

Dissertation

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**Diversity Management and Inclusion in the German Federal
Administration. A whole white world?**

University of Wales Trinity Saint David



SUBMITTED BY

MANAL ABDEL KHALEQ (1920273)

Supervisor Dr Gladius David Kulothungan, Course: MBA, pathway Human Resource Management
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List of Abbreviation

ADSdB	Federal Anti-Discrimination Agency /Antidiskriminierungsstelle des Bundes
AGG	General Equal Treatment Act / (Allgemeines Gleichbehandlungsgesetz
BAG	Federal Labour Court / Bundesarbeitsgericht
BBG	Federal Civil Service Act /Bundesbeamtengesetz
BerwG	Federal Administrative Court
BLV	Federal Career Path Ordinance /Bundeslaufbahnverordnung
BMI	Federal Ministry of the Interior / Bundesministerium des Inneren, für Bau und Heimat
BRL	Guideline for the Evaluation of Civil Servants in the Portfolio of the Federal Ministry of the Interior (excluding the Federal Police) / Bewertungsrichtlinie
BVerfG	Federal Constitutional Court / Bundesverfassungsgericht
CEADAW	UN Convention on the Elimination of all forms of Discrimination Against Woman (1979)
DB	German Parliament / Deutscher Bundestag
DM	Diversity Management
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EHRC	Equalities and Human Rights Commission
EU	European Union
FA	Federal Administration
FGCMRI	Federal Government Commissioner for Migration, Refugees and Integration
FIPR	Federal Institute for Population Research /Bundesinstitut für Bevölkerungsforschung
FRG	Federal Republic of Germany
GG	Basic Law (German Constitution) / Grundgesetz
HRM	Human Resource Management
OECD	Organisation for Economic Co-operation and Development
ICERD	UN Convention on the Elimination of all forms of Race discrimination (1966)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

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1. Chapter 1: Introduction

1.1. Abstract

Despite decades of equal opportunity legislation, human resource management (HRM) policies and procedures to address Diversity and Inclusion, people with a migration background (MB) in Germany, are more likely to experience disadvantages in accessing the labour market compared to people without an MB, regardless of their educational status, nationality or legal requirements (cf.12th Report,2017). The public sector does not seem to constitute an exception as the findings of the recently published research study on cultural diversity and equal opportunities in the Federal Administration (FA) reveals that minorities are significantly underrepresented in the FA (*Ger. Kulturelle Diversität und Chancengleichheit in der Bundesverwaltung*,hereinafter:DuCS,2019). Given that 26% of the German population have an MB (Statistical Federal Office,2020), only less than 12% of the overall employees in the FA have an MB (DuCS,2019). Moreover, the findings demonstrate inequalities regarding the employment situation of minorities since employees with an MB in the FA occupy less managerial and higher-ranked positions, are more often overqualified for their role, are less likely civil servants, and have more often fixed-term contracts (DuCS,2019).

The findings are particularly alarming given the legal obligation and the significant importance of ensuring participation and equal opportunities for minorities in the civil service deriving from the rule of law of the Federal Republic of Germany (FRG). The FRG identifies itself as a meritocratic democracy, which grants access to public office solely based on suitability, qualifications and professional performance (cf.Baumann,et.al.,2019). The BSP prohibits non-meritocratic considerations, such as gender, descent, race, language, homeland, origin, faith, religious/political views as stipulated in the 'Principle of Equality' (PoE) according to Article 3 German Constitution (*Ger.'Grundgesetz'*,hereinafter:GG) for the appointment of a public office (Article 33(2)GG) and has a direct binding effect on all authorities according to the rule of law principle (RLP)(cf.Art.20(3)GG). Further legal provisions on anti-discrimination protection, in particular the prohibition of discrimination under Article 14 of the European Convention on Human Rights (ECHR), underline that ethnic diversity is also of importance under international law concerning the protection of individual rights of minorities.

The legal background forces the supposition that the proportion of employees with an MB in the public sector should be higher than in the private sector, especially since it can be assumed that a state under the rule of law always fulfils its role model function in complying with its laws. However, research has shown that quite the opposite is true since minorities are far less represented in the FA compared with the private sector (Ette,et.al.2021). Moreover, scientific findings confirm that the population with an MB, i.e. migrants and their descendants, are underrepresented compared to their share in the population as a whole (DuCS,2019). This raises doubts as to whether the strong legal framework, its implementation or other institutional, organisational or structural deficiencies in the public administration enable barriers to access for minorities. It even raises the question of whether

the regulations and the appointment process are not themselves barriers to access when legally interpreted and applied under the 'Best Selection Principle' (BSP), stipulated in Article 33(2)GG.

Numerous theories and explanatory concepts can be found exploring the causes for ethnic inequality in the labour market, including the human capital theory (HCT), signalling and screening theory, and social capital factors. However, these theories and explanatory concepts cannot be applied unreservedly to the unique regulated meritocratic appointment procedure of the civil service without at the same time affirming a violation of equality principles.

Another possible reason for the unequal employment situation of minorities in the FA and access barrier to the public service could be discrimination (cf.Ette,2021). It is particularly striking that migrants are predominantly disadvantaged in the seven assessed indicators, including higher proportions in fixed-term contracts and private-law employment contracts, lower representation in public servant positions, lesser prospects on promotions, and inadequate employment according to the educational qualification of the employee (overqualification) (cf.DuCS,2019). These findings seem to be incompatible with typical employment relationships and the personnel management in the FA and contradict the legal requirements of meritocratic staff selection. For example, fixed-term contracts can be qualified as rather atypical employment relationships in the FA. The same is true for collective bargaining employment while the public servant status (which is a privileged status in both, in terms of financial advantage and social status) constitutes the conventional form of employment. Moreover, the affiliation of employees and civil servants to the clear structured hierarchical career pathway is regulated on basis of minimum requirements regarding educational qualification and promotions. They are strictly bound to performance appraisals on grounds of BSP/'Performance Principle'(PP) leaving limited room for human or social capital factors to justify inequality.

The unequal employment situation rather indicates that the stumbling block of equal opportunities for minorities in public administration lies in the personnel selection process, in particular in the application of the BSP. Although the performance evaluation and staff selection procedure are regulated in guidelines on grounds of objective criteria, the evaluation is based on facts and the value judgments of the hiring manager (cf.DBB,n.d.;1.2.of the Federal Career Regulation,*Ger.Bundeslaufbahnverordnung*, hereinafter BLV). This leaves room for numerous judgmental errors, including stereotyping, (unconscious) bias and discriminatory decisions on grounds of social categorisation/social identification which may impact the performance appraisal assessment.

Since the dispositions of decision-makers are not accessible, the existence of a discriminatory decision is difficult to establish, even in scientific papers (Deros and Ryan,2017,Hipp,2016). This is because, except for experimental studies, researchers can only assume, that labour market disadvantages of certain demographic groups are due to unjustified unequal treatment even after statistically controlling for relevant characteristics, (cf.Deros and Ryan,2017,Hipp,2016).

For this reason, potential mechanisms will be analysed based on the present data (secondary data,cf.DuCS,2019) against the background of the specific legal and procedural framework of the public staffing procedure. Through this, some theoretical explanations can be examined on the basis of their compatibility with the constitutionally enshrined BSP and if necessary ruled out as a theoretical explanation for the present inequalities in the FA as the incompatibility with mandatory rules and regulations would render the hiring decision unlawful and may affirm a discriminatory hiring-decision.

1.2. Purpose of this paper

This paper seeks to

- 1) to critically analyse the data on the proportion and the employment situation of minorities in the FA on grounds of the current research study (DuCS,2019),
- 2) to identify the legal and procedural weaknesses of the public staff selection procedure that may undermine ethnic diversity policy in the FA (intercultural opening),
- 3) to examine further mechanisms explaining inequalities and the underrepresentation of migrants within the specific legal and procedural framework of the public staffing procedure, particularly against the backdrop of the constitutionally enshrined principles of selection of the best and the principle of equality,
- 4) to identify concrete fields of action to enhance the intercultural opening of the FA,
- 5) to demonstrate the necessity of structural, procedural, and legal change to tackle the weaknesses of the present diversity policies and procedures.

1.3. Findings: The dissertation will reveal that the staff-selection process of the public administration, particularly the implementation of the BSP is considerably vulnerable to stereotypes and ethnic bias decision-making which constitutes potential access barriers to the FA and undermining equal career chances for ethnic minorities. This is indicated by the weaknesses found in the legal and procedural framework of the staffing procedure. Furthermore, it will be demonstrated that the equal opportunity and anti-discrimination legislation is not sufficient enough to protect minorities against discriminatory hiring decisions. The latter derives from legal hurdles, including the margin of discretion of the authority within the assessment process which is subject to a restricted judicial court review. The labour market theories explaining inequalities are predominately incompatible with the mandatory legal framework of the public staffing procedure. Other mechanisms explaining the identified inequalities in the employment situation of employees with a MB in the FA, may be explained due to differences in human capital factors. However, there is a lack of differentiated data to make such an assumption which underlines the necessity to collect nuanced anti-discrimination data. Based on a holistic and interdisciplinary view of the factors causing inequalities through the specific consideration of the peculiarities of the public recruitment procedure, conclusions can be drawn that the structural factors, namely the vulnerability of the staffing procedure, lead to the potential exclusion of minorities, particularly in the higher career pathways.

1.4. Practical Implications:

Although the political debate of the intercultural opening of the FA was proclaimed by governmental initiatives in 2007 (NAP,2007) the instruments and measures designed to increase the proportion of ethnic minorities in the FA have since not borne fruit yet (cf.Ette,et.al,2021). On the one hand, this is due to the non-binding nature of the measures, which, in the absence of a legal framework, is subject to the voluntary commitment of the individual federal agencies (Ette,et al.,2021).

On the other hand, there was no empirical data on which research studies could have been based. It is only through the Cultural Diversity and Equal Opportunity Survey in 2019 (DuCS,2019) and the project report on the survey published in June 2021 that representative data on cultural diversity in the FA is available for research for the first time. According to the authors of the study (Ette,2021),

this 'data has the potential to highlight the weaknesses of the intercultural opening of the FA and to show the authorities concrete areas for action'. This dissertation pursues this goal, as the analysis, reveals the concrete weaknesses by considering the practical implementation in the staffing process. Since the personnel decision-makers of the recruitment and promotion process adhere to strict structures determined by the law and case law, this report offers the authorities the opportunity to raise awareness of the potential pitfalls within the framework of the assessment of the best selection among their responsible staff. Since the present scientific paper also reveals legal weaknesses that can potentially jeopardise the RLP and enable structural discrimination due to the lack of legal protection for the persons concerned, there is also a concrete need for action on the part of the legislator. This concerns in particular the strengthening of anti-discrimination rights, but also legal changes concerning the appointment procedure so that the meritocratic principle of selecting the best is not undermined by ethnically discriminatory decisions. This could include stronger legal protection through restrictions on discretionary decisions and more extensive judicial review of hiring decisions based on the BSP. In addition, the legal framework for a mandatory anonymised application process for all federal agencies should be created. Finally, the introduction of a quota system for ethnic minorities at all hierarchical levels of the agencies should be introduced, which can be embedded within the framework of the selection of the best candidates. The latter is an effective approach to ensure the constitutional principle of equality and to compensate for the unequal opportunities of minorities in the FA.

1.5. Originality/Value:

This field of research is still largely unexplored, hence the theoretical approaches of labour market research and migration research are based almost exclusively on the private sector (cf. Ette, et al, 2021). As mentioned beforehand, the reason for the shortcomings of empirical studies may be the lack of data to investigate cultural diversity in public administration. While many European countries, such as Ireland and the United Kingdom, collect equal opportunity and anti-discrimination data from public service staff through staff surveys to set their diversity objectives and strategies accordingly, no comparable data was available in Germany until the pilot study of 2016 (cf. DuCs, 2019; Ette, et al. 2016). It was not until the Diversity and Equal Opportunities Survey (DuCS, 2019) that information on the situation of employees was collected for the first time (cf. Ette, 2021).

This dissertation is the first work to draw on the findings of the Cultural Diversity and Equity Survey Project Report (Ette, 2021), published in June 2021. The novelty of this work derives from the interdisciplinary approach taken in the field of HRM, social science in the context of the legal framework of staff selection in the public sector regarding equal opportunity legislation to contribute to the discussion of D&I in the FA. Political consideration will be taken into account when necessary to highlight the topic holistically.

Due to the interdisciplinary approach of labour market sociology, socio-psychology and the legal and practical applicability to public administration, this work may contribute in a particular way to the scientific debate. As previously addressed the assessed 'data has the potential to highlight the weaknesses of the intercultural opening of the FA and to show the authorities concrete areas for action'. This dissertation pursues this goal, as the analysis reveals the concrete weaknesses by considering the practical implementation in the staffing process.

The social relevance of this study lies in the importance of the state's responsibility to enable equal opportunities and participation of minorities. The public administration is the largest employer

in Germany and offers job security and ensures individual prosperity, which is particularly significant in times of a global economic crisis such as the current pandemic (cf. Baumann, et al., 2018), where there must be equal opportunities and fair participation for minorities in this sector. The Federal Republic is called upon to live up to its principles deriving from the rule of law, (Art. 20(3) GG) and demonstrate its legal constitutional nature of being a social, democratic constitutional state under 20 (1) of its Constitution. This is especially important since integration and equal opportunities constitute the foundation for social justice and legal peace in a state.

This thesis, therefore, is of significant social relevance for equal opportunities and participation for migrants in the FA, which can serve to avoid disadvantages by identifying specific problems and promoting the investigation of causes in the field of HRM.

1.6. Methodology /Methods/Research Design

The present exploratory study will be conducted by utilising the secondary data of the '*Diversity and Equal Opportunity Survey 2019*' (DuCS, 2019) which represents the first inter-agency and centrally conducted employment survey in the FA (Ette, et al., 2021). Furthermore, the secondary data analysis will be based on the project report of the Diversity and Equal Opportunity Survey (Ette, et al., 2021). The DuCS and the project report were published by the Federal Government Commissioner for Migration, Refugees and Integration (FGCMRI) and the Federal Institute for Population Research (FIPR) in 2020 and 2021 respectively.

Key data and methodology underlying the survey are as follows:

- 55 (from more than 100) agencies voluntarily participated in the employee survey employing 76% of all employees in the immediate federal government (total staff 231,000)
- 47,000 interviews were conducted, (43% response rate).
- The selection of the interviewed employees included all employed persons of the participating authorities, with the exception of customs administration and the federal police, each with 40,000 and 44,000 employees respectively, which were excluded from the full census (a random sample was carried out among the employees instead).
- The employee survey included questions to determine the migration/non-migration background and the employment situation of employees.
- The quantitative data collection comprised the share of ethnic diversity among employees in the FA as well as their proportion within different employment situations (including the proportion in the different hierarchical career groups, the civil servants status, executive roles, promotions, fixed-term contracts, and part-time-contracts).
- The employee survey was carried out by means of an online survey (Computer Assisted Web Interview) in the period of May - November 2019 (cf. DuCS, 2019, Ette, et al., 2021). According to the editor of the DuCS, 'the study was the first to collect representative data with international comparability on the diversity of employees in the immediate FA (DuCS, 2019).

The secondary data analysis will seek to answer the main research question and the sub-questions to identify structural, legal and institutional weaknesses of the cultural diversity policy as a

potential cause for unequal opportunities in the FA and illustrate action fields for an effective enhancement of the representation of ethnic minorities.

To fulfil this purpose the following research question shall be answered in the end:

Does the staff selection process of the FA pose a potential barrier to ethnic diversity and equal opportunities?

In order to be able to answer the research question in the first place, specific questions will be addressed in the subsequent questions:

A. Is the equal opportunity legislation sufficient enough to ensure equal opportunity and anti-discrimination in the framework of public staff selection?

B. What are the legal principles of the public staff selection procedure and how does it affect ethnic (in-) equality?

C. Is the staff selection process in the framework of the best selection principle vulnerable to ethnic bias and stereotypical decision-making opposing the meritocratic principle of best selection?

D. What are the theoretical approaches in labour market research that explain ethnic inequalities?

E. To what extent do the theoretical explanations serve to explain the inequalities in the FA against the background of the empirical findings?

F. To what extent are the labour market theories compatible with the legal principles that regulate the public staffing process?

To answer the research question, the following procedure shall be followed:

The introduction provides a review of the historical developments and the state of research on ethnic diversity in the FA (the so-called opening of public administration, hereinafter: PA).

Chapter 2 presents the empirical study (secondary data) of the Diversity and Equal opportunities Survey (DuCS, 2019). In addition to the representation of employees with a MB, the employment situation of migrants is also examined based on seven indicators, including the proportions in the various hierarchical career groups, qualification-adequate employment, management positions, civil servant positions, promotions, permanent employment, and part-time employment.

With Chapter 3 the relevant legislation on equal opportunity and anti-discrimination will be illustrated followed by the legal regulations concerning the staffing procedures in the public sector (hereinafter: PS). Here the focus is on the BSB anchored in Art. 33(2) GG embedded in the public staff selection process of recruitment and internal staffing and promotion. To examine whether the BSP may constitute a potential cause of ethnic inequality the well-known theories regarding appraisal errors in the framework of performance reviews impacting ethnic diversity will be presented and applied to the procedural and legal framework of civil servant performance reviews. Additionally, the public recruitment process will be assessed on basis of a potential vulnerability to ethnic bias with reference made to theories and research findings. Finally, the judicial protection against

discriminatory hiring decisions shall be examined with regard to possible procedural and legal stumbling blocks that could undermine equal opportunities and the BSP.

Chapter 4 will be focused on the assessment of conditioning factors of cultural diversity in federal organisations while taking sociological-institutional assumptions into account. The theoretical assumptions underlying the research questions will be discussed within the framework of the empirical results, namely within each indicator reflecting the employment situation of minorities in the FA. It is then examined whether the theories can be reconciled with the principles of the best selection and the principle of equality as cornerstones of the staffing procedure. Through this, potential theoretical explanations can be ruled out or restricted justifying ethnic inequalities in the FA. The latter would suggest the impact of a vulnerable staffing procedure on equal opportunity for minorities. This allows conclusions to be drawn about the weight of the existing vulnerability to ethnic bias in the recruitment process on the underrepresentation of employees with an MB and unequal opportunity.

Chapter 5 will summarise the findings and recommendations regarding the fields of action. Through this, the main research question shall be addressed as to whether the staff selection process of the FA poses a potential barrier to ethnic diversity and equal opportunities.

1.7. Research Limitation/Implications

The secondary data underlying this thesis is based on the concept of MB to measure cultural diversity (cf. Ette, et.al., 2021). According to the official definition, individuals have an *MB* if they or at least one of their parents was not born with German citizenship' (Statistical Federal Office, 2020). The concept, however, was often subjected to criticism since it 'homogenises an extremely heterogeneous population' group (Ahyoud, et.al., 2018, DuCS, 2019). Unequal opportunities for participation and discrimination in the workplace 'do not necessarily run between the population without an MB and the population with an MB, but rather between specific geographical groups of origin, the appearance, ethnicity, or language skills, regardless of the fact whether individuals concerned or their parents have a migration experience' (Ette, et.al., 2021; cf. DuCS, 2019; Simon, et.al. 2015).

Additionally, the data collected was not presented in a differentiated manner within the project report on the DuCS; this refers in particular to the employment situation of the second-generation late repatriates (ethnic German immigrants) and also of first- and second-generation EU citizens. Nuanced data analysis is of significant importance for the assessment of the human capital factors as a mechanism for inequalities. Future employee surveys should also include targeted questions on educational qualifications. The latter is particularly essential for an analysis under the human capital theory as to whether the educational qualifications were acquired in Germany and abroad and whether a certificate of equivalence from the relevant authorities is available. Finally, research on the inequality of opportunity in the FA will not be able to do without differentiated anti-discrimination data in the future, which are not based on the concept of MB, but rather includes a more precise differentiation of discrimination characteristics (including origin, religion, etc.).

This is particularly necessary because the FRG and its organisations are particularly called upon to live up to the basic principles of the rule of law, particularly, to ensure the legal equality and the legal protection of minorities (cf. Art. 20(3) GG).

1.8. Ethnic Diversity Policies in the Federal Administration in Germany - Too Little Too Late?

The concept of diversity management (DM) has its origins in the US and stems from anti-discrimination laws adopted as an outflow of the grassroots movements for civil rights, women's rights and gay rights in the 1950s and 1960s (cf. Syed & Özbilgin, 2009; ADSdB, 2020). The concept in a broader sense refers to 'any policy that seeks to increase the representation of disadvantaged social groups' (Vassilopoulou, et al., 2019) and was 'exported' to Europe by large international companies, such as Motorola and Ford, that propagated employee diversity in their business policy (Bührmann, et al., 2017). The dissemination in Europe, however, was reluctant and until the late 1990s, it was essentially limited to training migrants (Wrench, 2007). The historical origins and development of DM in different regions and cultures influenced its conceptual classification and associated social status. According to this, the Anglo-Saxon culture, such as the USA, Canada and the United Kingdom, has a human rights approach to DM and inclusion, thus equal opportunity rights are accorded great importance in society. By contrast, in Germany, it was initially understood as an HRM practice serving as a useful instrument to address demographic change and skill shortages in private organisations (cf. Vassilopoulou, et al., 2019). This has led to a weak anti-discrimination culture in Germany, which is reflected in both, public opinion and politics, and determines the reluctant attitude towards ethnic diversity in particular (cf. Vassilopoulou, et al., 2019). For example, Germany, as an EU Member State, was obliged to transpose the two key EU Directives (2000/43/EC and 2000/78/EC) on anti-discrimination protection into national law. However, the implementation of these directives into the 'General Equal Treatment Act' (*Ger. Allgemeines Gleichbehandlungsgesetz*, hereinafter AGG) has taken six years due to resistance from employers' organisations and church representatives (Kara and Merx, 2016). A similar reluctance can also be found in integration policies of Federal Government, which have been neglected for decades. Despite the quantitative significance of three immigration waves, namely the labour migration of the so-called guest workers in the 1950s and 1960s, the immigration of refugees and asylum seekers in the 1970s and 1980s, and the increased immigration of the 'Aussiedler' (ethnic German repatriates from Eastern Europe), no state integration measures had been developed until the turn of the millennium (Leenen, et al., 2014).

It was not until the Integration Act that integration policy was established as a state task for the first time in the history of the Federal Republic of Germany (FRG) (cf. Immigration Act, 2005; cf. Hanewinkel and Oltmer, 2017). At the same time, the Immigration Act served to transpose the EU Directive on the right of EU citizens and their families to move and reside freely within the EU, hence guaranteeing equal opportunity rights to EU citizens in the FRG (Directive 2004/38/EC, cf. Art. 2 of the Immigration Act). Once again the impetus for the progress of integration and equal opportunity policies was driven by EU regulations enforcing a development in the FRG.

The political refusal to accept Germany's status as a country of immigration¹ and the accompanying stagnation in the integration policy had precarious consequences for the equal participation of migrants in society, but especially concerning participation in education and the labour market (cf. Hanewinkel & Oltmer, 2017). These consequences are still visible despite certain successes in education and labour market policies in recent years, so that certain professions of central integrative importance, such as school and university staff, as well as the entire state-related employment sector, including the political system, the security forces, and the PA, have remained

¹ The stance that Germany is not an immigration country and, therefore, long-term oriented integration policies for 'foreigners', particularly guest workers was not necessary, was based on the notion, that the presents of guest-worker and their families are temporary. (Alexopoulou, 2018b!)

broadly culturally homogeneous despite an increasing ethnically diverse society (cf. Leenen, et al., 2014; Hönekopp, 2007).

The recent change of course in the government's integration policies through the National Integration Plan (NAP, 2007) which incorporated the so-called 'intercultural opening' of the PA represents an effort to compensate for past failures to develop strategic, comprehensive, and far-reaching integration concepts that include all sectors of society (cf. Leenen, et al., 2014). The concept of 'intercultural opening' of the administration as an instrument of ethnic DM in the PS, *'is understood as an organisational and human resources development process that aims to ensure immigrants and their descendants equal access to the PS in its function as an employer'* (cf. Ette, et al., 2021). This topic has been initially discussed politically concerning the municipal administration and encompassed the social services, including social work (Barwig & Hinz-Rommel, 1995), the educational sector (Goglin, 2010) and the health sector (Falge and Zimmermann, 2014).

At a federal level, however, the intercultural opening of the administration was only put on the political agenda with the National Integration Plan (cf. NAP, 2007). The pressing nature of the demographic development due to the retirement of the baby boomer generation from the end of 2019 leading to a considerable shortage of skilled workers represents a compulsion for the government to act. The impending shortage of skilled labour will not only affect the private sector but also the PA since 51% of the current PA workforce will retire in the period 2019-2036 (cf. Baumann, et al., 2018, PwC 2017). The plethora of governmental instruments to increase the representation of employees with a MB have not proven to be effective so far, as the recruitment practice of the federal authorities has not recorded any considerable change in ethnic diversity in recent years (cf. Ette, et al., 2021).

A significant circumstance that could undermine the implementation of the intercultural opening of the FA can be found in the ideological approach of the Federal Government. The culturalist and deficit perspectives on people with an MB that were included in early documents on the intercultural opening of the administration reinforce the view of people with an MB as aliens and entrench exclusionary views and actions (cf. Bauman, et al., 2018). This approach promotes institutional racism and leads to structural discrimination against people with an MB (Baumann, et al., 2021), as stereotypes, prejudices and bias against migrants are reinforced. The National Integration Plan, for example, notes: *'integration issues increased in the last years since parts of the society lack sufficient knowledge of the German language, have weaker results in education, and are more often unemployed(...). Some do not accept the basic rules of our coexistence, this also applies to the rights of women'* (BPB, 2007a). Through this, the government reaffirms the existing consensus among politicians and the public that migrants are accountable for the lack of building or even efficiently utilising their human capital in the labour market (Berlin-Institut, 2009; Vassilopoulou, et al., 2019). Furthermore, the stubbornly persistent cultural bias concerning the lack of professional qualifications and language skills of migrants, particularly concerning Turkish and North African migrants may have counterproductive effects concerning the increase of employees with MB in the PS (cf. Froehlich, et al., 2016; cf. Vassilopoulou, et al., 2019). This is particularly problematic as the intercultural opening is based on the premise that the BSP is adhered to. The latter principle, however, constitutes a prerequisite for recruitment in the PS, which is based on a subjective assessment of suitability, qualification and professional performance. As the subjective assessment is particularly vulnerable to implicit bias, stereotypes and prejudices the

reinforcement of the deficit perspective in governmental documents could undermine efforts aiming at increasing minorities in the PS.

Moreover, the FRG refrains from collecting ethnic equality data as a result of the National Socialist past as the Federal Ministry of Interior emphasises: *'Figures on national minorities in Germany (...) are not collected since the end of the Second World War, due to the persecution of such minorities during the National Socialist tyranny.(...)'*(BMI,2021). Unlike in the UK, for example, where there is a consensus that data collection regarding ethnic origin is a prerequisite for monitoring the effectiveness of ethnic equality policies (Vassiloupoulou,2009), in Germany this awareness is overshadowed by the country's dark past. Notwithstanding, without the collection of differentiated anti-discrimination data structural discrimination on an institutional, cultural and individual level cannot be measured and therefore cannot be countered with suitable measures (Ahyoud,et. al.,2018). This particularly affects the effectiveness of the governmental initiative of the intercultural opening of the administration as it aims for an adequate representation of minorities in the FA to reflect demographics in society. Instead, the concept of MB was developed (as mentioned above) which replaced the previously used distinctions based on citizenship and differentiated between German citizens and foreigners.

Since the state of research in this area, especially regarding empirical studies, is in its early stages due to a lack of available data until recently, the present Diversity and Equal Opportunities Survey (DuCsS,2019) may serve as a basis to advance research in that field. However, contrary to the assumption of Ette,et.al.(2021) it must be stated that the findings of the present survey, may have merely restricted potential to reveal the previous weaknesses in the intercultural opening to identify concrete fields of action.

2. Chapter 2: Ethnic Diversity and Equal Opportunity in the Federal Administration / Secondary Data Presentation

This chapter will illustrate the representation of minorities in the FA regarding their proportion and their employment situation compared to employees without an MB. To answer the main research question of this paper, whether the staffing process in the FA is a potential barrier to ethnic diversity and equal opportunities, the empirical findings of the current survey serve as the groundwork for the present research work.

As mentioned beforehand the secondary data presented and analysed are based on the research results of the DuCS,2019 and the scientific project report which was released in June 2021 (cf.Ette,et.al.,2021).

By comparing the diversity of the employment structure with the working-age population, it will be demonstrated that migrants and their children ('persons with an MB) are underrepresented in the FA. Additionally, to the proportion of the employees with an MB, the DuCS also assesses their employment situation and equal employment opportunity based on seven different indicators, including 1)career affiliation, 2)qualification-appropriate employment, 3)civil service employment, 4)executive positions, 5)promotions, 6)part-time employment, and 7)temporary employments. The latter analysis of the data reveals that minorities in the FA are in worse employment situations compared to employees without an MB thus face inequalities in career opportunities.

2.1. Empirical findings of the representation of employees with a migration background in the Federal Administration

In many member states of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), regular employment surveys in the PS are an important part of HRM practice (DuCS,2019) whereas, in Germany, there have been only two employee surveys concerning the FA to date (namely,Ette,et.al.2016 and DuCS,2019).

The DuCS (2019) encompasses representative data collection on the ethnic diversity of employees and simultaneously constitutes the first-ever conducted employee survey on intercultural diversity (Ette,et.al.,2021). The representation of minorities is examined through the underlying concept of MB (as described in Chapter 1)serving as an instrument to measure cultural diversity in the FA. The surveyed share of employees with an MB is compared with the comparative unit of the structure of the working-age population, based on the 2018 micro census data (Ette,et.al.2021). The latter is an official statistic and is based on an annual household survey conducted jointly by the states and the Federal Statistical Office (cf.Statistical Federal Office,2021). The cultural diversity in the FA is also compared with the employment structure of the private sector in terms of representation, but also in terms of professional qualifications.

To determine the MB, the survey encompassed the official questions utilised by the micro census. The categorisation of MB in the research study distinguishes between citizenship (German vs. non-German); the migrant generation (the first generation with own migration experience vs. the second generation without own migration experience) and region of origin based on country of birth (EU member state vs. third country) (cf.Ette,et.al.2021).

Figure 1: Employees with a migration background in the Federal Administration, public administration, public service und private economy, in per cent (Ette, et al.,2021).²

	Federal Administration (DuCS)	Public Administration (MZ)	Public Sector (MZ)	Private Sector (MZ)
Total employees	100,0	100,0	100,0	100,0
Thereof:				
• Employees without MB	88,0	90,4	86,0	73,8
Employees with MB	12,0	9,6	14,0	26,2
Total employees with MB	100,0	100,0	100,0	100,0
Thereof:				
First migration generation	35,7	56,7	68,2	76,3
Thereof:				
▪ Foreigners	6,0	19,2	30,9	45,2
▪ Germans	29,3	37,5	37,3	31,1
Thereof:				
(Late) repatriates	13,8	20,4	19,5	16,5
Second migration generation	64,3	43,8	31,8	23,7
Thereof:				
▪ Foreigners	2,8	5,4	5,3	7,3
▪ Germans	60,8	38,3	26,5	16,5
Total employees with MB	100,0	100,0	100,0	100,0
Thereof:				
▪ Member state of the EU	52,6	45,8	44,8	41,6
Thereof:				
State entered the EU before 2004	-	19,6	18,3	15,9
State entered the EU after 2004	-	26,3	26,6	25,6
▪ State outside the EU	45,4	54,2	55,2	58,4
Thereof:				
Rest of Europe	-	25,4	26,5	29,9
Asia	-	17,1	17,3	19,2
Rest of the world	-	11,7	11,4	9,3

The survey results of the DuCS (2019) reveals that a total of 19,000 people, thus 12% of employees, have an MB (DuCS,2019). The comparative value with the working-age population with an MB for 2018 is 27.1% (Ette,et.al.,2021). The cultural diversity of the FA lags significantly behind the private sector, which has a share of employees with an MB of 26.2% (cf.Figure1). These findings underline that the state, in its function as an employer, is not living up to its role model function regarding ethnic diversity. On the contrary, the private sector shows an exemplary progression of intercultural diversity. The low number of employees with an MB overall of 12% allows conclusions to be drawn about systemic discrimination and disadvantages(Ette,et.al.,2021). Moreover, the results of representation and the disadvantaged employment situation of migrants cannot be reconciled

² Explanatory note Figure 1 (Employees with migration background in federal administration, public administration, public service und private economy :The area 'Public Administration' includes the core area of the public service, namely public administration and public security. The data for the federal administration is based on the Diversity and Equal Opportunity Survey (DuCS,2019). Discrepancies in the results for the federal administration based on the DuCS 2019 result from missing data and correspondingly not clearly identifiable migration background (MB). The data on public administration, the public administration and the private sector in Germany as a whole are based on the data of the Microcensus (MZ) (Ette,et al.,2021, original presentation of the tables and figures in German ibid).

with the strict rules and regulation of the meritocratic staffing process suggesting weaknesses in its implementation and loopholes in the legal framework (including deficiencies in anti-discrimination protection).

A closer look at the categories of the employees' MB shows that of the 12% of employees(100%), only 35.7% are first-generation migrants, thus have their own migration experience, while 64.3% of employees are migrants who were born in Germany and thus represent the second generation of migrants (cf.Figure1,DuCS,2019). The ratio of migrant generations employed in the private sector is reversed, 76.3% of the employees are first-generation immigrants and 23.7% of the workforce belong to second-generation migrants (cf.Ette et al.,2021).

The study also illustrates the differentiated structure of employees with an MB in terms of their origin from an EU member state and a third country. The survey of employees on their place of birth and the place of birth of their parents (differentiated by EU/non-EU state) shows that 52.6% of employees in the FA with an MB or their parents were born in an EU member state, while 45,4 % of the minorities are originated from a third country. Compared to the private sector, the proportion of employees from third countries outside the EU is higher at 58.4% (Ette,et al.2021). The share of foreign employees (first and second-generation migrants) is only 8.8%, of which more than two-thirds are originated from an EU country (not displayed,cf.Ette,et.al.2021). Another difference in the personnel structure of the FA concerns the group of (late) repatriates, making up 13.8% of employees with an MB, whereas the private sector has a share of 16.5% (cf.figure1). In the civil service, on the other hand, 19.5% and in PA in general 20.4% of employees with an MB are (late)repatriates (cf.Ette,et.al.2021).

2.2.Empirical findings on the employment situation of employees with a migration background in the Federal Administration

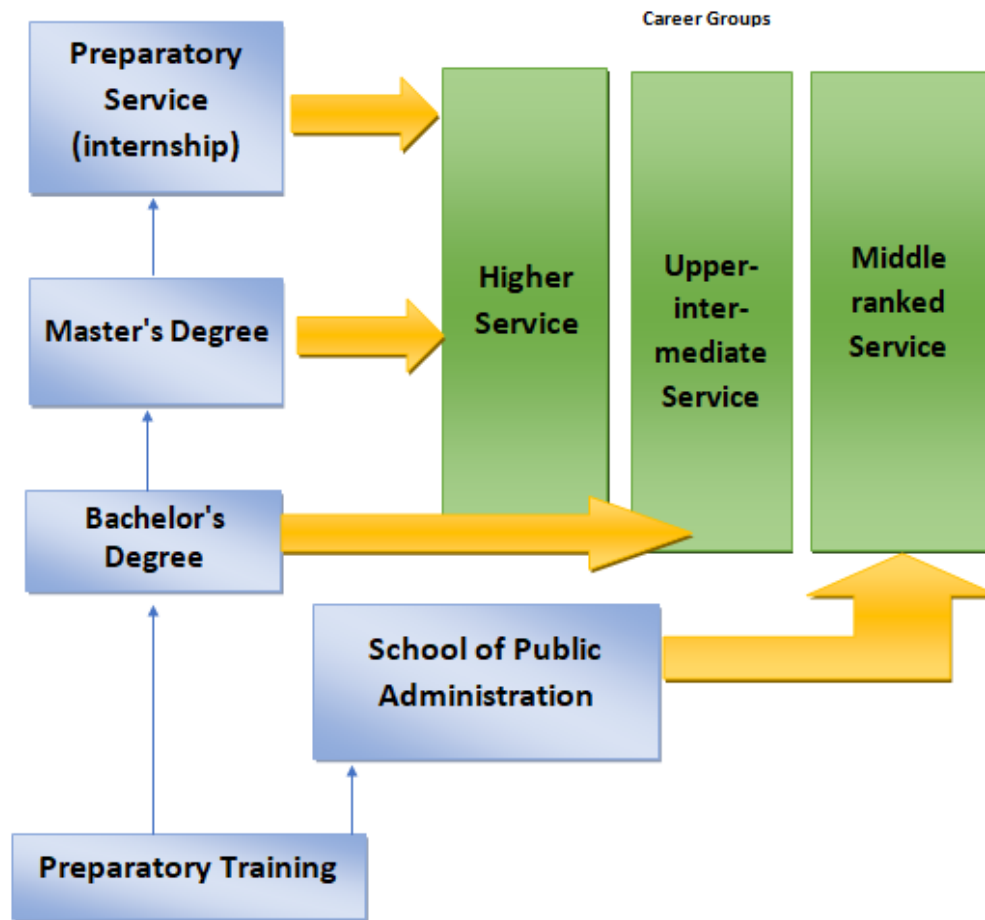
The inequality of opportunity for employees with an MB is also mirrored in the employment situation and career opportunities, which will be presented on grounds of the statistical findings along with the assessed indicators. Based on the data of DuCS,2019, the research report (Ette,et.al.,2021) found that employees with an MB have fewer career opportunities than their colleagues without an MB, are promoted less frequently and also hold executive positions less frequently (Straube/Ette,et.al.2021). Moreover, the empirical results reveal that migrants are more often employed in the lower career groups, for which they are more often overqualified than their German peers (Figures 3 and 4). Unequal employment situations are also significantly manifested regarding the proportion of civil servants and temporary employment (Figures 7 and 13). These employment relationships are atypical for the PS, especially the FA, which is characterised by civil servant status and permanent employment relationships.

In the following, the findings of the employment situation are presented in detail.

2.2.1. Representation of employees in the hierarchical career groups

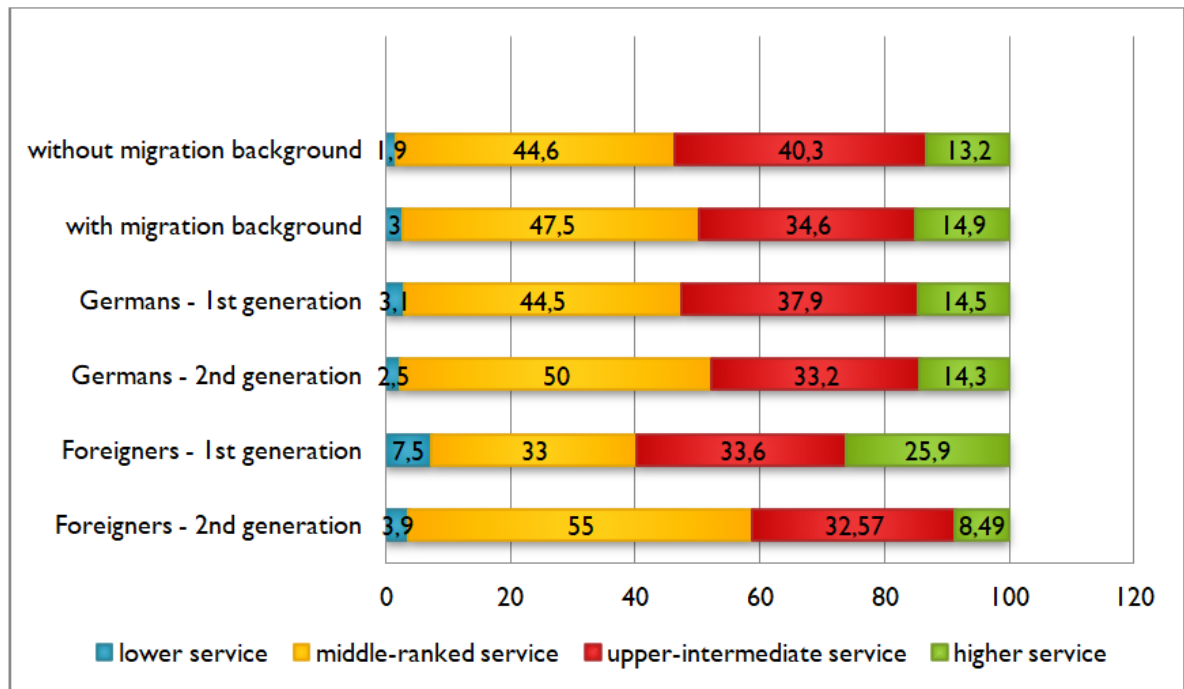
The career pathways of civil servants (and partly employees subject to collective agreements) at the federal level are divided into four career groups reflecting a hierarchical level within the respective organisations (cf.BMI,2020b). These categories, namely the lower service, the middle-ranked service, the upper-intermediate service and the higher service, represent clearly defined segments of the internal state labour market (Becker, 1990,cf.Figure 2, without lower service).

Figure 2: Access to the German Public Service (Fischer,2018)



The Federal Career Path Ordinance (*ger. Bundeslaufbahnverordnung*, hereinafter: BLV) stipulates uniform minimum standards regarding the required educational qualification for the recruitment to the respective career groups: As a prerequisite for employment in the lower service, for example, a secondary school diploma and a completed vocational training are required, whereas the employment in the upper-intermediate service requires a university entrance qualification (similar to the GCSE in the UK) and a bachelor's degree (cf., Fischer, 2018; BMI, 2020b). Recruitment to the higher service imposes the highest level of education on candidates as a minimum standard requirement, namely, a master's degree or an equivalent qualification, for example, a state examination or university diplomas as illustrated in Figure 2 (BMI, 2020b). The differentiation of the career groups underlines the vertical division of the administration in terms of rank, professional status and income (cf. Staub/Ette, 2021). Different job requirements and remuneration go hand in hand with the career groups and thus also determine the social status and life chances of the person concerned.

Figure 3: Affiliation to the career groups considering migration background as well as differentiated by citizenship and succession of generations - in per cent (Ette,et al.,2021)



Note: n=44.239. The data is weighted according to the number of employees in the federal authorities.

Figure 3 elucidates that employees with a MB are employed in significantly lower career positions compared to employees without a MB. Overall, 50,5% of the employees with a MB are represented in the lower and middle-ranked service, while some lower representation emerges for the upper-intermediate service and the higher civil service. Consequently, a pattern of employment in lower career groups emerges among migrant employees in the FA, with second-generation foreigners most significantly affected, whereas first-generation foreigners show no significant difference in career positioning within the career groups compared to the employee without a MB(cf.Straub,Ette,2021). Straub notes that a more in-depth analysis regarding the generational affiliation of migrants underlines that first-generation employees with German nationality are more often represented in the lower and middle-ranked-service compared to the second generation with German nationality, but less often in upper-intermediate and higher service. The opposite relationship is visible among migrants with foreign citizenship, where first-generation employees are less often represented in the lower and middle but more often in the upper-intermediate and higher service (2021).

2.2.2. Qualification-adequate employment

After the affiliation of employees to the various career groups has been presented regarding their MB, the question of the qualification-adequate employment of minorities will be discussed. The assessment of the usability of educational qualifications essentially provides insights into equal job opportunities of employees with an MB (cf.Straub/Ette,2021).

Since the career groups constitute clearly defined minimum requirements for professional qualifications as illustrated above, it can be determined whether the employees with an MB are employed according to their qualifications. By comparing the educational qualification of the employees with the objective minimum requirements of the career path a conclusion can be drawn as to whether migrants are hired according to their qualification levels.

The focus of the assessment is on the issue of overqualification, as this means considerable disadvantages for the employee, including the lower demands of the job task and economic losses due to a lower salary and thus indicates lower equal opportunities (Straub/Ette,2021).

The study questionnaire collected data on the career groups of the employees and the educational qualifications that the respondents had acquired (cf.DuCS,2021). In the first step, a general comparison of the career groups and the educational qualifications will be presented allowing an overview of (in) adequate employments in the FA. (cf.Figure 4).

Figure 4: Qualification-adequate employment in the federal administration according to educational attainment and career group, in column percentage (Ette,et al.2021)

	Lower service	Middle-ranked service	Upper-intermediate service	Higher service
No degree	17,9	9,0	5,1	1,1
Finished vocational education	75,6	82,1	14,5	0,6
Polytechnic degree	2,5	5,9	58,0	5,7
University degree	4,1	3,0	22,4	92,7

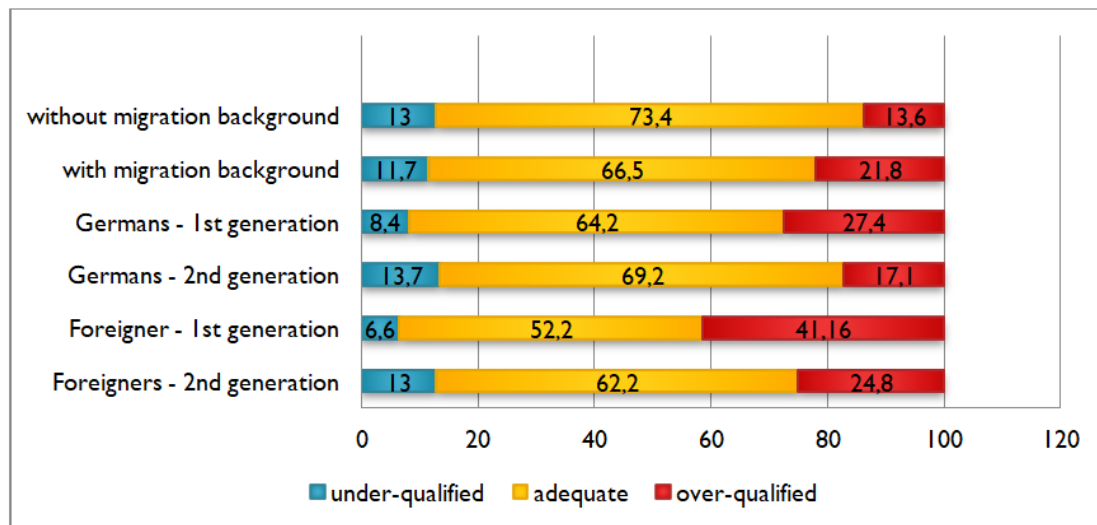
Note: n=44,363. The data is weighted according to the number of government agency employees.

Explanation: red = over qualified, blue = adequately qualified, yellow = under-qualified

The blue column in Figure 4 clarifies that the majority of employees in the FA are employed in career groups according to their level of qualification in the individual career groups, the majority of employees are employed according to their qualification level except for the lower service. Even though the access requirement for the lower service is a school-leaving certificate, 82,2% of employees have at least completed vocational training or have a higher vocational qualification as displayed in the first column of Figure 4 (in yellow).

Figure 5 (below) provides detailed information on the ratio of adequate employment within the individual employment groups.

Figure 5: (In-) adequate employment according to migration background as well as differentiated by citizenship and succession of generations (Ette,et al.,2021)



Note: n=44,357. The data is weighted according to the number of government agency employees.

A detailed consideration of adequate employment within the employment groups reveals a higher proportion of overqualified employees with an MB with 22% compared to their peers without an MB with a share of 14% (Figure 5).

Significant differences are particularly visible among employees with an MB concerning nationality and generation. The rate of overqualified employment is highest among first-generation foreigners, at 41%. Consequently, overqualified employment is three times more common among first-generation foreigners than among employees without an MB(cf.Straub,2021). A high share of 27% of overqualified employment can also be observed among first-generation Germans (cf.Figure5).

The pattern of overqualified employment is evident even among second-generation migrants, with 17% among Germans and 25% among foreigners, although these migrant groups are almost certainly to have acquired their educational qualifications in Germany.

Multivariate calculations by the authors of the research study (Straub/Ette,et al.2021) elucidate that the probability of employees being overqualified is six percentage points higher than for colleagues without an MB(cf.Annex I). Furthermore, figure 6 elucidates that first-generation foreigners are 14 percentage points more likely to be overqualified.

Figure 6: Results of the logistic regression on overqualified employment
(Reference adequate and underqualified employment) (Ette,et al.,2021)

	AME	SE
Migration background (Ref.: without)		
Germans 1 st generation	0,063***	0,005
Germans 2 nd generation	0,001	0,003
Foreigners 1 st generation	0,143***	0,012
Foreigners 2 nd generation	0,018	0,013
Gender (Ref.: male)		
Female	0,012***	0,002
Diverse	0,153***	0,023
Affiliation to authority (Ref.: >=30 years)		
<2 years	0,199***	0,004
2-4 years	0,170***	0,003
5—9 years	0,104***	0,003
10-19 years	0,060***	0,003
20-29 years	0,032***	0,002
Pseudo R ²		0,083
Log likelihood		-55.444,765
N		42.647

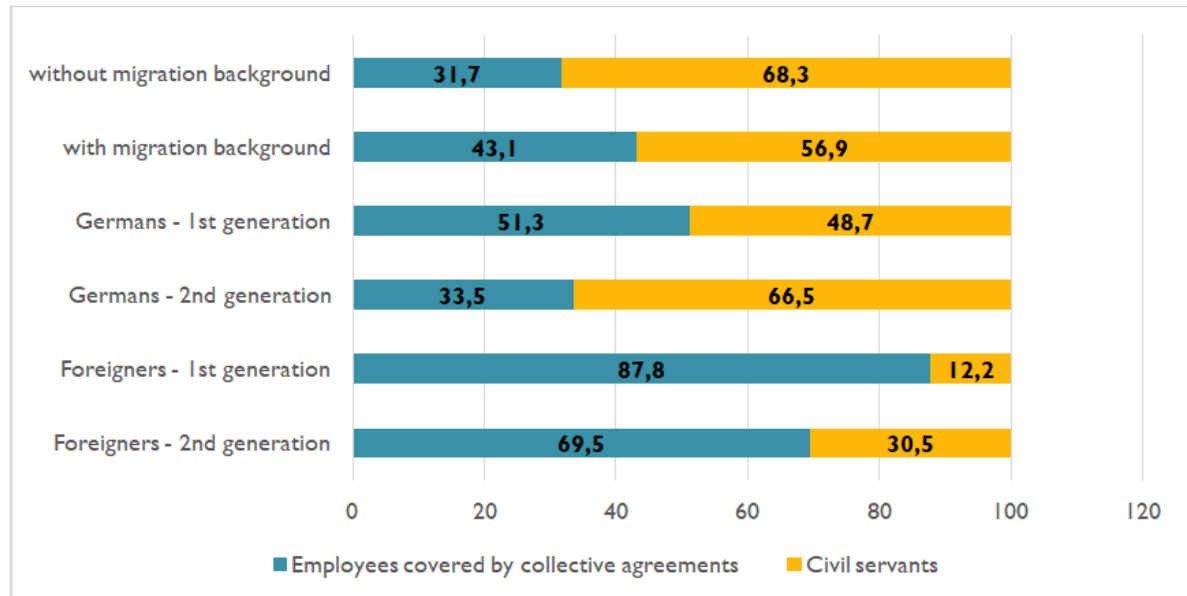
The data is weighted according to the number of government agency employees. On display are average marginal effects (AME) as well as standard errors (SE). Significance level: * p < 0.05, ** p < 0.01, *** p < 0.001. Controlled according to authority affiliation (not displayed)

2.2.3. Representation of employees in civil servant positions

The appointment to the civil service in the German PS is linked to certain access requirements inter alia the German nationality or the nationality of an EU member state, including Iceland, Liechtenstein, Norway, and Switzerland)' (BMI, 2020c).

Noteworthy, the formal requirement of citizenship is shaped differently by various service relationships, for example, the office of judge and the employment relationship of soldiers are exclusively linked to German citizenship. (cf. Ette, et al., 2021). While civil servants have a public-law employment relationship for life, the employment relationship of employees covered under a collective agreement (*Ger. Tarifbeschäftigte*) is based on a private-law employment contract (cf. Fischer, 2018). Consequently, there are no restrictions of employment for non-German citizens at the same time they can be dismissed under private law (Fischer, 2018). Apart from the interminability, the civil servant status gives rise to further privileges associated, including health care, dismissal protection to pension regulations (Tabbara, 2013). Therefore, the employment relationship under public law is not equivalent to the employment relationship under private law in the PS, both in legal terms and in terms of social status (cf. Tabbara, 2013).

Figure 7: Civil servants and employees covered by collective agreements according to migration background as well as differentiated by citizenship and succession of generations (cf.Ette,et al.,2021)



The study revealed, that employees with an MB are less likely to hold civil servant positions than their peers without an MB as illustrated in figure 7. While 68.3% of the latter employment group are civil servants, only 56.9% of minorities can claim civil servant status. However, there are significant differences between the migrant groups. While the German employees of the second generation differ only slightly from the employees without an MB, there is a significant difference among the remaining migrant groups according to their generation and nationality (Straub/Ette,2021). First of all, it is noticeable that the first-generation of foreigners has the smallest representation among civil servants with only 12.2%. Also, low represented is the second generation foreigners at 30.5 % and the first generation Germans at 48.7% compared to employees without an MB.

The authors of the study argue that the low representation of first-generation foreigners (12,2%) is due to the formal requirement of citizenship (Ette,et.al.2021). However,on closer examination, this argumentation may not be sufficient to explain the difference between the first and second generation of foreigners, without differentiating who obtains the formal access requirement based on the citizenship of an EU Member State, Iceland, Liechtenstein Norway or Switzerland. The utilised questionnaire for the present survey (DuCS,2019), encompasses data collection concerning EU citizenship, yet this data was not analysed in the context of the proportion of EU citizens with a civil servant status. Having regard to the fact that more than two-third of all foreign employees hold EU member state citizenship³ and given that EU citizens have a legal right to access civil servant status under EU law, the results are more surprising than plausible.

Except for a few special legal restrictions, EU citizens are entitled to equivalent employment as nationals of the Member State concerned. Since the civil service relationship differs from employment under the collective agreements due to the privileges provided for German civil

³ The percentage refers to the total number of employees with migration background, without a differentiation made as to which category of migrant background they belong to, namely first migration generation (Germans, foreigners) / second migration generation (Germans/foreigners),cf. figure 7.

servants, the employments are not equivalent. If it regularly employs its nationals as civil servants in this area, it cannot refer the other EU citizens to employment in a different employment relationship.

The argumentation of the lack of entry requirements due to a foreign nationality may also not explain the differences in the shares of civil servant status of first-generation Germans, which at 48.7% are still clearly behind employees without an MB.

The descriptive findings of multivariate analyses confirmed, that employees with an MB are on average three percentage points less likely to be civil servants compared to employees without a MB (Annex I; Ette, et al., 2021). First-generation foreigners in particular show a clear difference and, on average, are almost 33 percentage points less likely to hold a civil service position than employees without an MB. All other migrant groups also have a significantly lower average probability of being employed as civil servants (Ette, et al., 2021).

Straub, takes particular account here of interaction effects between gender, career pathway and length of service and concluded, that employees in lower career pathways have a lower probability of becoming civil servants (Straub/Ette, 2021). Accordingly, employees in the lower civil service are on average 52 percentage points less likely to become civil servants compared to employees in the higher civil service (Straub/Ette, et al., 2021). The latter finding constitutes an additional factor that highlights the inequality for minorities, as in the lower career groups the non-appointment of staff as civil servants have an even more serious economic and social impact and lead to additional disadvantage than non-appointment in the higher career groups. While a civil servant position in the lower career groups has higher financial advantages compared to the private sector the opposite is the case for employees with high qualifications and in higher career groups (Tepe&Kroos, 2010). This is due to the moderate wage differences between the career pathways. Hence, low or middle-income groups would earn considerably more in the PS (Tepe&Kroos, 2010) as only taxes and no social security contributions are deducted from the salary of a civil servant. Consequently, the findings represent an additional indicator to underline the disadvantage for employees with economic and social losses for minorities in the FA.

Figure 8: Results of the logistic regression concerning the civil servant status (reference: employees covered by collective agreements) (Ette,et al.,2021).

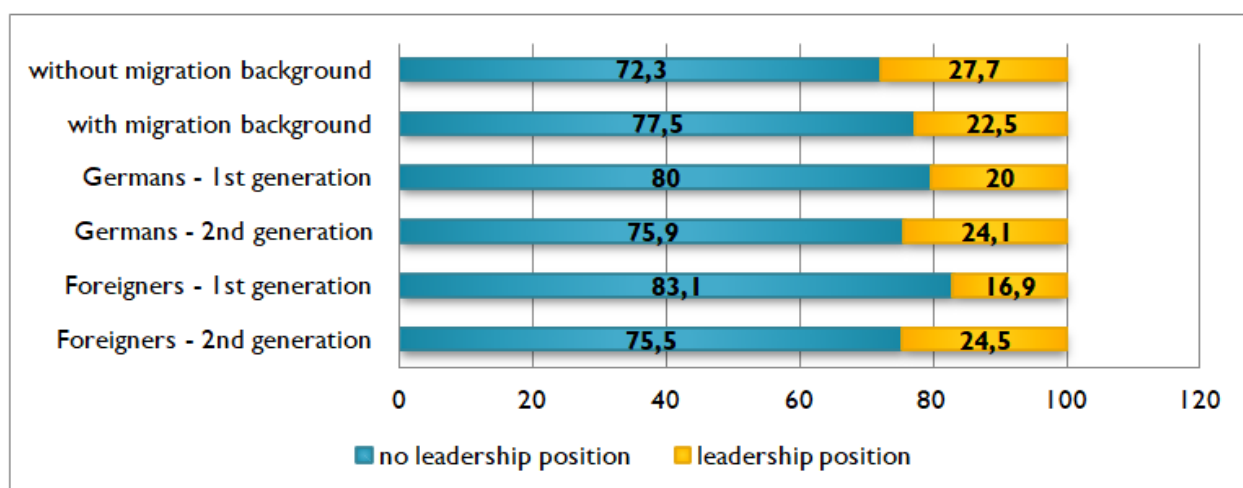
	AME	SE
Migration background (Ref.: without)		
Germans 1 st generation	-0,061***	0,005
Germans 2 nd generation	-0,013***	0,003
Foreigners 1 st generation	-0,330***	0,016
Foreigners 2 nd generation	-0,215***	0,018
Gender (Ref.: male)		
Female	-0,089***	0,002
Diverse	-0,123***	0,019
Career group (Ref.: Higher service)		
Lower service	-0,515***	0,008
Middle-ranked service	-0,248***	0,002
Upper-intermediate service	-0,074***	0,002
Authority affiliation (Ref.: >=30 years)		
<2 years	-0,267***	0,004
2-4 years	-0,095***	0,003
5-9 years	-0,049***	0,003
10-19 years	-0,035***	0,003
20-29 years	-0,017***	0,003
Pseudo R ²		0,387
Log likelihood		-60.794,208
n		44.718

Note: The data is weighted according to the number of government agency employees. On display are average marginal effects (AME) as well as standard errors (SE). Significance level: * p < 0.05, ** p < 0.01, *** p < 0.001. Controlled according to authority affiliation (not displayed)

2.2.4. Executive roles

The data analysis of the study revealed that employees in the FA without an MB occupy a higher proportion of executive positions (27.7%) compared to their colleagues with an MB, whose proportion of representation in leadership positions is 22.5% (cf. Figure 9, DuCs, 2019). Again, a differentiated view among migrant groups shows that the lower share of representation of managers is significantly lower among first-generation migrants, namely foreigners and Germans, at 16.9% and 20% respectively (Straub/Ette, 2021, cf. Figure 9). The latter is also confirmed by the in-depth analyses, as figure 9 demonstrates.

Figure 9: Executive position according to migration background as well as differentiated by citizenship and succession of generations (Ette, et al., 2021)



Note: n=44.744. The data is weighted according to the number of government agency employees.

Other factors, such as gender, career group, length of service and civil servant status between employees with and without a MB do not play a considerable difference in the exercise of the leadership position (cf. Annex II). However, it was found that employees without and with a MB (regarding first and second-generation Germans) are most likely to hold a leadership position if they have been employed for less than two years (Straub/Ette, 2021). This may be explained by the recruitment practices of the FA, which tend to recruit its managers primarily through new hires and less through the promotion of employees (Straub/Ette, 2021).

Figure 10: Results of the logistic regression taking an executive position (reference: non-executive position) (Ette,et al.,2021)

	AME	SE
Migration background (Ref.: without)		
Germans 1 st generation	-0,021***	0,006
Germans 2 nd generation	0,002	0,004
Foreigners 1 st generation	-0,033*	0,014
Foreigners 2 nd generation	0,035	0,021
Gender (Ref.: male)		
Female	-0,062***	0,002
Diverse	0,112***	0,027
Career group (Ref: higher service)		
Lower service	-0,361***	0,009
Middle-ranked service	-0,424***	0,004
Upper-intermediate service	-0,221***	0,004
Authority affiliation (Ref.: >=30 years)		
<2 years	-0,156***	0,004
2-4 years	-0,132***	0,004
5-9 years	-0,095***	0,004
10-19 years	-0,042***	0,004
20-29 years	-0,036***	0,003
Official status (Ref.: employees)		
Officials	0,031**	0,003
Pseudo R ²		0,128
Log likelihood		-78.508,118
N		43.955

Note: The data is weighted according to the number of government agency employees. On display are average marginal effects (AME) as well as standard errors (SE). Significance level: * p < 0.05, ** p < 0.01, *** p < 0.001. Controlled according to authority affiliation (not displayed)

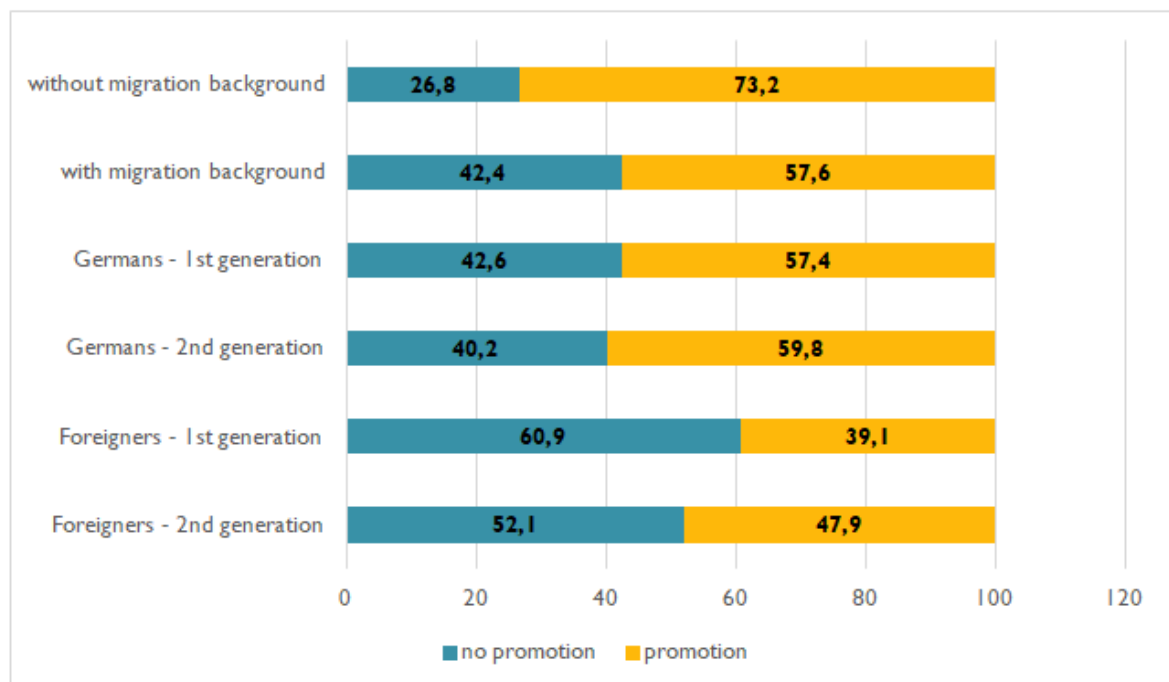
2.2.5. Promotions

Working in the PS offers a crisis-proof job and thus social security (cf.Ette,et.al.,2021). Bonus payments and financial rewards for outstanding performance as in the private sector do not exist per se. Job security and flexible working arrangements (part-time or telework), and flexible working hours (good work-life balance) may be factors that make employees accept a standardised wage structure (cf.Tepe and Kroos,2010). Promotions are accompanied by a salary increase and bring economic benefits as well as a strengthening of social status. In addition, the higher pay and promotion in the hierarchy also increases the social security of the employee. The unequal opportunities of minorities are particularly evident through the promotion indicator. The reason for this is that a promotion is preceded by a performance review. This in turn is particularly vulnerable to

appraisal errors, which can be riddled with stereotypes, (unconscious) bias, the similar to me effect and also unlawful discrimination (as will be discussed in Chapter 3). As displayed in figure 11, employees without an MB are promoted more often (73,2%) compared to their peers with an MB(57,6%).

First-generation foreigners are promoted least often at 39%, followed by second-generation foreigners at 47.9%, while first- and second-generation Germans are promoted at 57.6% and 57.4% respectively (cf.Ette/Staub,et.al.2021). The findings underline that the privileging of promotion among migrants is based on nationality. This result cannot be reconciled with the performance principle and suggests that biased performance evaluations (appraisal errors,as discussed below) cannot be ruled out. An explanatory approach with human capital factors is likely to fail because first-generation Germans also have their own migration experience. This is supported by the descriptive findings revealing that the first generation migrant workers with German citizenship are almost 3 percentage points more likely to be promoted compared to second-generation workers (cf.Ette/Straub,2021).

Figure 11: Promotions according to migration background as well as differentiated by citizenship and succession of generations (Ette,et al.,2021)



Note: n=44.091. The data is weighted according to the number of government agency employees.

The descriptive findings were verified by controlling for gender and length of service (Ette/Straub,2021,cf.Figure12;Annex II). The results show that employees with a MB are 2 percentage points less likely to be promoted, especially for second-generation migrants (Ette/Straub,2021). The insignificant differences between employees of the first generation of migrants and employees without MB are explained by controlling for the duration of employment, as

the first generation is employed for a comparatively shorter period by the respective authorities. Straub notes that the likelihood of promotion is increased for all migrant groups if they have been employed for more than two years (2021).

Figure 12: Results of the logistic regression about promotions (reference: no promotion)

	AME	SE
Migration background (Ref.: without)		
Germans 1 st generation	-0,003	0,004
Germans 2 nd generation	-0,022***	0,003
Foreigners 1 st generation	-0,011	0,010
Foreigners 2 nd generation	-0,058***	0,015
Gender (Ref.: male)		
Female	-0,055***	0,002
Diverse	-0,060**	0,019
Career group (Ref: higher service)		
Lower service	-0,326***	0,009
Middle-ranked service	-0,106***	0,003
Upper-intermediate service	-0,031***	0,003
Authority affiliation (Ref.: >=30 years)		
<2 years	-0,698***	0,004
2-4 years	-0,587***	0,003
5-9 years	-0,289***	0,004
10-19 years	-0,086***	0,002
20-29 years	-0,037***	0,002
Pseudo R ²		0,366
Log likelihood		-58.094,215
N		43.486

Note: The data is weighted according to the number of government agency employees. On display are average marginal effects (AME) as well as standard errors (SE). Significance level: * p < 0.05, ** p < 0.01, *** p < 0.001. Controlled according to authority affiliation (not displayed)

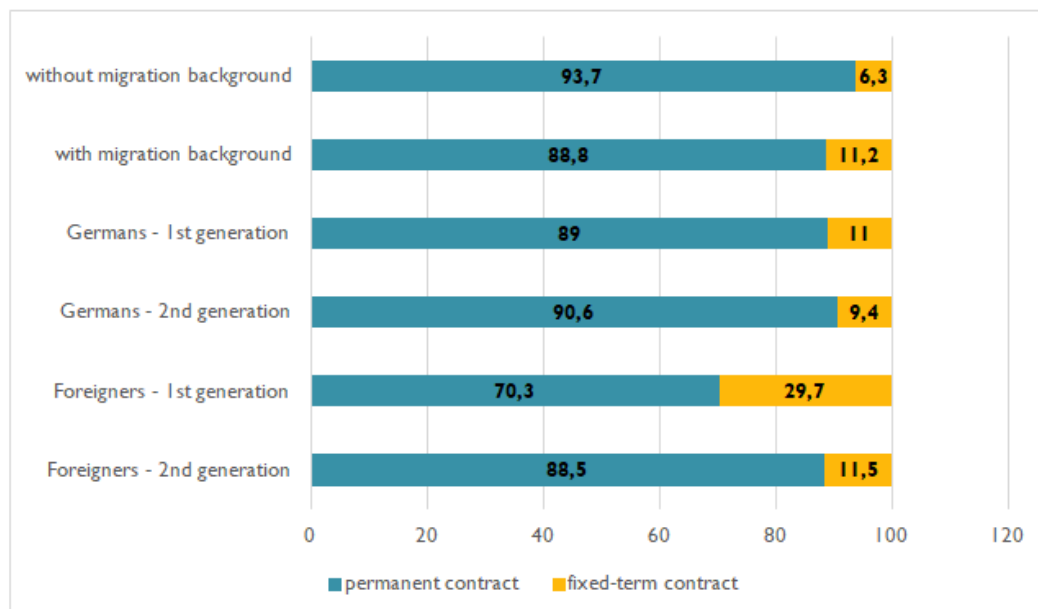
2.2.6. Fixed-term contracts

Besides part-time employment, the atypical employment relationship in the FA encompasses fixed-term contracts (cf. Straub/Ette,et.al.,2021). Although the PS was long regarded as a 'role model employer' that made little or no use of atypical employment relationships compared with the private sector, Keller and Seifert (2014) state that this is no longer consistently the case. Although the reduction in working hours within part-time employment necessarily results in a lower income and may lead to a higher risk of employment stability and social security (cf.Keller&Seifert,2014), it cannot necessarily be classified as a precarious employment relationship due to its voluntary element, particularly in cases where the legal claim has been invoked. In contrast, the fixed-term employment relationship is regularly driven by the unilateral economic interest of the employer to avoid being legally bound by an employment relationship in the long term despite the development of the workload. Hence, the flexibility element only serves the employer, whereas the employee, on the other hand, faces legal uncertainty of a possible extension of the employment relationship or a transfer to a permanent employment relationship which constitutes also the social risk due to the greater, longer-lasting economic and social uncertainty (Keller&Seifert,2014).

Fixed-term contracts can only be implemented in the framework in contracts under the collective agreement (cf.Straub/Ette,2021).

The results of the research study show that employees without MB are least likely to be employed on a fixed-term basis with a share of 6% as illustrated in figure 13.

Figure 13: Fixed-term contracts according to migration background as well as differentiated by citizenship and succession of generations (Ette,et al.,2021).



Note: n=44.365. The data is weighted according to the number of government agency employees.

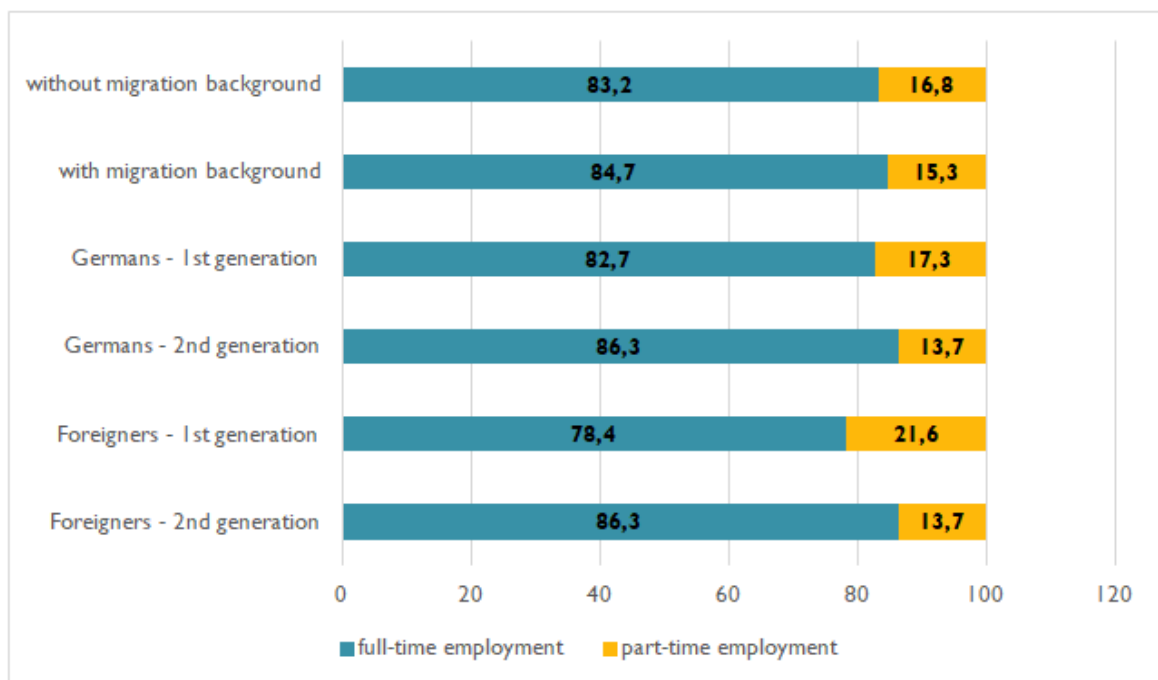
In comparison, employees with a MB are employed on a fixed-term contract with a share of 11%. A nuanced consideration of the migrant groups underlines the significant extent of disadvantages for the first-generation foreigners, who are affected by temporary employments with a share of 30% more often compared to other migrant groups. While every third person in this migrant group

receive a fixed-term contract, the average share of fixed-term employment among other migrants is on average 11% (Figure 14,cf.Straub/Ette,2021)

2.2.7. Part-time employments

In the present case, part-time employment is not suitable as an indicator to identify equal opportunities, since flexible working initiatives follow predominantly voluntarily and are offered as a typical flexibility instrument by the employer (cf.Keller&Seifert,2014). The purpose of the FA's promotion of part-time employment is to provide employees with a form of employment that allows them to reconcile work and private life (work-life balance) (cf.BMI,2014). Employees of the FA are entitled to part-time employment according to the legislation (cf.Art.13(1)Federal Equal Opportunities Act; Section 8 of the Part-time and Temporary Employment Act) which the employer must comply with, 'unless there are compelling organisational concerns (cf.BMI,2014). Therefore, the atypical employment relationship of part-time employment constitutes rather a privilege due to its mostly voluntary implementation on the part of the employee and the necessary affordability of that contractual choice, rather than as an indicator of a lack of equal opportunities.

Figure 14: Full-time employment and part-time employment according to migration background as well as differentiated by citizenship and succession of generations (Ette,et al.,2021)



Note: n=44.324. The data is weighted according to the number of government agency employees.

Due to this privileged contractual arrangement, it is not surprising that the results of the survey (DuCS,2019) reflect that the proportion of part-time employment among employees without a MB is generally higher at 17% than the proportion of part-time employment of employees with a MB (15%)(cf.Figure14). Since this indicator does not reflect the inequality of minorities, findings are not elaborated further (see arg.in:2.2.6).

Chapter 3: The Legal Framework of Ethnic Diversity Management and Inclusion in the Federal Administration

3.1. Introduction

This chapter will focus on the relevant legislation regulating equal opportunity and anti-discrimination in the framework of the public staff selection, and by this, it will deliver an answer to the sub-questions A. to C. as listed under 1.6.

The equal opportunity legislation on different levels have must be considered in light of the legal regulation of the staffing procedure in the PS. The BSP enshrined in the GG allows only meritocratic characteristics to be considered for staff selection and restricts the appointment to the public office for the 'best candidate' on grounds of the evaluated selection criteria, namely, suitability, qualifications and professional performance of the candidate (Art.33(2)GG). Consequently, specific regulations are dictating the recruitment process in the FA.

For this purpose, it is important to understand the nature of the regulations, their scope of protection and its possible weaknesses that may enable potential unequal treatment of minorities in the staffing process of the FA. In the second step, the public staffing procedure is analysed in the framework of contemporary theories on biased decision-making in the hiring process. This is considered to be a necessary intermediate step to analyse the main research question of whether the strictly regulated recruitment process poses potential barriers to ethnic diversity and equal opportunities.

3.2. Equal opportunity legislation

3.2.1. International Law, supranational law and national anti-discrimination law

Anti-discrimination protection is stipulated on a supranational level encompassed by Article 14 of the European Convention on Human Rights (ECHR) is directly applicable with a binding effect for the FRG and its organisations (ADSdB,2015). In the FRG, the protection against discrimination was significantly promoted by the EU directives. In particular, the EU Council Directive 2000/43/EC ('Race Equality Directive'), the Directive 2000/78/EC, and Directive 2006/54/EC were transposed into German National Law through the enactment of the prior mentioned AGG in 2006, prohibiting discrimination on six grounds, including race and ethnic origin, gender, religion and worldview, disability, age, and sexual orientation (cf.ADSdB,2015). Before the AGG came into force, only Art.3(3)GG stipulated anti-discrimination and ensured equal treatment (*'no one shall be discriminated against or given preference on the grounds of sex, descent, race, language, nationality, origin, creed, religious or political beliefs. No one may be disadvantaged because of his or her disability'*). However, the binding effect did not cover the private sector and thus only protected against state discrimination, including PS employment (SVR,2015). Consequently, individuals had no legal protection against discrimination from civil persons before the AGG entered into force, at the same time anti-discrimination protection was already an individual right in the relation between individuals and state institutions deriving from the binding force of fundamental rights enshrined in the constitution (cf.ADSdB,2015). The latter derives from the RLP stipulated in Art. 20(3)GG.

3.3. The Legal regulations concerning the staffing procedures in the public sector

3.3.1. Best Selection Principle pursuant to Article 33 (2) of the Basic Law

Regardless of whether employees in the public service are hired, promoted, or transferred, the BSP is anchored in Art.33(2)GG which must be observed when selecting personnel. Art.33(2)GG stipulates that 'every German (has) equal access to every public office according to his/her suitability(*Ger.Eignung*), qualifications (*Ger.Befähigung*) and professional performance (*Ger. fachliche Leistung*)'. It constitutes a specific embodiment of the principle of equality (PoE) stipulated in Article 3 GG since the staff selection is restricted to the aforementioned meritocratic attributes prohibiting the consideration of non-meritocratic characteristics comprised by the PoE, namely, gender, descent, race, language, homeland, origin, belief, religious and political beliefs, or disability (cf.Hessen,n.d.).

Consequently, the BSP in the light of the PoE ensures the prohibition of arbitrariness within the staff selection process in the PS. The required criteria of suitability, qualifications and professional performance are intended to guarantee that only the most suitable person is selected for a public office; which is also referred to as the 'performance principle' (DGB,2013). The corresponding provision can also be found in Section 9 of the Federal Civil Service Act (*ger.Bundesbeamtengesetz*, hereinafter: BBG).

The criteria are specified in §2 BLV. *Suitability in the narrow sense* encompasses, in particular, (inherent) 'personality and character traits that are important for a specific office' (§2(2)BLV). This includes, particularly, such character traits that are not covered by the professional performance and qualification, including physical and mental strength which are necessary to fulfil all official and extra-official duties arising from the civil servant relationship (cf.BVerwG,3.3.2011-5C-16.10).

Qualification includes abilities, knowledge, skills and other characteristics that are essential for official use (§2(3)BLV). Qualification is therefore defined by corresponding previous education and specific professional experience as far as necessary to fulfil the task(cf.DB,2019).

The *professional performance* is to be assessed based on the work performance that corresponds to the service requirements. This requires a performance evaluation of the work performance of the employee's practical activities and is particularly relevant for promotions. The performance appraisal encompasses the work results, the practical working method, the work behaviour and the leadership behaviour if applicable(§2(4)BLV).

3.3.2. Formal Procedural Requirements of the Staffing Procedure

The staff selection procedure in the PS begins with the determination of the requirements profile of the vacant position encompassing information about the desired skills that the candidate needs for the position to be filled. The latter is a mandatory prerequisite for the legal execution of BSP as the criteria stipulated in the requirements profile serve to select the best candidate(DB,2019). Noteworthy, the criteria defined in a requirement profile must be determined before the job posting and must apply for the entire duration of the selection process (DB,2019). Errors in the requirements profile generally lead to the selection procedure being flawed since the decision in the selection procedure is then not based on the BSP but extraneous deliberations (BAG,2015).The BSP applies for both, civil servants and collective bargaining employees (cf.BVerfG 22.2.2011).

The performance appraisal forms the most important basis for the decision among several candidates eligible for promotion and internal appointments (cf.DBB,n.d) The 'Guideline for the

appraisal of civil servants in the portfolio of the Federal Ministry of the Interior' (*hereinafter BRL*) regulates the appraisal procedure, including the appraisal criteria, the standard of the appraisals, and the grading scale for federal organisations subordinate to the division of the Federal Ministry of the Interior except the Federal Police(cf.BRL). Although different guidelines may be implemented in other ministries and their subordinate departments, *'the principle of selection of the best applies without restriction and exception'* to all staffing procedures in the PS of the Federal Republic (Maties,2018).

3.4. The best selection principle as a potential cause of ethnic inequality?

3.4.1. Appraisal Errors in the Framework of Performance Reviews

As mentioned above, the performance appraisal is the employer's most important instrument in the preparation of promotion decisions as well as in the context of personnel development (cf.DBB,n.d.;1.2.BLV). At the same time, the appraisal serves to satisfy the BSP. According to 1.1. BRL, the purpose of the performance evaluation *'is to provide a meaningful, objective and comparable picture of the employee's performance and, as far as possible, to make statements about the general skills and knowledge that have become apparent.'* Based on the personal impression of the supervisor individual performance characteristics are evaluated by utilising a grading scale, which is then calculated into an overall grade (4.4.(1)BRL). The highest grade 9 refers to 'consistently outstanding performance', while the lowest grade 1 means that the appraisee 'does not meet the job requirements in any way' (cf.4.4.BLR). Additionally, 4.4.(1) BRL stipulates a forced distribution of the highest grades, restricted to 10% and 20%,respectively.

Scholars and practitioners argue that the fairness of performance review outcomes is compromised by appraisal errors on grounds of the subjectivity of their implementation (Armstrong,2020;Mackenzie,2019). Notwithstanding its aim of presenting an objective picture of the employee's performance and complying with the performance principle, appraisals contain value judgments (cf.DBB,n.d.;1.2.BRL). Consequently, they are equally exposed to potential appraisal errors identified in research which will be presented in the following. In the second step, the vulnerability of civil servant performance reviews to appraisal errors will be assessed considering the legal and procedural framework of the federal administration.

3.4.1.1. Appraisal errors impacting ethnic diversity

Bias errors could come in different varieties, such as the so-called 'halo effect' (positive bias) and 'horn effect' (negative bias), where the evaluation of an employee's performance is based on one or a few impressions of the evaluator affecting the evaluation of all other characteristics and criteria (Blickle,2019). These appraisal errors can affect all appraisees equally and are not related to a characteristic protected by the AGG. For the purpose of this dissertation, the focus of the presentation will be on possible evaluation errors that have an impact on ethnic diversity, including stereotypes and the illegal discriminatory bias, the similarity error and potentially the distribution error.

a) Stereotypes

One of the possible sources of error based judgmental deception impacting ethnic diversity are, stereotypes, where the rater's *'individual beliefs (cognitive schema and expectations) of a group characteristics are applied to minorities (ethnic minorities, disabled individuals, etc. which are typically negative (but not necessarily) in nature.'*(Derous&Ryan,2017). Stereotypes lead to discrimination and are also referred to as illegal discriminatory bias when protected groups of anti-discrimination legislations are concerned (Derous&Ryan,2017, Mallela,2016). The assignment to stereotypes is often unconsciously associated with a higher evaluation of performance or with a devaluation of performance and skills and thus does not reflect the actual performance of the appraisee (cf.Landesverwaltung,Niedersachsen,2007).

b) Similarity Error

The similarity error may undermine ethnic diversity and equal opportunities, particularly regarding promotions to leadership positions, where an executive 'oversees the factual performance of employees' but rather base the performance review on identified similarities in behaviour, personality, background, race and ethnicity to the rater leading to a better appraisal (cf.Mumtaz,2018). The latter derives from the cognitive process that 'perceptions of similarity automatically induce interpersonal attraction' leading to a homogeneous workforce as it can be observed in the case in the FA (cf.Derous&Ryan,2017). The homogeneity of the workforce is reflected in particular in the higher career groups of the federal authorities, as the results of the current research study on Diversity and Equal Opportunities (DuCS,2019) demonstrate (see Chapter 3, cf. DuCS,2019).

c) Distribution Error

A further common appraisal error identified in the performance management literature is the so-called distribution error reflected in the severity error, central tendency and leniency error (cf.Mumtaz,2018;Black,et.al.,2019). The severity error refers to the tendency of the appraiser to rate the majority of employees below average (Black,et.al.,2019). The tendencies of the raters towards severity are characterised by the fact that good performance is considered the rule whereas the threshold for outstanding performance is set considerably high resulting in a downward shift of the assessment results by devaluating appraisees' performance (Landesverwaltung,Niedersachsen,2007). The central tendency describes the distribution error where the majority of employees are rated average (Black,et.al.,2019). The assessments are levelled at an intermediate level of performance by not exhausting the scale of ranks. This tendency usually follows from the assessor's caution to avoid extreme and differentiated statements and ultimately leads to a devaluation of good performance and an upgrading of poor performance (Landesverwaltung,Niedersachsen,2007). The leniency error refers to the tendency of raters to rate performances mainly above average (Black,et.al.,2019) and is characterised by the intention of the rater not to dissatisfy the appraisee on grounds of a realistic assessment which may lead to the loss of employee engagement and motivation (cf.Landesverwaltung,Niedersachsen,2007). In this case, the readiness to perform is subject to the appraisal rather than the performance itself. Such an assessment behaviour leads to a shift in the assessment results into the area of the top grades and thus leading to very few differentiated and insignificant assessment results (Landesverwaltung,Niedersachsen,2007).

3.4.1.2. Appraisal errors of civil servant performance reviews in the Federal Administration concerning inequalities in the framework of promotions and internal staffing

The vulnerability of performance reviews of civil servants (and collective bargaining employees) to appraisal errors has been emphasised in the working guide of the state administration of Lower Saxony which rightly points out: *'the basis of any assessment of work performance is the observation of people by people. Unconsciously, when observing, interpreting, and evaluating the behaviour of others, we are influenced by our personal value systems, experiences, expectations, and (role) perceptions.'* Despite all the subjective elements that play a role in an assessment as an act of evaluative cognition, it nevertheless remains the goal of a new assessment system to arrive at assessment results that are as objective, non-discriminatory, and thus differentiated as possible (Landesverwaltung, Niedersachsen, 2007).

Since the FA implements a forced-distribution system, performance reviews are considerably vulnerable to distribution errors, particularly the central tendency error. The forced distribution only refers to the highest performance marks, namely 9 and 8, whereas the rest of the rating range is not restricted suggesting a strict assessment of high performance and a central tendency for the majority of the evaluation. Statistical data on the appraisal rates of civil servants in the state of Baden-Württemberg supports this assumption, as about two-thirds of the civil servants (67.3%) who have been appraised in the past three years have been rated average, namely performing as expected, whereas 33% are performing above the performance expectations, 5,2% of them even exceed them "to a particular degree". Only one in two hundred (0,5%) perform poorly (Wetzel, 2018). Additionally, it is argued, that such an assessment model, especially with the limitation of best scores, could foster discrimination based on race, gender or nationality (cf. Meyer, 2003).

The performance appraisal in the FA is particularly vulnerable to stereotypes and ethnic bias. A research study conducted within the police authority in Saxony confirmed that performance appraisal in the authority does not necessarily reflect meritocratic aspects, such as suitability and work performance (Beamten-Infoportal, 2020; Rehm, 2020). The police research study identified possible sources of error leading to a distorted assessment procedure and a distorted picture of the results, including the forced ranking system, subconscious and often unintended political considerations, sympathy influences (favouritism) or stereotypical behaviour. Insufficient training in the assessment process and the lack of experience were named as additional causes distorting the assessment process (Beamten-Infoportal, 2020). In many areas and for many staff groups, such as employees on parental leave or staff council representatives, it was found, that appraisals are even constructed retrospectively (cf. Beamtenportal, 2020). These findings are confirmed by the empirical study conducted by Scullen, et al. (2000), revealing that superiors on average only refer to the appraisee's performance, about 30%. Moreover, they estimate that the influence of assessment errors encompasses 40 to 50% of the review outcome (Scullen et al., 2000).

This means that assessment results are determined by influencing factors that are not performance-related (Scherm, 2013), which would constitute a potential violation of the meritocratic BSP, undermining ethnic diversity in the federal administration. Having regard to the employment situation of employees with MB presented in Chapter 2 appraisal errors may be a decisive mechanism for inequality, particular concerning promotions and executive positions. Decisions on

promotions, staff development and management positions are essentially made based on performance appraisals, regardless of other factors such as educational attainment. Thus, the reference to HCT as a possible explanation of ethnic inequality of opportunity concerning some indicators of the employment situation is not compatible with the rules and regulations of the staffing procedure in the FA. Limitations of the HCT in application to FA employments arise at least for the most part concerning promotions, staff developments and internal staffing.

3.4.2. Potential ethnic bias in the application screening process of the recruitment and selection procedure of the federal administration concerning potential access barriers of minorities

The recruitment process of the PS could also be vulnerable to ethnic bias due to the legal framework and practical implementation of the BDP. The examination of candidates' qualifications to hire the best-suited person in the recruitment process (cf. Art. 33(2) GG) requires a subjective judgment decision of the hiring manager which is also vulnerable to bias decision-making.

Since the recruiting process in the public service is embedded in an objective staff-selection process reflecting the BSP for reasons of legal certainty and legal conformity, it can be argued that the risk of ethnic bias within the application screening process may be reduced. This could be the case, where the assessment is linked to a ranking system and where the assessment criteria are described in detail according to the job profile.

Nevertheless, a strongly objectified recruitment procedure, where every requirement is linked to a clear rating system (for example, allocating 3 points for each criterion met in congruence with the job profile, with specified requirements, such as excellent language skills -C1) could also be prone to biased decision-making. The latter derives from the vulnerability of the screening process of applications on several levels as demonstrated by Derous and Ryan through their three-stage model (2017). The established model incorporates theoretical perspectives to explain why 'résumé screening' is vulnerable to biased decision-making and ethnic discrimination (2017). Since the underlying theories of the three-stage model are well-known explanatory approaches in economics, sociology and psychology, they can also be applied to the application screening process impacting the decision-making as demonstrated in the case of the selection procedure below.

The first stage of the three-stage model represents the screening of the applicants' information in his or her application and is referred to as the 'building block of the decision-making' in the screening process (Deros & Ryan, 2017). In this phase, the employer assesses the employee's qualifications that are required for the vacant position (cf. Arrow, 1973; Spence, 1973; Stiglitz, 1975). According to the labour market signal theory, the employer evaluates the future productivity of the candidate based on certain signals provided by the résumé, education degrees, references etc. In the public administration, the application documents of candidates are assessed against the predefined requirements profile in compliance with the jurisdiction to determine the best-suited candidate (i.e. Art. 33(2) of the Basic Law). Derous and Ryan argue, that non-job-related cues such as the applicant's ethnic name may affect the information-processing of the assessor (2017). 'Ethnic cues' in applications can be conveyed, for example, through names (cf. McGurk, 2019) or foreign degrees (Herwig, 2017). The outcome of discriminatory hiring decision-making, particularly regarding name discrimination within the application screening process can be observed all around the world (cf. Zschirnit & Ruedin, 2016; Derous & Ryan, 2017). German research studies confirm these findings,

revealing that a Turkish-sounding name in the German labour market reduces the chance of being invited to a job interview by an average of 14%, for medium-sized and small companies even by 24%, despite the presents of equal qualifications (cf. Kaas&Manger,2012). Furthermore, scholars argue that foreign educational certificates have less signal value than domestically earned degrees (cf. Herwig,2017;Kogan,2012;Reitz,2007). Possible reasons include employers' lack of knowledge about foreign educational credentials and a general quality gap between domestic and foreign education systems (Reitz,2007). Given the difficulties of predicting the productivity of candidates holding foreign educational qualifications (Konietzka&Kreyenfeld,2001), it is assumed that this leads to a devaluation of foreign qualifications and reduces the employment opportunities of migrants (cf. Herwig,2017,Weins,2010).

The consideration of educational qualifications within the framework of the BSP is preceded by a subjective evaluation and weighting of the hiring manager regarding the achieved grade (given the official certificates of equivalence has been presented). It leaves room for stereotypes and a biased assessment due to a lack of information regarding the grading system in the country concerned, particularly when there is no information available about the equivalent of the grade of the foreign educational credential the foreign academic certificate would be rated regarding its value or regarding the achieved grade (in the framework of the above mentioned exemplary point system, a foreign degree would be rated with 0 points regarding the achieved mark). However, it should be mentioned that federal organisations generally may not accept foreign obtained educational degrees without an official certificate issued by the competent authorities (Central Office for Foreign Education Systems,ZAB) about the equivalence of the educational degree (so-called certificate of equivalence, the certificate for academic degrees merely encompasses the recognition of the academic degree but does not indicate the equivalent grade to the German grading system, cf. ZAB,n.d.).

The second stage of the screening process within the three-stage model refers to the impression formation based on the impression formation theories like the continuum model (Fiske et al.,1999) which explains how 'signals of applicant's group status' influence the personnel decision-maker (Derous&Ryan,2017). According to psychological theories (cf. Kahneman,2003), the presence of little information about a candidate may lead to automatic or unconscious categorisations (cf. Derous&Ryan,2017;Typ 1 processes), especially pressure and the lack of time, could activate a judgement without reflection (cf. McGurk,2019). However, Derous and Ryan (2017) note, that when there is a high degree of conscious assessment, such as checking the match of the applicant's characteristics and qualifications with the job profile of the vacancy, attribution-based information processing (rather than category-based processing) may occur, especially when more personal information is provided by the applicant (type 2 processes),(Kahneman,2003). The third stage refers to the decision-outcome deriving from the processed information underlining that particularly category-based processing may trigger discriminatory decision-making (Derous&Ryan,2017).

The latter outcome, however, cannot be ruled out for processes where the assessment is concluded with a considerably high level of conscious involvement within a ruled-based, meritocratic-oriented system as it is most likely the case in the FA recruitment procedure. Research findings from the field of education, show that even ruled-based judgements such as counting errors

in the framework of dictation can lead to biased assessment outcomes (cf. Bonefeld&Dickhäuser,2018). Bonefeld and Dickhäuser (2018) revealed that pre-service teachers' marked students' performance in a third-grade level dictation assignment which was presented with the same amount of errors, less favourable when they assumed the student had a (Turkish) MB, although they applied a rule-based judgment (counting the errors). They found, that *'biased performance assessment of students with a MB in comparison to students without a MB does not occur when the diagnostic process requires a rule-based judgment (e.g., counting errors), but rather when teachers have to make a less rule-based judgment (here: assigning grades)'* (Bonefeld&Dickhäuser,2018). These findings are particularly alarming for the staffing process of the PA as it is justifying its fairness and compliance with constitutional requirements on grounds of its 'objective assessment' of suitability, qualification and professional performance transforming the assessment into a rating system to determine the 'best-suited candidate'. Consequently, biased performance rating outcomes could also occur, when strictly applying a rule-based judgment (as implemented in the PS through objectified grade rating system) since 'the translation' in grades or a point system (or any other 'objective assessment system') constitutes a non-rule-based judgement, leaving room for a biased judgement.

Regardless of whether there are objective evaluation systems in place, such as a rating scheme/grading system to evaluate every essential criterion of the job profile on an objective ground, there is still room for implicit bias carried out within the discretionary decision of the appraiser leading to a bias assessment of migrants' qualifications. The latter may lead to a lower rating of qualifications and performances of ethnic candidates compared to their ethnic German competition. As mentioned in Chapter 1, the existing negative stereotypes about the intellectual competencies of particular nationalities and ethnicities, including Turkish migrants are widespread and may activate stereotypes when assessing qualifications (cf. Froehlich,et.al.,2016). This is confirmed by analyses of cultural stereotypes in Germany where ethnic Germans associate migrants with 'less strong performance and success-related attributes compared to Germans without a MB (Froehlich,et al.,2016,Kahraman&Knoblich,2000).

The presence of ethnic (negative) stereotypes and prejudices in the minds of hiring managers in the PS, particularly in the FA could be demonstrated by the current study of the Friedrich Ebert Foundation (Nowicka,et.al.2019). Within the framework of that research study, personnel decision-makers in the FA, the state administration and the local administration were questioned about the need to promote the intercultural opening within recruitment processes. In particular, some personnel decision-makers in the FA believe that there is no need for action to increase the proportion of employees with a MB in their organisation or implement resourcing strategies to address minorities, as the intercultural opening of the administration is not given high priority (cf Nowicka and Will,2019). In this regard, the opinion of the personnel decision-makers was justified with different arguments. On the one hand, it is argued that there is no shortage of applicants at the federal level. Hence, only in cases of skill shortages would they affirm the necessity to make efforts to recruit people with a MB if suitable candidates (of German ethnicity) cannot be found (Nowicka&Will,2019). The latter view underlines a reluctance on the part of FA HR decision-makers to hire minorities in non-migration-related positions when equally qualified ethnic German applicants are available. Consequently, the recruitment of minorities can only be justified if the position is migration-related which constitutes is a barrier to access for migrants in the federal agency violating the PoE and BSP. The noncompliance with the rules and regulations lies within the prioritisation of ethnic German candidates for all job positions within the FA and a subordinate consideration of migrant candidates who should only be given access to federal agencies if ethnic German candidates are not employable due to a lack of intercultural competences, i.e. if migrants have additional skills that ethnic German candidates do not have for specific positions. Conversely, this means that if a position is not migration-related, a candidate with a MB should not be given access to a federal office due to a lack of German ethnicity, despite having the same qualifications. This so-called cultural reservation (see Chapter 1) seems to be a widespread hiring practice in the civil service and underlines ethnic selection in the hiring practices, as migrants were initially hired into positions where there is citizen contact and they bring additional value to the agency, for example due to their language skills (for example, in the foreign affairs department)(cf.Baumann,et.al.,2019). Where this added value is lacking, there seems to be a widespread perception among HR decision-makers that ethnic German candidates should be given priority. The findings of the pilot study of 2016 (Ette,et al.,2016) indicates this 'ethnic selection' which is reflected in the different representation of the individual federal authorities. While the Federal Foreign Office, the Federal Ministry for Economic Affairs, Cooperation and Development and the Federal Office for Migration and Refugees, have a proportion of employees with a MB of 19.6%, 23.6%, and 24.2% respectively, the proportion of the ethnically diverse workforce in the Federal Ministry of Defence, the Federal Ministry of Justice and Consumer Protection, and the Federal Criminal Police Office, is 6.4%, 11%, 11.4% respectively (cf.,Ette,et al.,2016).

Additionally, there is a generalised view expressed by the interviewed hiring managers at the federal and state level that applicants with a MB do not have the expected qualification profile of 'the best' (cf.Nowicka,et.al.,2019). The HR decision-makers also emphasised, with reference to Art.33(2)GG, that people with a MB should not be given preference even if they are equally qualified as their German candidates (Nowicka,et.al.,2019). This view not only highlights the prevailing

presence of prejudices and stereotypes about the qualifications of migrants but also that the BSP (according to Art.33(2)GG can be *instrumentalised* to justify biased decision-making.

Baumann,et.al., emphasise that hiring managers in the PS do not understand their significant role as a 'central gatekeeper' for migrants' to access the public organisations when hiring new employees (2019). Despite their decision-making power, they interpret the responsibility for the appropriate consideration of people with a MB to be outside their own sphere of activity (Nowicka&Will,2019).

The attitudes of the actual 'gatekeepers' of PA support the demand for a quota system for minorities, as no significant changes will occur without corresponding legal regulations. Despite the governmental initiative from 2007, the tools implemented to address the increase in ethnic diversity in the FA seem to fail, as the proportion of employees with a MB has not increased in recent years in the recruitment of new employees(cf.Ette,et.al.,2021). This is mainly due to the entrenched structures in the civil service, leading to slow implementation of measures (cf.Ette,et.al.,2021). However, the decisive criterion in favour of a legally prescribed quota regulation is the widespread view in society, politics and among personnel decision-makers that the intercultural opening of the (federal) administration is justified more by necessity (for example, in the presence of a shortage of skilled workers due to demographic change or when employees with a MB provide additional added value to ensure the functionality of the administration), and less by the insight that granting equal opportunities to minorities is the right and lawful thing to do. Another essential argument for advocating a legally anchored quota system for ethnic diversity is the deficiency of inner conviction of personnel decision-makers coupled with the specific structures of the civil service, regarding the low degree of autonomy in decision-making leading to a service strictly according to regulations and instructions of executives. The recruitment and staffing procedure in the civil service follows certain structures developed by law and jurisprudence. Voluntary promotional measures for the intercultural opening of the administration, even if it would be implemented as a top-to-bottom approach and promoted by the public authority management, will not bring about any change, as it carries legal uncertainty for the decision-makers as to how these measures are to be reconciled with the legally anchored BSP. This additional effort which would be necessary, the legal uncertainty and also the attitude of doing things by the book encompass obstacles to change concerning ethnic diversity, as the statement of a hiring manager underlines the problem and field of action: *'Equal opportunities? Why should I care about that? My goal is already achieved if I don't violate any regulations in the secondary goals. The regulations guide my actions, enter into my discretion. Beyond that, there is nothing that could move me to do more than the regulation there'* (AdSdB,2020). Consequently, without legal clarification and legally binding requirements to be implemented in the recruitment and appointment process, there will be no effective change to ensure equal opportunities for minorities in the FA. A quota for ethnic minorities would also tackle the issue on a structural level of federal organisations challenging power relations (cf.Vassilopoulou,et al.2019) resulting in a swift change which is essential given the short time window of opportunity in which vacant positions will become available in the PS in the next few years (cf.Baumann,et.al.,2018). The long-term consequences of the missed chances for enhancing ethnic diversity and equal opportunities will inevitably shape the image of the administration for decades to come (cf.Baumann,et.al.,2018). The latter is due to the nature of the job positions in the public service, which are predominantly characterized by consistency and longevity, especially in the civil service.

Considering that discriminatory decision-making may also occur on the interview stage, particularly on grounds of in-group bias according to the social identity theory and social categorisation according to which, individuals identify themselves as a member of a group leading to in-group favouritism (Ashforth&Mael,1989) a quota system would be most efficient targeting ethnic diversity (cf.Derous&Ryan,2017). Particularly, research on the Similar-to-Me effect in job interviews has shown that the higher the similarity between interviewer and candidate in terms of job-related, biographical and racial characteristics, the higher the candidate's rating (cf.Sears &Rowe,2003;Baskett,1973,Lin,et.al.,1992). Against the backdrop of the homogenous personnel structure among executives the similar-to-me effect may constitute an additional threat to equal opportunities for minorities in the FA, particularly, since the authority can exercise its selection discretion in cases of equally qualified candidates (as discussed below, Maties,2018).

However, a legally binding quota in all hierarchies of the FA as a positive measure to promote equality must be embedded in BSP to be compliant with the constitution as Liebscher notes: *'(...) positive action measures, such as preferential recruitment and promotion of employees with a MB in the higher and senior civil service in the federal administration, for example through a fixed quota, is compatible with German constitutional law (Article 3 (3) of the Basic Law) and the AGG. However, the legality can only be affirmed if the principle of selection of the best according to Art.33(2)GG is observed, namely if the employee with a MB has equivalent suitability, qualifications and professional performance, as the detailed legal opinion on the question of the legality of positive action in the civil service finds (Liebscher,2019).'*

Having regard to the role that stereotypes and prejudices play in the hiring process of the FA rendering the recruitment process particularly vulnerable for discriminatory decision-outcomes potentially infringing the BSP, it must be concluded, that establishing an anonymised application process is probably the only way to exclude bias and stereotypical evaluations in the screening process. Only through this measure Art.33(2)GG can be fully complied with ensuring equal opportunity not only in theory but also in practice. As research studies confirmed, the chances of being invited to a job interview increased for ethnic minorities and women when anonymised application processes were implemented (Krause,et al.,2010).

3.5. Legal stumbling blocks for ethnic diversity and equal opportunities in the public sector

Due to the fact, that the disposition of decision-makers is 'typically' not accessible (Derous &Ryan,2017) ethnic bias in the application screening process has been disregarded in literature as an essential threat to equal opportunity thwarting the BSP. Additionally, the risk of discrimination seems to be all the higher in the framework of the present objective system of 'best selection', since ways can be found to justify biased decisions on objective grounds. This issue, namely the vulnerability of the staff selection process in the PA to ethnic bias, is intensified by the margin of appreciation to implement the best selection principle. According to the jurisdiction, authorities are entitled to a selection discretion limiting the possibility of judicial review of official selection decisions (BAG,7.9.2004 –9AZR/537/03;BAG,5.3.1996 –1AZR/590/92). Moreover, Art.33(2)GG merely grants the candidate a claim to have his or her application considered in the selection procedure rather than an entitlement to employment (cf.Maties,2018).

3.5.1. Margin of appreciation in the framework of the assessment process

The assessment process for recruitment is the responsibility of the hiring employer, namely the public organisation (Marties,2018). Whether and to what extent it can be controlled by the courts is a question of the margin of appreciation. According to the case-law of the Federal Constitutional Court, Art.33(2)GG constitutionally leaves a discretionary power of assessment on the part of the employer, which is only subject to limited judicial review by the administrative courts (cf.BVerfG,4.2.2016 –2BvR-2223/15,BVerfG,29.5.2002 –2BvR723/99). The Federal Administrative Court emphasised that *'the decision as to whether the applicant meets the requirements of the post to be filled and of the career is taken by the employer in exercise of his power of assessment. The result is that the self-assessment can only be reviewed by the administrative courts to a limited extent. Only the employer, through the bodies acting on his behalf, is to make a personal value judgement, following the recognisable meaning of the regulation on selection according to suitability, qualifications and professional performance, as to whether and to what extent the candidate for appointment meets the professional and personal requirements of the specific office and the career - which is also to be determined by the employer'*.

Consequently, public organisations have considerable leeway when implementing the BSP within the assessment and selection process which leads to a restricted judicial review of the legality and the fairness of the procedure. The judicial review is limited to the question of whether procedural rules have been violated, an applicable term or the legal framework has been misunderstood, an incorrect factual situation has been assumed, whether general standards of value have not been observed or extraneous considerations have been taken into account (Maties,2018).

3.5.2. Enforcement of claims / Effective legal protection and the hurdle of the burden of proof

The applicant's claim based on Art.33(2)GG is limited to the right to be included in the selection (among the applicants) without discretion errors or error of judgement. Insofar as the applicant wishes to assert a claim for recruitment or compensation, he or she bears the burden of presenting proof of his/her best suitability, since this is a fact that gives rise to a claim. However, due to the lack of insight into the procedure, the burden of proof may be alleviated or even reversed.

To ensure better individual legal protection, a reversal of the burden of proof should apply in cases where discrimination is suspected by public authorities as employers. The state not only has a model function of the impeccable implementation of its legislation deriving from the RLP (Art.20 (3)GG, but also has a special protective function towards its citizens. Due to the weakness of anti-discrimination protection, a reversal of the burden of proof regulated from the outset is to be advocated.

3.5.3. Discretion of Selection

As mentioned beforehand, if the assessment results in two candidates being determined to be equally qualified, then the authority has the discretion to select as the high court found (BAG,1AZR 590/92). Nevertheless, this right of choice may be restricted by other laws, such as the Disability Act. Against the background of the similar-to-me effect discussed above, this could also lead to the disadvantage of the candidate with a MB not to be hired.

3.6. Conclusive observations - Recommendation

In this Chapter, the equal opportunity legislation in the FRG and the specific rules and regulations determining the staffing procedure in the FA were illustrated which influences ethnic diversity. It could be established that the staff selection procedure, particularly the implementation of the BSP is considerably vulnerable to stereotypes and ethnic bias decision-making constituting an access barrier to the FA and for equal career opportunities of employees with a MB. Additionally, it could be demonstrated, that legal stumbling blocks to ensure equal opportunities for ethnic minorities encompass the margin of appreciation within the assessment process of determining the best-suited candidate which is only subject to limited judicial review. This legal framework not only reinforces the subjectivity of the assessment due to the lack of judicial review but also intensifies the susceptibility of the application assessment and performance reviews to ethnic bias decision-making due to the merely unrestricted discretionary power of the assessor. Finally, the discretion of selection could be identified as a further legal hurdle of the staffing processes as it justifies freedom of choice where candidates were determined equally qualified. It is reasonable to assume that the similar-to-me effect and ethnic bias regarding the competencies and qualifications of minorities may contribute to a hiring tendency of candidates without a MB. In summary, the legal framework and the weak anti-discrimination protection of the person concerned, but also the hurdles at the structural level, have demonstrated that the BSP can potentially be undermined and that the particularly high vulnerability in the context of the implementation of the rules and regulation already undermines the principle. The predominantly homogeneous personnel structure of the FA as illustrated in Chapter 2 implies the assumption of ethnic bias decision-making practices in the staff selection process unless other factors can be considered as explanatory approaches. The latter will be discussed in Chapter 4 considering economic theories explaining ethnic inequalities in the FA to ultimately answer the research questions, whether the staffing procedure in the FA represents a significant factor in the barrier to entry and a hurdle of equal career opportunities for employees with a MB?

4. Chapter 4 Labour Market Theories Explaining Ethnic Inequalities based on the current research findings of the secondary data and its applicability on the staffing process of the federal administration

4.1. Introduction

The phenomenon of the unequal situation of migrants and their descendants has been discussed in German labour market research for some time (Kalter&Granato,2018;Herwig,2017;Basilo &Bauer,2010;Fleischmann&Dronkers,2007;Gächter&Smoliner,2010;Heath,et,al,2008,Kanas&Van Tubergen,2009;Konietzka&Kreyenfeld,2001;OECD/EU,2014). The poorer labour market success of migrants is explained in the literature based on basic mechanisms that are considered as theoretical explanations (Kalter&Granato,2018).

Notwithstanding the strict legal regulation of the appointment process and equal opportunities laws, significant disadvantages of minorities in the A are evident. To answer the research question of whether the staffing procedure presents a decisive potential factor for ethnic inequality, it is necessary to consider well-known economic labour market theories as possible mechanisms for ethnic inequalities, including the HCT, the social capital theory, the signalling and screening theory, as well as different forms of discrimination. However, the assessment of these factors is embedded in the legal and structural framework of the staffing procedure with references to the empirical findings of the DuCS (2019). Through this, answers to sub-questions D to F shall be provided.

First, I will present the labour market theories and then apply them to the identified inequalities in opportunities for employees with a MB in the FA (findings of the study DuCS,2019). The findings are then subsumed under the presented theories and critically discussed against the background of the special circumstances of PA, particularly the FA. In the third step, these explanatory theoretical approaches are examined for their applicability to the legally standardised staffing process of the FA.

4.2. Theoretical mechanisms explaining ethnic inequalities

Various theoretical concepts have been developed in the literature to explain the emergence and presence of ethnic differences or inequalities which must be distinguished conceptually. While microeconomic labour market theories focus on individual decision-making processes, social science approaches tend to emphasize institutional aspects.

4.2.1. Human Capital Theory

The HCT is one of the micro-theoretical approaches explaining inequalities in the labour market (Herwig,2017). The theory comprises a variety of models based on the idea that the productivity and thus the value of employees in the labour market are determined by their knowledge and skills (cf. Abraham&Hinz,2018;Ott,1998). Human capital is thus understood as 'the stock of knowledge and skills of an individual' (Franz,1999;Herwig,2017), the individuals' abilities and capacity to develop and innovate' (CIPD,2021). It includes educational qualifications, labour market and occupational experience, health, and specific knowledge, for example, regarding the economic system of the country of residence. (Hintz/Abraham,2005;Straub/Ette,2021). It is believed that higher capital leads

to increased productivity (Franz,1999;Herwig,2017). The poor employment situation of migrants on the German labour market is often discussed based on HCT. In this context, it is argued that ethnic inequalities result from a lower human capital endowment of certain ethnic minorities (Herwig,2017).

According to the economic models of the human capital theory, the first-generation migrants are particularly at risk of not fully realising their human capital according to their knowledge and skills due to the devaluation of educational qualifications obtained in their home country (Abraham&Hinz, 2018). This so-called 'devaluation of capital' stems from the fact that educational qualifications, skills and knowledge acquired abroad can prove to be unusable in the host country, while other knowledge and skills required in the host country are missing (cf.Esser,1999). The value of the qualification is thus determined in the social context and can partially 'devalue' existing human capital so that the human capital cannot be fully 'transported' into the labour market of the host country (Chriswick 1978;Friedberg,2000;Kalter&Granato,2018). Consequently, it is assumed, that the devaluation of human capital leads to poorer labour market opportunities for migrants resulting in employments with a lower level of qualification and ultimately to a lower income compared to actors with the same human capital endowment (Abraham&Hinz, 2018,Straub/Ette,2021).

The described different endowments with human capital may provide plausible explanations for the inequalities in the labour market concerning the first-generation migrants, but less reasonable for the second-generation migrants who grew up and were educated in Germany (Kalter&Granato,2018). Research on existing ethnic inequalities in the labour market in the second generation often links to the education system (cf.Diehl,et al.,2016;Herwig,2017,Müller,et.al.,1989, Erikson&Goldthorpe,1992,Jackson,et.al.,2007). Even though children of immigrants are educated in Germany they generally have considerably less human capital than natives of the same age without a MB (Kalter&Granato,2018). However, Kalter and Granato (2018) note in this context that, in terms of social origin, hardly any differences in the primary effects (achievements and competencies) of migrant children can be determined compared with non-migrants.

The HCT is also often referenced as a potential mechanism for inequalities found in the present research study DuCS (2019) serving as a theoretical explanation for the underrepresentation and poorer employment situation of employees with a MB in the FA (cf.Ette,et al.,2021). Straub argues that the theory serves particularly as an explanation for the significant-high proportion of overqualified migrants of the first-generation (Straub/Ette,2021).

However, this explanatory approach cannot serve as a sufficient explanation for the ethnic inequalities in the civil service. Firstly, it may explain at most a selective access to certain career groups, but fail to explain the inequalities of the employment situation within all assessed 7 indicators, including those that represent atypical contract arrangements for the federal administration. As Straub notes, the FA seems to tend to find it easier to employ migrants temporarily (Straub/Ette,2021), that however, suggests, that bias reservation regarding the 'ethnic' productivity is reduced, when a flexible contract arrangement is possible (Straub/Ette,2021) Moreover, the HCT is also not plausible regarding indicators such as promotions and executive roles as they would contradict the staffing procedure of the FA since the performance appraisal is considered a decisive decision criterion on which promotions, internal appointments and personnel development measures are based on (as elaborated in chapter 3).

It must be stated that the theory cannot be applied unconditionally to the FA as it would partly qualify as an unlawful (staffing) practice in some cases. First of all, the devaluation of foreign educational degrees does not apply to second-generation migrants, so that the explanatory approach is only applicable to a limited extent to first-generation migrants who did not acquire their educational qualifications in Germany. Limitations of the human capital theory must also be taken into account concerning first-generation migrants, since many migrants immigrate to Germany to complete their studies, and could thus also have acquired their educational qualifications in Germany. Therefore, due to the lack of nuanced data, a differentiated analysis of the human capital factors of first-generation migrants cannot be concluded. On the other hand, it must also be taken into account that there is an increasing number of employees without a MB who acquire their degrees abroad. In the course of the Bologna Process, the harmonisation of academic education in 30 European countries enhanced a mutually recognition of predominantly EU educational qualifications among the signatory states (cf.EU/Bologna process). The Bologna Process is likely to have a twofold impact on the assessment of educational qualifications obtained in the EU. On the one hand, the EU harmonisation of university degrees has resulted in increased mobility of ethnic German students (cf.Himmelrath,2015), so that even among employees without a MB, degrees acquired abroad cannot be classified as an unusual circumstance. Second of all, this will preclude the 'devaluation' of the human capital of EU educational qualifications regarding foreigners and first-generation Germans. The same is true for educational attainments from a third country (non-EU State) which has been evaluated by the authorities regarding their equivalence to the German education system. If there is an equivalence certificate or a certificate evaluation by the Central Office for Foreign Education Systems (ZAB), then an objective evaluation or equal treatment of this qualification is legally required (inter alia on grounds of Art.3GG). Conversely, this means for the assessment in staffing procedure of the FA that a devaluation of the educational qualification in the aforementioned cases would violate constitutional principles, particularly the performance and equality principle. The incomppliance would also affirm a discriminatory hiring decision. Therefore, a generalised application of the 'utilisation model' in the framework of the HCT is unsuitable to explain the underrepresentation and poorer occupational conditions of the first-generation migrants in the FA. For the latter, a differentiated view based on nuanced anti-discrimination data would be required, including a survey encompassing the question of where the educational qualification was acquired and, in the case of a foreign educational qualification, whether there is an official recognition or equivalence by the competent authorities.

Furthermore, Straub notes, that the higher proportion of first-generation migrants with German citizenship in lower career groups are due to human capital factors, namely the lower educational qualification of these employees (Straub/Ette,2021). Given the explanation in the framework of the human capital theory foreign educational qualifications and the lack of language skills may be the cause concerning the aforementioned migrant group. However, it was also surprisingly, found that the opposite is the case for first-generation foreign migrants who are more likely to have concluded their education abroad whereas first-generation Germans may also have possibly concluded their academic education or vocational training in Germany. Straub, concludes that the first-generation of foreign employees are to be qualified as a small selected group with a proportion of more than 53 % of academics (cf.Straub/Ette,et.al.,2021). In comparison, the proportion of university graduates among employees with a MB is only 31 % overall (Straub/Ette,et al.,2021).

On the other hand, findings may also suggest that academics with a MB face particularly higher barriers to access the public service, regardless of whether they acquired their educational qualifications in Germany or abroad. This could derive from the political efforts of the 'intercultural opening of the PA which have been limited to the lower career groups (NIP,2007-2011;Ette,2021), as there is a consensus in politics and society that the lack of labour market opportunities for the extremely heterogeneous group of employees with a MB is due to their lack of competencies and language skills (cf.Vassilopoulou,et al.,2019).

The latter is likely to contribute to the stereotypes of hiring managers which are supported by the fact, that academics with a MB are three times more often unemployed compared to ethnic Germans (OECD Report,2007,see also the biased attitude of hiring managers in the PA as discussed in Chapter 3). The fact that this particularly affects certain ethnic groups such as Turkish migrants has been revealed by various research studies (cf.Vassilopoulou,et.al.,2019). The findings, rather suggest that the access barriers for migrant academics in the FA seem to be significantly higher in the upper career groups (higher service and upper-intermediate service). The latter is also underlined by the fact that second-generation foreigners and second-generation Germans are represented with a higher proportion in the lower career groups (DuCS,2019). Research findings confirm, that discrimination even increases at higher qualification levels which is related to the problem that migrants are often ascribed lower qualifications in the labour market (Weichselbaumer,2016).

Noteworthy, the findings of integration research in Germany prove that the principles of the HCT do not apply to migrants of Turkish descent. This means that despite a higher level of education, migrants of Turkish descent do not reach the professional position of (ethnic) Germans or Italian migrants (cf.Haug,2010). This underlines that the barriers of the intercultural opening and equal career opportunities in the FA cannot be overcome effectively without differentiated anti-discrimination data based on questions concerning the specific origin of the employees.

In summary, the theory may not serve as a sufficient explanation for the inequalities in the FA because, if applied, it is partly incompatible with the legal requirements of the civil service appointment and evaluation process and would lead to the illegality of the decision or disadvantages.

4.2.2. Signalling and Screening Theories

The Signalling and screening theories (Arrow,1973,Spence,1973,Stiglitz,1975), focus on the 'selection process to determine the most productive applicant' on part of the employer (Franz,1999,Herwig,2017). According to these theories, the focus is not on the individual resources of the employee, as it is the case within the human capital theory and social capital theory, but on the individual productivity, an assessment conducted by the employer (Herwig,2017). Since the productivity of the candidate cannot be reliably assessed at the application stage, personnel decision-makers make use of so-called 'screening devices', such as certificates, references and work experience, which can be influenced by the employee and correspond to the employee's human capital (Arrow,1973), but also refer to immutable characteristics (indices), such as age, gender, ethnicity, etc. (Herwig,2017). The incomplete information about the candidate's productivity is 'filled in' with the help of recourse to the hiring manager's experience to reduce existing uncertainty in the hiring process, for example, employers generally conclude that higher educational qualifications mean higher education and thus higher productivity (Herwig,2017). Against this backdrop, it is argued, that foreign educational certificates are being attributed to a lower signal value than

domestic qualifications, thus creating ethnic inequalities in the labour market (cf. Wilkesmann, et al. 2006, Herwig, 2017). This is explained by the employers' lack of knowledge about the quality of foreign educational qualifications leading to the assumption that there is a general quality gap between the foreign and domestic education systems (Reitz, 2007).

As mentioned beforehand, the signalling and screening theory serves as an explanatory approach for ethnic bias decision-making in the staffing process of the FA (cf. Chapter 3). Hence, may serve as a mechanism for inequalities of employees with a MB.

4.2.3. Social Capital Theory

To explain ethnic inequalities in the labour market, the literature, furthermore, refers to social capital theory, in particular to the labour market-relevant individual resource of social networks (cf. Abraham & Hinz, 2018). The term social capital refers to the notion that relationships among people constitute an asset producing 'favourable outcomes for those involved in the relationships' (Brankston, 2014). Research studies show that social networks play a crucial role in job search and labour market placement in terms of access since many jobs are indirectly mediated through friendship and acquaintance relationships (Granovetter, 1995, Franzen & Hangartner, 2006, Abraham & Hinz, 2018; Kalter & Granato, 2018). The recruitment of new employees is, therefore, very often concluded through existing social contacts (friendship and acquaintance relationships). For migrants, on the other hand, the ethnically homogeneous composition of social networks in the labour market could be a hindrance or even lead to segmentation, as they predominantly mobilise the resources available within the ethnic group (cf. Kalter & Granato, 2018, Haug, 2010).

For the FA, Straub, therefore, assumes that the low representation of migrants in conjunction with a higher proportion of self-ethnic contacts lead to poorer access opportunities (Straub/Ette, 2021). According to Straub, social networks within the respective organisation should also influence equal opportunities concerning later professional interfaces, such as promotions, filling management positions, or being appointed to a civil service position (2021). Concerning the second-generation of migrants, it was noted that the inequalities concerning promotions indicate the lack of social networks (Straub/Ette, 2021). As mentioned beforehand, promotions are almost exclusively based on performance reviews as the performance principle must be adhered to. Since no other consideration except the performance appraisal is taking into account for promotions and internal appointments the social capital theory (in theory) cannot serve as a mechanism for the present ethnic inequalities as they would lead to an unlawful staffing procedure, thus affirming discrimination.

Furthermore, the explanatory approach is not applicable to the procedural and the legal framework of the recruitment process of the civil service. This is especially true with regard to the sociological considerations on social networks, which are of significant importance when labour markets have information deficits so that the quality of information and the social influence of certain actors on other actors play would play a decisive role (Hinz & Abraham, 2018). Since vacant positions in the civil service must be advertised through public announcements, whereas internal positions are communicated through the appropriate internal channels and are accessible to all employees, the information aspect of the social capital theory cannot be classified as decisive for the 'competitive advantage' of a candidate. Given the procedure and the legal framework advertising public positions in the civil service the aspect of the social network as an information channel is

insignificant since jobs are not communicated exclusively through personal channels. Further cornerstones of social networks enhancing job access concern information quality and social influence (cf.Hinz&Abraham). Both aspects are incompatible with the BSP since non-meritocratic considerations are incompliant with regulations of the staffing procedure. This applies all the more to promotions and appointments to management positions. However, the legal requirements are not always congruent with practice, it cannot be excluded that job appointments (despite a publication) are nevertheless filled on grounds of social networks and/or homogeneous favouritism which may even influenced (biased) assessments of performance reviews of application screening at a previous level. Nevertheless, if, in practice, job appointments in the FA are made based on non-meritocratic considerations, but rather due to the existence of a social network, the existence of unlawful staffing practices must be affirmed. However, this biased decision-making does not occur on the grounds of ethnicity, on the contrary, due to the lack of social network which can also disadvantage employees without MB. Although this practice is, in any case, unlawful it is not necessarily connected to ethnic bias. In any case, the theory cannot be used as an objective justification for the inequality of migrants, without affirming an illegal biased hiring decision.

4.2.4. Discrimination

In addition to human capital factors and social networks, discrimination has been put forward as a possible explanation for ethnic unequal labour market opportunities (cf.Derous&Ryan,2017). In the legal sense, discrimination occurs when a person or a certain group of persons is unjustifiably treated unequally (Hipp,2016). The characteristics on the basis of which discrimination is legally inadmissible are found in the AGG. In the sociology of the labour market, discrimination is usually referred to in economic contexts when, given equal capital endowments and productivity, a person's ascriptive characteristics, such as gender, skin colour, nationality, influence their labour market opportunities (cf.Arrow,1973,Kalter&Granato,2018). Despite moral and economic reasons against discrimination and the legal framework, discrimination still occurs in the labour market (cf.Derous&Ryan,2017;Hipp,2016). The causes are explained in economics, sociology as well as in social psychology by different theoretical approaches, including the tendency to discriminate (taste for discrimination), statistical discrimination, and institutional discrimination (cf.Hipp,2016).

4.2.4.1. Theory of Taste-based discrimination

The concept of 'taste for discrimination' developed by Garry S. Becker (Taste-based discrimination,1971) explains why members of certain demographic or social groups are disadvantaged on the job market with the individual preference of employers for a certain group or aversions to a certain group of people in society (Krause,et.al.,2010).

4.2.4.2. Statistical Discrimination

Another explanation for the unequal treatment of ethnic minorities is the concept of statistical discrimination (Arrow,1989). In contrast to Becker's preference model, statistical discrimination is about perceptions of reality based on the assumption of incomplete information (cf.Phelps,1972; Krause,et.al.,2010). Since the employer cannot determine the performance and productivity of the candidates before filling the position, he/she falls back, among other things, on the applicant's ascriptive characteristics (Herwig,2017) and evaluates the average productivity of the group to which

the applicant can be assigned, for example, women vs. men, employees without a MB vs. with a MB)(cf.Straub/Ette,2021).

The mere fact that extraneous considerations are taken into account constitutes a violation of BSP in the context of the FA's recruitment procedure, as explained in Chapter 3, even if statistics and data were available to the hiring manager. However, since HR decision-makers have little knowledge about mean values and variances regarding the productivity of certain demographic groups and this data is usually not available, they cannot assess whether, for example, people with a MB with the same formal qualifications are more productive, unreliable or committed compared to people without a MB (Hipp,2016). Therefore, the decision is made on grounds of status characteristics rather than statistics, using prejudices and stereotypes to determine the competencies and performance of certain groups (so-called status-based discrimination)(cf.Ridgeway&Correll,2004). This type of discrimination is particularly relevant in the context of the recruitment and promotion processes of the civil service in the FRG, as the HR decision-maker has a discretionary judgment that is not legally reviewable by courts, thus cannot be challenged (cf.Chapter 3). Furthermore, personnel decision-makers have an increased interest in placing their decisions on an objective basis, as this necessity arises from the BSP. Consequently, this leads to a legitimisation of decision-making results even if they were made based on discriminatory judgements (as elaborated in Chapter 3).

4.2.4.3. Institutional Discrimination

Unlike the previous forms of discrimination, institutionalised discrimination is not about individual preferences or negative stereotypes of HR decision-makers, but about institutionalised practices, specific structures and organisational forms as triggers for discrimination (Feagin &Booher,1986;Gomolla and Radtke,2009). This concept is based on the notion 'that social institutions incorporate discriminatory assumptions that have discriminatory consequences'. (Straub/Ette,2021). This means that formal regulations, established structures, ingrained habits, established values and proven maxims of action are institutionalised in the middle of society, whereby such institutions are mostly embedded in organisations(authorities, companies, institutions and other organisations)(Gomolla and Radtke,2009). As Gomolla and Radtke(2009) note institutional discrimination against people with a MB can take place in the form of legal regulations, for example, residence law, work permit law, tax law, social security law, nationality law, etc. Since the FRG is a welfare state, these legal regulations differentiate between different modes of inclusion for certain population groups, such as Germans, foreigners, EU citizens, guest workers, refugees, asylum seekers, persons entitled to asylum(Franz,1989). For the PS, this practice can be seen in the example of access to civil servant status(Straub/Ette,2021), which is tied to certain nationalities, namely either exclusively the German or, in the majority of cases, the EU member state nationality (cf.Tabbara,2013).

As Kruse notes, in legislation and case law, no distinction is made between the above-mentioned concepts of discrimination(2010). There, it is solely a matter of ensuring that members of certain population groups or persons with certain characteristics receive identical treatment with the same qualifications (Krause,et.al,2010). However, institutional discrimination may constitute an exception since discrimination in the legal framework is affirmed when there is no objective reason for unequal treatment, hence the presence of laws such as the nationality law is likely to be considered a justifiable reason.

5. Chapter 5: Findings /Conclusion/Recommendations

As introduced in the beginning, this report aimed at contributing to the scientific debate by revealing the weaknesses of the initiative to increase the representation of minorities and to create equal career opportunities in the FA by underlining specific areas for action.

With this in mind, it intended to provide an answer to the main research question if the staff selection process of the FA poses a potential barrier to diversity and equal opportunity.

To achieve conclusions on this question, it was necessary to:

- present the secondary data in *Chapter 2* to illustrate the detailed inequalities present in the FA as a basis for further analysis of the main research and sub-questions. The following could be established:

Chapter 3:

- illustrated the equal opportunity legislation in the FRG and the specific rules and regulations determining the staffing procedure in the PS, particularly the BSP (Art.33(2)GG) ensuring appointment to a public office on solely meritocratic considerations
- established that staffing procedure (concerning recruitment and internal staffing and promotio) is highly vulnerable to ethnically biased bias decision-making undermining the BSP (particularly through appraisal errors such as the distribution error, similar-to-me-error, and stereotypes) serving as a potential access barrier for minorities and worse career opportunities
- found that legislation does not provide for a sufficient effective legal protection due to the margin of appreciation in the assessment and selection process which is limited to judicial review.
- Weak anti-discrimination framework

Chapter 4

- assessment of conditioning factors of ethnic inequality which could be predominantly ruled out due to incompatibilities with either procedural or legal specifics of the FA staffing procedure.
 - including HCT (limitation to first-generation migrants and on ground of the lack of anti-discrimination data, further data concerning the nature and country of the acquired degree ('human capita').
 - Human capital factor have no influence on internal staffing and procedure since the performance review is decisive to bias hiring decisions
 - Signalling and screening theories underline the vulnerability of the qualification assessment .
 - Social capital theory would violate legal framework of the staffing procedure

- The information value about vacancies is meaningless as the public sector must advertise job positions publicly.
- Discrimination as a potential decisive factor for inequalities of minorities in the FA could not be ruled out, particularly as other mechanisms seem to be incompatible with the legal principles of the staffing procedure and would lead to flawed decisions when applied.

Recommendations (through enactment of legislation)

- to ensure the meritocratic selection and reduce ethnic bias application reviews in the recruitment process: implementation of an anonymised application process,
- on the interview stage: legal framework for ethnic quota in all hierarchical positions aiming at an adequate representation reflecting the demographics to achieve the intercultural opening of the administration,
- evidenced-based appraisal systems with reduced discretion of the authorities
- Enhancement of the judicial review and strengthening of individual rights to enforce

What is needed here is an understanding by all actors, especially the FRG and its institutions, that ethnic minorities are underrepresented not because of the BSP, but because this very principle is undermined by procedural and structural barriers obliging the legislator to act on grounds of the rule of law.

Since the topic has been debated at the political level for 14 years with no successful results in terms of increasing the number of employees with MB, especially in the higher career groups and management positions, no genuine political will to implement the intercultural opening of the administration can be ascertained so far. Against the background of the demographic development, 51% of the positions in the civil service will be filled by 2036 (cf. Baumann, et al. 2018). If the FRG allows the 'window of opportunity for diversity' to pass unused, then the image of the administration will be characterised by homogeneity for decades to come (Baumann, et al. 2018) and thus may remain predominantly a 'whole white world'.

As the development processes in the civil service are extremely slow to implement, the federal government is called upon to act and the time to act is now!

Word count: 19.995 (as approved by my supervisor)

Appendices

Annex I: Attributes of employees in federal administration, public administration, public sector and private sector, in per cent (Ette,et al.,2021)

	Federal administration (DuCS)		Public administration (MZ)		Public service (MZ)		Private economy (MZ)	
	Without MB	With MB	Without MB	With MB	Without MB	With MB	Without MB	With MB
Job degree								
Without degree	6,2	8,7	7,9	22,5	7,9	19,7	13,2	35,6
Vocational education	43,5	38,2	58,4	47,5	54,2	44	68,8	45,8
Polytechnic degree	27,6	22,3	20,7	14,2	12,5	7,2	7,2	4,9
University degree	22,8	30,8	13	15,8	25,3	29,1	10,9	13,7
Total	100	100	100	100	100	100	100	100
Status								
Civil Servant	68,3	56,9	45,2	33	31,5	15,4	0,3	0,1
Employees	31,7	43,1	54,8	67	68,5	84,6	99,7	99,9
Total	100	100	100	100	100	100	100	100
Leadership position								
Executives	27,7	22,5	27,8	18,8	25,9	18,2	24,9	14,7
Non-executives	72,3	77,5	72,2	82,2	74,1	81,8	75,1	85,3
Total	100	100	100	100	100	100	100	100
Limitation								
Limited	6,3	11,2	11,7	22,5	13,2	24,3	10,4	17
Unlimited	93,7	88,8	88,3	77,5	86,8	75,7	89,6	83
Total	100	100	100	100	100	100	100	100

Annex II : Differences of the earning situation of employees according to migration background (Ette,et al.,2021)

	Migration background (Ref.: without)	
	AME	SE
Career group		
Lower service	0,004***	0,0
Middle-ranked service	0,037***	0,003
Upper-intermediate service	-0,022***	0,002
Higher service	-0,019***	0,002
Over-qualification (Ref.: adequate / under-qualified)	0,063***	0,005
State official (Ref: employees)	-0,031***	0,003
Leadership position (Ref: no leadership position)	-0,005	0,003
Promotion (Ref: no promotion)	-0,017***	0,003
Part time (Ref: Full time employment)	-0,016***	0,003
Limitation (Ref: Unlimited employment)	0,011***	0,002

Note: The data is weighted according to the number of government agency employees. Results of ordered logit- and logistic regressions. On display are average marginal effects (AME) as well as standard errors (SE). Significance level: *** $p < 0.001$. The data – each in regard to the models of the individual dependent variables inside the article – was controlled by gender, age, affiliation time to the agency, career group, state official status as well as affiliation to a government agency (not displayed)

**Annex III: Questionnaire of the micro census to determine the migration background
(cf. Statistical Federal Office, 2019)**

- "1) Do you have German citizenship?
- 2) How did you become a German citizen?
(Answer options: by birth, by naturalisation, as a (late) repatriate, by adoption)
- 3) Do you have the nationality of a current member state of the European Union or of a third country outside the European Union (multiple answers are possible),
- 4) Where were you born? (Answer option on the present territory of Germany, in a present member state of the EU, in a third country outside the EU)
- 5) Does your father have or was your father based on German citizenship?
- 6) Does your mother have German citizenship?
- 7) How did your father become a German citizen?
- 8) How did your mother become a German citizen (possible answers: by birth, by naturalisation, as a (late) repatriate, by adoption)
- 9) Where was your father/mother born,
- 10) Where was your mother born (possible answers: on the present territory of Germany, in a present member state of the European Union, in a third country outside the European Union)?"

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