

RAXEN BULLETIN
Germany
January – April 2010

The information provided in the RAXEN bulletins feeds into the FRA Bulletin. The FRA Bulletin offers a snapshot overview on developments in the EU, which are relevant to FRA's mandate and work. Its purpose is to provide factual up-to-date and accurate information for policy-makers as well as for experts from non-governmental organisations (NGOs), think tanks and intergovernmental organisations (IGOs).

This RAXEN Bulletin was compiled by the *European forum for migration studies* (efms) within the framework of the RAXEN project, commissioned by the EU Agency for Fundamental Rights (FRA).

1. UPDATE ON POLICY DEVELOPMENTS

More awareness raising events than ever during the International Weeks against Racism

On the occasion of the International Day against Racism on 21 March, the non-governmental organisation Interkultureller Rat [Intercultural Council; IR] organised the annual International Weeks against Racism, which took place this year between 15 and 28 March. The IR, who coordinates the Weeks every year, was supported by more than 60 cooperation partners and other organisations; more than 900 individual events in almost 300 cities and municipalities were counted, which makes the 2010 International Weeks the largest and most diverse ever. Numerous actors, including schools and adult education centres, sport clubs, trade unions, enterprises and other local initiatives, organised various activities to raise public awareness on, amongst other things, the precarious situation of refugees, political and social exclusion of migrants and minorities and different forms of racism, such as anti-Semitism, Islamophobia and anti-Roma developments. IR chairman Jürgen Micksch concluded that the 2010 International Weeks illustrated the diverse and active commitment against racism in Germany.

www.internationale-wochen-gegen-rassismus.de, www.interkultureller-rat.de (15.04.2010)

Federal Anti-Discrimination Agency takes a more proactive approach under new director

In February 2010, Christine Lüders took office as the new director of the Federal Anti-Discrimination Agency (ADS). With this change a significant increase in the public presence and activities of the German equality body could be observed. Since then, the ADS has publicly addressed several pressing issues of discrimination and has sought to proactively contribute to the public debate. For instance, Lüders called for job application procedures with anonymous CVs, criticised the deficient data situation on discrimination and expressed her support of a current initiative of the German Institute for Human Rights aiming to replace the term 'discrimination due to one's race' (*Rasse*) in the equality provision of the Constitution (Art. 3) by 'racist discrimination'. The ADS has also commissioned numerous research studies to gain deeper insights into the various facets of discrimination and to fill research gaps. Moreover, the ADS published an overview on recent court cases relevant to discrimination and launched a newsletter, which also includes descriptions of exemplary cases of discrimination.

www.antidiskriminierungsstelle.de (16.04.2010)

2. UPDATE ON LEGAL DEVELOPMENTS AND AWARENESS-RAISING CAMPAIGNS

New attempt: Upper House discusses hate crime bill

In March 2010, the two East German *Länder* Mecklenburg Western-Pomerania and Saxony-Anhalt introduced a bill (printed matter 71/10) in the Upper House (*Bundesrat*) that aims to incorporate explicit hate crime provisions into the German Penal Code (StGB). According to the suggested amendments, the perpetrator's racist, xenophobic or otherwise inhumane motives should be considered as an aggravating factor when determining the sentence by the court (Sec. 46 StGB). The amendments also seek to expand the possibilities of prison sentences (instead of a fine) and sentences without probation in such hate crime cases (Sec. 47 StGB). The bill was transferred to the *Bundesrat* committee for legal affairs. The *Land* Hamburg presented a similar hate crime bill in the *Bundesrat*, which also called for taking the perpetrator's racist, xenophobic or inhumane motives into account as an aggravating factor (Sec. 46 StGB); though the Hamburg bill does not suggest any amendments to Sec 47 StGB (printed matter 71/1/10).

www.bundesrat.de/SharedDocs/TO/867/erl/3,templated=raw,property=publicationFile.pdf/3.pdf
www.bundesrat.de/SharedDocs/Drucksachen/2010/0001-0100/71-1-10,templated=raw,property=publicationFile.pdf/71-1-10.pdf (16.04.2010)

Constitutional Court: 'Foreigners out' slogans covered by freedom of speech

The Federal Constitutional Court (BVerfG) held that the anti-immigrant slogan 'Repatriation of foreigners...for a lively German Augsburg', as printed on a poster of a local extreme right-wing group, does not constitute an unlawful case of incitement according to Sec 130 Penal Code and is covered by the right to freedom of speech. According to the court, such 'foreigners out' slogans violate the constitutional right of human dignity only if expressed in combination with other aspects that indicate such a violation. With this ruling the BVerfG overruled two previous court decisions (BVerfG, 1 BvR 369/04; 4.2.2010).

www.bundesverfassungsgericht.de/entscheidungen/rk20100204_1bvr036904.html (19.04.2010)

Upper Regional Court: Ruling on racial discrimination in the housing market

The Upper Regional Court (OLG) Cologne overruled a first instance decision of the Regional Court Aachen which had rejected the discrimination claim of a family of African origin that had been refused to have a look at a publicly advertised flat by the caretaker. The latter had referred to the instructions of the estate management not to rent out to 'negros, well, Black Africans or Turks'. The OLG held that these words consider a violation of the family's dignity and personal integrity and sentenced the estate company to pay compensation of 5,056 EUR to the family.

The ruling was not based on the provisions of the General Equal Treatment Act (AGG), but on the basis of the 'traditional' Civil Code (Sec. 831 BGB) – also due to unclear interpretations of the AGG provisions on issue of accountability (OLG Köln 24 U 51/09, 19.01.2010).

www.olg-koeln.nrw.de/presse/archiv/archiv_2010/006_01-19_diskriminierung.pdf (19.04.2010)

3. RESEARCH AND REPORT

Annual Survey: Two out of three people of Turkish origin experienced discrimination

In early April 2010, the research institute *Zentrum für Türkeistudien* [Centre for Studies on Turkey] published its tenth annual report on the situation of people of Turkish origin in North Rhine-Westphalia; the study is based on a representative multi-topic survey, carried out among more than 1,000 adults of Turkish origin in summer 2009. The survey encompasses, amongst other issues, questions on experienced discrimination: Altogether 67 per cent of the respondents – less than in previous years (2008: 71 per cent; 2003: 79.9 per cent) – stated that they have experienced discrimination due to their ethnic origin. Despite this decreasing tendency in the *general* level of discrimination, the level of perceived discrimination in *specific* areas of life slightly increased compared to the results of last year's survey round, such as at the workplace, in the neighbourhood, in pubs, at courts and at the police. The highest rates of perceived discrimination continue to occur at the workplace or at school/university (50.6 per cent) and when looking for a job (40.2 per cent) or a flat (39.1 per cent).

M. Sauer (2010) Teilhabe und Orientierung türkeistämmiger Migrantinnen und Migranten in Nordrhein-Westfalen. Essen: ZFT; available at: http://www.mgffi.nrw.de/pdf/integration/NRW-Bericht_2009.pdf (19.04.2010)

Testing study unveils discriminatory practices in the access to the labour market

The results of the first systematic discrimination testing study in Germany since the mid-1990s revealed that job applicants with a Turkish sounding name continue to face discriminatory barriers in the access to the labour market. On behalf of the Institute for the Study of Labor (IZA), the two researchers tested 528 publicly advertised student internships and discovered that applicants with a Turkish name have a 14 per cent lower chance of being called back than the 'German' testers; differential treatment was significantly higher in small companies where the call back rate of 'Turkish' applicants was 24 per cent lower. The researchers discovered that the testers were treated equally when adding a reference letter to their application with positive statements of previous employers about the candidate's personality; this finding was interpreted as an indicator for 'statistical discrimination'. The study was published in February 2010.

L. Kaas & C. Manger (2010) Ethnic Discrimination in Germany's labour Market: A Field Experiment, Bonn: IZA; available at: <http://ftp.iza.org/dp4741.pdf> (19.04.2010)

4. OFFICIAL AND UNOFFICIAL STATISTICAL DATA

Annual police statistics: less extreme right-wing and xenophobic crimes, slight increase in anti-Semitic crimes compared to 2008

According to the official police statistics, published by the Federal Ministry of the Interior in March 2010, 19,468 politically motivated right-wing (i.e. extreme right-wing) crimes were registered by the police in 2009 – a slight decrease by 4.7 per cent compared to 2008, but still the second highest number since the introduction of the new registration system in 2001. 959 of these extreme right-wing crimes were categorised as violent crimes, 13.8 per cent less than in 2008 (2008: 1,113). For the first time, these police statistics allow for an identification of hate crimes within this category of extreme right-wing crimes: 3,981 hate crimes were counted among the total number of 19,469; 418 of these hate crimes were deemed as violent crimes.

The number of registered extreme right-wing crimes deemed as xenophobic (sub-category of hate crime) dropped by 16 per cent from 2,950 in 2008 to 2,477 in 2009; 366 of these xenophobic crimes were registered as violent crimes, 10.5 per cent less than in 2008 (409). Contrary to the generally decreasing tendency, the number of extreme right-wing crimes, committed with an anti-Semitic background, increased slightly from 1,496 (2008) to 1,520 in 2009 (+ 1.6 per cent), but less violent anti-Semitic extreme right-wing crimes were registered (2009: 31; 2008: 44).

Germany, Federal Ministry of the Interior, press release on 23.03.2010, available at:

www.bmi.bund.de/cln_174/SharedDocs/Pressemitteilungen/DE/2010/03/politisch_motivierte_kriminalitaet.html?nn=109632 (19.04.2010)

Germany, Bundestag, printed matter 17/1319 (08.04.2010), available at:

<http://dip21.bundestag.de/dip21/btd/17/013/1701319.pdf> (19.04.2010)

NGO victim support organisations registered less right-wing violence in 2009

Seven non-governmental victim support organisations in the Eastern Germany (including Berlin) published their joint annual statistics on right-wing violent attacks. The organisations counted 739 such acts in 2009, which constitutes a significant decrease compared to 2008. This trend occurs – to differing degrees – in all *Länder*. Saxony continues to be the state with the highest number violent right-wing attacks counted by the victim support organisations (2009: 263). In 222 of all 739 registered cases, racism was assumed to be the main motivation of the perpetrator(s) (2008: 296); 26 of these attacks appeared to be motivated by anti-Semitism (2008: 17). Most of these 739 violent right-wing attacks were cases of bodily harm (478), followed by serious threat, coercion and attempted bodily harm (172) and damage to property (67).

Opferperspektive, press release (09.03.2010): <https://opferperspektive.de/Home/996.html> (19.04.2010);

LOBBI e.V., press release (09.03.2010): www.lobbi-mv.de/presse/24.php