

## Research of the FADA at a glance: Diversity Measures and Risks of Discrimination in the Public Employment Service

### Overview of the survey

The public employment service as a public service of job placement agencies and job centres is a significant gateway for entering the labour market and consequently for the participation of all job seekers in the working and social life. Thus, the consequences of discrimination in the public employment service can be particularly severe for those affected. The study investigates institutional and organisational risks of discrimination in the public employment service in Germany from the point of view of law and social science. Over and above that, it examined diversity management and measures of protection against discrimination.

### Authors, title and publication year of the survey

Professor Dr Martin Brüssig, Professor Dr Dorothee Frings and Johannes Kirsch: „Risks of discrimination in public employment service" (in German language only, 2017).

### Method

The study includes seven investigation modules in total:

- Explorative talks with counselling experts in anti-discrimination guidance centres,
- Expert workshops on selected risks of discrimination (disability, religion and ethnic origin as well as trans\*people) and an expert workshop to discuss the results and recommendations for action with experts of cooperation partners in the public employment service, representatives of civil society as well as of administration and science.
- Analysis of the literature on the current state of research on risks of discrimination in the public employment service.
- Legal opinion on the protection against discrimination in the public employment service and on regulatory gaps in the relevant provisions of national, European and international law.
- Analysis of target agreements in the Social Code Book II,
- Analysis of selected documents of the Federal Employment Agency (German abbreviation: BA) on risks of discrimination, protection against discrimination and diversity management and
- Short case studies in employment agencies and job centres on practices of job placement and counselling.

## Results

### Protection against discrimination, diversity and good practice

Within the public employment service there is already a large variety of activities for the protection against discrimination and for handling complaints about discrimination. Of particular note is the **swift adaptation to the integration requirements for refugees**, the elaboration of the **target agreements in the Social Code Book II** as well as the **diversity management**.

### Risks of discrimination in the public employment service

However, the entire 'chain' of working processes of the public employment service also includes risks of discrimination:

#### Insufficient participation of job seekers and beneficiaries

This may result in risks of discrimination, especially for people with particular needs of support that are not obvious at first sight. In order to be able to make the appropriate provisions, those affected have to be involved.

#### Non-transparent and unsubstantiated decisions

They are frequently connected with the allocation of and/or decision on measures and possible benefits. Thus, for example, during the issuing of vouchers for continuing vocational training courses, it may occur that requests for participation in those courses are rejected without justification. In addition to budgetary reasons, those rejections are sometimes also caused by negative prognoses as to the expected success rate, which are exclusively based on apparent or known global characteristics (such as e.g. age, ethnic origin or a disability).

#### Insufficient individualisation of benefits and services rendered

Although the technical concept for job placement requires that integration strategies and related measures should always be geared to the needs of the individual client, this is actually not always the case. As a result, there is a risk of discrimination against people who need individualised benefits and services to a particular extent due to their life circumstances, i.e. people belonging to the whole range of discrimination characteristics mentioned in the General Equal Treatment Act.

#### Information and counselling deficits

Insufficient counselling and withheld information constitute a risk of discrimination for people with complex counselling requirements, such as e.g. the severely disabled, trans\*people, but also adolescents and the elderly. Important reasons for the deficits in information and counselling are insufficient training offers and high workload.

#### Risks of discrimination due to management processes based on key figures

Management based on key figures provides incentives for not tailoring the placement efforts to individual needs of job seekers, but to achieve the goal of those key figures with the lowest possible effort (creaming) and to place those people who can only be integrated with increased efforts in measures connected with lower expenditure or not place them anywhere at all (parking).

#### Risks of discrimination at interfaces

Due to or with regard to one or several categories of discrimination, job seekers frequently have to deal with interfaces to other service providers, authorities and social services. If the cooperation between the different agencies involved does not work, there is a risk that specific needs in connection with a criterion of discrimination are not sufficiently taken into account and processes

will slow down due to other institutions being involved, thus adversely affecting our goal to achieve equality of integration into the labour market.

### **Gaps in judicial protection**

In cases of direct and indirect discrimination as well as (sexual) harassments, beneficiaries of legal protection currently depend on lodging an action on account of breach of official duty in civil courts. In those few cases where a legitimate benefit situation has subsequently been restored, they depend on their legal claim of performance under social law provisions by the public employment service, and in cases of injustice on the part of the legislator, they depend on their claim towards the German state based on the rule of law, as laid down in European law. However, a claim to non-discriminatory benefits and services is hardly enforceable in court.

### **Transformed discrimination due to discriminatory conduct of employers**

This risk of discrimination occurs where employers exclude, e.g. women and/or men, members of a particular religion or even elderly from the application procedure without any objective grounds. Then there is the danger that staff members of job placement centres might condone those discriminatory requirements or even convey them via their own action by adapting the pre-selection of applicants accordingly.

## **Recommendations for action in the study**

- **Strengthening the legal protection against discrimination** by extending the ban on discrimination to all discrimination criteria when exercising social rights (Section 33c of Social Code Book I).
- **Professionalisation of staff members by raising their awareness** for risks of discrimination, specific needs and appropriate measures, but also changes of organisation, such as internal specialisations and case supervision.
- **Improving the situation of job seekers and beneficiaries in the course of the procedure and strengthening their participation opportunities**, e.g. by better information on offers and procedural rights, and support of independent counselling agencies as well.
- **Increasing the transparency of decisions** and evaluations, thus enabling the affected applicants to detect and counteract possible discriminations (e.g. by written justification).
- **Further development and careful supervision of management based on key figures.**
- **Establishment of a joint coordination agency for job seekers** which, *inter alia*, clarifies the responsibilities according to Social Code Book II and Social Code Book III and receives applications.
- **The establishment of ombuds offices** in employment agencies and job placement centres should be **made mandatory** in Social Code Book III and Social Code Book II.
- **Countermeasures have to be taken** with regard to **the development of stereotyped segments on the labour market** (especially with a view to an applicant's sex and ethnic origin).

## **More information**

The complete survey can be retrieved => [here](#) (in German only).

Contact details: Federal Anti-Discrimination Agency  
Glinkastrasse 24  
D-10117 Berlin  
Telephone: 030 18555-1855  
E-Mail for counselling: [beratung@ads.bund.de](mailto:beratung@ads.bund.de)  
E-Mail for general questions: [poststelle@ads.bund.de](mailto:poststelle@ads.bund.de)