



Sachstand

Public opinion on the German Act on Equal Treatment

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1. Introduction

German legislation to help protect people from discrimination and harassment advanced against the backdrop of four European guidelines countering discrimination. When these guidelines were transposed into national legislation, several areas of concern had emerged in Germany where progress on equal opportunities and access was considered desirable. One area of specific concern was equal opportunities for women and old aged people in the labor market; the second core area of concern was the situation of foreigners and their status in Germany.

The following report will analyze selected aspects of the legislation, such as the mandate of the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes* - ADS) created along with the Act on Equal Treatment in 2006, to help protect people from discrimination and harassment. Furthermore, public acceptance prior to and after the enactment of the General Act on Equal Treatment will be presented along with recommendations to have the AGG amended ten years after its enactment.

2. The enactment of the Act on Equal Treatment (AGG) in 2006

2.1. Mandate of the Federal Anti-Discrimination Agency (Antidiskriminierungsstelle)

Between 2000 and 2004, the Council of the European Union adopted four directives on equal treatment which were incorporated into German law. The AGG was enacted on August 18th 2006.¹ The creation of an independent federal agency to help protect people from discrimination and harassment, the Federal Anti-Discrimination Agency, was enshrined in law. The mandate of the main actor at federal level - the Federal Agency headquartered in Berlin - to help protect people from discrimination and harassment was set out in the AGG. According to §27 of the AGG, the Federal Anti-Discrimination Agency is responsible for

1. supporting victims of discrimination or protecting them from discrimination on the grounds of race, of ethnic origin, of gender, of religion or belief, disability, age or sexual orientation.
1. mediating in conflicts concerning discrimination and helping settle cases;
2. public relations;
3. taking measures to prevent discrimination on the grounds referred to in § 1 of the AGG and commissioning scientific research on discrimination;
4. reporting to Parliament every four years and giving recommendations on policy changes as set down in AGG § 27 (4).

2.2. Reporting duties and accountability reports by ADS

- The ADS presents a report on discrimination to Parliament once every four years.
- The latest report was presented to Parliament on August 13, 2013, with a special focus on discriminatory behavior in education and the labor sector.

1 **Federal Anti-Discrimination Agency (2016).** The Directives on Equal Treatment of the European Union. Retrievable under: http://www.antidiskriminierungsstelle.de/EN/TheAct/EU-Directive/eu-directive_node.html, (last retrieval: 6. Oktober 2016).

- In 2013, in connection with its reporting duties, the ADS commissioned scientists to carry out two independent studies: one on discrimination within the pre-school field/in schools and a second on what protection can be offered to students in school.
- The ADS commissioned the Office for Law and Science (*Büro für Recht und Wissenschaft*) with an “Evaluation of the AGG”, which was published in August 2016. The study’s goal was to examine, ten years after its enactment, whether the law had been successful in protecting people from discrimination.

The Federal Anti-Discrimination Agency is an independent institution affiliated with the Ministry of Family Affairs, Senior Citizens, Women and Youth.

The budget proposal for the ADS was a total of € 4.3 million in 2016, up from € 3.7 million in 2015. In 2014, ADS funding amounted to € 3.2 million. This represents a gradual increase in government spending on the ADS. There is no consistent data collection on discriminatory behavior.² Therefore, little knowledge exists about the exact number of cases of racial or ethnic discrimination in Germany.

2.3. Public opinion prior to and after the enactment of the Act on Equal Treatment

Public opinion in the days prior to and after the enactment of the Act on Equal Treatment and following the implementation of EU directives was assessed based on opinion polls, on interviews with business leaders, on statements by non-governmental organizations and associations.

Opinions towards the AGG and its achievements differ by actor. Generally speaking, the law and the Federal Anti-Discrimination Agency have increased awareness of the majority of the German population towards discrimination.

According to a study conducted prior to the enactment of AGG on the costs for German companies incurred through the Act, projections anticipated an increase in costs for all German companies of € 1.73 million.³ The study carried out by Hoffjan/Bramann and commissioned by the *Initiative Neue Soziale Marktwirtschaft* of the University of Dortmund was intended to „empirically assess the high level additional strain caused by this law”. The authors of the study criticized the fact that companies were paying a high price and taking on risks for a well-meant intention. The Act was meant to protect from discrimination in the labor sector, but, according to company leaders, important parts of AGG are not clear and thus might be open to interpretation by courts.

In its response to the study, ADS pointed out that the Hoffjan/Bramann study „must be viewed as **untenable on the basis of errors in the data collection and evaluation**“:

2 **Bertelsmann Stiftung (2015)**. Faktensammlung Diskriminierung. Retrievable under: https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/28_Einwanderung_und_Vielfalt/Faktensammlung_Diskriminierung_BSt_2015.pdf, (last retrieval: 29. September 2016). S. 19.

3 **Hoffjan, Andreas und Annehild Bramann (2007)**. Empirische Erhebungen der Gesetzesfolgekosten aus dem Allgemeinen Gleichbehandlungsgesetz (AGG). Kurzbericht des Lehrstuhlprojekts im Auftrag der Initiative Neue Soziale Marktwirtschaft GmbH. S.17f.

„When one considers the various options of extrapolating onto the overall economy, including the notion that an extrapolation is not possible because of the lack of representativeness and erroneous data collection, one comes to the following conclusion: **The amount of 1.73 billion euro is a bureaucratic cost** whose academic value is invalid. Finally, the data collection in the INSM study is **pervaded by serious defects** to the extent that the data cannot be used for a new assessment and extrapolation.“⁴

2.3.1. Opinion poll by Sinus-Institute

The **Sinus-Institute** located in Heidelberg was commissioned to carry out a multi-faceted opinion poll in the years 2007/2008 based on the question how discrimination is perceived by society at large and what kind of policy society expects from its government.⁵ The empirical study's goal was to establish how different groups in society view the subject of equality, how they act upon it and what they expect from government policy. A total of 2610 interviews and 40 in-depth interviews were conducted to find out more about the biographical background of the interviewee. The attitude towards discrimination and the way that people act upon discrimination with which they are confronted varies a lot among different groups in society. According to the representative survey, **34 percent of the interviewees had heard about AGG, 15 percent were not sure.** Thus **a majority of people was not familiar with AGG.**

The **policy countering discrimination of the years 2007/2008 and in particular AGG were rejected by the majority of society** according to the study of the Sinus-Institute. Only **about 15 percent of the German population considered equal treatment a legitimate goal.** With respect to discrimination or disadvantages, the focus of the majority of society was on the sustainability of the social security system and on economic justice for particular groups like the unemployed, the low-income class and economically disadvantaged groups. The **majority of society considered focusing on the protection of impoverished disadvantaged societal groups as legitimate.** These groups, however, were not identical with the groups identified by AGG. **Government policy and AGG politics were associated with excessive action and a focus on what interviewees considered as fringe groups** (foreigners, homosexuals and people of non-Christian belief). Legal action was perceived as „over-the-top“ and **dealing with side issues rather than core issues.** Moreover, equal opportunity and access are fundamental rights already enshrined in the Basic German Law. In that sense, the AGG was perceived as overregulating the issue of equality. Even though the underlying values and intentions are shared by the majority of society, the majority of interviewees felt that the groups in focus (foreigners, homosexuals and people of non-Christian belief) did not merit the attention that they receive through AGG.

4 **Antidiskriminierungsstelle des Bundes (2008).** Utility and Costs of the General Equal Treatment Act (AGG) Part I Analysis and Evaluation of the Study “Costs Related to the General Equal Treatment Act”. Retrieval under: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/nutzen_und_kosten_des_agg_teil_1.pdf?__blob=publicationFile, (last retrieval: 28. September 2016).

5 **Sinus-Institut (2008).** Summary of the Sinus-Milieustudie „Diskriminierung im Alltag“. Retrieval under: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/zusammenfassung_Diskriminierung_im_Alltag_Sinusstudie.pdf?__blob=publicationFile, (last retrieval: 28. September 2016).

The study found that attention towards every-day discrimination is generally low in society, because the bulk of society does not experience discrimination on the grounds of color, ethnic origin, religion, creed or sexual identity. Thus, most interviewees did not identify the corresponding groups to be vulnerable. The more a group perceived itself as vulnerable or disadvantaged, the more it expected protection from discrimination. The majority viewed the protection of women, the elderly and disabled as justified.

According to the study, the dilemma of a modern policy countering discrimination is to act on underlying social norms and values in everyday life. There was too little involvement by societal actors and the potential of the German society in 2008 to help change the perception how different groups in society were affected by discriminatory behavior was not significant.⁶

2.3.2. Studies on the awareness level of discrimination

Since its inception the Federal Anti-Discrimination Agency has commissioned a number of studies on discrimination to gather information on the nature of discrimination and its victims. These studies provide insight into the awareness of society about the legal situation and protection of victims by the AGG. The study „Benachteiligungserfahrungen von Personen mit und ohne Migrationshintergrund im Ost-West-Vergleich“ was published in July 2012 and conducted by the Expert Council of German Foundations on Integration und Migration.⁷ Discrimination of persons or groups with respect to certain criteria had been reported twice as often by the immigrant population as by the majority population. About 25 percent of interviewees without migration experience or background and 41.9 percent of the people of foreign origin reported of discriminatory behavior in contact with authorities, on the job market or on public transportation.

The results of a survey on Sinti and Roma carried out in 2013 by the Centre for Research into Anti-Semitism showed that the attitude of the German population towards Sinti and Roma ranges from indifference to rejection.⁸ Attitudes were not rigid or set-in-stone, rather the findings were characteristic of an undetermined position of the interviewees. There was not much awareness about the situation or the cultural background of Sinti and Roma in German society, which applies at the cognitive as well as the emotional level. Germans' attitudes towards this minority were less based on knowledge than on a vague perception. There was a knowledge gap on part of

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- 6 **Sinus-Institut (2008)**. Summary der Sinus-Milieustudie „Diskriminierung im Alltag“. Retrievable under: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/zusammenfassung_Diskriminierung_im_Alltag_Sinusstudie.pdf?__blob=publicationFile, (last retrieval: 28. September 2016), S. 14.
- 7 **Sachverständigenrat deutscher Stiftungen für Integration und Migration (27. Juli 2012)**. Benachteiligungserfahrungen von Personen mit und ohne Migrationshintergrund im Ost-West-Vergleich. Retrievable under: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Expertise_Benachteilig_Migrant_innen_Ost_West_Vergleich.pdf?__blob=publicationFile&v=1, (last retrieval: 28. September 2016). S. 5.
- 8 **Zentrum für Antisemitismusforschung Institut für Vorurteils- und Konfliktforschung e.V. (2013)**. Zwischen Gleichgültigkeit und Ablehnung. Bevölkerungseinstellungen gegenüber Sinti und Roma. S. 9. Retrievable under: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Expertise_Bevölkerungseinstellungen_gegenueber_Sinti_und_Roma_20140829.pdf?__blob=publicationFile&v=1, (last retrieval: 28. September 2016).

the majority society, because the way of life of Sinti and Roma lacked relevance to and connection with the lives of the interviewees. There was also a knowledge gap on part of the minority **as to victims' rights**. According to the findings of the study, **only a small proportion of victims of racist discrimination initiate legal proceedings to counteract discrimination**.⁹ According to self-help organizations racial profiling in trains and on airports were issues concerning Sinti and Roma.

The German pollster Forsa conducted an opinion poll in November/December 2013 on the discrimination of people on the basis of ethnic origin.¹⁰ More than two thirds of interviewees believed that people of different ethnic background suffered discrimination in the housing sector. Further areas of concern with respect to discrimination cited by the interviewees were the police and the authorities, as well as the question of access to clubs and restaurants. The study was commissioned by the Federal Anti-Discrimination Agency in 2014 in order to raise awareness for discrimination and racism in society at large. According to the findings, general distrust towards a heterogeneous society is higher with interviewees whose family has no migration experience.

In August 2016, civil society commented on an independent evaluation carried out by the German Institute for Human Rights on the prevention of discrimination and hate crime. According to the NGO *AG Rassismus*, German legislation protecting people from discrimination and harassment is **„not comprehensive, but deficient”**. The NGO demands amending German legislation along the lines of CERD.¹¹ The focus here is not just on the AGG. In their view, the **Act on the Federal Police should be amended to prevent racial or ethnic profiling** in stop and search operations.¹² This view, however, is not shared by experts of the Research Services of German Bundestag. § 22 Abs. 1a of the Act on the Federal Police restricts the individual right of the freedom of action enshrined, *inter alia*, in the Basic German Law. However, the implementation of §22 of the Act on the Federal Police and thus **the restriction of basic rights was considered legitimate by the Research Services of German Bundestag in order to prevent transboundary crime**.¹³

The Migrant Integration Policy Index (MIPEX) 2014 ranks Germany 10 out of 38 countries. MIPEX is a tool that measures policies to integrate migrants in all EU member states and beyond.

9 Ebenda, S. IV.

10 **Forsa (2014)**. Themenjahr gegen Rassismus 2014. Meinungen zur Diskriminierung von Menschen aufgrund der ethnischen Herkunft. Retrievable under: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Umfragen/Umfrage_Ethnie_20140403.pdf;jsessionid=3F9240E4230690E90CEE1B363F1E5950.2_cid340?__blob=publicationFile&v=1, (last retrieval 28. September 2016).

11 CERD: UN-Committee on the Elimination of Racial Discrimination.

12 **Deutsches Institut für Menschenrechte (August 2016)**. Zusammenfassung der Kommentare zivilgesellschaftlicher Gruppen und Organisationen zum unabhängigen Evaluierungsbericht des Deutschen Instituts für Menschenrechte: Die Umsetzung ausgewählter OSZE-Verpflichtungen zu Menschenrechten, S. 5.

13 **Research Services of German Bundestag (March 2015)**. Verdachtsunabhängige Maßnahmen nach § 22 Abs. 1a BPolG und „Racial Profiling“. Retrievable under: <https://www.bundestag.de/blob/408488/d66a6492df5e52e2fdc26e840b3dd3e2/wd-3-020-15-pdf-data.pdf>, (last retrieval: 7. Oktober 2016).

German policy countering discrimination is viewed as “relatively favorable” with 58 scores out of 100 whereas labor market mobility is viewed more favorably with 86 out of 100. In its conclusion and recommendations the authors of MIPEX state:

„Germany is one of few countries with a language test abroad, restrictions on dual nationality, limited healthcare entitlements for asylum-seekers and undocumented migrants, and **a weak equality body and equality policy**. These policies may be disproportionate and ineffective from an integration perspective, with many unintended consequences and negative long-term effects. The challenge is to expand access to the most effective general and targeted programs and to pass new reforms from an integration perspective.“¹⁴

Thus, the Council for Migration recommends that „anti-discrimination policies and commitment against racism must be considered as integration policy and must be funded accordingly“. **The Council calls for „the extent of social and institutional discrimination as well as hate crimes“ to be analyzed.** To date, no comprehensive examinations and data collections exist. These calls are in line with recent demands by the United Nation to meet the requirements of the „International Convention on the Elimination of All Forms of Racial Discrimination“. Furthermore, the inequality in education is criticized as „inappropriate“ for a wealthy country like Germany. Education policy should follow the principle of equal treatment. The same approach should be taken to health policy, the Council states.

2.4. Recommendations for amendment of AGG

Ten years after AGG enactment, ADS commissioned an evaluation of the law’s effectiveness and its repercussions to be carried out by the Office for Law and Science (Büro für Recht und Wissenschaft GbR) with scientific input from Prof. Dr. Christiane Brors.¹⁵ Based on the outcome of the independent evaluation, the ADS favors a reform of the AGG. The reform has become necessary to protect potential victims of discrimination more effectively and to close loopholes, the study’s experts say. According to ZeitOnline this means “stricter rules”.¹⁶ Here are some proposals for amendment of the AGG¹⁷:

14 **Migrant Integration Policy Index 2014 (2015)**. Germany. Retrievable under: <http://www.mipex.eu/germany>, (last retrieval: 28. September 2016):

15 **ADS (9. August 2016)**. Evaluation des Allgemeinen Gleichbehandlungsgesetzes. Retrievable under: https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/AGG_Evaluation.html?nn=6575434, (last retrieval: 7. October 2016).

16 **Zeitonline (8. August 2016)**. Antidiskriminierungsgesetz soll ausgeweitet werden. Retrievable under: <http://www.zeit.de/gesellschaft/2016-08/gleichberechtigung-anti-diskriminierungsgesetz-verschaerfung>, (last retrieval: 7. October 2016).

17 For a short summary of recommendations made to ADS see: **ADS (9. August 2016)**. Zehn Jahre Allgemeines Gleichbehandlungsgesetz: Antidiskriminierungsstelle legt Evaluation vor. Retrievable under: https://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2016/20160809_AGG_Evaluation.html, (last retrieval: 7. October 2016).

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- In compliance with AGG regulations, people discriminated against may make a complaint or initiate proceedings in order to receive compensation. However, the majority of victims hesitate to go public with their cases or have little knowledge concerning their rights. The deadline for making a complaint or initiating a proceeding is shorter than the deadline for claiming a violation of personal rights. This is important with respect to the time needed to acquire the necessary information about one's rights and get legal support to actually file a complaint. The ADS recommends **extending the deadline for filing a complaint from two to six months** in order to better protect the claims of people concerned.
 - The term "race" in the German basic law and all bills should be replaced by "on the basis of race" to better protect people from discrimination.¹⁸
 - So far, the federal agency ADS is entitled to provide legal assistance in individual cases, but cannot act on behalf of a complainant in legal proceedings. The evaluation carried out by the Office for Law and Science recommends **having victims of discrimination represented in court by ADS or by an association representing its rights**.
 - The **mandate of the ADS should be extended to give it the right to access records and a right to information**, as well as support potential victims in legal proceedings by **providing an expert opinion**.
 - The evaluation also recommends **raising ADS' budget for human resources and infrastructure**.

18 The German NGOAG Antirassismus criticized a lack of awareness for the definition of racism, in particular in Art. 1 (1) of the International Convention on Elimination of all forms of racial discrimination. This statement by AG Antirassismus forms part of an expert's opinion to an evaluation report by the German Institute for Human Rights of Germany's implementation of OSCE commitments.