations such as the Federal Commissioner for Migration, Refugees and Integration, ECRI or AktionCourage demand increased training for police officers to further their intercultural competence²⁵⁰. In addition in its Third Report on Germany 2004, the ECRI repeated its demand for “the creation of an independent committee to investigate claims of police assaults”²⁵¹.

B. Anti-Semitism

Due to a lacking legal definition, as there are no guidelines on what is to be defined as an anti-Semitic criminal offence, the crimes are attributed by the police according to the perpetrator’s motive and those people or objects which are attacked²⁵².

After the number of anti-Semitic crimes which have been evaluated as extremist rose constantly from 1999 to 2002²⁵³, a reduction of 21% in 2003 was registered in comparison with the previous year (from 1,515 to 1,199 criminal acts). However, against this trend, the number of violent anti-Semitic crimes rose further from 28 (2002) to 35 (2003) (cf. Graph 5). In total, 22 people were injured in 2002. Due to the high level of violent anti-Semitic crimes, the BMI has “started careful analysis and close observation”²⁵⁴.

Graph 5: Criminal acts with an anti-Semitic background 1993-2003

²⁴⁶ Amnesty international (2004), *Erneut im Fokus. Vorwürfe über polizeiliche Misshandlungen und den Einsatz unverhältnismäßiger Gewalt in Deutschland*, p. 3; PUBDE1240.

²⁴⁷ Barbara Lochbihler, General Secretary of the ai section in Germany in a press release from 14.01.2004.

²⁴⁸ AktionCourage (2003) *Polizeiübergriffe auf Ausländerinnen und Ausländer in Deutschland 2000-2003*; PUBDE1358.

²⁴⁹ Here not only violent assaults by police officers were recorded, but those by officials from the Federal Border police, judicial employees and employees of private security firms.

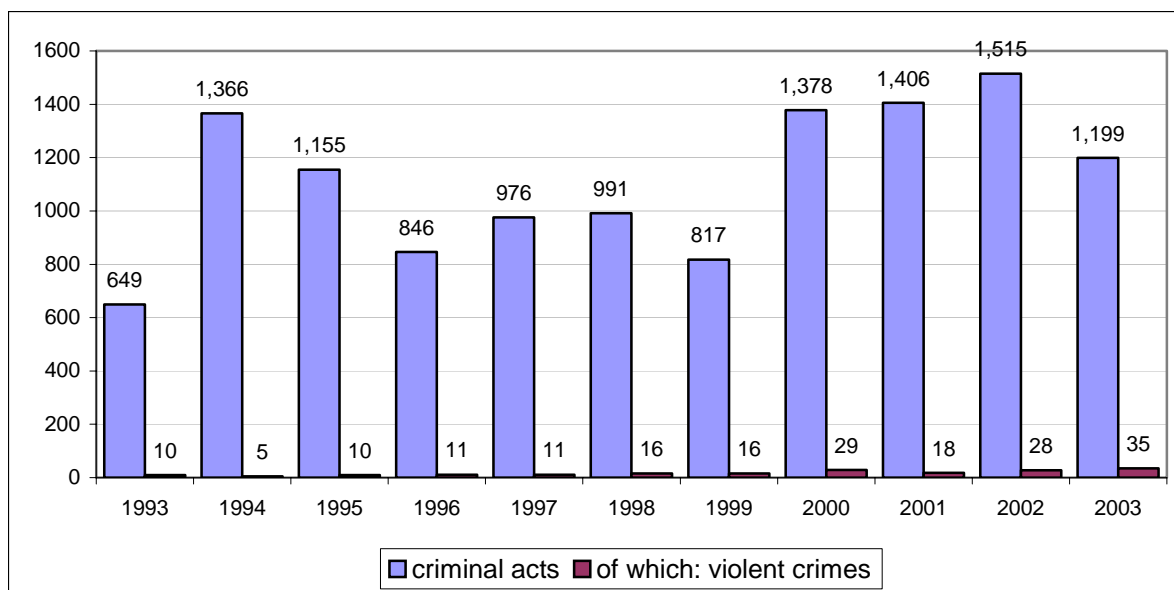
²⁵⁰ Cf. here good practice measures which are already in place such as NAPAP ('NGOs and Police against Prejudice') or the training and information programme “Intercultural Competence for Trainees at the State Police School in Berlin” (*Interkulturelle Kompetenz für Auszubildende der Landespolizeischule Berlin*) as well as the “Clearing House for Police and Migrants” (*Clearingstelle Polizei und Ausländer*) which has been in existence since 1993 and has the task of “promptly mediating in cases of conflict based on the individual case”.

²⁵¹ ECRI (2004) *Dritter Bericht über Deutschland*, p. 28; PUBDE1269.

²⁵² Germany, Federal Ministry of the Interior/Federal Ministry of Justice (2001) *Erster Periodischer Sicherheitsbericht*, Berlin; PUBDE1022.

²⁵³ With a dramatic increase of 69% from 1999 to 2000.

²⁵⁴ Press release of the Federal Ministry of the Interior from 13.05.2004



Source: *Bundesamt für Verfassungsschutz*

In the first quarter of 2004, 263 anti-Semitic crimes were registered in the field of “politically motivated criminality – right-wing”, including 6 violent crimes²⁵⁵. Three people were injured as a result of them. In the comparable period in the previous year, 222 crimes with an anti-Semitic motivation were registered, including 7 violent crimes. Six people were injured.

C. Islamophobia

In Germany, no official definition of islamophobia and therefore no national and systematic registration and statistics of islamophobic assaults exist. Moreover, such a registration is hindered by the distinction which is made in practice between xenophobia and islamophobia.

The Central Council of Muslims reports that especially Muslim women are affected by discrimination in the labour market. The Council also identifies an increasing tendency in islamophobic incidents. Furthermore, the Council has registered a huge number threats and insults in letters, e-mails and phone calls.²⁵⁶

In the past year, there was an incident which can be seen both as islamophobic as well as xenophobic and which attracted attention on a national level.

In March 2003, there were nationwide reports about a trial before the Braunschweig State Court of seven radical right-wingers who admitted to having thrown firebombs during an arson attack on a mosque in Wolfenbüttel (Lower Saxony) in November 2002. The 16 to 22-year-old defendants, who admitted to having contacts to the right-wing milieu and who gave hatred of foreigners as the motive for their crime, were charged with attempted murder and arson. The court dropped the charge of attempted murder, however, due to a lack of evidence and convicted the perpetrators of attempted arson and infringements of the laws on arms to between two years on probation and three years and nine months imprisonment. There was only little material damage as a result of the attack and nobody was hurt. The judge did, however, refer to the severe psychological damage suffered by the children of the Muslim families living in the mosque building.

D. Most vulnerable groups

There is only little data available on victims of racist violence. Systematic, national statistics on victims still do not exist. Official statistics only provide information on the number of injured people as a result of “politically motivated criminality - right-wing”. In 2003, the number of people injured by

²⁵⁵ Cf. Germany, Lower House of the German Parliament (*Deutscher Bundestag*) (2004) Stenographic Report (*Stenographischer Bericht*), 104th Sitting, 28 April 2004.

²⁵⁶ Statement received on request (October 2004).

extreme right-wing violence amounted to 420, compared to 319 injured people in 2002 (according to KPMD-PMK). 198 (or 47%) of them were victims of xenophobically motivated violence. In the first six months of 2004 197 injured people were registered, 91 of them were injured as a result of xenophobic crimes (see Table 3 in the annex).

In order to obtain more detailed information on the socio-demographic structure of victims of xenophobic violence, one must fall back on journalistic research²⁵⁷ or publications and (regionally limited) statistics from victim support centres²⁵⁸ and anti-discrimination offices. In addition, there are several social scientific studies in which more detailed information on the groups of victims can be found²⁵⁹.

For example, the analysis of police investigation files revealed that two thirds of the victims of violent acts with an extreme right-wing background are non-Germans, of which almost 50% are asylum seekers. People with certain ethnic origins are particularly affected because of their outward appearance (e.g. Turks or people of African origin, Sinti and Romany, in eastern Germany also Vietnamese). Slightly more than 10% are ethnic Germans (*Spätaussiedler*) who are also frequently perceived as non-Germans ("Russians")²⁶⁰. However, almost a fifth of the victims of xenophobic violent crimes are German citizens (apart from ethnic Germans), especially the homeless, handicapped, punks and politically left-wing orientated people. In sum, it can be said that particularly "members of physically visible minority groups" (ECRI 2004) are most frequently subjected to xenophobic assaults.

It is important to note that not all extreme right-wing criminal acts are reported to the police, as the victims refrain from reporting them out of fear of retaliation, because they are not sufficiently informed on the legal basis or do not trust the judicial system. Some of the victims also have had negative experiences as non-Germans/migrants with the German police authorities.

E. Important incidents and court cases

A great media response was triggered by the discovery of explosives in the Munich neo-Nazi milieu. According to statements by some suspects, the neo-Nazi group around the main suspect Martin Wiese was planning an attack on the construction site of the Jewish Community Centre in the centre of Munich on the day the foundation stone was being laid, 9 November 2003. Further investigation revealed that the neo-Nazis, in addition to the Jewish Community Centre, also had envisaged mosques and a Greek school in Munich as potential targets. The Federal Public Prosecutor (*Generalbundesanwaltschaft*) took over the investigations. After comprehensive investigation, on 28 April and 28 June 2004 the Public Prosecutor pressed charges of leadership or membership of a terrorist association against a total of nine defendants belonging to the Munich *Kameradschaft Süd*²⁶¹. On 6 October 2004, the trial began of five members of the neo-Nazi group before the Higher Regional Court (*Bayerisches Oberstes Landesgericht*) in Munich.

In 2003 and 2004, an increasing number of arson attacks on Turkish and Asian fast-food stands and restaurants was registered. The organisation Opferperspektive registered 14 such attacks in Brandenburg in the past year alone. For 2004, eight attacks have been registered to date in the

²⁵⁷ Cf., for example, documentation from the newspapers *Frankfurter Rundschau* and *Tagesspiegel* "Giving the Victims a Name (*Den Opfern einen Namen geben*)" from 14.09.2000, p.2; PUBDE1229.

²⁵⁸ Cf., for example, *Opferperspektive* (2003) Yearbook 2002; PUBDE0756.

²⁵⁹ Cf., for example, 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, p. 51-52; PUBDE1075; Willems, H.; Steigleder, S. (2003) „Jugendkonflikte oder hate crime? Täter-Opfer-Konstellationen bei fremdenfeindlicher Gewalt“, in: *Journal für Konflikt- und Gewaltforschung*, Vol. 5, No. 1; PUBDE1282.

²⁶⁰ Cf. for example, Peucker/Gaßebner/Wahl 2001, p. 52-53

²⁶¹ Cf. Bayern, Bayerisches Staatsministerium des Innern, *Verfassungsschutzinformationen Bayern* 1. Halbjahr 2004, p. 14.

chronicle of the Victims' Perspective. It was possible to arrest and sentence the perpetrators in many cases.

For example, five months after a xenophobically motivated **arson attack** on a Turkish fast-food bistro in Henningsdorf (Brandenburg), a 27-year-old right-wing extremist²⁶² was sentenced to six years in prison in February 2004 by the criminal division at Neuruppin Regional Court; the charge had been attempted murder and attempted serious arson. The motive had been xenophobia, according to the presiding judge. At the time of the crime, six people had been in the bistro, but no one was injured. The fire that was started by the two firebombs thrown against the façade of the building was quickly extinguished.

Even if the people running the fast-food stands and restaurants remained uninjured after such attacks, the arson attacks frequently meant that the basis for their existence had been destroyed²⁶³.

A signal could be given by a settlement reached in a civil trial before the Munich Regional Court (*Landgericht*) in mid-October 2003. Four neo-Nazis, who had beaten up a Greek man early in 2001 and who had been sentenced to longer periods of imprisonment for attempted manslaughter and grievous bodily harm, were ordered to pay a total of 25,500 Euros in relatively short periods to their erstwhile victim. The lawyer acting for the victim hoped that this judgement would serve as a signal to potential perpetrators for future civil proceedings²⁶⁴.

F. Initiatives and good practices against racist violence and crimes

There are a variety of initiatives and programmes against right-wing extremism, xenophobia and anti-Semitism which can be described as good practice. These range from the fields of prevention, work with (potential) perpetrators and advice for victims.²⁶⁵ In the following, closer reference will be made to the national programme "Young People for Tolerance and Democracy – Against Right-Wing Extremism, Xenophobia and Anti-Semitism" and its associated programmes.

The "Alliance for Democracy and Tolerance - against Extremism and Violence" (NFPDE0128) was officially founded on 23 May 2000 under the motto "Hinschauen - Handeln - Helfen" (Look - Act - Help)²⁶⁶. Since then, **over 1,300 groups and individuals**, including school classes, societies, local action groups and artists, have expressed their interest in participating in order to confront xenophobic, racist and anti-Semitic violence.

Since 2001, under the umbrella of the Alliance for Democracy and Tolerance, there has been the programme of action called "Young People for Tolerance and Democracy – Against Right-Wing Extremism, Xenophobia and Anti-Semitism". Support from the central government has been provided until 2006 for this programme. One of its central aims is to foster the involvement of civil society, above all, on a local level. The aim of all the projects is *prevention* through the support and promotion of decentralised projects, advisory bodies and pedagogical and social action groups. The action programme consists of three parts: XENOS (see employment; ACTDE0098), CIVITAS (ACTDE0100) and ENTIMON (ACTDE0348).

In addition to fostering external projects, the Alliance has also started its own activities, amongst others, a competition entitled "Active for Democracy and Tolerance" (ACTDE0688), the aim of which is to support exemplary activities, the regular award of the title "Botschafter der Toleranz" (Ambassador of Tolerance) (ACTDE0350) and the Victor-Klemperer-Jugendwettbewerb (Victor Klemperer Youth Competition) (ACTDE0317). In 2003, the competition took place under the motto

²⁶² In a report in the *Frankfurter Rundschau* from 20.02.04, the perpetrator is described as a "notorious neo-Nazi":

²⁶³ Cf. Opferperspektive 2004.

²⁶⁴ Cf. Sager, T. (2003) „'Signalwirkung' Schmerzensgeld für Opfer rechter Gewalt“, in: *blick nach rechts*, Vol. 20, No. 22, p. 5; PUBDE 0586

²⁶⁵ At this point it must be stated that there are numerous projects and measures maintained on the level of the federal states and on the local level by various financing sources which cannot be presented here. Information on these projects can be found, for instance, in the KODEX data file (Kommunale Datenbank gegen Gewalt, Extremismus und Fremdenfeindlichkeit (Local data file against violence, extremism and xenophobia)), which contains the descriptions of currently about 450 projects on the internet at www.kommunen-gegen-gewalt.de/DSTGB.asp; 05.10.2004).

²⁶⁶ <http://www.buendnis-toleranz.de/> (05.10.2004)

'Creative for Tolerance'. Young people are encouraged in the latter competition to seek out voluntary work carried out by members of their community, or to start a project themselves and report about it. The aim is to interest young people as early as possible in community involvement in society in order to prevent extremist tendencies arising in the first place. Young people over the age of 15 can take part. To date, the competition has taken place four times and, with around 60,000 participants, is, in the meantime, one of the largest competitions for young people in Germany²⁶⁷.

Within the framework of the partial programme "ENTIMON - Together against Violence and Right-wing Extremism" 153 projects are being supported in 2004. In 2003, there were 238. Political education measures form the focus of this programme. It aims to foster the practice of tolerance, intercultural and interreligious dialogue, the willingness to involve oneself in community tasks, democratic behaviour and having the courage of one's convictions, as well as to impart the basics of a reliable, political education. The target groups for ENTIMON²⁶⁸ are particularly pupils from secondary modern (*Hauptschule*) and vocational schools, but also parents, multipliers and migrants.

The German Youth Institute was given the task of academically supporting the programme; the Institute published an evaluation report in April 2002 for the year 2001²⁶⁹. Main results of this first evaluation should be mentioned briefly: the report determines that the proposed aim of localised involvement has been realised. However, it is also mentioned that, particularly in the area of the projects on intercultural learning, problem areas have become apparent (overloading with intercultural learning constellations, working with "outdated" methods which, in part, confirm clichés). In addition, contrary to the declared aims of the programme, only few of the projects have reached the important target group of pupils from secondary modern and vocational schools. This result "reflects the well-known problem that political education mainly reaches the group of people who, due to their socialisation, are interested in it anyway"²⁷⁰. This criticism was taken into account in the support given for subsequent projects²⁷¹.

Within the framework of the partial programme CIVITAS²⁷² 1,042 projects and individual initiatives were supported in the new federal states from 2001 to 2003²⁷³ (in 2003 there were 295). The aim of the CIVITAS programme "Initiative against Right-Wing Extremism in the New Federal States" is to counter an ideology of inequality of human beings expressed in right-wing extremism, xenophobia and anti-Semitism with a democratic, socially-orientated culture in the new federal states²⁷⁴. The areas supported extend to mobile advisory teams, victim support centres as well as help for local initiatives. In 2002, the CIVITAS guidelines were expanded to incorporate two further programme areas: "Networking of Civil Involvement in the Community" as well as "Supraregional Model Projects".

As an example, the work of the victim support centres²⁷⁵ is briefly presented in the following:

These centres offer various types of assistance either by an outward approach of potential victims or by being consulted by advice-seeking victims: legal advice, assistance in the search of witnesses,

²⁶⁷ For more information on the winners, see <http://www.buendnis-toleranz.de/Anlage13473/Preistraeger.pdf> (05.10.2004)

²⁶⁸ www.entimon.de (05.10.2004). A list of the individual projects with the address and main area of support can be accessed at <http://213.133.108.158/cgi-bin/db/default.php?db=4> (05.10.2004).

²⁶⁹ Deutsches Jugendinstitut (2002) Bericht der wissenschaftlichen Begleitung der „Maßnahmen gegen Rechts-extremismus und Gewalt“ (Report of the academic evaluation of "Measures against right-wing extremism and violence"), München: DJI; PUBDE0579. The report can be accessed at: <http://www.entimon.de/entimon/doc/abschlu.pdf> (05.10.2004)

²⁷⁰ Deutsches Jugendinstitut 2002, p. 27

²⁷¹ Cf. Servicestelle entimon (2004) *Zwischenbericht zum Stand der Umsetzung des Programms "entimon – Gemeinsam gegen Gewalt und Rechtsextremismus"* 2001-2003; available at: http://www.entimon.de/content/e28/e45/e551/Zwischenbericht_entimon2001-2003.pdf (05.10.2004).

²⁷² www.jugendstiftung-civitas.org (05.10.2004)

²⁷³ Cf. also the project databases of initiatives, sponsors, associations and projects which are active in the new federal states against xenophobia, anti-Semitism and racism, available at <http://www.jugendstiftung-civitas.org/> (05.10.2004).

²⁷⁴ Cf. here the guidelines for implementing the CIVITAS programme "Initiative against Right-Wing Extremism in the New Federal States" (*Initiativ gegen Rechtsextremismus in den neuen Bundesländern*) for 2004.

²⁷⁵ A list of Internet addresses for Victim Support Centres can be found at: <http://www.agora-info.de/links.htm>. (05.10.2004)

accompanying to authorities or court proceedings, finding appropriate medical or psychotherapeutic help, assistance in the application for compensation as well as for the coverage of legal expenses, providing contacts with initiatives that assist victims locally. It is the objective to shift the emphasis from concentrating on the perpetrator to promoting processes of increasing solidarity in the social environment of the victims, to extend alliances against exclusion, to strengthen democratic structures and to weaken the right-wing power.

The CIVITAS programme has been scientifically evaluated since August 2002 by a research team from the Institute for Interdisciplinary Research on Conflict and Violence at the University of Bielefeld. At the end of 2003, a comprehensive evaluation report was published²⁷⁶. The report came to the conclusion “that, by means of the supported structural projects, the development and testing of various approaches to forms of democratically coming to terms with the complex problem relationship of xenophobic mentalities and extreme right-wing phenomena has been successful”²⁷⁷. However, the programme was only able to realise the aim of developing civil society in its breadth in a limited way. The following reasons were given for this:

- The multilevel and grave *structural problem situations* (e.g., high unemployment) present clear limits for the far-reaching aim of developing lasting forms for civil society to come to terms.
- As there was a focus on the support for projects in the *fields of youth and initiatives*, necessary and influential groups and institutions were not adequately addressed so that significant impulses for the expansion and consolidation of civil society in the new federal states could not be sufficiently implemented.²⁷⁸

After a (further) reduction in the finances available for the support programme started in 2001 entitled “Young People for Tolerance and Democracy” was initially planned in the federal budget for 2005²⁷⁹, the federal government has decided after the latest state election successes (in September 2004) for extreme right-wing parties in Saxony (NPD 9.2%) and Brandenburg (DVU 6.1%) to refrain from making the planned cutbacks. In the budget, the same amounts are available for 2005 that were available for 2004, namely 10 million Euro for the national partial programme ENTIMON and 9 million for the CIVITAS programme²⁸⁰.

²⁷⁶ Lynen von Berg, H.; Palloks, K.; Vossen, J. (2003) Report on the Scientific Evaluation Research on the Model Phase of the Structural Projects of the CIVITAS programme “Initiative against Right-Wing Extremism in the New Federal States“ (Bericht der wissenschaftlichen Begleitforschung über die Modellphase der Strukturprojekte des Programms „CIVITAS – initiativ gegen Rechtsextremismus in den neuen Bundesländern“), Berlin; available at: http://www.uni-bielefeld.de/ikg/download/CIVITAS-Bericht_2003.pdf (05.10.2004).

²⁷⁷ Lynen von Berg/Palloks/Vossen 2003, p. 457.

²⁷⁸ Lynen von Berg/Palloks/Vossen 2003, p. 454.

²⁷⁹ The federal funding has been reduced from 2004 onwards and a complete termination of the programme was planned for 2006. Whether this will be the case has still not been announced.

²⁸⁰ Frankfurter Rundschau (01.10.2004).

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6. Annex

6.1. Employment

1. Labour market-related statistics: Disparities between non-Germans and Germans

Due to structural economic changes entailing an increased demand for highly qualified personnel, **unemployment** among non-Germans has risen disproportionately over the last years. In 2003, the average unemployment rate for non-Germans (20.4%) was almost twice as high compared to that of all employees (10.5%). In the East German labour market, respective figures are as high as 40%. If one compares different nationalities, unemployment is highest among Turkish nationals, followed by Moroccans, Italians and Greek.²⁸¹ According to information by the Federal Employment Office in September 2002, three of four non-German unemployed persons had no completed vocational training. With Turkish, Portuguese, Greek and Moroccan unemployed persons the respective figure even amounted to 80%.²⁸²

Table 1 : Unemployment quota of non-German employees according to countries of origin – West Germany (1991 - 2002)

| Year ¹⁾ | Unemployment quota in total | Non-Germans in total ²⁾ | Greece | Italy | Portugal | Spain | Fed. Rep. Yugoslavia ³⁾ | Turkey |
|--------------------|-----------------------------|------------------------------------|--------|-------|----------|-------|------------------------------------|--------|
| 1991 | 6.0 | 10.6 | 10.1 | 11.2 | 5.8 | 6.7 | 6.5 | 11.0 |
| 1992 | 6.5 | 12.3 | 12.7 | 13.6 | 6.3 | 7.7 | 9.2 | 13.5 |
| 1993 | 8.3 | 15.3 | 17.4 | 18.3 | 9.7 | 10.8 | 11.0 | 17.4 |
| 1994 | 8.8 | 15.5 | 16.2 | 17.0 | 11.2 | 11.2 | 9.8 | 18.9 |
| 1995 | 9.0 | 16.2 | 15.8 | 16.2 | 12.3 | 10.6 | 8.8 | 19.2 |
| 1996 | 10.0 | 18.6 | 17.8 | 18.0 | 13.2 | 11.7 | 9.9 | 22.5 |
| 1997 | 10.7 | 19.7 | 19.0 | 18.9 | 13.4 | 12.6 | 9.8 | 24.0 |
| 1998 | 9.8 | 18.3 | 17.7 | 17.6 | 12.4 | 12.3 | 11.0 | 22.7 |
| 1999 ⁴⁾ | 10.1 | 18.2 | 17.5 | 16.8 | 12.0 | 12.0 | 11.6 | 22.5 |
| 2000 | 9.0 | 16.0 | 15.4 | 14.7 | 11.1 | 11.3 | 10.4 | 20.2 |
| 2001 ⁵⁾ | 9.0 | 17.4 | 15.6 | 15.7 | 12.5 | 11.9 | 13.7 | 21.9 |
| 2002 ⁶⁾ | 9.5 | 18.4 | 16.3 | 16.6 | 12.7 | 12.5 | 13.9 | 22.7 |
| 2003 | 10.5 | 20.4 | - | - | - | - | - | - |

Source: Federal Institute for Labour (Report of the Federal Government's Commissioner for Foreigner Affairs on the Situation of non-Germans in the Federal Republic of Germany)

1) in September

2) unemployed persons in % of the non-German employees

3) until 1991 the former Socialist Federative Republic of Yugoslavia (SFRJ), 1992 former SFRJ without Bosnia-Herzegovina, Croatia, Slovenia, from 1993 SFRJ without Bosnia-Herzegovina, Croatia, Slovenia. Information is provided on all persons that were registered in the Office for the Central Register of Non-Germans (Ausländerzentralregisteramt) with Yugoslavian nationality on the date of the data collection.

4) From 1999 to 2002 the data refer to East and West Germany

5) Annual average 2001; In the differentiation according to nationality the values are only comparable with the official unemployment quota to a limited extent, as the basis of reference only includes employees with occupation entailing the payment of insurance contributions plus unemployed persons.

6) In the differentiation according to nationality the values are only comparable with official unemployment quota to a limited extent as the basis of reference only includes employees with occupation entailing the payment of insurance contributions plus unemployed persons.

Also with regard to **the sector distribution** German and non-German employees still differ considerably. In the secondary sector (manufacturing and construction) non-Germans are overrepresented, whereas they are underrepresented in the tertiary sector (services)²⁸³. In 1974, almost 80% of all non-German workers (compared to approx. 56% of all employees) were working in the primary (agriculture, forestry, fishing) and secondary sector. In 1998, respective figures had decreased to 53% (or 40% of all employees). Thus, the original margin between non-Germans and all employees has been narrowing considerably. At the same time, respective figures for employment in the service industry have greatly increased. In September 2003, two thirds of German labour worked in the

²⁸¹ Vgl. Statistisches Bundesamt 2004a (text part / chapter 7)

²⁸² Vgl. Statistisches Bundesamt 2004a (tables / tab. 7.9)

²⁸³ Loeffelholz, H.D. von (2001) „Wirtschaftliche Auswirkung von Zuwanderung – Kosten der Nicht-Integration von Migranten“; in: Mehrländer, U; Schultze G. (eds.) *Einwanderungsland Deutschland. Neue Wege nachhaltiger Integration*. Bonn: Dietz, pp. 92-116 (here page 104)

service (tertiary) sector. Conversely, the employment of non-German labour in the service sector is significantly lower, but has risen in recent years to almost 60%.

Table 2: Employees with occupations entailing the payment of insurance contribution by sectors, Federal Republic of Germany (December 2003)

| | Total | | Germans | | Non-Germans | |
|----------------------|------------|------|------------|------|-------------|------|
| | Absolute | In % | Absolute | in % | Absolute | In % |
| First sector | 279,839 | 1.0 | 264,769 | 1.1 | 15,070 | 0.8 |
| second sector | 8,896,746 | 33.3 | 8,186,130 | 32.8 | 710,616 | 39.6 |
| Third sector | 17,566,241 | 65.7 | 16,497,501 | 66.1 | 1,068,740 | 59.6 |

Source: Federal Institute for Labour, Department Statistics an Employment

At a first glance, this could be interpreted positively as a normalisation concerning non-German employment. In fact, a more detailed analysis of developments in employment, which distinguishes between several **branches of the service sector**, reveals that traditional differences (similar to those in manufacturing) between non-German and German employees have up to now been sustained in the service sector, too. This can be gathered from the fact that non-Germans in the service sector mostly work in branches that are badly paid, that have a low (professional) prestige and bad working conditions. 25% of all employees in hotel and catering business as well as in cleaning and waste disposal are non-Germans.²⁸⁴ However, in higher-skilled professions of the tertiary sector with a higher prestige, e.g. in trade, in banks and insurances and in the public service, non-Germans are clearly underrepresented, as it can be seen in the following table.

Table 3: German and Non-German employees with occupations entailing the payment of insurance contribution by economic branches (within the third sector)

| Economic branch | September 2003 Germans | | September 2003 Non-Germans | |
|---|---------------------------|------|-------------------------------|------|
| | Absolute | in % | absolute | in % |
| Trade; maintenance and repair of cars and consumer goods | 3,837,053 | 15.4 | 228,988 | 12.3 |
| Hotel and restaurant business | 611,137 | 2.4 | 159,780 | 8.6 |
| Credit and Insurance business | 1,030,908 | 4.1 | 25,178 | 1.4 |
| Public administration, defence, social insurance, extraterritorial organisations | 1,702,310 | 6.8 | 41,765 | 2.2 |
| Education and teaching | 987,072 | 4.0 | 48,739 | 2.6 |
| Health, veterinary and social affairs | 2,974,284 | 11.9 | 138,702 | 7.4 |

Source: Federal Institute for Labour, Department Statistics on Employment

The overrepresentation of non-German employees in the secondary sector, a sector with a over-proportionally high number of manual workers and relatively few employees, can also be gathered from the data on the **occupational position**: non-Germans (still) have “significant deficits compared to German labour”²⁸⁵. Whereas about 46% of the non-German workforce in 2002 were manual workers and about 30% employees, the respective figures for the German workforce amounted to 27% manual workers and 48% employees.²⁸⁶ However, the structure of the non-German workforce shows a positive development: between 1991 and 2002 the number of non-German employees increased by 75% (the respective figure for Germans was 9%).²⁸⁷ At the same time, the number of migrants in public service as well as in medium and higher employment continues to be very low. The following table illustrates the differences between Germans, Turks and ethnic German migrants.

²⁸⁴ Vgl. Statistisches Bundesamt 2004a (text part, chapter 7)

²⁸⁵ Loeffelholz, H. D. von 2004, p. 104

²⁸⁶ The poorer positioning of non-German employees in companies is also shown by a case study conducted by Brüggemann/Riehle (Brüggemann, B.; Riehle, R. (2000) *Alltägliche Fremdenfeindlichkeit im Betrieb und gewerkschaftliche Politik*, Berlin und Freiburg: Infiis; PUBDE0676), in which employment structure is examined more closely using the example of a large plant in the chemical industry. In this case, 45% of the about 2,200 employees were of foreign origin. Of this number, around 99% were workers and only 1% white-collar workers. In the case of the German staff, this relationship was 57% workers to 43% employees.

²⁸⁷ Cf.. Statistisches Bundesamt 2004a (text part, chapter 7)

Table 4: Occupational position of Germans, migrants with Turkish background and ethnic German migrants (1996 and 2001)

| | Germans | | Migrants from Turkey | | Ethnic German migrants | |
|-----------------------------------|---------|------|----------------------|------|------------------------|------|
| | 1996 | 2001 | 1996 | 2001 | 1996 | 2001 |
| Unskilled workers | 4 | 3 | 16 | 16 | 12 | 12 |
| Semi-skilled workers | 8 | 9 | 37 | 38 | 32 | 32 |
| Highly skilled workers | 15 | 13 | 23 | 22 | 28 | 23 |
| Low white-collar employees | 12 | 12 | 10 | 7 | 14 | 12 |
| Medium/higher employees | 41 | 42 | 9 | 10 | 12 | 18 |
| Self employed | 11 | 11 | 5 | 8 | 2 | 3 |
| Civil servants | 10 | 9 | 0 | 0 | 1 | 2 |

Statistisches Bundesamt 2004b, 581 (based on SOEP data 1996 and 2001)

Considering the over-proportionally high employment of non-Germans in the secondary and low skilled branches of the tertiary sector and as manual workers, it is hardly surprising that non-German employees are faced with worse working conditions than Germans (monotonous, dirty, physically demanding, poor working hours). This is confirmed by an analysis of the SOEP data of 2001. According to this analysis, 15% of the German workforce work under “poor working conditions”, but 29% of the Turkish migrants and 21% of the non-German EU citizens.²⁸⁸ This is exemplified by the fact that non-German workers are more likely to work shifts than German nationals. According to data compiled by the Federal Office for Statistics, 12.6% of German employees have to work shifts regularly or occasionally, as compared to 20.2% of non-German employees. An analysis of the Micro-census data has shown that non-Germans from the former recruitment countries are much more frequently employed in dirty routine jobs (about 25 to 32%, depending on nationality) than Germans (12.6%) and less non-Germans have clean and interesting jobs.²⁸⁹

In view of the fact that the occupational position is reflected in the income, the average **income** of non-Germans is lower than that of Germans. The gross income (average value) of Turkish migrants in 2001 amounted to 1,870 DM²⁹⁰, that of Yugoslavians to 1,700 DM. This was clearly below the average German income of 2,320 DM²⁹¹. A similar result can be seen when looking at the average household income: In 2002, 20% of non-German households had to live on less than 900 EUR and further 47% of up to 1,500 EUR, whereas the respective numbers for German households were 14% and 38%. Conversely, more than 10% of German households had a net income of between 3,200 and 4,500 EUR at their disposal, compared to just 6% of non-German households.²⁹²

²⁸⁸ Cf. Statistisches Bundesamt 2004b, p. 581

²⁸⁹ Cf.. Granato, N. (2003): *Ethnische Ungleichheit auf dem deutschen Arbeitsmarkt*. Opland: Leske + Budrich, p. 99ff, 170. Exceptions are non-Germans who come from countries such as United States or other western European countries (not former recruitment countries).

²⁹⁰ 1 Euro = 1,95583 DM

²⁹¹ Statistisches Bundesamt 2004b, p. 581

²⁹² Statistisches Bundesamt 2004a, text part (chapter 10). It should also be noted that non-German households with an average of 2.63 persons are larger than German households with 2.10 persons.

2. *Model Works Agreement* (own translation, original text see <http://www.igmetall.de/betriebsraete/betriebsvereinbarungen/>)

For the combating and eradication of discrimination against migrant employees and fostering equality in the workplace.

1. Purpose and status of the works agreement

1.1.

In the following works agreement, practical guidelines are agreed which are to help the management and workers' representatives of the company _____ to combat or eradicate social discrimination against migrant employees in the workplace. Moreover, binding agreements are entered into in order to implement a policy of equality in the company _____.

1.2.

The regulations of this works agreement have a legally binding character.

1.3.

All other legal regulations regarding the implementation of the principle of equality remain unaffected.

2. Applicability of the works agreement

2.1.

This works agreement is valid for the whole physical area of the company _____ and its subsidiaries and, regarding its content, for all measures relating to the selection and treatment of its employees. In addition, the regulations are also valid for access to training, further education and training within the company and for the treatment of those taking part in training courses.

2.2.

All those involved should take the required measures in close co-operation with each other to realise equal opportunities in the workplace. All employees of the company _____ and its subsidiaries should profit in like manner from equal opportunities irrespective of their skin colour, race, nationality, religion, ethnic or national origin.

3. Implementation of a policy of equal opportunity within the company

3.1

The management of the company _____ obliges itself, in co-operation with the workers' council, to implement forthwith the following measures to ensure a policy of equal opportunity:

1) The management shall inform all employees in writing - in translation, if required - on the content of this works agreement.

2) In order to realise equal opportunities, aims and measures shall be fixed for the areas of employment, treatment in the workplace, access to training, further education and training, professional promotion and the allocation of company housing, and their implementation shall be monitored.

3) The entire responsibility for the implementation of the company policy of equal opportunity is borne by the management of the company _____. A commission on equal terms shall be formed from representatives of the company _____ and the workers' council which shall be responsible for the exercising of duties resulting from this works agreement. The progress which is to be registered through the implementation of the aims determined for equal opportunity shall be monitored by this commission and the existing deficits shall be identified.

4. Evaluation of the effectiveness of the policy of equal opportunity

4.1.

On the basis of the knowledge gained on still existent discrimination, the commission shall suggest the necessary measures to improve the situation to the employers.

4.2.

The results of measures to implement equal opportunities are to be made known to the representatives of the employers (for example, in meetings of works councils, via the company newsletter and other publications).

5. Employment of staff**5.1.**

In a job advertisement posted within the company, it is to be ensured that this advertisement appears in the main languages represented in the company and that it can be read by workers with a migrant background. In internal as well as external job offers, applicants with a migrant background are to be treated equally in line with the demands for qualifications.

5.2.

In selection criteria and grouping, comparable qualifications and professional experience attained outside of Germany are to be considered appropriately. In selective tests, only those questions may be asked that result from the profile of the respective job.

5.3.

In interviews, if so desired, members of the commission can also be invited to attend.

6. Allocation of duties and professional promotion/ equal treatment of migrant workers in cases of a change in the organisation of work**6.1.**

Personnel managers and company heads who make decisions regarding the allocation of duties and their respective areas as well as the selection of those who take part in further education and training measures are to apply their criteria in the spirit of this works agreement. It may not be assumed that certain tasks are 'reserved' for members of specific ethnic groups. In the case of a shift in duties which belong to a higher pay bracket or in cases where participation in on-the-job training takes place, members of ethnic minorities may not be excluded or disadvantaged.

6.2.

The evaluation of achievement and professional promotion shall take place according to uniform criteria. Employees with a migrant background are to be treated in the same way as all other employees in the allocation of new duties and workplaces which especially result from changes in the organisation of work. The organisation and structure of work may not lead to a reduction in the proportion of migrant workers in the total number of employees.

7. Training, further education and training / support measures**7.1.**

In the evaluation of applications for apprenticeships, the national or ethnic origin shall be disregarded. It shall be ensured by appropriate measures (by information in the applicants' native tongue, if required) that sufficient information is supplied to the higher classes at school regarding future-oriented professions, that places are allocated for work experience and, in co-operation with the career advisory services, if required, specific professional training is fostered for young migrants.

7.2.

It shall be ensured that all measures for training, further education and training carried out by the company _____ shall be made known to all employees, irrespective of their origin.

Further training and qualification measures are to be co-ordinated in such a way that appropriate duties are offered within the framework of the qualification.

7.3.

The members of ethnic and national minorities shall be encouraged and supported by the company (through appropriate information campaigns, in workers' meetings or by offers of subject-related language teaching) to utilise the opportunities for further training, especially those which facilitate entry to those areas of work in which they are underrepresented.

8. Allocation of company housing

It is to be ensured that in allocating or procuring company housing that employees with a migrant background are treated in the same way as all other employees. More precise details can be regulated in a specific works agreement.

9. Complaints procedure / Measures in the case of discrimination against employees with a migrant background

Possible complaints regarding discrimination against employees with a migrant background are to be dealt with immediately. The manager or personnel manager responsible shall pursue the complaint and immediately report their resolution to the commission.

10. Evaluation

Attempts should be made to evaluate the company policies on anti-discrimination and equal treatment in the sense of the 'Joint Statement on the Prevention of Racial Discrimination and Xenophobia as well as the Promotion of Equality in the Workplace' as passed at the Summit on Social Dialogue on 21 October, 1995 in Florence [own translation].

The publication of this evaluation should be attempted with the help of financial support from the European Commission.

Closing statement

This works agreement becomes effective from _____ and may be terminated at the earliest after three years.

Signed for the Management

Signed for the Workers' Council

Enclosures

Please send this form for information purposes to:

IG Metall Vorstand
Abt. Ausländische Arbeitnehmer
Lyoner Str. 32

60519 Frankfurt(Main)

REPORT FORM

Between the company _____ and the workers' council, a works agreement has been entered into 'for the combating and eradication of discrimination against migrant employees and fostering equality in the workplace'.

6.2. Education

1. Tables

Table 5: Pupils at schools providing a general education according to selected nationalities and school types in the school year 2003/2004

| Country of Nationality | total | primary schools (Grundschulen) | | secondary schools (Hauptschulen) | | special schools (Sonderschulen) | | Realschulen | | grammar schools | |
|-------------------------|-----------|--------------------------------|------|----------------------------------|------|---------------------------------|------|-------------|------|-----------------|------|
| | | | % | | % | | % | | % | | % |
| Germany | 8,764,199 | 2,777,462 | 31.7 | 889,349 | 10.1 | 360,662 | 4.1 | 1,205,599 | 13.8 | 2,223,511 | 25.4 |
| France | 5,589 | 2,366 | 42.3 | 509 | 9.1 | 107 | 1.9 | 391 | 7.0 | 1,571 | 28.1 |
| Greece | 33,760 | 13,718 | 40.6 | 7,576 | 22.4 | 1,856 | 5.5 | 3,766 | 11.2 | 3,744 | 11.1 |
| Italy | 65,897 | 24,024 | 36.5 | 17,706 | 26.9 | 5,876 | 8.9 | 7,049 | 10.7 | 4,300 | 6.5 |
| Austria | 6,835 | 2,285 | 33.4 | 893 | 13.1 | 219 | 3.2 | 739 | 10.8 | 2,190 | 32.0 |
| Portugal | 13,256 | 5,054 | 38.1 | 3,034 | 22.9 | 960 | 7.2 | 1,513 | 11.4 | 1,127 | 8.5 |
| Spain | 7,200 | 2,620 | 36.4 | 1,110 | 15.4 | 381 | 5.3 | 999 | 13.9 | 1,072 | 14.9 |
| United Kingdom | 5,842 | 2,035 | 34.8 | 704 | 12.1 | 254 | 4.3 | 630 | 10.8 | 1,327 | 22.7 |
| Albania | 17,490 | 6,803 | 38.9 | 4,180 | 23.9 | 2,924 | 16.7 | 918 | 5.2 | 517 | 3.0 |
| Bosnia-Herzegovina | 20,398 | 7,819 | 38.3 | 3,830 | 18.8 | 1,240 | 6.1 | 2,402 | 11.8 | 2,339 | 11.5 |
| Serbia and Montenegro | 61,542 | 25,275 | 41.1 | 14,038 | 22.8 | 9,284 | 15.1 | 3,898 | 6.3 | 2,646 | 4.3 |
| Croatia | 20,209 | 7,366 | 36.4 | 3,527 | 17.5 | 892 | 4.4 | 3,121 | 15.4 | 3,508 | 17.4 |
| Poland | 19,803 | 6,254 | 31.6 | 2,955 | 14.9 | 624 | 3.2 | 2,419 | 12.2 | 4,293 | 21.7 |
| Russian Federation | 23,893 | 8,313 | 34.8 | 3,518 | 14.7 | 625 | 2.6 | 1,807 | 7.6 | 5,712 | 23.9 |
| Turkey | 418,065 | 165,562 | 39.6 | 97,042 | 23.2 | 28,298 | 6.8 | 41,168 | 9.8 | 23,574 | 5.6 |
| Ukraine | 11,931 | 3,528 | 29.6 | 1,162 | 9.7 | 159 | 1.3 | 1,157 | 9.7 | 3,976 | 33.3 |
| Morocco | 13,658 | 4,768 | 34.9 | 3,081 | 22.6 | 1,171 | 8.6 | 1,410 | 10.3 | 702 | 5.1 |
| Afghanistan | 15,581 | 4,880 | 31.3 | 2,582 | 16.6 | 769 | 4.9 | 1,749 | 11.2 | 2,161 | 13.9 |
| Iran | 13,194 | 4,003 | 30.3 | 1,488 | 11.3 | 442 | 3.4 | 1,282 | 9.7 | 3,428 | 26.0 |
| Lebanon | 13,849 | 5,227 | 37.7 | 3,234 | 23.4 | 1,792 | 12.9 | 755 | 5.5 | 301 | 2.2 |
| Vietnam | 14,380 | 6,229 | 43.3 | 1,017 | 7.1 | 240 | 1.7 | 889 | 6.2 | 3,042 | 21.2 |
| total of migrant pupils | 962,835 | 369,417 | 38.4 | 203,142 | 21.1 | 68,663 | 7.1 | 91,107 | 9.5 | 92,752 | 9.6 |
| total of pupils | 9,727,034 | 3,146,879 | 32.4 | 1,092,491 | 11.2 | 429,325 | 4.4 | 1,296,706 | 13.3 | 2,316,263 | 23.8 |

Source: Federal Statistical Office

Table 6: Qualifications achieved by Germans and migrants upon leaving schools providing a general education from 2001 to 2003

| Type of qualification | 2001 | | | | 2002 | | | | 2003 | | | |
|--|----------|-------|----------|-------|----------|-------|----------|-------|----------|-------|----------|-------|
| | Germans | | migrants | | Germans | | migrants | | Germans | | migrants | |
| | absolute | in % | absolute | in % | absolute | in % | absolute | in % | absolute | in % | absolute | in % |
| without <i>Hauptschule</i> qualification | 73,681 | 8.7 | 15,200 | 20.2 | 70,637 | 8.2 | 14,677 | 19.5 | 68,741 | 7.9 | 15,351 | 19.2 |
| <i>Hauptschule</i> qualification | 206,292 | 24.2 | 29,835 | 39.6 | 207,149 | 24.1 | 30,744 | 40.8 | 212,614 | 24.5 | 33,297 | 41.5 |
| Intermediate school leaving certificate | 354,798 | 41.7 | 21,747 | 28.9 | 354,512 | 41.3 | 21,690 | 28.8 | 360,541 | 41.6 | 23,327 | 29.1 |
| A- level | 217,733 | 25.5 | 8,566 | 11.4 | 227,091 | 26.4 | 8,234 | 10.9 | 225,405 | 26.0 | 8,170 | 10.2 |
| Total | 851,504 | 100.0 | 75,348 | 100.0 | 859,389 | 100.0 | 75,345 | 100.0 | 867,301 | 100.0 | 80,145 | 100.0 |

Source: Federal Statistical Office

Table 7: Pupils at vocational schools according to selected nationalities and school types in the school year 2002/2003

| Country of Nationality | Total | vocational preparatory year or vocational foundation year | | vocational schools | | vocational technical schools | | vocational secondary schools/ secondary technical school | | Technical schools | |
|-------------------------|-----------|---|------|--------------------|------|------------------------------|------|--|------|-------------------|------|
| | | | in % | | in % | | in % | | in % | | in % |
| Germany | 2,505,341 | 103,655 | 4.1 | 1,618,640 | 64.6 | 411,253 | 16.4 | 216,038 | 8.6 | 149,120 | 6.0 |
| France | 1,088 | 47 | 4.3 | 588 | 54.0 | 255 | 23.4 | 78 | 7.2 | 96 | 8.8 |
| Greece | 8,780 | 503 | 5.7 | 5,669 | 64.6 | 1,805 | 20.6 | 495 | 5.6 | 296 | 3.4 |
| Italy | 19,914 | 1,243 | 6.2 | 13,361 | 67.1 | 3,813 | 19.1 | 837 | 4.2 | 612 | 3.1 |
| Austria | 2,247 | 48 | 2.1 | 1,384 | 61.6 | 343 | 15.3 | 217 | 9.7 | 195 | 8.7 |
| Portugal | 3,283 | 270 | 8.2 | 1,872 | 57.0 | 804 | 24.5 | 187 | 5.7 | 146 | 4.4 |
| Spain | 2,730 | 113 | 4.1 | 1,665 | 61.0 | 609 | 22.3 | 139 | 5.1 | 177 | 6.5 |
| Bosnia-Herzegovina | 5,686 | 363 | 6.4 | 3,660 | 64.4 | 1,018 | 17.9 | 410 | 7.2 | 223 | 3.9 |
| Serbia and Montenegro | 10,965 | 1,472 | 13.4 | 6,810 | 62.1 | 1,883 | 17.2 | 540 | 4.9 | 238 | 2.2 |
| Croatia | 8,582 | 305 | 3.6 | 5,620 | 65.5 | 1,526 | 17.8 | 743 | 8.7 | 359 | 4.2 |
| Macedonia | 1,990 | 171 | 8.6 | 1,358 | 68.2 | 320 | 16.1 | 78 | 3.9 | 59 | 3.0 |
| Poland | 5,205 | 359 | 6.9 | 2,734 | 52.5 | 1,271 | 24.4 | 481 | 9.2 | 342 | 6.6 |
| Romania | 1,380 | 80 | 5.8 | 799 | 57.9 | 304 | 22.0 | 76 | 5.5 | 104 | 7.5 |
| Russian Federation | 3,407 | 448 | 13.1 | 1,759 | 51.6 | 732 | 21.5 | 269 | 7.9 | 143 | 4.2 |
| Turkey | 78,051 | 7,497 | 9.6 | 47,536 | 60.9 | 16,595 | 21.3 | 4,433 | 5.7 | 1,973 | 2.5 |
| Migrant pupils in total | 194,328 | 19,045 | 9.8 | 114,593 | 59.0 | 40,997 | 21.1 | 12,223 | 6.3 | 6,867 | 3.5 |
| Total number of pupils | 2,699,669 | 122,700 | 4.5 | 1,733,233 | 64.2 | 452,250 | 16.8 | 228,261 | 8.5 | 155,987 | 5.8 |

Source: Federal Statistical Office

Table 8: Graduates and others leaving vocational schools in 2002

| Those leaving | Total | in % | Germans | in % | Migrants | in % |
|---------------------------------------|------------------|------------|----------------|------------|---------------|------------|
| With leaving certificate ¹ | 230,174 | 21.6 | 195,889 | 20.0 | 34,285 | 38.2 |
| With qualification | 833,811 | 78.1 | 778,652 | 79.6 | 55,159 | 61.5 |
| No response regarding qualification | 3,510 | 0.3 | 3,200 | 0.3 | 310 | 0.3 |
| Graduates/leavers in total | 1,067,495 | 100 | 977,741 | 100 | 89,754 | 100 |

Source: Federal Statistical Office

1) A leaving certificate is given when the aim of the respective level of education is not attained (without completing the vocational training)

Table 9: Apprentices of foreigners in Germany from 1993 to 2003

| Year | Apprentices in total | Apprentices of foreigners | Proportion in % |
|------|----------------------|---------------------------|-----------------|
| 1993 | 1,629,312 | 126,283 | 7.8 |
| 1994 | 1,579,879 | 125,887 | 8.0 |
| 1995 | 1,579,339 | 121,312 | 7.7 |
| 1996 | 1,592,227 | 116,246 | 7.3 |
| 1997 | 1,622,680 | 110,165 | 6.8 |
| 1998 | 1,657,764 | 104,250 | 6.3 |
| 1999 | 1,698,329 | 100,899 | 5.9 |
| 2000 | 1,702,017 | 96,928 | 5.7 |
| 2001 | 1,684,669 | 92,300 | 5.5 |
| 2002 | 1,622,441 | 85,218 | 5.3 |
| 2003 | 1,581,629 | 79,205 | 5.0 |

Source: Federal Statistical Office

Table 10: Apprentices according to fields of training and nationality 2003

| Country of nationality | Total | Industry and trade | | Craft professions | | Public service | | Self-employed | | Others | |
|------------------------------|-----------|--------------------|------|-------------------|------|----------------|------|---------------|------|--------|------|
| | | | in % | | in % | | in % | | in % | | in % |
| Germany | 1,502,424 | 801,654 | 53.4 | 473,804 | 31.5 | 42,434 | 2.8 | 13,3574 | 8.9 | 50,958 | 3.4 |
| Greece | 3,913 | 1,928 | 49.3 | 1,484 | 37.9 | 49 | 1.3 | 428 | 10.9 | 24 | 0.6 |
| Italy | 9,094 | 4,325 | 47.6 | 3,674 | 40.4 | 102 | 1.1 | 893 | 9.8 | 100 | 1.1 |
| Austria | 948 | 486 | 51.3 | 334 | 35.2 | 2 | 0.2 | 106 | 11.2 | 20 | 2.1 |
| Portugal | 1,423 | 686 | 48.2 | 552 | 38.8 | 16 | 1.1 | 151 | 10.6 | 18 | 1.3 |
| Spain | 1,070 | 648 | 60.6 | 300 | 28.0 | 14 | 1.3 | 96 | 9.0 | 12 | 1.1 |
| Bosnia-Herzegovina | 2,310 | 1,133 | 49.0 | 759 | 32.9 | 37 | 1.6 | 367 | 15.9 | 14 | 0.6 |
| Serbia and Montenegro | 3,844 | 1,749 | 45.5 | 1,539 | 40.0 | 40 | 1.0 | 479 | 12.5 | 37 | 1.0 |
| Croatia | 3,603 | 2,145 | 59.5 | 887 | 24.6 | 70 | 1.9 | 478 | 13.3 | 23 | 0.6 |
| Poland | 2,085 | 997 | 47.8 | 617 | 29.6 | 29 | 1.4 | 420 | 20.1 | 22 | 1.1 |
| Turkey | 30,033 | 14,139 | 47.1 | 10,864 | 36.2 | 307 | 1.0 | 4,465 | 14.9 | 258 | 0.9 |
| Morocco | 1,110 | 756 | 68.1 | 54 | 4.9 | 37 | 3.3 | 250 | 22.5 | 13 | 1.2 |
| Migrant apprentices in total | 79,205 | 36,715 | 46.4 | 28,561 | 36.1 | 905 | 1.1 | 12,157 | 15.3 | 867 | 1.1 |
| Total number of apprentices | 1,581,629 | 838,369 | 53.0 | 502,365 | 31.8 | 43,339 | 2.7 | 145,731 | 9.2 | 51,825 | 3.3 |

Source: Federal Statistical Office

Table 11: Migrant students at German universities from the winter term (WS) 1993/94 to the winter term 2003/2004

| Term | Total number of students | Students of foreign nationality | Quota of migrant students | Of which <i>Bildungsinländer</i> | Percentage of migrant students |
|--------------------------|--------------------------|---------------------------------|---------------------------|----------------------------------|--------------------------------|
| winter term (WS) 1993/94 | 1,867,264 | 134,391 | 7.2 | 47,641 | 35.4 |
| WS 1994/95 | 1,872,490 | 141,460 | 7.6 | 48,851 | 34.5 |
| WS 1995/96 | 1,857,906 | 146,472 | 7.9 | 48,083 | 32.8 |
| WS 1996/97 | 1,838,099 | 152,206 | 8.3 | 52,173 | 34.3 |
| WS 1997/98 | 1,824,107 | 158,474 | 8.7 | 54,758 | 34.6 |
| WS 1998/99 | 1,801,233 | 165,994 | 9.2 | 57,209 | 34.5 |
| WS 1999/2000 | 1,773,956 | 175,140 | 9.9 | 62,257 | 35.6 |
| WS 2000/2001 | 1,799,338 | 187,027 | 10.4 | 61,313 | 32.8 |
| WS 2001/2002 | 1,868,666 | 206,141 | 11.0 | 63,355 | 30.7 |
| WS 2002/2003 | 1,939,233 | 227,026 | 11.7 | 63,813 | 28.1 |
| WS 2003/2004 | 2,019,831 | 246,136 | 12.2 | 65,830 | 26.7 |

Source: Federal Statistical Office

2. Brief description of further good practice projects

In day nurseries in Berlin, for example, coordinated by the Senate of Education, 500 “suitcases for the promotion of language” (*Sprachförderkoffer*), as they are known, were distributed; by using these cases, teachers are to be supported in encouraging migrant children to foster the development of their German skills.²⁹³

In many schools, innovative programmes have been established in the meantime which, on the one hand, aim to encourage migrant children better (for example, by means of special support courses) and, on the other hand, aim to create a democratic culture of co-determination in schools and mutual tolerance and an appropriate manner in dealing with cultural diversity and conflicts (for example, programmes offering mediators in cases of dispute).

Furthermore, the Federal Government-State Commission for Education Planning and Furthering Research (*Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung*) consented to a report in March 2004 which aims to improve educational advice for migrants in all phases of life and

²⁹³ Press release from the Berlin Senate Administration for Education, Youth and Sport (*Senatsverwaltung für Bildung, Jugend und Sport*) from 10.09.2003.

learning (for example, advice on the school system for parents, general further education). The recommendations in the report are to be implemented from autumn 2004 onwards within the framework of various projects.²⁹⁴

6.3. Housing

1. Description of the living situation of migrants

In the sociology of living situations there are some tried and tested indicators which have also found application in the description of living conditions of migrants. The following are of central importance:

- Size of the household and living area (density)
- Status in housing (owner, main tenant, subtenant, collective accommodation)
- Fittings and furnishings
- Cost of rent²⁹⁵

Migrant **households**, i.e. households with a non-German head, are, with an average of 2.63 persons, larger than German households, with an average of 2.10 persons.²⁹⁶ At the same time, however, migrant households have a smaller living-area at their disposal (74.7 m²) than their German counterparts (90.9 m²).²⁹⁷ Thus, an individual in a migrant household has access to an average of 28.4 m², whereas a member of a German household has 43.3 m².

The differences between migrant and German households regarding the size of their accommodation can generally be explained by the fact that, compared to migrants, Germans are far more frequently the **owners of the homes** they live in and less frequently the **main tenants** and homes which are occupied by their owners have on average a larger living area. In 2002, 43.4% of Germans surveyed owned the apartment in which they were living, while 53.8% of them were living in rented accommodation as the main tenants. In contrast, 78.8% of migrants questioned were living as main tenants and only 15.1% owned the apartment they were living in. Furthermore, the proportion of migrants living in sublet accommodation (3.9%) is higher than that of Germans (2.2%), as is the percentage of migrants living in collective accommodation (*Wohnheimen*) (2.2%) which is much higher than it is for Germans (0.6%).²⁹⁸

The clear discrepancy with regard to the rates of home-ownership and main tenancy explains to a great extent the differences regarding the average size of the living area available. This is because if one differentiates according to owned accommodation and rented accommodation, one discovers that the area of the apartments of Germans and migrants are not very different: The average area of an apartment with a migrant main tenant was 68.4 m², with a German main tenant 70.5m²; apartments owned by migrants measured on average 107.7 m², whereas German-owned apartments were an average of 116.0 m². Although the percentage of apartments owned by migrants has increased (15.1% of all migrant households now own their own apartments compared to 10.9% in 1993), “the gap regarding the share of apartments owned by Germans and those owned by migrants has nevertheless hardly narrowed.”²⁹⁹

²⁹⁴ Press release: Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung (29.03.2004)

²⁹⁵ Cf. Bremer 2000, p. 156; PUBDE0037. Häußermann,/Siebel2001, p.19, PUBDE0039.

²⁹⁶ At the same time, the size of migrant households varies greatly depending on their nationality. A representative survey among Turks, Greeks, Italians and people from the former Yugoslavia in Germany in 2001 showed that 57% of the Greeks, but only 34,5% of the Turks lived in a one or two-person household. The share of households with more than 4 persons stood at 18.6% for Turks and at a mere 6.7% for Greeks (cf. Germany, Bundesministerium für Arbeit und Sozialordnung (2002) *Situation der ausländischen Arbeitnehmer und ihrer Familienangehörigen in der Bundesrepublik Deutschland. Repräsentativuntersuchung 2001*, p. 88 PUBDE0696).

²⁹⁷ Cf. Statistisches Bundesamt 2004a, Table section (Tab. 5.3.1); PUBDE1265

²⁹⁸ Cf. Statistisches Bundesamt 2004a, Table section, (Tab. 5.1)

²⁹⁹ Cf. Statistisches Bundesamt 2004a Text section, Chap. 5; figures from the same source (Tab. 5.1; 5.3.1)

The **equipment of flats** rented by non-German residents is, in most cases, poorer than that in German households. There is a tendency towards an equalisation of the equipment of flats occupied by German and migrant households, however, some significant differences continue to exist. Although migrant households show a similarly high percentage (98% approx.) of apartments with their own kitchen, toilet and bath or shower as the Germans, clear differences can be seen regarding heating.³⁰⁰

Table 12: Housing situation of German and non-German residents

| | German residents | | | Non-German residents | | |
|-----------------|------------------|------|------|----------------------|------|------|
| | 1984 | 1989 | 1998 | 1984 | 1989 | 1998 |
| Toilet | 97.0 | 97.0 | 98.0 | 84.0 | 89.0 | 97.6 |
| Bathroom | 97.0 | 98.0 | 98.2 | 76.0 | 85.0 | 97.3 |
| Central heating | 81.0 | 84.0 | 92.9 | 53.0 | 58.0 | 83.7 |

Source: Häußermann/Siebel 2001; PUBDE0039

According to the most recent figures relating to the equipment of flats from the representative survey by the Federal Ministry for Labour and Social Affairs 2001, where migrants from Italy, Turkey, Greece and the former Yugoslavia were questioned, the percentage of migrant households which manage without modern heating ranges between 14% (Greeks) and 20% (Turks)³⁰¹, while it stood at about 5% for Germans (in 1998)³⁰².

Although migrants live in smaller and more poorly equipped apartments, the average **gross rent** (before expenses, such as heating, water and electricity) in 2002 was about 15 EUR higher than that of Germans (422 EUR compared to 407 EUR)³⁰³. The findings of a micro census in 1998 also showed that German tenants paid a slightly lower price per square meter (11.07 DM/m²) than migrant tenants (11.55 DM/m²) - despite the latter's generally more poorly equipped apartments.³⁰⁴

This also has consequences, not least on the relationship of the net household income to the expenditure for rent (which is known as the "burden of rent" (*Mietbelastungsquote*)). In migrant households, the average rent is around 24.3% of the income, whereas it is 22.6% for German households. 39.5% of non-German households but only 34.0 % of German households have to spend more than 30% of their income on rent. If one observes the development of the burden of rent in the last ten years, one can conclude that while there is indeed still a clear difference between German and migrant households, this tendency however is declining – albeit slowly.³⁰⁵

The higher burden of rent in migrant households can be traced back to a number of causes which will just be briefly mentioned here. On the one hand, the higher burden results from the lower incomes on average of migrants because as a rule, the lower the income, the higher the relative burden of rent. On the other hand, sociologists who study accommodation also assume that for non-Germans the rent is raised additionally by what are called "discriminatory surcharges" or "migrant supplements", i.e. "migrants must pay higher rent than German citizens for the same apartment."³⁰⁶

³⁰⁰ Cf. Bremer 2000, p. 158, PUBDE0037; Häußermann/Siebel 2001, p. 20f., PUBDE0039; Drever/Clark 2002, pp. 2443-2445; PUBDE0515.

³⁰¹ Cf. Bundesministerium für Arbeit und Sozialordnung 2002, pp. 44f; PUBDE0696.

³⁰² Cf. Drever/Clark (2002), Appendix (Tab. 1); PUBDE0515.

³⁰³ Federal Statistics Office 2004 (*Statistisches Bundesamt 2004*), Tables section (Tab. 5.7); PUBDE1265.

³⁰⁴ cf. Winter, Horst (1999): The Living Situation of Households 1998 (*Wohnsituation der Haushalte 1998*). Results of the Supplementary Microcensus (*Ergebnisse der Mikrozensus-Ergänzungserhebung*). In: Economics and Statistics (*Wirtschaft und Statistik*), Issue 11, pp. 858-864, here: p. 861.; cf. Häußermann/Siebel 2001, p. 22; PUBDE0039.

³⁰⁵ Federal Statistics Office 2004 (*Statistisches Bundesamt 2004*), Tables Section (Tab. 5.6); PUBDE1265

³⁰⁶ Häußermann/Siebel 2001, 22; PUBDE0039. For the various causes of unequal living conditions, see below.

2. Further studies and surveys on discrimination experiences

In a local study about Frankfurt/Main³⁰⁷, about 800 people with a migration background were interviewed specifically about discrimination they have personally faced in Frankfurt and about the areas where they have felt discriminated. The results showed some gender-specific differences. Whereas male interviewees mostly cited problems with police officers and nightclub bouncers, female respondents quoted contacts with administrators and landlords as the main source of discrimination.

The **Representative Survey** (2001) of the Federal Ministry for Labour and Social Affairs stated that 30% of Turkish, Italian and Greek residents had reported difficulties in finding their current flat. When interviewees asked more specifically about the main problem, the most frequent answer was that the rent was perceived as too high. Other difficulties quoted by interviewees comprised the time it took to find a flat, the limited number of offers and the assumption that landlords refuse to accept non-Germans as tenants. 43.6% of the Turkish interviewees who stated that they had faced major difficulties in finding a flat reported that this discrimination happened because of their nationality compared to 22.4% of Greeks and 17.8% of Italians.³⁰⁸

3. Further good practice initiatives in housing

The **district project “Haus 49”** in the Stuttgart Nordbahnhof district (a multi-ethnic quarter in which 60% of the inhabitants are migrants) is also based on dialogue and contact between Germans and migrants. The newly built “Haus 49”, a learning, cultural, and meeting centre which was completed in 1996, is home to a district-related project which is sponsored by the church and which has offered a large selection of activities to German and non-German inhabitants (of all ages) in the area for over 20 years. The activities offered include the supervision of little children, assistance with homework after school, coaching for job applications, addiction prevention, dance and singing groups, as well as many free-time activities for children and teenagers, including holiday trips. Furthermore, with its multicultural staff, “Haus 49” serves as a contact point and an advisory centre for the inhabitants of the neighbourhood. It also provides rooms for various German and non-German clubs and societies, and it organises intercultural street parties.

This longstanding integration project is embedded in the overall concept of the city of Stuttgart’s integration policy, which the city council itself agreed in 2002 with the **Alliance for Integration**. Therefore the project is being supported politically “from the top” and at the same time is being actively carried “from below” – two preconditions for successful intercultural planning at local government level.³⁰⁹

A more theoretically based example of good practice is presented by the research group “**City 2030**” which was founded in 2000 by the Federal Ministry for Research. This city project comprising 21 sub-projects aims to identify central urban challenges of the future and to develop model concepts for the city of the future to cope with these problems long term. The research group will be evaluated in accompanying research and in an evaluation project run by the German Institute for Urban Studies (*Deutsches Institut für Urbanistik* (Difu)).

³⁰⁷ Straßburger, G. (2001) Evaluation von Integrationsprozessen in Frankfurt am Main. Studie zur Erforschung des Standes der Integration von Zuwanderern und Deutschen in Frankfurt am Main am Beispiel von drei ausgewählten Stadtteilen im Auftrag des Amtes für multikulturelle Angelegenheiten der Stadt Frankfurt am Main, Bamberg:efms

³⁰⁸ Federal Ministry for Labour and Social Affairs 2002(*Bundesministerium für Arbeit und Sozialordnung*), p. 46; PUBDE0696. However, one has to keep in mind that there is no direct causal link between prejudices and discrimination (c.f. e.g. Farley 1988, 40ff., PUBDE1203; Heckmann 1992, 125ff., PUBDE1201). For example, a person that is not prejudiced could still discriminate against non-Germans in the case of social pressure, for example by his peer group. Conversely, a prejudiced landlord might still let his flat to a non-German resident if his hostile attitudes are overruled by his business interests.

³⁰⁹ Waltz, Victoria (2003): Intercultural Concepts in the Communities of the Cities of Solingen and Essen (*Interkulturelle Konzepte in Kommunen der Städte Solingen und Essen*). In Bertelsmann Foundation (Bertelsmann Stiftung) (ed.): Social Cohesion – The First Signs of Action in the Community. Documentation of the Symposium Project Compass - Model Communities (*Sozialer Zusammenhalt – Handlungsansätze in der Kommune. Dokumentation der Fachtagung Projekt „Kompass-Modellkommunen“*) on 30.10.02 in Celle, pp.20-28, here p.20 (available at: www.kompass-modellkommunen.de/download/DokumentationSozialerZusammenhalt.pdf)

Numerous sub-projects are of a purely conceptual nature, i.e. no concrete steps were taken for the implementation of the concepts which were developed, even if the (future) possibility of being able to implement them was an essential requirement of the sub-projects which were sponsored. An essential thematic focal point, the central challenge of seven of the sub-projects, were the questions of “the strength of integration in the city in light of growing inequality and heterogeneity of the city’s population”³¹⁰ with the integration of migrants, being particularly emphasised.³¹¹

In all of the seven projects (Bremen, Dietzenbach, Esslingen, Leipzig, Munich, Saarbrücken and Stuttgart) which focus on the development of concepts for improved integration as part of the research group “City 2030”, “a consolidated mobilisation of civilian resources” and the avoidance of social tension and conflicts” are desirable. The importance of “participation, cooperation and communication, and with them new forms of dialogue participation” (e.g. networks in the district, informal and formal self-help), are emphasised unanimously for the future of the city society³¹². In this way the research group, with its (theoretically) developed concepts, supports the practical integrative district work which was described above with regard to concrete projects.

A similar, even more implementation-oriented, research project on questions of ethnic segregation and the integration of migrants, is being carried out at the moment by the Schader Foundation under the name “**Migrants in the City**”. In recognition of growing social and cultural diversity and due to the fact that the integration process is nowadays less effective solely via the labour market, “the project’s ultimate ambition is to contribute to social cohesion of urban society and to counteract social segmentation”³¹³.

The project is based on two major parts: Firstly, a board of ten experts (Expertenforum), both scientists and experts with practical experience in local affairs and housing. Secondly, a network of eight cooperating large German cities (Praxis-Netzwerk). The findings of the board of experts will be published at a congress and in a report expected in February 2005. The principal task of the city-network is to implement these results and to improve the local practice of immigrant integration. Accompanying research monitors the situation before, during and after measures have been taken in the cooperating cities. The end of the project is scheduled for June 2006.

³¹⁰ Federal Ministry for Education and Development 2003 (*Bundesministerium für Bildung und Forschung* 2003): Models, Scenarios and Concepts for the Future of the City. On the Way to City 2030 (*Leitbilder, Szenarien und Konzepte für die Zukunft der Stadt. Auf dem Weg zur Stadt 2030*). Bonn, p. 7, PUBDE1328 (available at www.stadt2030.de/pdf/brosch2030.pdf).

³¹¹ Cf. Reimann, Bettina (2003): Report from the *Integration Working Group* (*Bericht aus der Arbeitsgruppe „Integration.“*). In: Federal Ministry for Education and Research (*Bundesministerium für Bildung und Forschung*): Newsletter 2030, Issue 13 (Dec. 2003); available at: www.newsletter.stadt2030.de/aginteg131.shtml

³¹² Federal Ministry for Education and Development 2003 (*Bundesministerium für Bildung und Forschung* 2003), p. 7, 9f; PUBDE1328.

³¹³ www.zuwanderer-in-der-stadt.de/679.php

6.4. Racist violence and crimes: Tables

Table 13: Politically motivated criminality - right-wing

| | Total | | of which: with xenophobic motivation | | of which: with anti-Semitic motivation | |
|------------------------------------|--------|--------|--|-------|--|-------|
| | 2002 | 2003 | 2002 | 2003 | 2002 | 2003 |
| Total number of crimes | 12.933 | 11.576 | 2.789 | 2.431 | 1.594 | 1.226 |
| of which: violent crimes | 940 | 845 | 512 | 465 | 30 | 38 |
| of which: extremist crimes | 10.902 | 10.792 | 2.337 | 2.209 | 1.515 | 1.199 |
| of which: violent extremist crimes | 772 | 759 | 440 | 430 | 28 | 35 |

Quelle: Bundesministerium des Innern (Federal Ministry of the Interior)

Table 14: Politically motivated criminality - right-wing: Criminal acts and violent crimes 2004 (first six months)

| | Criminal acts | | of which xenophobic criminal acts | |
|---------------|---------------|-------------------------|-----------------------------------|-------------------------|
| | | of which violent crimes | | of which violent crimes |
| January 2004 | 554 | 29 | 94 | 14 |
| February 2004 | 587 | 45 | 102 | 25 |
| March 2004 | 679 | 30 | 125 | 17 |
| April 2004 | 687 | 44 | 128 | 19 |
| May 2004 | 740 | 56 | 151 | 27 |
| June 2004 | 567 | 34 | 119 | 18 |

Source: Criminal Investigation Registration Service – politically motivated criminality

Table 15: Politically motivated criminality - right-wing 2003-June 2004: Injured people

| | Injured people as a result of "politically motivated criminality - right-wing" | The number of which were injured as a result of xenophobic crimes |
|----------------|--|---|
| January 2003 | 35 | 21 |
| February 2003 | 45 | 18 |
| March 2003 | 21 | 0 |
| April 2003 | 22 | 16 |
| May 2003 | 44 | 22 |
| June 2003 | 31 | 18 |
| July 2003 | 33 | 26 |
| August 2003 | 45 | 20 |
| September 2003 | 51 | 18 |
| October 2003 | 27 | 13 |
| November 2003 | 33 | 14 |
| December 2003 | 23 | 12 |
| January 2004 | 30 | 14 |
| February 2004 | 39 | 20 |
| March 2004 | 14 | 8 |
| April 2004 | 45 | 14 |
| May 2004 | 45 | 21 |
| June 2004 | 24 | 14 |

Source: Criminal Investigation Registration Service - politically motivated criminality

Update of the Report

October – December 2004

1. Employment

Research study

In fall 2004, the working group “Urban Research” at the University of Oldenburg concluded a five- year research project in which **integration and exclusion processes** with respect to second generation Turkish migrants were qualitatively analysed, especially focussing on three dimensions: labour market, housing and social networks. The researchers conducted 55 thematically structured, open interviews with representatives of the target group as well as 40 interviews with “gatekeepers” in the labour and housing market, such as personnel managers or landlords.³¹⁴

Besides confirming the migrants’ disadvantaged situation in the labour market (e.g. higher unemployment rate, overrepresented in unskilled job positions), the study comes to the conclusion that migrants often show discontinuous “employment careers” with phases of unemployment and precarious job positions (“The exclusion career”).³¹⁵ Although **discrimination** seems to play “only” a subordinate role³¹⁶, it cannot be neglected entirely: According to the study, gatekeepers in the labour market ascribe certain characteristics to Turks which are assessed rather negatively in the service sector (e.g. male Turks’ lack of “professional humility” or female Turks’ wearing “unacceptable” headscarves³¹⁷).

Court case

On November 11, 2004, the Federal Administrative Court ruled that it is not allowed to treat an airport employee in a disadvantaged way solely on the ground of his membership in an Islamist organization.

A 30-year-old naturalized German with a Turkish background who worked at the airport in Munich was deprived of his access authorisation to **sensitive security areas in the airport** after a reliability check (in the aftermath of the terror attacks of September 11) by his employer. The decision was justified by his membership in the “Islamic Association Milli Görüs” (according to Office for the Protection of the Constitution, an anti-constitutional organisation) between 1996 and 1998.

The employer’s decision was confirmed by two court rulings. However, the Federal Administrative Court overruled these subordinate court decisions and ruled that temporary membership in the Milli Görüs association does not count as a sufficient proof for the employee’s lack of reliability and, consequently, the ban from the sensitive security area in the airport had to be rescinded. The Court argued that the anti-constitutional tendencies of Milli Görüs does not automatically imply that its members are not reliable, and since the Islamist organisation does not follow its aims with violence, membership itself does not indicate the members’ propensity to violence.³¹⁸

³¹⁴ The final research report has not been published yet, however, a summary of the main results was released by the University of Oldenburg in late 2004. Furthermore, an interim report (June 2003, English version) is available at: <http://www.uni-oldenburg.de/stadtforschung/download/Bellagio.pdf> (22.12.2004) (Gestring, N.; Janßen, A.; Polat, A. (2003) Processes of Integration and Exclusion. Second Generation Turkish Migrants in Hanover. Oldenburg)

³¹⁵ Gestring, N. et al. (2004) Die zweite Generation türkischer Migranten, in. Einblicke, No. 40/autumn 2004 (ed. by the Carl von Ossietzky University of Oldenburg), pp. 8-11 (here p. 9)

³¹⁶ Gestring/Janßen/Polat 2003, p. 11

³¹⁷ Gestring et al. 2004, p. 9

³¹⁸ Germany / BVerwG 3 C 8.04 (11.11.2004)

Good practice

One of the recently started good practice projects focusing on the equal treatment of migrants in their jobs is presented here as an example.

In December 2004, the German Association of Medium-Sized Economy (BVMW) and the Alliance for Democracy and Tolerance (Bündnis für Demokratie und Toleranz, BfDT) launched the initiative “**Medium-Sized Businesses Open-minded – Against Discrimination**”, which aims at supporting diversity and equal treatment in medium-sized businesses.³¹⁹ The basic idea of the project is that, by signing a declaration, entrepreneurs commit themselves to the principles of equal treatment irrespective of, among others, ethnic origin or religion and to a discrimination-free working environment. Businesses that take part in the initiative are allowed to use the logo “Medium-Sized Businesses Open-minded – Against Discrimination” for their public relation work. This project should help to draw more public attention to the already existing good practice activities for equal treatment and against discrimination in many companies; furthermore, these activities should function as examples for other entrepreneurs.³²⁰

Beside initiatives against discrimination in the workplace, there are numerous good practice projects that aim at fostering integration in the labour market. The EQUAL development partnership **ProInteCra** (“Professional Integration of Immigrants in Skilled Crafts”) is briefly described here as one example.

The general objective of ProInteCra is to support the migrants’ professional chances in the sector of skilled crafts through several independent, but interconnected partial projects. These projects aim at motivating migrants to enter training programmes for skilled crafts and at promoting their technical language skills. Furthermore, special business management training sessions for new business founders are offered and – especially for female migrants – further qualification programmes have been set up. Besides, intercultural training courses are provided for instructors in the vocational training to teach them how to combat xenophobic tendencies in their training areas.³²¹

³¹⁹ Press release BfDT/BVMW 08.12.2004

³²⁰ Cf. BfDT and BVMW (2004) *Mittelstand weltoffen – gegen Diskriminierung*, BfDT: Berlin, p.5; Declaration printed on p. 23; available at <http://www.buendnis-toleranz.de> (04.01.2005)

³²¹ www.prointecra.de (04.01.2005)

2. Education

*School Statistics: Vocational Schools*³²²

The *distribution of migrant pupils among the various vocational school types* differs from that of German pupils (cf. table 1 in the annex). Young migrants are underrepresented particularly at the *Berufsoberschule* (vocational secondary school) and the *Fachoberschule* (secondary technical school), with a percentage of 6.8% of all migrant pupils, as well as at *Fachschulen* (technical schools) with a percentage of 3.7% (German pupils: 9.2% and 6.0% respectively). Migrant pupils are overrepresented in the vocational preparatory year or vocational foundation year with 10.0% (German pupils: 4.3%).

Particularly young people from Serbia and Montenegro and Turks are over-represented in the lower vocational school types and underrepresented in the higher ones.

In addition, it becomes apparent that a significantly higher number of migrant pupils (36.8%) in vocational schools left school without qualifications than was the case for German pupils (19.2%) (cf. table 2 in the annex).

Recent studies

Since October 2004, several studies have been published which deal – among others – with the educational situation of migrant children and young people and confirm their worse educational situation.

In November, the State Ministry for Social Affairs in **Baden-Wurtemberg** presented its “**Second Family Report**” (“Zweiter Familienbericht”) with the special focus on “Migration and Migrant Families in Baden-Wurtemberg”, which shows once again the educational deficits of non-German children and young people. According to the report, children with a migration background, especially those of Turkish, Yugoslavian and Portuguese nationality, are strongly overrepresented at secondary modern schools (*Hauptschule*), the type of school that leads to rather low school certificates.³²³ Furthermore, the report states that in Baden-Wurtemberg the quota of migrant pupils attending a **special needs school** is significantly higher than in any other German state.³²⁴ A report on the general educational situation in Bavaria (“*Bildungsarmut in Bayern*”) submitted by the Bavarian Green Party also confirms the low attainments of young migrants in the general education system in Bavaria. Additionally, the study comes to the conclusion that “the low educational attainments are also translated into the **vocational schools**”³²⁵: non-German young people at such schools are significantly more likely to finish school without any recognized vocational qualification than Germans³²⁶ and their dropout rates (especially of young Turks) are higher than the average rate³²⁷.

More public attention than to the two studies mentioned above was attracted by the study “**Viele Welten leben**” commissioned by the Federal Ministry for Family, Elderly, Women and Youth (BMFSFJ). For this representative study 950 unmarried female migrants between the age of 15 and 21 with a Greek, Italian, former Yugoslavian,

³²² Data for the school year 2003/2004 were published in November 2004 with the result that they could not be considered in the National Annual Report.

³²³ SWR 08.11.2004; available at: www.swr.de/international/de/2004/11/08/beitrag2.html (31.12.2004)

³²⁴ Motion made by the SPD in the Baden-Wurtemberg parliament, printing matter 13/3798 (25.11.2004)

³²⁵ Hinz, T; Zerger, F; Groß, J (2004) Neuere Daten und Analysen zur Bildungsarmut in Bayern., p. 68

³²⁶ Hinz/Zerger/Groß 2004, p. 5

³²⁷ Hinz/Zerger/Groß 2004, p. 74

Turkish and an ethnic German (Spätaussiedler) background were interviewed³²⁸ on – among others- their experiences in the educational system. 22% of the interviewees (N=210) stated that they have experienced “worse treatment at school and/or in the vocational training due to their origin”. Especially interviewees with an ethnic German background reported of such discriminatory treatment(s) (39%), followed by interviewees with a Turkish background (24%).³²⁹ Furthermore, the study reaches the conclusion that most of the interviewed young migrants attach great importance to high educational attainments, i.e. to a greater extent than German young people from a similar social stratum.³³⁰

The **second PISA study**, which was published in November 2004, confirmed the link between social origin and success in education – which was already identified by the first PISA study³³¹. Seeing that many young people with a migration background grow up in families with a lower socio-economic status they have lower chances to obtain a high degree of education than native pupils do. According to the study, the socio-economic status is the decisive factor for the school performance, not the migration background itself. A further analysis indicated, however, that disparities in levels of attainments in education are not only related to social position, but also to competence/lack of competence in the teaching language. That means that the colloquial language spoken at home is also an important factor for the success in the education system. An additional result of the PISA II study is that young people of the first generation (both parents foreign born) who have grown up in Germany and have spent their whole school career at German schools and whose parents are both foreign born (first generation) perform even worse than young people who were born outside the country.³³²

Right-wing extremist incidents at school

In the statistics of the School Administration of Berlin, 39 extreme right-wing incidents were registered for the school year 2003/04³³³, which constitutes 13 more than in the previous school year. 11 of the 39 registered incidents were categorized as motivated by anti-Semitism; 3 had a xenophobic background. 82% of the right-wing extremist incidents were propaganda crimes. In three cases bodily injuries were registered. Additional to the “Projekt Schulhof” (Project Schoolyard; cf. National Annual Report), right-wing parties and organisations have strengthened their activities in front of schools to win over more and more young people. According to the Federal Office for the Protection of the Constitution, the right-wing extremists have started a broad “propaganda offensive”. Not only CDs with nationalistic songs (“völkischem Liedgut”) were distributed in front of schoolyards, but also leaflets and school newspapers with right-wing extremist content.³³⁴

³²⁸ Germany, BMFSFJ (2004) *Viele Welten leben. Lebenslagen von Mädchen und jungen Frauen mit griechischem, italienischem, jugoslawischen, türkischen und Aussiedlerhintergrund*. Berlin: BMFSFJ, p. 51

³²⁹ BMFSFJ 2004, pp. 259-161

³³⁰ FR 15.12.2004, taz 15.12.2004

³³¹ Baumert, J./Schümer, G. (2001) “Familiäre Lebensverhältnisse, Bildungsbeteiligung und Kompetenzerwerb”, in: Deutsches PISA-Konsortium (ed.) *PISA 2000 – Basiskompetenzen von Schülerinnen und Schülern im internationalen Vergleich*, Opladen: Leske + Budrich, pp. 323-407; PUBDE0047.

³³² Cf. PISA-Konsortium Deutschland (ed.) (2004) *PISA 2003. Der Bildungsstand der Jugendlichen in Deutschland – Ergebnisse des zweiten internationalen Vergleichs*, pp. 254-272

³³³ Berlin, Senatsverwaltung für Bildung, Jugend und Sport (2004) *Gewaltsignale an Berliner Schulen 2003/2004*, p. 15.

³³⁴ Press release Bundesamt für Verfassungsschutz (19.12.2004)

State provisions for migrant education: Pre-school language courses

Similar to provisions already implemented in other German states, compulsory pre-school language courses will be established in **Bavaria** for children with insufficient German proficiency – predominately for children with a migration background. In early December, the Bavarian government announced in the Bavarian parliament that non-German children will in the future not be allowed to enter the first grade at school without sufficient German skills.³³⁵ Additionally, the existing pre-school German courses will be extended (from 40 to 160 lessons) in the school term 2004/2005.³³⁶

Good practice

There are numerous initiatives in Germany which aim at fostering the educational integration of migrants and to developing intercultural methods in the educational system. Some recently started projects are briefly presented in the following.

(1) In December 2004, the Federal Ministry of the Interior started the integration (BMI) contest “**Engagement macht Schule**” in cooperation with the EU Commission. In this contest, which especially addresses primary schools, the initiators search for “innovative solutions for the integration”³³⁷ of children of non-German origin and projects in the area of intercultural education. Primary schools in Germany, the Netherlands, Austria and Denmark are called to send in relevant ideas and examples of good practice stemming from their own daily experiences; the best 20 of these ideas will be selected and awarded in March 2005. The main objective of the contest is to collect practically suitable projects and to make them available for teachers (free of charge as a CD ROM).

In the meantime, almost 40,000 primary schools – 17,000 of them in Germany – have responded to the call and requested the application forms for the contest.

(2) In November 2004, a new support project for children and young people with a migration background started in Saxony. Students of the University of Leipzig offer **additional German lessons** to migrant pupils who attend one of the participating secondary schools in Saxony. The student teachers took part in special preparation courses.³³⁸

(3) The project “**Beraberce-Together**” initiated by the Thomas-Morus-Academy aims at promoting intercultural education at school and in universities by taking actively advantage of the already existing intercultural potentials in the educational institutions (e.g. migration or abroad experiences). Concrete objectives are to qualify pupils and university students from diverse cultural backgrounds as multipliers of intercultural education and to develop intercultural education programmes for schools and universities.³³⁹

³³⁵ Press release Bayerischer Landtag (1.12.2004), taz 02.12.2004, p. 6

³³⁶ Press release Bayerisches Kultusministerium No. 355 (8.12.2004); Zickgraf, A. (21.10.2004) Keine Schultüte ohne Deutschkenntnisse (Teil 1), available at: http://bildungplus.forum-bildung.de/templates/imfokus_inhalt.php?artid=357

³³⁷ Press release BMI 17.12.2004; for further information see: www.engagement-macht-schule.de (03.01.2005)

³³⁸ Press release University of Leipzig 11.11.2004

³³⁹ www.tma-bensberg.de/beraberce (03.01.2005)

3. Legislation

Anti-discrimination bill

In December 2004, the Federal Government of Germany submitted the **draft of an anti-discrimination law**³⁴⁰, through which the EU Directives on Equal Treatment 2000/43/EC (“Racial Equality Directive”) and 2000/78/EC (“Employment Equality Directive”) should be transposed into national law. This bill, which covers the spheres of labour law as well as the civil law, contains regulations on the protection against discrimination. It exceeds the minimum standards required by the EU Directives in some aspects.

The most extensive regulations of the bill relate to the protection against discrimination based on ethnic origin. In future it should be prohibited to discriminate against people directly or indirectly (including harassment) on the ground of their ethnic origin at the workplace and concerning their access to employment, education, benefits from the social security and healthcare system as well as to goods and services which are made available to the public. Solely in the very private sphere (“privater Nähebereich”) (e.g. renting out a flat which is located in the same building in which the landlord lives him- or herself) will unequal treatment based on someone’s ethnic origin continue to be legally tolerated.

Unequal treatment at the workplace or regarding the access to employment on the grounds of someone’s **religion** (or belief, age, disability and sexual orientation) is banned by the law. Furthermore, discriminatory treatment concerning the access to goods and services on the grounds of religion³⁴¹ is to be prohibited – provided it is a “mass business”³⁴², as it is termed (“*Massengeschäft*”). Unequal treatment on the grounds of religion will remain allowed if it happens for “objective reasons” (e.g. churches can call upon their right of self-determination and set up certain recruitment criteria related to the applicant’s religious affiliation).

The bill also contains regulations on the creation of a specialised **anti-discrimination body**. Since this body is supposed to deal with different kinds of discrimination – among others, on the grounds of ethnic origin and religion – the German bill exceeds the minimum requirements set up by the EU Directive 2000/43/EC which refers only to *ethnic* discrimination. According to the bill, this body will be affiliated to the Federal Ministry of Family, Elderly, Women and Youth and will function as a complaint and advice office for people who feel discriminated against. Further responsibilities and tasks of this federal body are to mediate in cases of discrimination, to conduct research studies, to develop measures to combat discrimination and to carry out public relations work.

³⁴⁰ The information on this bill stems from a press release by the Federal Ministry of Justice (BMJ) (15.12.2004) and from the bill itself, which is available at: http://www.spdfraktion.de/rs_datei/0..4395.00.pdf (23.12.2004)

³⁴¹ Further grounds that are named in the German bill are: belief, age, disability and sexual orientation. Discrimination on the basis of one of these grounds is prohibited by the EU Employment Equality Directive, which means it only refers to the employment sector, i.e. this is one aspect in which the German bill exceeds the minimum requirements of the EU anti-discrimination directives.

³⁴² “Mass business” is defined as “transactions based on civil law contracts which are usually concluded without respect of person” (press release BMJ 15.12.2004).

The German government is planning to introduce the bill and discuss it in parliament in January 2005. Despite the submission of the bill by the German government, the EU Commission announced that it will refer Germany to the **European Court of Justice** for failing to transpose the EU Employment Equality Directive (2000/78/EC).³⁴³

Decrees for the new immigration law

After the immigration law had been passed in July 2004, several decrees which contain detailed regulations on the transposing of the new law (in effect by January 1, 2005) have been passed during the past few months. Especially two of these decrees are relevant to the topics of the National Annual Report.

(1) The **decree on integration courses** (*Integrationskursverordnung*)³⁴⁴ specifies the regulation concerning the integration **courses**, which comprise 600 lessons of language training and 30 lessons of an orientation course to impart knowledge of the legal system, culture and history of Germany. Since the immigration law itself contains the main provisions of these programmes, they have already been described briefly in the *National Annual Report*.

(2) The second relevant decree is the “employment proceedings decree” (*Beschäftigungsverfahrensverordnung*), which contains regulations on the **access to gainful employment** for those foreigners who are living in Germany.³⁴⁵ With its coming into effect on January 1, 2005, this decree will **improve** the access to the German labour market for many foreigners: The so-called “priority check” (*Vorrangprüfung*) will not be applied anymore for foreigners with a residence permit who either have been in gainful employment for at least three years (formerly five years) or who have been living in Germany – tolerated or with a legal residence status – for at least four years (formerly six years). That means that these foreigners will have the same rights to enter the labour market as German job seekers. Furthermore, young foreigners who have entered Germany as minors can receive such equal access rights (no “priority check”), provided they have acquired a school certificate in the general school system in Germany or they have participated in vocational preparation courses in Germany .

However, the new decree does not contain any improved provisions concerning the access to the labour market for **foreigners with a toleration certificate**, i.e. this group is legally excluded from any gainful employment for one year and, after this waiting period, a priority check has to be applied by the Federal Employment Agency. A work permit must not be granted at all if the tolerated foreigner can not be deported for reasons that he or she is responsible for him- or herself (e.g. deception of his or her true nationality) or if the person has entered Germany solely in order to receive benefits according to the Act on Benefits for Asylum seekers.

State laws on the ban on wearing Muslim headscarves

By passing the amendment of the Bavarian Law on the Educational System on November 11, 2004, the **Bavarian** state parliament decided to introduce a **ban on the wearing of headscarves by Muslim teachers** at Bavarian schools. The ban will come into effect by the beginning of 2005.³⁴⁶ Similar to other recently amended school laws (e.g. in Saarland, Baden-Württemberg and Lower Saxony) the Bavarian law intends to exclude Christian and Jewish symbols from the ban on religious symbols.³⁴⁷

In the meantime, the **Hessian bill** relating to the ban on the wearing of Muslim headscarves has been passed by the Hessian state parliament in line with the votes of the

³⁴³ Cf. press release EU Commission (IP/04/1512) 20.12.2004

³⁴⁴ Printed in: Bundesgesetzblatt BGBl. I pp. 3370 (17.12.2004)

³⁴⁵ Printed in: Bundesgesetzblatt BGBl. I 2004 Nr. 62, pp. 2934 (2.12.2004)

³⁴⁶ Cf. Bayerisches Sozialministerium (2004) TIPP, II/3-2004

³⁴⁷ Cf. Bayerischer Landtag, Plenarprotokoll 15/27 (11.11.2004), pp. 1820-1821

governing Conservative party and against the votes of the Liberals, the Greens and the Social Democrats. Different to the legal provisions in other German states, this law prohibits not only teachers, but **all civil servants** from wearing clothes that are “objectively suitable to affect the neutrality of exercising the office and to endanger the political, religious or ideological peace”. Christian and Jewish symbols, however, should remain to be allowed due to the “Christian and Humanist influenced occidental tradition”³⁴⁸ of the state of Hesse.³⁴⁹

In October 2004, the **Berlin** Senate (SPD and PDS) agreed on the bill of the “**Neutrality Act**” (*Neutralitätsgesetz*), which aims at banning all noticeable religious symbols – no matter whether Muslim, Christian or Jewish – in many areas of public services, i.e. for teachers at public schools, judges and within the police services. Although the Conservative party disapproves of these provisions, the state parliament is expected to pass the bill so that the law can come into effect in early 2005.³⁵⁰

Court ruling

On December 29, 2004, the Federal Constitutional Court (BVerfG) published a ruling (dated July 6, 2004) concerning non-Germans’ **entitlement for parental allowance** (Erziehungsgeld).³⁵¹ In this ruling the Court criticized a legal provision which denied third country parents who hold an Aufenthaltsbefugnis (a residence title mainly for humanitarian purposes) parental allowance. According to the highest court, this provision, which was introduced in June 1993, is contrary to the right of equal treatment: Foreigners with an Aufenthaltsbefugnis³⁵² who have the right to work must be entitled to receive parental allowance in order to devote more time for the upbringing of their children.

The German parliament is now called to bring a new regulation into force by January 1, 2006.

³⁴⁸ Hessisches Schulgesetz § 86; Hessisches Beamtengesetz § 68

³⁴⁹ Spiegel online 07.10.2004; Nürnberger Nachrichten 08.10.2004

³⁵⁰ Berliner Zeitung 28.10.2004, p. 4

³⁵¹ press release BVerfG 29.12.2004; Germany / BVerfG 1 BvR 2515/95 (06.07.2004)

³⁵² According to the criticized legal provision, only foreigners with a stronger residence status (i.e. with an *Aufenthaltserlaubnis* or an *Aufenthaltsberechtigung*) are entitled to receive parental allowance.

4. Housing

The **study on integration and exclusion processes** with respect to second generation Turkish migrants, conducted by the working group “Urban Research” at the University of Oldenburg (see employment), focused on the labour market, housing and social networks.³⁵³

In the realm of the housing market, the study confirms that the average housing situation of second generation (Turkish) migrants has improved (compared to that of the first generation), but it still remains significantly worse than the situation of Germans with regard to size and equipment of the flat. The Oldenburg researchers describe this phenomenon as an “integration career on a low level”. The interviewed migrants have, for instance, access to an average of about 20 m²/person, whereas the local average was at 40 m²/person.³⁵⁴

Apart from the lower accommodation standard, the interviewed migrants “often live in urban areas which are avoided by German households for reasons such as environmental pollution, bad building fabrics or a bad reputation”³⁵⁵. According to the research group, this results from the lower social capital of migrants, but also from the gatekeepers’ **discriminatory practices**: Turkish migrants “have hardly any access to the private housing market segment and limited access to that of (...) housing associations” due to the “more or less rigid policy of quotation”³⁵⁶ by the housing societies, i.e. landlords often try not to exceed a certain percentage of Turkish tenants in order to – as they argue – maintain an ethnically balanced relationship in each of their buildings.

Concerning aspects of ethnically segregated living, the study differentiates between two kinds of typical migrant quarters: “functionally mixed old inner city quarters” and “mono-functional large social housing estates”. Interviewed migrants from the old inner city quarters seem to have “ethnically heterogeneous (...) networks” and they can, according to their own assessment, often take advantage of these networks. In those large social housing estates, on the other hand, such local resources are very limited and the “social composition” is often described by the interviewed migrants as a negative aspect. Nevertheless, most of them remain living in these quarters. Their main reason is that they do not want to move too far away from their parents and siblings; furthermore, those quarters are often perceived as family-friendly.³⁵⁷

In December 2004, the City of Nuremberg hosted the Fourth European Conference “**Cities against Racism in Europe**”, which is part of a initiative recently launched by UNESCO that aims at establishing a “network of cities interested in sharing experiences in order to improve their policies to fight racism, discrimination and xenophobia”³⁵⁸. Nuremberg is not only one of the 235 European cities participating in this international coalition, but it also plays an outstanding role as the “Lead City” for Europe, i.e. the City of Nuremberg functions as the coordinator of the initiative in Europe.

By the end of the conference, the European city representatives in attendance, the representatives of NGOs and academics agreed on a finalised Ten-Point Plan of Action which is based on the notion that the urban space – where people with many different

³⁵³ Gestring./Janßen/Polat, 2003 (see footnote 1)

³⁵⁴ Gestring et al. 2004, p.11

³⁵⁵ Gestring et al. 2004, p. 11

³⁵⁶ Gestring./Janßen/Polat 2003, p.15

³⁵⁷ Gestring et al. 2004, p.11

³⁵⁸ UNESCO (2004a) International Coalition of Cities against Racism, available at: http://portal.unesco.org/shs/en/ev.php-URL_ID=3061&URL_DO=DO_TOPIC&URL_SECTION=201.html (22.12.2004)

ethnic and cultural backgrounds work and live together – is an “ideal space (...) to conduct a struggle against racism”³⁵⁹ and that, therefore, local authorities play a key role in implementing anti-discrimination policies and in encouraging other active bodies to do the same.

The Plan of Action contains ten commitments covering, among others, aspects of housing including concrete examples for their implementation. Commitment No.7 advocates taking “active steps to **strengthen policies against housing discrimination** within the city”. This could be implemented by

- a) drawing up “legal normative instruments (Ethical Charter and a Code of Practice) for public and private bodies involved in renting and selling accommodation in order to combat discrimination in access to housing”,
- b) granting “facilities and incentives to owners and estate agents that commit to the municipal anti-discrimination Code of Practice” and
- c) establishing or supporting “advisory services with a brief to assist and support residents from those affected by discrimination in seeking accommodation”³⁶⁰

The signatory cities agreed to integrate the Plan of Action in their local strategies and to commit to it the human, financial and material resources required for its effective implementation. As a first step, each city should implement at least one of the recommended actions as soon as possible in respect of each of the commitments.³⁶¹

³⁵⁹ UNESCO – Division of Human Rights and Struggle Against Discrimination (2004b) Call for a European Coalition of Cities against Racism, Paris, p.5; available at the same UNESCO website (see above)

³⁶⁰ UNESCO 2004b, p.9

³⁶¹ UNESCO 2004b, p. 11

5. Racist violence and crime

*Developments in 2004 (January to October)*³⁶²

From January to October 2004, 6,474 crimes were registered nationally in the field of “**politically motivated criminality - right-wing**” (comparable period of 2003: 5,796), including 397 violent crimes (comparable period of 2003: 458). 1,208 offences were deemed as xenophobic, including 203 violent crimes (cf. table 3 in the annex)³⁶³. In the comparable period of the previous year, “only” 1,082 xenophobic offences were reported; however, 258 violent crimes were registered.

From January to October 2004, the number of people injured by extreme right-wing violence amounted to 309, compared to 364 people injured in the same period of 2003. 149 of the injured people in 2004 (January to October) were victims of xenophobically motivated violence (same period of 2003: 172) (cf. table 4 in the annex).

The figures show that **no clear trend** can be determined: There is a rise in the number of right-wing extremist and xenophobic crimes in total, but a decrease concerning the number of violent crimes in this field in comparison to the same period of 2003. There are, however, differing developments in the individual federal states: the Ministry of the Interior in Brandenburg, for instance, reported a significant increase of right-wing extremist violent crimes for the first nine months of 2004 in comparison to the same period of the year before. The police in Brandenburg registered 75 violent crimes in this period.³⁶⁴

From January to September 2004, 660 **anti-Semitic crimes** were registered in the field of “politically motivated criminality – right-wing”, including 21 violent crimes³⁶⁵. Nine people were injured as a result of them. In the comparable period of the previous year, 720 crimes with an anti-Semitic motivation were registered, including 23 violent crimes. 20 people were injured.

An increase in anti-Semitic crimes, however, was registered in Berlin: 130 crimes in the first nine months of 2004 in comparison to 96 in the same period of 2003.³⁶⁶

In the context of the **GMF-Survey** (Group-Related Misanthropy), also in 2004 about 3,000 representatively chosen members of the German-speaking population were interviewed (as was done in 2002 and 2003). One result of the study is that anti-Semitic attitudes fell back to the level of 2002, after an increase in 2003.³⁶⁷ In general, the degree of anti-Semitic attitudes is relatively stable in the German population (15.1% of the population in West-Germany and 13.0% of the population in East-Germany show anti-Semitic attitudes).

³⁶² It is important to mention that the figures (added-up monthly figures) for 2004 do not represent final figures as they can still increase – possibly to a great extent – due to the later reports coming in from the federal states.

³⁶³ Cf. here Printed Matter of the German Parliament 15/2710, 15/2913, 15/3145, 15/3284, 15/3577, 15/3632, 15/3675, 15/3897, 15/4099 and 15/4459.

³⁶⁴ Opferperspektive - Beratung für Opfer rechtsextremer Gewalt (2004) Schattenberichte Dezember 2004, p. 3

³⁶⁵ Cf. here Printed Matter of the German Parliament 15/2965, 15/3705 and Germany, Deutscher Bundestag (2004) Stenographischer Bericht, 137th Sitting, 10 November 2004.

³⁶⁶ Berliner Kurier (2.12.2004)

³⁶⁷ Cf. Heitmeyer, W. (2004) Deutsche Zustände. Folge 3, Frankfurt/Main. Suhrkamp p. 26

Islamophobic incidents/crimes in the last two months of 2004

In November and December of 2004 three attacks on mosques in Germany were registered by the police and published (nationwide) in the media:

In the night of 17 to 18 November an arson attack on a mosque in Sinsheim (Baden-Württemberg) was committed. The wooden door was damaged and the damage was estimated at 10,000 Euro. Although the mosque was inhabited, nobody was injured. At the beginning of December, a 17-year-old boy was arrested. His motive for the crime presumably was an “anti-Turkish attitude”³⁶⁸.

In the night of 21 to 22 December a mosque in Schwäbisch Hall (Baden-Württemberg) was damaged by a gun shot. The criminal investigation department has appointed a special task unit to investigate the case. The police assumes a politically motivated crime. On 23 December, an arson attack on a mosque in Usingen (Hesse) was committed.³⁶⁹ The praying room was destroyed almost complete. The damage was estimated at 50,000 Euro. The police assumes there to be an individual perpetrator.³⁷⁰

Court cases

On 20 December, the trial against twelve neo-Nazis started in Potsdam. They are accused of having built up a terrorist association. The Public Prosecutor has charged them with having committed arson attacks on Turkish and Asian restaurants and fast-food stands between July 2003 and May 2004. Their aim was, according to the Public Prosecutor, to destroy the economic existence of the victims and to drive them away.

On 15 December, two construction workers were sentenced to more than three years of imprisonment each by the District Court of Berlin for dangerous bodily injury and insult. The convicted perpetrators had beaten up and slandered (in a racist way) a man from Guinea. One of the perpetrators had shouted “beat the nigger to death”.

On 23 November, a right-wing extremist was sentenced to six and a half years of imprisonment by the District Court of Karlsruhe for attempted murder in twenty cases and attempted serious arson. Six months previously he had committed an arson attack in Pforzheim on a residential building in which several foreign families had been living.

³⁶⁸ taz 4.12.2004

³⁶⁹ taz (24.12.2004)

³⁷⁰ taz (28.12.2004)

Annex

Table 1(replaces table 7 in the National Annual Report): Pupils at vocational schools according to selected nationalities and school types in the school year 2003/2004

| Country of Nationality | Total | vocational preparatory year or vocational foundation year | | vocational schools | | vocational technical schools | | vocational secondary schools/ secondary technical school | | Technical schools | |
|-------------------------|-----------|---|------|--------------------|------|------------------------------|------|--|------|-------------------|------|
| | | | in % | | in % | | in % | | in % | | in % |
| Germany | 2,532,715 | 109,214 | 4.3 | 1,578,194 | 62.3 | 452,590 | 17.9 | 232,860 | 9.2 | 153,094 | 6.0 |
| France | 1,061 | 43 | 4.1 | 561 | 52.9 | 259 | 24.4 | 97 | 9.1 | 81 | 7.6 |
| Greece | 8,379 | 510 | 6.1 | 5,152 | 61.5 | 1,900 | 22.7 | 498 | 5.9 | 303 | 3.6 |
| Italy | 19,530 | 1,493 | 7.6 | 12,437 | 63.7 | 4,095 | 21.0 | 897 | 4.6 | 553 | 2.8 |
| Austria | 2,156 | 45 | 2.1 | 1,280 | 59.4 | 341 | 15.8 | 223 | 10.3 | 214 | 9.9 |
| Portugal | 3,285 | 265 | 8.1 | 1,848 | 56.3 | 831 | 25.3 | 191 | 5.8 | 149 | 4.5 |
| Spain | 2,467 | 121 | 4.9 | 1,458 | 59.1 | 555 | 22.5 | 141 | 5.7 | 161 | 6.5 |
| Bosnia-Herzegovina | 5,732 | 362 | 6.3 | 3,542 | 61.8 | 1,206 | 21.0 | 394 | 6.9 | 221 | 3.9 |
| Serbia and Montenegro | 10,280 | 1,459 | 14.2 | 5,945 | 57.8 | 2,110 | 20.5 | 482 | 4.7 | 261 | 2.5 |
| Croatia | 7,931 | 309 | 3.9 | 4,916 | 62.0 | 1,561 | 19.7 | 732 | 9.2 | 387 | 4.9 |
| Macedonia | 1,964 | 171 | 8.7 | 1,267 | 64.5 | 376 | 19.1 | 91 | 4.6 | 57 | 2.9 |
| Poland | 5,368 | 320 | 6.0 | 2,752 | 51.3 | 1,403 | 26.1 | 504 | 9.4 | 361 | 6.7 |
| Romania | 1,508 | 95 | 6.3 | 866 | 57.4 | 351 | 23.2 | 80 | 5.3 | 100 | 6.6 |
| Russian Federation | 4,010 | 486 | 12.1 | 2,012 | 50.2 | 960 | 23.9 | 318 | 7.9 | 169 | 4.2 |
| Turkey | 77,145 | 7,830 | 10.1 | 43,835 | 56.8 | 18,685 | 24.2 | 4,773 | 6.2 | 1,991 | 2.6 |
| Migrant pupils in total | 192,808 | 19,286 | 10.0 | 107,084 | 55.5 | 45,685 | 23.7 | 13,052 | 6.8 | 7,041 | 3.7 |
| Total number of pupils | 2,725,523 | 128,500 | 4.7 | 1,685,278 | 61.8 | 498,275 | 18.3 | 245,912 | 9.0 | 160,135 | 5.9 |

Source: Federal Statistical Office

Table 2 (replaces table 8 in the National Annual Report): Graduates and others leaving vocational schools in 2003

| Those leaving | Total | in % | Germans | in % | Migrants | in % |
|---|-----------|------|-----------|------|----------|------|
| With leaving certificate¹ | 230,603 | 20.7 | 196,686 | 19.2 | 33,917 | 36.8 |
| With qualification | 842,745 | 75.6 | 788,958 | 77.2 | 53,787 | 58.3 |
| No response regarding qualification | 41,517 | 3.7 | 36,983 | 3.6 | 4,534 | 4.9 |
| Graduates/leavers in total | 1,114,865 | 100 | 1,022,627 | 100 | 92,238 | 100 |

Source: Federal Statistical Office

1) A leaving certificate is given when the aim of the respective level of education is not attained (without completing the vocational training)

Table 3 (replaces table 14 in the National Annual Report): Politically motivated criminality - right-wing: Criminal acts and violent crimes 2004 (January - October)

| | Criminal acts | | of which xenophobic criminal acts | |
|-----------|---------------|-------------------------|-----------------------------------|-------------------------|
| | | of which violent crimes | | of which violent crimes |
| January | 554 | 29 | 94 | 14 |
| February | 587 | 45 | 102 | 25 |
| March | 679 | 30 | 125 | 17 |
| April | 687 | 44 | 128 | 19 |
| May | 740 | 56 | 151 | 27 |
| June | 567 | 34 | 119 | 18 |
| July | 572 | 36 | 106 | 22 |
| August | 741 | 37 | 115 | 20 |
| September | 609 | 38 | 124 | 24 |
| October | 738 | 48 | 144 | 17 |

Source: Criminal Investigation Registration Service – politically motivated criminality

Table 4 (replaces table 15 in the National Annual Report): Politically motivated criminality - right-wing January – October 2004: Injured people

| | Injured people as a result of "politically motivated criminality - right-wing" | The number of which were injured as a result of xenophobic crimes |
|----------------|--|---|
| January 2004 | 30 | 14 |
| February 2004 | 39 | 20 |
| March 2004 | 14 | 8 |
| April 2004 | 45 | 14 |
| May 2004 | 45 | 21 |
| June 2004 | 24 | 14 |
| July 2004 | 20 | 13 |
| August 2004 | 32 | 21 |
| September 2004 | 30 | 18 |
| October 2004 | 30 | 6 |

Source: Criminal Investigation Registration Service - politically motivated criminality