ENAR Shadow Report 2009-2010

**ENAR SHADOW REPORT
2009/2010**

**Supplemental report: Ethnic profiling in
Germany**

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Introduction

Historically "ethnic profiling" goes back to "parole prediction", which applied the same methods as the risk assessment of new applicants in insurance companies, where group-traits were used to make predictions.[1] First profiles were developed in the 1960's. Since then different styles of profiling have developed.[2] Formal profiles and less structured, informally collected data, which is not systematically analysed and which is increasingly being used in contemporary policing.[3] Predictive profiles contain variables such as "race", religion or skin colour. The underlying assumption is that by including ethnicity in a criminal profile, this increases the efficiency of law enforcement.[4]

In Germany two aspects of ethnic-profiling can be distinguished. **Informal Profiling** which covers everyday routines of police-officers, like identity checks, normal stop and search and **Formal Profiling** covering dragnets ("Rasterfahndung" and "Schleierfahndung"), controls without any suspicion ("Verdachtsunabhängige Kontrollen") and airport controls. "*Ethnic monitoring*" is different to "*ethnic profiling*" because it is used with the individual's permission, according to national and European data protection regulations and gathers sensitive information for statistical reasons[5]. The discussion on ethnic data collection is a sensitive topic in Germany, but meanwhile a wider public sees the need for some kind of ethnic data collection to make (indirect) discrimination visible[6]. In the absence of officially available ethnic data all kinds of proxies and work-around are used, which are open for misuse. There is evidence that "*ethnic profiling*" takes places, but officially it is denied. The presented report has the purpose to find new evidence about "ethnic profiling" in Germany, which goes beyond the information provided in the OSJI-report on ethnic profiling[7] which includes developments and data before 2007 and has a strong focus on formal profiling in Germany.

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1   Kaufmann, Mareile, *Ethnic Profiling and Counter-Terrorism. Examples of European Practice and Possible Repercussions*, LIT Verlag, Berlin, 2010 (thereafter: Kaufmann: Ethnic Profiling and Counter-Terrorism), p. 13.

2 Ibidem, p.15.

3 Ibidem, p.16.

4 Ibidem, p.17.

5 Ibidem, p.17.

6 For the discussion see ENAR Shadowreport 2009/10.

7 See: Open Justice Initiative, *Terror, crime and suspect communities. Ethnic profiling in the European Union*, p. 10-27.

Formal profiling

Profiling in counter-terrorism: Although officially all allegations and suspicions about ethnic profiling in German law enforcement and especially in the area of counter-terrorism are rejected, the German secret police takes advantage of the descriptive profiles when they are provided by other secret services. In 2007 the CIA provided the German secret service with information on terrorists hiding in Oberschledorn, one being of Middle Eastern descent[8]. On the other hand the Hamburg Office for the Protection of the Constitution compared the profile of two attackers, who attempted a terrorist attack on two regional trains in North Rhine-Westphalia on 31 July 2006, with the profile of other attackers in Europe (Madrid, London) and came to the conclusion that there is no uniform profile of the perpetrators, which could be used for profiling[9]. In German criminology "*ethnic profiling*" is discussed in the context of "*target hardening*". Information about gender, "race", age, socio-economic make-up, physical layout, types of crime occurring is used to develop "*descriptive profiles*". The information on the appearance or the behaviour of a suspect is available and elements of descriptive profiling are used to find the unknown potential attackers. This turns a "*descriptive*" into a "*predictive*" profile. Descriptive profiles independently are not very useful in the context of counter-terrorism, but in the aftermath of a fatal attack it is most likely that profiling is implemented[10]. The EU devises several kinds of profiles for different kinds of attacks[11]. Religious affiliation is normally not identifiable and relies on poor proxies like "racial" appearance, national origin or place of birth, with the effect of over inclusion of innocent people[12]. Seven individuals were sent to trial in 2009 on terrorism charges Germany (2007:7; 2008:10)[13]. Three "Islamists", one "Separatist" and three "Left-wingers" were convicted on terrorism charges in 2009 in Germany[14]. Europol concludes that "*Germany has become the focus of a determined propaganda campaign* (which attempts) *to influence the outcome of the general elections in Germany and the country's foreign policy*"[15]. The secret police (Verfassungsschutz) estimates the number of "Islamist" followers in Germany at 36.270 in 2009 (2008: 34.720). The increase is due to the fact that the membership of Milli Görüs (IGMG) is included as "potential Islamists" and has increased to 29.000 people. (2008: 27.500)[16].

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8 Ibidem, p. 45.
9Verfassungsschutzbericht Hamburg 2006, http://fhh.hamburg.de/stadt/Aktuell/behoerden/inneres/landesamt-fuer-verfassungsschutz/publikationen/pdf-bibliothek/vsb2006-nur-text-pdf,property=source.pdf, accessed 14.6.07.
10 Kaufmann: Ethnic Profiling and Counter-Terrorism, p. 50.
11 Council of the European Union Document 11858/3/02
12 Kaufmann: Ethnic Profiling and Counter-Terrorism, p. 52.
13TE-SAT 2010: EU TERRORISM SITUATION AND TREND REPORT, http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/Tesat2010.pdf, accessed 24.09.2010 (thereafter: TE-SAT 2010), p. 15.
14 Ibidem, p. 17.
15 Ibidem, p. 22.
16http://www.hamburg.de/islamismus/822964/islamismus-personenpotential-verfassungsschutz-hamburg.html

Ethnic profiling in mass controls and in stop and search practices: Stop and Frisk requires evidence of a real threat, burglary, gambling, and drug dealing or loitering in a "high crime area", which then leads to automatic frisk[17.] Hamburg evaluated the effectiveness of the video surveillance in the "high crime area" of the "Reeperbahn" in the period between April 2006 to March 2009[18.] In a data base called "ViDok" the frequency of the use of the videos is documented. An action is "triggered" when the police officer at the monitor suspects a crime happening or a dangerous situation is approaching[19.] There are several police procedural systems in place in Germany. The system ComVor has been developed by the police in Hamburg, but is now used by the police in Baden-Württemberg, Brandenburg and in Hessen[20]. In Berlin the police use POLIKS[21]. This is the central IT-system of all areas of policing and the interface for other IT-systems in Berlin.

Dragnet (Schleierfahndung) has been introduced in Germany after the lifting of European inner borders and is seen by the police as a successful instrument to fight organised and cross-border crime. Dragnet is used within a reach of 30 km in a border area and in important traffic areas, like motorways, airports or train stations. In these areas people are controlled to check their identity. The decisive moment for the controls is dependent on the intuition of the police-officers. This often leads to the fact that „Foreign looking" nationals are targeted, delivering most likely successful results[22]. The efficiency is low and most of the people caught are asylum seekers or tolerated people who have left the area they were restricted to live in[23.]

Data mining ("Rasterfahndung"): "*Data mining is a version of artificial intelligence. Large volumes of data (all kinds of database, library lists, official registers, collected data in stores, e-mails) can be analyzed and searched for yet unknown patterns by using genetic algorithms. The results of this analysis can be used as a prediction instrument to build models on real world behaviour*"[24]. With this type of data mining data outside the police data system is used according to a profile, which identifies possible suspects which then are screened more intensively. This highly controversial instrument was restricted to a very narrow application by the constitutional court[25]. In practice this instrument has lost its meaning[26].

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17 Kaufmann: Ethnic Profiling and Counter-Terrorism, p.18.
18 Behörde für Inneres, Hamburg, Mitteilung des Senats an die Bürgerschaft: Unterrichtung der Bürgerschaft über die Videoüberwachung der Reeperbahn (Wirksamkeitsanalyse), Press Release 6.7.2010 (thereafter BfI: Videoüberwachung).
19 BfI: Videoüberwachung, p. 7.
20 http://de.wikipedia.org/wiki/POLIKS, accessed 25.9.10.
21 Polizeiliches Landessystem zur Information, Kommunikation und Sachbearbeitung – Local policing system for information, communication and computing
22 Sachverständigenrat Deutscher Stiftungen für Integration und Migration (Stiftung Mercator, VolkswagenStiftung, Bertelsmann Stiftung, Freudenberg Stiftung, Gemeinnützige Hertie-Stiftung, Körber-Stiftung, Vodafone Stiftung und ZEIT-Stiftung Ebelin und Gerd Bucerius), Einwanderungsgesellschaft 2010: Jahresgutachten 2010 mit Integrationsbarometer (thereafter: Einwanderungsgesellschaft 2010), p. 216
23 Ibidem
24 Kaufmann: Ethnic Profiling and Counter-Terrorism, p.34.
25 Ruling 4. April 2006 – 1 BvR 518/02
26 Kaufmann: Ethnic Profiling and Counter-Terrorism, p.34.

There are a variety of proxies available in the police crime statistics (pcs) which can be used for such data mining. The police crime statistics reports the age structure of "*non-German*" suspects, which are foreign nationals, stateless persons, or persons whose nationality has not been clarified. With regard to the victim-suspect-relationship data about kinship, acquaintance, and fellow countryman are available[27].

The Visa Information System (VIS) is a central data base designed to manage biometric data[28]. Security technology, such as body scanning as well as facial recognition could involve more problems in terms of ethnic profiling. In Hamburg first body scanners have been introduced for a testing phase on 27.9.2010[29]. Face prints: eyes, nose, mouth, front, etc. are measured as well as their relative position to each other[30]. The EU plans for the risk assessment of passengers to identify those who "may be involved" or are "associated" with crime or terrorists acts[31]. This leads to an increased vetting of air passengers by metal detectors, passport controls and storage of certain passenger information[32].

Raids on Muslim places and harassment of Muslim businesses: Mass identity checks at sites where officials believe there to be a high concentration of Muslims, e.g. telephone calling centres, halal restaurants, mosques, specific neighbourhoods until recently have taken place with a variety of justification[33]. On 2. December 2009 offices of Milli Görüs (IGMG) were raided all over Germany[34.] The rationale was the suspected misuse of donations and illegal employment of Imams in the mosques of the IGMG[35]. It was the fourth action within 14 month[36]. On 21.09.2010 the investigation was stopped, because no evidence was found during the investigations[37].

In the first half of 2009 offices in Bavaria, Northrhine Westfalia, Berlin and Belgium of the Islamic Community in Germany[38], which is said to be the largest member organisation of the Muslim Brotherhood in Germany, were raided. They have been accused of creating a criminal organisation, fraud in several cases, e.g. to achieve public funding or status as an NGO, forgery of documents, infidelity, bankruptcy, as well as financial support of international terrorism. Nobody has been arrested[39].

On 9.8.2010 the former Al-Quds mosque (now Taiba mosque) in Hamburg, where the attackers of 9/11 regularly met was raided. The mosque was

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27 Bundesminsterium des Innern, Die Kriminalität in der Bundesrepublik Deutschland, Polizeiliche Kriminalstatistik für das Jahr 2009, Berlin 2010, p. 34-35.
28 Article 29 Working Party 2005, Kaufmann: Ethnic Profiling and Counter-Terrorism, p.23.
29 http://www.ndr.de/regional/hamburg/koerperscanner123.html, accessed29.9.2010.
30 Kaufmann: Ethnic Profiling and Counter-Terrorism,, p.32.
31 EC Document 0/243/2007, art. 3.5., ibidem, p.28.
32 Ibidem, p.27.
33 Ibidem, p.23.
34 Bundesministerium des Innern (BMI), Verfassungsschutzbericht 2009, p. 237.
35 Ibidem, p. 238.
36 Ibidem, p. 238.
37 http://www.spiegel.de/politik/deutschland/0,1518,718784,00.html , accessed 23.09.2010.
38 Islamische Gemeinschaft in Deutschland e.V. - IGD
39 Bundesministerium des Innern (BMI), Verfassungsschutzbericht 2009, p. 227.

founded at the end of the 1990's and organized by German Muslims. It was one of the founding members of the Schura, the Islamic council of Hamburg, which they have left after 9/11. Nowadays they are isolated among the Muslims of Hamburg[40]. The investigations started in 2006 and the mosque and their members were regularly monitored. The official reasoning was the spread of „salafist-jihadist "ideology. According to the police the Imam Mamoun Darkanzali is classified as a „hate preacher"(Hassprediger) and is seen as belonging to the inner circle of the mosque. He has been sentenced to 27 years in Spain because of alleged involvement in the Madrid attacks. He could not be deported as he has been a German citizen since 1990[41].

Monitoring mosques, Muslim institutions, organizations and their members: Since 2003 Lower Saxony was the only Federal state in Germany, which used controls in front of mosques as a means to prevent crime in connection to international terrorism. 14,000 Muslims and additionally 6,000 vehicles have been checked[42.] In 138 cases in Baden-Württemberg it was claimed that there were evidence recorded in a "special database of the secret police"[43], which is the preliminary database "political motivated crime" (AD PMK)[44]. Inclusion in this database has the consequence that every time when there is an identity check by the police this information pops up. There are concerns by IGMG that this information may be used in naturalization procedures or when someone's residence permit needs to be extended[45]. On 27.01.2010 legal experts came to the conclusion that controls of mosques without any concrete evidence are not legal[46]. On 4.02.2010 the minister of the interior in Lower Saxony restricted the controls. Now controls are only possible in specific circumstances and in individual cases where concrete evidence is available[47]. The high level expert group of the German foundations concluded in their monitoring report that the possible security considerations where counter balanced by the high costs on the side of integration policies[48].

On Monday, 21.6.2010 the Minister of the Interior presented the annual report on Anti-constitutional activities in Germany for 2009. The IGMG was again highlighted as an organization and its Secretary General spoke of highly constructed allegations, barely comprehensible and torn apart from the right context[49].

On 12.07.2010 the association "International Humanitarian Help Organisation[50]" (IHH) was banned. It was claimed that the IHH deliberately

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40 Interview with Ali Özgür Özdil from the Islamic Institute for education and science (IWB)
41 http://welt-online.de, accessed 9.8.2010.
42 Drucksache 16/1680: „Niedersachsen kontrolliert Tausende ohne Verdacht", Frankfurter Rundschau vom 25.10.2005
43 Pressemeldung des Innenministeriums Baden-Württemberg vom 27.07.2004 mit dem Titel „Bekämpfung des islamistischen Terrorismus"
44 Drucksache 13/4910, S. 16.
45IGMG-Typoscript: Kontrollen vor Moscheen-Beitrag und Fallsammlung.
46http://www.neuepresse.de/Hannover/Uebersicht/Experten-Kontrollen-vor-Moscheen-nicht-zulaessig, accessed 14.09.2010.
47http://www.igmg.de/nachrichten/artikel/2010/02/04/11585.html?L=.html.html.html%2Fphprojekt%2Flib%2Finclude%2Flib.inc.php, accessed 29.9.2010
48 Einwanderungsgesellschaft 2010, p. 219.
49 IGMG Press releases 23/06/2010
50 Internationale Humanitäre Hilfsorganisation – IHH

supports organisations, which are related to HAMAS or are themselves supporting HAMAS[51]. The president of the IHH highlighted the fact that the IHH as a humanitarian organisation is not only active in Palestine, but in 79 other countries where they work in the areas of Humanitarian aid, development and catastrophe help, like in Haiti. The IHH has never questioned the right of Israel to exist nor have they supported violence[52].

Among those mentioned in reports on Anti-constitutional activities in Germany is the „Muslim Youth in Germany"(MJD)[53], an organisation of young people between the ages of 13 and 30. The 2009 report views the information provided by MJD as being disintegrative and targeted towards stirring up „anti-western" emotions[54], while the MJD sees itself giving their participants rather a wide-ranging insight into the literature on topics such as being Muslim, young and German[55]. They argued against their presentation as anti-constitutional in three Federal reports[56]. Positive interpersonal experiences as they are described in the OSI report on Muslims in Hamburg and Berlin are discouraged by such reports by the constitutional police (*Verfassungsschutz)*, where Muslim institutions are stigmatised[57].

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51 http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2010/07/vereinsverbot.html, accessed 30.9.2010.
52 http://www.igmg.de/nachrichten/artikel/2010/07/12/yoldas-verbot-der-ihh-durch-den-bundesinnenminister-de-maiziere-ist-schaendlich-und-rechtswidrig.html, accessed 29.9.2010
53 Bundesministerium des Innern (BMI), Verfassungsschutzbericht 2009, p. 237.
54 Ibidem
55 Position Paper MJD, 6.06.2010.
56 Baden-Württemberg 2005-2009, Hessen 2007-2009, Bavaria 2008-2009, Position Paper MJD, 6.06.2010.
57 Open Society Institute, Muslims in Hamburg, At home in Europe Project, Budapest – New York 2010 (thereafter: OSI-Muslims in Hamburg).

Informal profiling

To give a sense on how policing is perceived on the ground it is helpful to look at some data by the above mentioned OSI-project. In Berlin only half of Muslims and non-Muslims trust the police, while in Hamburg the majority of Muslims were satisfied with policing and trusted police and courts. Even if the local police in Berlin and Hamburg introduced inter-cultural training and other measurements to prevent stereotyping, in other parts of the country police violence, especially against people with an immigrant background are repeatedly reported by amnesty international.

Police raids targeting ethnic minorities: Participants of the OSI-project were looking at several experiences in the aftermath of 9/11 related to informal ethnic profiling. The statistical over-representation of crime suspects with non-German citizenship might be the effect of rules of thumb based on everyday experiences reproducing existing stereotypes. At the OSI round table it was strongly stressed that all studies show there is no correlation between crime rate and being Muslim. The objectives of the Hamburg Action Plan on Integration in this field are the reduction of crime, to lower the risk of becoming a victim, and to reduce right-wing crime. Specially, focus is placed on the non-acceptance of prejudice and general suspicion against minority groups. Such sensitivity goes back to the parliamentary inquiry commission "Hamburg Police" which was established in the mid 1990's after the minister of the Interior stepped down from his office, because of allegations of racism within the Hamburg police. Incidents of police violence and the corps spirit within the police were criticized by amnesty international.

Case study Hamburg-Neuwiedenthal: In Hamburg-Neuwiedenthal police-officers were attacked after they stopped a person to control his identity. During the identity check the police was suddenly attacked by 30 young people. The offenders escaped and during the search 16 persons between the age of 15 and 32 were arrested. In total five police-officers were injured. While some newspapers described the offenders by detailing their ethnic background the police did not mention any ethnicity. The discussion of the events changed when a video on YouTube became public, where a policeman is seen bending over a person and hitting him with his stick. Conversation in Neuwiedenthal with young people with a migrant background revealed that police-control is a regular occurrence. "They are going after black hair" one boy described and another added, that boys who have a hair cut like him (very short hair on the side, a bit longer on the top) are more likely to be controlled. A social worker supported the sentiment that it is common knowledge, that youth of a specific ethnic group, at a certain age are more often controlled than others. She reported that the police threw 12-13-year old bystanders to the ground, handcuffed them and took them into custody. A compilation of articles covering this event is available, but the analysis of all articles was not in the scope of this report. The events in Neuwiedenthal are part of a series of violent events involving minority youth.

Dangerous spots and stop and search in Hamburg-Bergedorf / Neuallermöhe / Nettelnburg: Since June 2005 the police in Hamburg has the right to define

"Dangerous areas" (Gefahrengebiete) on the basis of their knowledge of an area. In those areas persons can be stopped, questioned, their identity can be checked and things they carry with them can be looked at according to § 4 Abs. 2 PolDVG. In the Eastern areas of Hamburg (Bergedorf/Neuallermöhe/Nettelnburg) the police stopped 7.889 persons and searched 972 persons between 2006 and 2009. 2188 received a ban to use certain places ("Platzverweise"), 114 have been arrested and within those three years the police pressed 5.312 charges. These parts of Hamburg have a high population of migrants (ethnic Germans from Poland and Russia in Neuallermöhe/ Nettelnburg and of Turkish origin in Bergedorf). In 2008 two imprisonments (one on probation), three young offender sentences, seven fines and three educational measures have been handed down by the courts, seven cases were dismissed . According to § 170 StPo there were 56 dismissals and according to § 153 StPO there were nine dismissals by the prosecutor.

The Case of a German woman of African origin in Reutlingen: On 3 August 2007 four people – who are suspected of being plain-clothes police officers – asked a person of African origin who was standing in front of the shop of a German woman of African origin, whether he would sell them marijuana. Later that day, after the shop was closed the shop owner was chatting with three customers, all of African origin, in front of the shop. Three police officers demanded identification documents. The shop owner complained about the discriminatory treatment of only carrying out such checks on black people. Then the situation escalated. The police officers claimed the shop owner and two other people had refused to reveal their identity when asked for their identification document. In court, a police officer said that the reason for the ID check had been that several of the people involved were known to him from drug-related incidents, though he could not substantiate his claims.

Controls during a soccer game in Hannover: On 9. September 2009 during the soccer match Germany-Aserbaidschan in Hannover, the match Bosnia-Turkey was televised from Bosnia. The same day at lunch-time at the tram-station Steintor the police conducted stop and searches. Witnesses reported, that mainly males with a "foreign" look, who wanted to take the tram were controlled. Around 6 p.m. during Ramadan and because of the public viewing of the soccer game all Turkish cafes were filled. Around 7 p.m. one female and four male police-officers entered the Cafe "Hür-Türk e.V. and checked the customers.

Reflections on police culture in Germany

Gender, Youth and Ethnicity in the German Police: Age is a real existing, but blind category of diversity within the German police. This has severe consequences for dealing with youth, when police-officers and targeted youth are of the same age group . The problem becomes more complex, if the combination of youth and ethnicity is reflected within the police. Since 1993 it is legally possible for foreign applicants to become a member of the German police force. It is understood that you need qualified personnel and people who understand the milieus and know how to deal with migrants.

A lot of people in Germany have a distant migrant history in their family, but it is not relevant to their everyday or professional life. For people with another skin colour it is easier to overcome the perception as the "other", when they can show trust giving characteristics, such as language, dialect, milieu specific knowledge or same humour.

Until 1993 there was a clear ethnic division between the police force and their clients. The "ethnic other" was always on the side of the clients as perpetrator, victim, witness, etc. Ten years after making the police accessible for migrants the quota is still between 0 and 1 per cent. Only in some big cities like Hamburg, Bremen, Berlin or in Northrhine-Westfalia the quota of 10 per cent is barely reached . Those few migrants working in the police reject their functional exclusiveness as translators, culture scouts, mediators and conflict managers.

Furthermore, there is a habitual difference, which is expressed as follows: "we policemen are male, self-confident, have agency, socially secure, white, German, young, healthy and we all come from the lower middle class, where we move and act within an unquestionable normality". The assumption that the police are mirroring society is only true as a statistical mean, in reality police only represents the public servant sector of the middle class of society. Police-officers with a migrant background are neither representative of the migrant population, because they are "successful" migrants and have assimilated into the existing majority culture. To be in the police force they have to be closer to German society than to the migrant society . The current culturalistic focus overshadows other criteria of inequality (income, age, gender, education, health). Discourse and problem solving competencies do change an organization positively, when there is a greater cultural variance and no homologue structure .

"Street Smartness" and Police Subcultures: Apart from the official police culture and their image, there is a subculture among the police officers on the street, where a specific form of potentially aggressive masculinity is acted out . There is a sort of improvised "street smartness". Cop culture is the knowledge of belonging to a community which shares certain risks and dangers. This produces solidarity, which each member can be sure of. In a situation of stress, the police officer looks at what his colleagues do, not what the law says. Official police culture is sold as a service and the police officer

on the street knows that this is not really true, because they have to do the "dirty work" as well. Big events in Germany have shaped the image of the police over the last twenty years. The police are not only civil and service oriented, but as well an apparatus, which has techniques, logistics and organizational strength. As a consequence there are two logics at work: a peace-making logic in the local, everyday work and police logic for extreme situations and big events. The police generally recruit people who represent continuity, people who do not question the status quo. These values make them the natural enemy of young people who riot on the streets. The police fight with discipline, according to rules and they have to respect the limits. For the youth the police represent a very predictable enemy in unpredictable times and that annoys the police.

Minority Recruitment in the Police force: Affirmative action is not considered as an appropriate means to increase the participation of migrants within the police. Instead of stressing the positive outcomes of a diverse police force (creating a safe environment for all, providing ethnic minorities with positive role models) Germany's idea in recruiting ethnic minorities has been for specific tasks only and utilizing them to target migrant population. It was the mandatory adaptation of EU-regulations in 1994, which guarantee the freedom of career choice within the European Union.

Legal framework

EU framework decision on combating terrorism: The Act dealing with the prosecution of the preparation of serious violent acts endangering the state, which came into force on 4 August 2009, amends several important legal instruments and implements the EU framework decision on combating terrorism[58].

Legal Basis for controls in front of mosques: The stop and search in front of mosques in Lower Saxony have been conducted in accordance with § 12 Abs. 6 Nds. SOG[59]. This regulation has been amended through a law from 16. January 2009, which identifies appropriate barriers. Controls may not be carried out without any suspicion and only if the police have knowledge that it is expected that a crime is prepared and committed and that it generates evidences about persons who are related to such crimes[60]. The recording and evaluation of personal data gathered during the stop and searches by the police or the agency protecting the constitution (Verfassungsschutz) is happening according to the law (§§ 38, 39 Nds. SOG, §§ 8, 9 NverfSchG).

International prohibition against racial discrimination: The prohibition against racial discrimination is enshrined in a number of human rights treaties that Germany has ratified, including ICERD[61], the ICCPR[62] and the ECHR[63]. The ICERD explicitly places a dual obligation on states to ensure that their agents do not themselves engage in racial discrimination, and to prohibit and eliminate racial discrimination by private persons, groups or organizations[64]. With regard to the police specifically, the European Code of Police Ethics[65] states that police training should take full account of the need to challenge and combat racism.

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58 TE-SAT 2010: EU TERRORISM SITUATION AND TREND REPORT, http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/Tesat2010.pdf, accessed 24.09.2010.
59 Niedersächsischer Landtag − 16. Wahlperiode Drucksache 16/1680. Kleine Anfrage mit Antwort. Wortlaut der Kleinen Anfrage der Abgeordneten Pia-Beate Zimmermann (LINKE), eingegangen am 07.07.2009. Ereignis- und verdachtsunabhängige Kontrollen in der Umgebung von islamischen Gebets-, Vereins- und Kulturstätten
60 Ibidem
61 Amnesty International, Unknown assailant Insufficient Investigation into alleged ill-treatment by police in Germany, Amnesty international publications 2010.
62 ICERD, Articles 6 and 7.
63 ECHR, Article 14.
64 ICERD, Article 2(1).
65 European Code of Police Ethics, Rec (2001)10, para. 30.

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