DISCRIMINATION AND RACISM IN THE WORKPLACE: THE GENERAL EQUALITY LAW AND THE FIGHT AGAINST DISCRIMINATION AND RACISM IN GERMANY

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ABSTRACT

The following article highlights the reality of workplace discrimination in modern-day Germany. Firstly, there is an analysis of Sanem, a Turkish-born German whose case of discrimination in working life is demonstrative of how slowly the General Equality Law is being acted upon. Secondly, there is a comparison of Germany with the United States, a traditional country of immigration and, in order to highlight the imperative for action, an examination of issues of anti-discrimination policy in German history. Finally, the article concludes by highlighting the next steps Germany has to take to move toward possible solutions.

It is the 21st century and Germany is celebrating the 50th anniversary of the German-Turkish agreement regarding labour recruitment. Even so, racism and discrimination continue to be part of many people's daily lives in Germany, particularly in their places of work.

Consider the example of Sanem[1], a German with Turkish roots, who began working at an insurance company two years ago. While she initially enjoyed her work and performed her job well, things changed following the birth of her child. After taking maternity leave, Sanem's boss made it clear that he wanted her to go on parental leave as well, although this had never been Sanem's intention. Because of her decision not to go on parental leave, Sanem's email account was frozen, she was forbidden from participating in previously authorized training, and she was told to leave her position with the company. To top off the insult, on her last day at work, her successor was introduced to her. All these events caused Sanem to suffer a nervous breakdown. It was only after spending two months in a psychiatric hospital that Sanem was strong enough to initiate proceedings against her former employer. She was sure that her Turkish background played a role in the escalation of the process and sued her former employer for ethnic discrimination as well as gender discrimination. However, the general assumption that any employer would be more than happy to keep a high-achieving, respected worker led to the suspicion that Sanem must have had negative relations with her employer prior to taking maternity leave. The lawsuit, conducted by a well-known German lawyer, turned out to be unsuccessful.

The headlines in some German newspapers in autumn 2008 were alarming: "Pregnant woman bullied and neutralized;" "Her pregnancy cost a 38 year old Turkish Woman her job;" "Being both Turkish and pregnant is reason enough for firing?" and, "Pregnant, Turkish, degraded." However, not even public attention helped and an action for damages turned out to be hopeless. To go through a process like Sanem did, only to experience failure, is devastating.

This is only one of the many lawsuits that have been filed because of violations of the law against workplace discrimination due to the sex, ethnic origin, religion or

sexual orientation of an employee. Only a few people have gone to court since the General Equity Law was enacted in August 2006. It would set completely new standards and would be an important step for future actions for damages if the industrial tribunal would come to a decision. All of this happened in 2009. Only one year later, the institution of anti-discrimination celebrated its 5th anniversary to support the rights of those who are discriminated against. Suddenly Sanem's case is portrayed as a regrettable, isolated incident. Regrettably, Sanem's case is not just one isolated incident; Germans of foreign descent are often impacted by situations of discrimination and racism. The exclusion of racial and ethnic minorities is costly to German society because it denies the addition of valuable skills and knowledge sets. It can even be argued that the development of the society is affected.

The above-mentioned case was only detected by the media because of the existing General Equality Law, enacted in 2006. A similar public debate would have been inconceivable in Germany in the 1990s, when the country was not yet considered a country of immigration. Some NGOs repeatedly tried to draw public attention to cases of discrimination, underlining the necessity of an appropriate law and finally demanding it. Sadly, government actions only succeeded in bringing attention to the issue rather than real change. Overcoming discrimination requires a change at the societal level. The aim should be to introduce a different way of dealing with diversity in order to change attitudes towards multiculturalism. While other norms need to be accepted in our daily lives, the power of politics to set a symbolic precedent should not be underrated. A small step in the right direction has been made already, beginning with German reunification in 1990 which contributed to the introduction of the General Equality Law.

THE GENERAL EQUALITY LAW AND THE INSTITUTION OF ANTI-DISCRIMINATION IN GERMANY

The discussion of immigration policy regarding guest workers in Germany after the Second World War focused on cost-benefit analyses. In the 1990s, however, a new debate arose. Following the reunification of Germany at the end of the Cold War, prejudices and tensions re-emerged and a wave of racism swept across the country. This was initially targeted at the foreign-born population and their descendents, and especially at refugees. In addition, Germany had to adjust to the changing European landscape as its neighbours coped with their own challenges. The pressure increased on countries that already had large immigrant populations, such as Great Britain and France. In the end, Germany had no other option than to change its political line and start to adopt at least some of the European guidelines concerning an appropriate equality policy. The result of these events was the General Equality Law (GEL), introduced in 2006 after much hesitation.

According to the General Equality Law, job advertisements, for example, job advertisements must be written in neutral language and only requirements related to the job qualifications can be obligated. Any information regarding the age, origin, marital status or mother tongue of the applicant must not be given; not even a photo may be submitted—officially. In reality, the only employers who accept an application without this information are a few international companies; the personnel departments still expect the applicants to include these details in their applications. Whoever feels that a job advertisement is discriminatory can take the matter to court. Presumed discrimination in job interviews has to be proven. About 10,000 appeals (on average about 2000 every year) have been filed since the Anti-discrimination Institution was founded.

Germany lags behind other countries, such as the United States (USA), and a lot of catching up is needed. In 2009, there were 93,277 appeals filed in the United States.[5] Obviously, we need to consider the size of the USA, which has a population of 310 million compared to Germany's 82 million. However, I want to focus on the difference between Germany and a traditional country of immigration, like the United States. Even if Germany were a state of the USA, there would be about 26,389 actions expected each year. That is not even half of what Germany has reached in the last five years. This gap is a sign of a lack of political interest and awareness of the issue. In the USA, debates like this have been ongoing since the 1960s and are even supported by the government. The institutionalization of equality encourages employees to take action if they feel somehow discriminated against.

THE BACKGROUND OF THE EUROPEAN GUIDELINES

Reconciliation and a breaking down of prejudices began in Europe with the first economic treaty, "The European Coal and Steel Community," which was established on the 23rd of July, 1952. Measures addressing diversity and equality were required for economic development. Based on this necessity, the European Council introduced four guidelines for an appropriate equality policy between 2000 and 2004. These guidelines are binding and have to be adjusted to the legislation of each country. Germany began the proceedings of the adoption in 2006, taking limited steps only after many warnings and threats of pecuniary sanctions from the EU. The guidelines outline and define the various forms of discrimination and obligate each member state to take concerted actions against violations. The intention was a simplification of the process for the victims of discrimination, and a change in the social reality in EU member states.

The particular guidelines are: the "Anti-Discrimination Guideline" (2000/43/EG), the "Employment Guideline" (2000/78/EG), the "Gender-Guideline" (2002/73EG), and the guideline for "Sex-equality not only in the world of work" (2004/113/EG). [3]

The establishment of the "Anti-Discrimination Guideline" was supposed to pave the way to fight discrimination based on racism. This is based on the statement that social marginalization be prevented in order to make long-term educational work possible. The view of a country as one of immigration is of overriding importance. The following section will discuss a paradigm shift in Germany since the beginning of discourse about guest workers.

GERMANY CAUGHT IN THE DILEMMA OF BLOOD RIGHTS AND TERRITORIAL RIGHTS–A PARADIGM SHIFT SINCE THE 1990s

In the German Empire a law was put in force in 1870 called the law "About the Acquisition and the Loss of the National Status." In 1914, the "Law of the National Status" was introduced. According to that law, nationality became based in jus sanguinis (the question of the origin) and in some cases, in the location of the place of birth. In 2001, the law was reformed, increasing the importance of place of birth in determining national status. In contrast to Germany, other European countries have different ways to deal with the question of nationality due to their history of immigration related territorial history. Germany adopted the French law. In France, the law was repealed in 1851 because there were too many immigrants that could not fulfill their military service without French nationality. The French changed the law for the better in 1889, while in Germany, the law is still in force today. The understanding of a nation with citizens who have equal rights and rely on the responsibility of each one to care for the society was called "unnatural." [4]

Racism and discrimination are a daily discourse in Germany just as in every other European country. Considering Germany's history, the country needs an intensified educational campaign to change not only the laws but also the social consciousness. Acts need the support of political powers to succeed. The economic value of foreign-born Germans and their descendants is pushed forward by demographic developments, but even so, there will always be resistance to equalization.

STRATEGIES AGAINST RACISM AND DISCRIMINATION

With the introduction of the GEL, Germany assumed the obligation to put the law into practice, which means that companies and institutions of all kinds have to conform to the law. It takes further education to push the process of sensitization against discrimination. The implementations of measures like these need a responsible government with a good working administration and educational system. Public engagement with the issue is proceeding, although it is slowed by the fact that the issue of discrimination was a taboo subject for a long time—caused by, among other things, the Third Reich's burden on German history. A rethinking needs to begin with children and youth in schools and kindergartens, and needs to extend to all other areas of society. It will take a long time until the process is complete, but it is possible.

NOTES

[1] This name has been changed.

[2] See: www.süddeutsche.de 21.5.2010, Abkassieren im Namen der Gleichheit.

[3] See: http://de.wikipedia.org/wiki/Gleichstellungspolitik_der_Europäischen_Union.

[4] See: Staatsangehörigkeit in Deutschland | Suite101. de http://johannesvon.suite101.de/staatsangehoerigkeit-in-deutschland-a100641#ixzz1akIjPW8p.