



## Anwältinnen ohne Grenzen e.V. Deutschland

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### Introduction

Lawyers without Frontiers (Anwältinnen ohne Grenzen e.V. (AOG)) is a charitable, non-governmental organization founded in 2007 in Freiburg. AOG's membership is composed of women jurists from Germany, Bosnia and Herzegovina, Brasil, the Dominican Republic, France, Georgia, Kosovo, Iran, Rumania, Turkey, Spain and Palestine, thus juxtaposing different legal systems and languages and presenting a pool of international expertise.

Following CEDAW, AOG aims at reaching de-facto equality between women and men in all areas of public, professional and private life. Promoting the integration of migrants living in Germany and fighting all forms of discrimination are some of AOG's core issues.

"Lawyers without Frontiers" is participating for the first time in an alternative ngo report.

### Alternative Report Follow-up

The German CEDAW 2011 intermediate report explains that social integration "is based on fair chances *for all*" (p. 3). Nevertheless, migrant women are not mentioned in the report at all, even though they suffer from discrimination in many areas and on many levels. Certainly, CEDAW's Concluding Observations (para. 40) of 2009 oblige the government to include migrant women as well as non-migrants. Furthermore, the Convention refers to all women under a State's jurisdiction, not only citizens.

I. Structural discrimination in general and certain specific obstacles are highly detrimental to the economic situation of migrant workers, especially women migrant workers in Germany. The gender pay gap in Germany appears even larger, if discrimination against migrant women is taken into consideration. We refer to Non-EU-migrants here (irrespective of their legal or illegalized status) because the status of EU migrants in the working system is more equal to the one of Germans due to European labour market policies.

Migrants suffer from many aspects of discrimination, for example in terms of access to education, to the labour market or to systems of social security. CEDAW has commented on this overall situation repeatedly (see Concluding Observations of 2000, 2004, 2009). Recently, the CESCR has highlighted the situation of migrants in its Concluding Observations of May 2011 to the latest State Report under this Covenant.

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II. Of course, there are many elements that lead to pay discrimination against migrants. A very specific and concrete obstacle to fair pay for migrant women has to do with administrative regulations: Migrants, especially women, often work in positions that are below their qualifications to a tremendous degree, because their **foreign professional degrees/qualifications are rarely accepted by the German authorities**. Changing this situation would not only reduce discrimination against women migrants but could also help to end the lack of highly qualified personnel in certain branches.

1. The German national legal system does not refer to a “right to work”<sup>1</sup> as guaranteed in CEDAW article 11a, the ICESCR and the European Social Charter but sets out the “rights at work” and work contract rights. Social state requirement of Article 20 I GG and the obligation to provide subsistence means no decent life. Remunerated work is more than a social norm and the human right to support one’s existence. It is also the basis for a sense of identity and integration in a society such as ours. It is about dignity<sup>2</sup>.

Nevertheless, in Germany many women academics, including those holding a PhD, work as cleaning personnel<sup>3</sup> and thousands of migrant academics become part of the unskilled labour force<sup>4</sup>. Discrimination does not only include direct, indirect and unintended discriminations. From the perspective of the group discriminated against, it is often enough the perceived appreciation that is crucial for an experience of discrimination<sup>5</sup>. Because of their hampered access to the labour market and the low-paid underqualified work they are forced to take on, migrant women in Germany experience exclusion and reduced appreciation often and clearly.

2. A law to change this situation has been promised since December 2009. According to official statistics in 2008 (Mikrozensus, special analysis) about 2.9 million people living in Germany have gained their highest degree abroad. About 300,000 people would benefit from a reform, half of which will be migrant women. The draft “Berufsqualifikationsfeststellungsgesetz” (BQFG) focusing on the regulation of the recognition of foreign professional degrees/qualifications is now on its parliamentary way; The Bundesrat has commented on it in May 2011, in July it has been referred to the respective chambers of the Bundestag<sup>6</sup>.

We welcome this initiative as a step forward. We call the German State to keep the issue as a priority in the parliamentary process and not to let pass another one and a half years to solve this

<sup>1</sup> Even if a few constitutions of German federal states provide the right to work, the Constitution Law has preference over the federal law, and there the principle of neutral economic and labor relations is anchored.

<sup>2</sup> Despite the social security system, which in Germany with the basic security for jobseekers or income support ensures the subsistence, protection against social exclusion is not ensured. In detail, *Koerner, Marita*: The international human right to work, international law requirements for Germany, Study, German Institute for Human Rights (ed.) 2004.

<sup>3</sup> “I have been living in Germany for 18 years. I am a Farmaceutica/ pharmacist and used to own a pharmacy in Argentina. When I came to Germany (...) I worked as a cleaning lady (...), because my diploma was not accepted here.” Blogger, <http://serkantoeren.wordpress.com/2011/03/23/36/>, visited 13.09.2011.

<sup>4</sup> For statistics about migrants’ employment situation see the studies of *Rolf Meinhardt* at the University of Oldenburg, for a comprehensive newspaper report see <http://www.spiegel.de/wirtschaft/0,1518,508780,00.html>, visited 13.09.2011.

<sup>5</sup> *Kaegi-Diener, Regula*, The importance of international prohibitions of discrimination, particularly CEDAW, for the Swiss case law: women’s issues magazine, 1.2009.

<sup>6</sup> <http://dipbt.bundestag.de/dip21/btd/17/062/1706260.pdf>, visited:13.09.2011.

issue. We agree with the parliamentary opposition in a number of issues that we would like to highlight again:

- a) The title of the law - Entwurf eines Gesetzes zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen - “Berufsqualifikationsfeststellungsgesetz” suggests that it is going to materially rule formal recognition of professional degrees/qualifications. This is not the case. The law is about a procedural improvement, about a right to reach a decision on the recognition in a set time frame. However this does not reach far enough, as it does not mean that the degrees will in fact be recognized,
- b) The law does not include many academic professions, so-called “Reglementierte Berufe”<sup>7</sup> (such as the medical profession, lawyers etc.). It refers to approx. 350 professions only and excludes professions that are subject to additional professional regulations,
- c) The procedural provisions are not harmonized enough between all the German federal states, so the actual place of residence within Germany may become relevant for decisions on the right of a women to work according to her qualifications.

### Suggested Solutions and Improvements

- Although the draft “Berufsqualifikationsfeststellungsgesetz” does represent an improvement, it is not far reaching enough. It needs to be amended as described above, before it can truly be considered a law that rules formal recognition of foreign degrees/qualifications. Furthermore, the exclusion of professions that are subject to additional professional regulations is not acceptable.
- AOG calls for more central institutions which support migrants during the whole process. At the moment we diagnose a tremendous lack of such institutions.
- AOG also calls for a systematic integration of migrant perspectives into labour market policies and measures to reduce the gender pay gap. The fact that migrant women are not even mentioned in the government report speaks a clear language as to the relevance allocated to the subject by the government at the moment.
- In addition, AOG calls for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

For a transitional period we suggest temporary special measures according to the Concluding Observations (paras 25, 26) to improve women migrant workers’ positions on the labour market: The government could oblige employers to formulate job offers open/inclusive to migrants

- a) by announcing the respective job title/requirements “or a comparable foreign professional qualification”,
- b) by introducing combined quota policies in a company such as: “the company is committed to increasing the share of women, particularly migrant women in departments where they are currently underrepresented, in its workforce. Qualified Women are encouraged to apply.

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<sup>7</sup> Under regulated professions such occupations are understood, whose inclusion or exercise is bound to any legal or administrative provisions concerning possession of specific professional qualifications. This especially includes the use of a professional designation, which is restricted by law or regulation to people who have certain professional qualifications. For more information, Maier, Ralf Wund and Rupprecht Bemdt, The government draft of the Recognition Act [http://www.zar.nomos.de/fileadmin/zar/doc/Aufsatz\\_ZAR\\_11\\_07.pdf](http://www.zar.nomos.de/fileadmin/zar/doc/Aufsatz_ZAR_11_07.pdf), visited 13.09.2011.