

# OBSERVATIONS OF AMNESTY INTERNATIONAL GERMANY TO THE EUROPEAN COMMISSION ON RACISM AND INTOLERANCE (ECRI) ON GERMANY'S 6<sup>TH</sup> REPORT INTERIM FOLLOW-UP

by Beate Streicher, Expert on Police and Human Rights, Antiracism and International Criminal Law at Amnesty International Germany

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## A. INTRODUCTION

Amnesty International Germany welcomes this opportunity to provide input on the interim follow-up of ECRI's 6<sup>th</sup> report on Germany from March 2020. Our observations are based on our experience advocating for policy changes in order to combat racism and other structural discriminations in Germany. Our comments are not exhaustive. Generally, we recommend to involve self-organizations of people affected by discrimination in consultations regarding this topic.

## B. PRIORITY RECOMMENDATION ON EFFECTIVE SUPPORT FOR PEOPLE WHO FACE DISCRIMINATION (§ 11)

ECRI recommended that German authorities establish a coherent system of organisations that provide victims of discrimination throughout the whole country with effective support including legal assistance to enforce their rights. A comprehensive, accessible and independent counselling structure throughout Germany has not yet been established. There are contact points for people experiencing discrimination; especially civil society organisations play a crucial role in providing support services. However, a nationwide, accessible counselling structure in line with ECRI's requirements is urgently needed in order to provide professional counselling and access to justice for all people who have been discriminated against. Counselling structures must operate independently of government influence and they need to be provided with long-term funding. In the process of establishing these structures German government agencies at the federal and the state (Länder) level have to involve existing counselling centres and self-organisations of people affected by discrimination. The model project "Rassismus, Antisemitismus, Rechtsextremismus – Stärkung von Strafverfolgung & Opferschutz" [racism, antisemitism, right-wing extremism - Strengthening



law enforcement & victim protection] of the German Institute for Human Rights is an example how cooperation of state and non-state actors can be promoted.<sup>1</sup>

In addition, ECRI recommended that German Länder start setting up independent equality bodies in line with ECRI's General Policy Recommendation No. 2. In this regard the Land Berlin is one step ahead of the other states and the Federal government by passing its own anti-discrimination law (LADG) in 2020. It covers different forms of discrimination by the public sector of the Land, allows for class actions and establishes an ombuds office. In other Länder, there are no independent equality bodies that meet the requirements set up in ECRI's General Policy Recommendation No. 2. With regard to allegations of unjustified discrimination by police officers, there is no independent investigation mechanism neither on the federal level nor in any of the Länder that fully meets the requirements arising from human rights law. In several Länder (Schleswig-Holstein, Rheinland-Pfalz, Mecklenburg-Vorpommern, Baden-Württemberg, Berlin) Police Commissioners have been established that are independent in terms of personnel and institution from the respective ministry of the interior. However, these mechanisms do not have sufficient investigative powers and complaint possibilities against the public prosecutor's office.<sup>2</sup> Due to the important role of the police in the protection of people against discrimination, effective complaint mechanisms have been demanded by civil society organizations for years.

## C. PRIORITY RECOMMENDATION ON A STUDY ON RACIAL PROFILING (§ 109)

ECRI recommended that the police authorities of the federal and the state (Länder) level commission and participate in a study on racial profiling with the aim of developing and implementing measures that eliminate existing and prevent future racial profiling. Civil society organizations and people facing discrimination have also repeatedly called for such a study. Two studies have been commissioned by the Federal Ministry of the Interior under the former Federal government. As the former Federal Minister of the Interior refused to have racism investigated as an institutional problem in the police, the orientation of the studies is likely to be insufficient.

The German Police University conducts the study "Motivation, Einstellung und Gewalt im Polizeialltag" (MEGAVO)<sup>3</sup> [motivation, attitudes and violence in everyday police life] from 2021 until 2024. However, the study does not focus on the specific problem of racial

<sup>1</sup> <https://www.institut-fuer-menschenrechte.de/das-institut/geoerderte-projekte/rassismus-antisemitismus-rechtsextremismus>.

<sup>2</sup> On these requirements: <https://www.amnesty.de/sites/default/files/2019-03/Amnesty-Positionspapier-unabhaengige%20Untersuchungsmechanismen-21.11.2018.pdf>.

<sup>3</sup> <https://www.bmi.bund.de/DE/themen/sicherheit/megavo-polizeistudie/megavo-node.html>.



profiling and other racist practices of the police but explores the everyday work of police officers. Also, the Federal Ministry of the Interior commissioned the study „Rassismus als Gefährdung des gesellschaftlichen Zusammenhalts im Kontext ausgewählter gesellschaftlich-institutioneller Bereiche“ (FGZ study 2021-2024)<sup>4</sup> [racism as a threat to social cohesion in the context of selected social-institutional areas], which generally examines racism in German society and institutions. The study includes a data collection on police control practices in Berlin and Frankfurt am Main. However, at the federal level no empirical study with regard to police forces beyond MEGAVO is planned. Also, it seems unlikely that the FGZ study will meet all criteria set up by ECRI in recommendation § 108 of the report from 2020, especially the requirements to conduct an in-depth and ex-post analysis of representative sets of police controls under the different police acts together with controlled persons and civil society organisations; an ex-post analysis of the results of these controls in terms of prosecutions and convictions; and an assessment of the ratio between checks and convictions, as well as whether this is different for minority groups compared to the rest of the population. Besides, to our knowledge none of the Länder has recently commissioned an independent study on racial profiling or racist practices among their police forces. A comprehensive study on the extent of problematic areas of policing such as racial profiling would be a step to tackle structural racism in Germany in a systematic way.

Moreover, in the report from March 2020 ECRI has rightly pointed out the problem of German police forces carrying out stop and search operations and identity checks with no reasonable justification. Therefore, we call on ECRI to persuade Germany to introduce a “reasonable suspicion standard” for any such activity in the Federal Police Act and the police acts of the Länder.

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<sup>4</sup> <https://www.fgz-risc.de/forschung/inra-studie>.

