

Research by the Federal Anti-Discrimination Agency at a glance: Sexual harassment at university – protection gaps and recommendations

An overview of the expert opinion

In an EU-wide survey on sexual harassment and violence, one in two (54.7%) of the female students questioned said they had been sexually harassed during their time at university¹. One third of the assaults originated from the university environment. According to the study, sexual discrimination and violence mostly involve a male harasser. In those cases, perpetrators span teachers, university staff and often fellow students. Due to the students' state of dependence and/or their need for close cooperation, the university setting favours the exposure of students to the risk of sexual harassment. Going public with an assault may adversely affect the course of study.

It is the aim of this expert opinion to improve the protection of students against sexual harassment by raising awareness and giving policy recommendations for university settings. The authors studied the Federal and *Laender* law and the autonomous law of the universities to point to gaps in the protection of students against sexual discrimination and violence. Furthermore, the authors contrast the status quo at German universities with best-practice examples.

Authors, title and publication year of the expert opinion

Kocher, Prof. Dr. Eva/Porsche, Stefanie: Sexuelle Belästigung im Hochschulkontext – Schutzlücken und Empfehlungen (Sexual Harassment at University - Protection Gaps and Recommendations) (2015).

Outcomes

The General Equal Treatment Act (German abbreviation: AGG)

Students at public and private institutions of higher education are protected by the ban on discriminative harassment in accordance with Section 3(3) of the AGG. Besides, the provisions to alleviate the burden of proof (Section 22, AGG) and the provisions in support of anti-discrimination organisations (Section 23, AGG) are also applicable to the entire university context. However, Section 3(4) of the AGG that guarantees direct protection against sexual harassment applies only to university *employees*, not to students. The requirements set out in Section 3(3) of the AGG that need to be met to constitute an offence are higher than those stipulated in Section 3(4) of the AGG. In addition to the element of

¹ Cf. Krebs et al., The Campus Sexual Assault (CSA) Study, 2007, XVIII. On criticism of the representative character of the study (the response rate among the 5,446 questioned female students was low and the survey covered merely two universities) cf. *The Washington Post*, 17 December 2014, available at: <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/12/17/one-in-five-women-in-college-sexually-assaulted-an-update/> (accessed: 14 February 2015).

violation of dignity, a hostile environment must exist. Hence, the non-applicability of Section 3(4) of the AGG represents an enormous protection gap for students.

Higher education laws of the *Laender*

All 16 Federal *Laender* have used their legislative power to pass their own higher education laws. Hence the responsibility to implement and enforce gender equality and the ban on discrimination rests with the university. Yet, the form of implementation varies widely from *Land* to *Land*. The expert opinion points out that only few universities have sufficiently clear rules on the question of whether and how students may receive protection against sexual harassment. Besides, sexual harassment is only rarely made explicit as an element of the ban on discrimination.

Autonomous law of the universities

The autonomous law of universities comprises agreements that stipulate the ban on discrimination both for civil servants and university employees. To also include students, universities are authorised, yet not obliged, to establish guidelines prohibiting sexual harassment. These include principles and definitions, preventive measures, procedures in case of violation of the ban as well as sanctions. Furthermore, they provide information about contact persons at the university. The guidelines studied in the expert opinion differ widely, both in the number of rules they include and in the scope of those rules.

Policy Recommendations

To improve the protection against sexual discrimination and violence in the university setting, the authors of the expert opinion make different recommendations for the universities as well as recommendations on statutory provisions at Federal and *Land* level.

Prevention:

- To determine the need for action: Conduct a survey of all students and staff members (of any sex)
- Pass guidelines that ensure the ban on sexual discrimination and violence against all students (women, men, LGBTI)
- Organise flyer and poster campaigns to inform and raise awareness among students and staff members
- Introduce the equal opportunities commissioner and/or the complaints office
- Empowerment: Inform students about (legal) bases and the background of the ban on sexual discrimination
- Infrastructural prevention measures: create a safe environment on campus
- Organise further training on 'non-discrimination at university' and make participation mandatory for all staff members involved in the complaints procedure

Procedures & sanctions:

- Introduce & notify about a transparent, regulated (complaints) procedure
- Establish a complaints office (ensure that all persons involved meet the minimum qualification requirements)
- Differentiated sanctions based on the status of the perpetrator (staff member, students, third party) in case of a violation of the ban on sexual discrimination

Federal & *Laender* laws:

- Remove the restriction of the AGG to the fields of work and employment
- Proclaim the universal applicability of the AGG in the field of higher education
- Enshrine a ban on discrimination (acc. to Section 3(4) of the AGG) in the higher education laws of the *Laender*
- Make it mandatory to pass guidelines

More information

The expert opinion "Sexuelle Belästigung im Hochschulkontext – Schutzlücken und Empfehlungen (Sexual Harassment at University – Protection Gaps and Recommendations)" can be found => [here](#) (in German language only).

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