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**Tolerance and non-discrimination II**

Every form of discrimination presents a barrier for integration and for the active participation in social life. A complete antidiscrimination policy can prevent unequal treatment both under private and labor law and in the public and institutional realms.

Germany finally implemented in August 2006 the Anti-discrimination Act (Allgemeines Gleichbehandlungsgesetz- AGG) as one of the last member countries in the European Union. The European Court of Justice has already condemned Germany for not implementing the EU Directives into law.

The Turkish Community in Germany (TGD) welcomed that the Federal Government has met its responsibility to pass an anti-discrimination legislation for comprehensive protection against all types of discrimination. Nevertheless we also have to criticize this act on many points for either lagging behind or entirely not addressing the EU Directives standards, particularly with respect to the interests of those affected by discrimination. This is one of the main weaknesses of this law that becomes even clearer after two years of implementation. Beside economical and social factors that work as an barrier the law itself contains many obstacles that prevent victims their rights for equal treatment.

The Anti-discrimination Act also remains below the minimum standard for effective protection of rights. Here are a few examples where the legislation falls short or prevent victims their rights for equal treatment:

- **The omissions, for example in housing:** These exceptions are not conform to the EU-Directives. On the contrary, this omission legitimizes racial discrimination. Much too frequently, people with non-German heritage are denied housing on the grounds of preserving or establishing an "even social and cultural mix" in a neighborhood.
- **The two month reporting requirement for compensation requests:** Requiring victims to report equal rights violations within a two month period is neither logical nor in compliance with the EU requirements. Additionally, it places victims at a disadvantage. Further more, such a short period in which to asses violations undermines the goal of the legislation, producing an extrajudicial outcome.
- **The omission of protection for victims of sexual harassment as well as victimization:** EU Directives require that people who fight discrimination, whether as victim or witness must be protected. The gender directive demands protection against sexual harassment also in the realm of civil law.
- **Unreasonable sanctions:** According to the EU Directives the sanctions must not only be proportionate but also effective and dissuasive. It is debatable whether the sanctions of the German Anti-discrimination Act are actually effective and dissuasive.

Furthermore, despite heavy criticism from victims' organizations, the Federal Government continued to use the word "race" (Rasse). The social discourse and many media reports show that the term is not used in the political realm. As a result, the idea of biological differences between races is strengthened. Additionally, the absence of the features citizenship and language in the list of protected characteristics as well as the illogical unequal treatment of different characteristics in the civil part of the law clearly produces a hierarchy of characteristics to be protected that must also be criticized.

Although the labor law protects against being discriminated against based on perceived or actual belonging to a minority group, this is not the case in the civil law. In civil law there is little to no protection for those falsely perceived to belong to a particular group. This inconsistency is a gateway

for discrimination and impedes effective protection for all people who face discrimination based on physical characteristics or appearance.

Because the Federal Government has not adopted the legal formulation of the EU Directives, the burden of proof for filing a claim of disadvantage due to discrimination seems to lie on the victim. However, the experience of people working in counseling has shown there is a clear and significant imbalance of power between the offender and the victim, making it all the more critical that an actual shifting of the burden of proof take place.

Additionally, the relegation of anti-discrimination organizations to the role of bystander must also be criticized. Practice has shown that real power for NGOs in litigation, particularly with respect to consumer protection and equal access for people with disabilities, is highly effective at fighting discrimination, especially indirect discrimination. It is also disappointing that the German Equality Body can neither be seen as independent nor strong enough to support those encountering discrimination.