



Research of the FADA at a glance: Complaints unit and complaint procedure pursuant to Section 13 of the General Equal Treatment Act

Overview of the expert opinion

In practice, there is frequently a double mandate of Equal Opportunities Commissioner and Severely Disabled Persons Commissioner. This involves the risk of conflicting interests. Therefore, the employer should clarify in advance how the cooperation of the complaint department with the Equal Opportunities Commissioner, Severely Disabled Persons Commissioner, staff council or works council should be implemented. The right of appeal pursuant to Section 13 of the General Equal Treatment Act should enable the staff members to have direct access to their employer. Interest groups might take an active and supporting part or a joint body with equal representation could be established.

The expert opinion analyses the legal scope of complaints which can be lodged according to Section 13 of the General Equal Treatment Act and it comprises practical suggestions on their implementation.

Author, title and publication year of the expert opinion

Doris Liebscher, Anne Kobes: Complaint department and complaint procedure pursuant to Section 13 of the General Equal Treatment Act (2010, available only in German).

The right of appeal pursuant to Section 13 of the General Equal Treatment Act

The General Equal Treatment Act grants a comprehensive right of appeal to the employees of a company with regard to discriminations. For this purpose, the concrete organisation of the complaint procedure and of the complaint department to be established is left to the employees.

How should the complaints unit be organised?

- The employer may either appoint particular persons as focal points for complaints or may establish a department competent for complaint procedures.
- In case of sexual harassments it should be possible to complain by reporting the case to a person of one's own gender.
- Equal Opportunities Commissioners or Severely Disabled Persons' Commissioners shall only be declared to be in charge if they are able to explicitly assume employers' tasks, i.e. the right of examination and of summarising the outcomes.
- The works council does not belong to the range of competent focal points, since it cannot assume employees' tasks and is not obliged to forward the complaint.

What are the requirements which the complaint procedure should comply with?

- The employer has to examine the complaint. The handling can be assigned to the complaint department. However, the employer has to be able to reach a conclusive decision on these facts.
- These facts have to be clarified by using all means available to the employer and/or the complaint department. The parties concerned should be consulted and heard.

- The result of the examination has to be reported to the complainant and - at least in case of a rejection of the complaint - has to be justified. The result should be available within a reasonable period of time, not longer than two weeks.
- It is recommended to keep records of all incidents. However, the complaint should be kept separately from the personnel files.
- The rights of the employee representative body shall not be affected.

Who may file a complaint?

Complaints may be filed by any employee who feels discriminated against on grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The General Equal Treatment Act starts out from a broad definition of the term employees, which also includes job applicants, trainees and own account workers. No disadvantages must arise to the complainants as well as to the persons supporting them because of their making use of the right of appeal. The complaint procedure may be implemented in parallel with a suit.

How should a complaint procedure be implemented?

A step-by-step procedure would be appropriate: In a first step the complaint is to be taken, in a second step the facts are to be determined. In a next step it should be examined whether the General Equal Treatment Act has been infringed. The result of this examination should then be communicated to the complainant. Finally, the employer should take the appropriate measures.

Which measures should be taken on the part of the employers if a discrimination has come to notice?

- In case of discriminations on the part of the employer the latter shall be obliged to take remedial measures, to stop the discrimination and to subsequently grant the benefits which had been withheld.
- In case of discrimination on the part of the employees the employer has a duty to ensure protection. In the specific case the employer has to take the appropriate, necessary and adequate measures to stop the discrimination, for example by a warning letter, transfer of staff to a different workplace within the company/authority, relocation of staff by transfer to a subordinate authority and/or to another affiliate or branch within the group or dismissal.
- Also in case of discriminations by third parties, as e.g. business partners or clients, the employer has a duty to ensure protection. In exceptional cases this may even lead to an interruption of the business relationship.

What can works council do when employers do not establish a complaint department?

If the employer grossly violates the duty of establishing a complaint department, the works council and also the trade unions may file a request to the labour court asking for the employers' taking these measures.

More information

The expert opinion entitled 'Complaint department and complaint procedure pursuant to Section 13 of the General Equal Treatment Act'

is accessible => [here](#), available only in German language.

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Example: Documentation of a complaint pursuant to Section 13 of the General Equal Treatment Act ¹

Complaint received on:

at:

in writing orally

Confirmation by the complainant:

Complainant:

employed as:

department:

superior:

I. Determination of the facts/subject of the complaint:

1. What happened? (from the point of view of the complainant)

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¹ source: Doris Liebscher, Anne Kobes: Beschwerdestellen und Beschwerdeverfahren nach § 13 AGG, hg.v. Antidiskriminierungsstelle des Bundes, Berlin 2010.

2. Which substantive scope under the terms of Section 2 of the General Equal Treatment Act is affected?

- Access to employment, Section 2 Para 1 No. 1 of the General Equal Treatment Act

- Employment conditions and working conditions including pay and reasons for dismissal and measures to implement and terminate an employment relationship, as well as for promotion, Section 2 Para 1 No. 2 of the General Equal Treatment Act

3. Who was responsible for the discrimination?

- superior
- other employees
- third person

4. What is the ground of discrimination?

- age
- gender
- sexual orientation
- religion/belief
- disability
- ethnic origin/
racist motivation

5. Is it a complaint about

- indirect discrimination
 - harassment
 - instruction to discriminate
- direct discrimination
 - sexual harassment
 - disciplinary reprimand

6. When did the discrimination occur?

7. Is there any witness or proof?

- yes
- no

If there are, could you please give me some details?

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8. Has the superior been informed?

- yes
- no

If so, what measures did he/she take and when?

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9. Have other bodies already been involved (e.g. staff and/or works council, Commissioner for Women's Affairs and/or Equal Opportunities Commissioner, Severely Disabled Persons Commissioner, youth and/or trainee representatives) and what measures did they take?

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10. Request the comment by the defendant

in writing orally When was it requested?

In case an oral comment was requested, what has happened from the point of view of the defendant?

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11. What reasons for the above-mentioned procedure have been stated by the defendant?

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12. Did the complainant or a third party already approach the defendant on account of this incident?

yes no

If so, what was the result?

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13. Has the defendant already involved other persons?

yes no

If so, who has been involved?

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14. Did the defendant take notice of the General Equal Treatment Act?

yes no

15. Did the defendant attend a training on the subject of General Equal Treatment Act?

yes no

If so, when and to what extent?

II. Examination of the facts?

1. A discrimination as defined in Section 2 Para 1 of the General Equal Treatment Act has occurred.

yes no

2. The differences of treatment were permissible (Section 8, 9, 10 of the General Equal Treatment Act)

yes no

If so, for what reason?

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Examination of the facts carried out by:

.....

Next steps:

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III. Information of the complainant on the result of the examination

in writing (see enclosure)

orally

complainant

defendant

on:

Signature:

Signature:

Signature:

IV. Corrective action and control measures

1. Recommended action:

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2. Measures launched:

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.....
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3. Control:

Envisaged for which date?

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By whom?.....

Control implemented (result and signature)

4. Please indicate the reasons why no concrete measures have been taken in answer to the complaint:

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