How Law Fuels Racism

Since the death of George Floyd, anti-racism protests spread throughout the world. They show that racism is still present in many countries, and can be even solidified by legal provisions. Dr. Anika Seemann, researcher at the Max Planck Institute for Social Law and Social Policy, has examined the role of laws in promoting racist ideas using the example of the obligatory handshake in the Danish naturalization procedure. She concludes that the regulation contained therein, namely to shake hands with an official, is based on and further fuels racism against Muslims as an ethnic group, which is deeply rooted in society.

To become a Danish citizen, since last year, immigrants have to attend a ceremony to complete the naturalisation process, during which they are obliged to shake hands with at least one official. This gesture is intended to express the acceptance of Danish values that the Danish society sees as endangered by the increase in immigrants from countries of Muslim culture. Accordingly, the introduction of the handshake requirement was specifically targeted at Muslims, as an analysis of the parliamentary debates shows. “During the legislative process, Muslims were stereotyped and stigmatised as a group. They were, for instance, portrayed as culturally backward in terms of women’s equality”, says Seemann. At the same time, this has nourished the idea in society that people with a Muslim background are by birth not able to adapt to a liberal democracy. Two other recent laws, which also aim to protect Danish values, further encourage racism against Muslims: the burqa ban of 2018 and the ban on surgical restoration of the hymen, introduced a year later.

It is extremely problematic that the handshake requirement, which deliberately discriminates against Muslims in a racist manner, can only be legally challenged to a limited extent at both international and European level. The International Convention on the Elimination of All Forms of Racial Discrimination does not apply in this particular case. Similarly, at the European level, the Race Equality Directive (2000/43/EC) is an inadequate instrument for taking action against the handshake requirement. At first glance, recourse to the European Convention of Human Rights seems appropriate. In its application, however, the European Court of Human Rights (ECtHR) has so far concentrated primarily on individual cases of discrimination on the grounds of religion and has avoided dealing with ethnicity as a ground for discrimination. Moreover, the ECtHR is blind to the historical eye and does not take into account the origin of a legal text or its social background.

In order to better combat racism, Seemann argues, on the one hand, for a greater distinction to be drawn between discrimination on the basis of religion and discrimination on the basis of ethnicity. On the other hand, when examining whether a regulation is racist, not only the legal text itself should be used: “It is absolutely necessary to take into account the intention of the legislator as well as the historical and social context more than before”, demands the researcher.

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