The Federal Anti-Discrimination Agency’s research projects at a glance:

**Legal experts’ opinion on the need to specify and broaden the statutory characteristics set out in the General Equal Treatment Act**

**Overview of the study**

Section 1 of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz - AGG*) provides for six characteristics based on which no one may be discriminated against: “race” or ethnic origin, gender, religion or beliefs, disability, age or sexual identity.

However, persons might face discrimination on grounds other than these, such as socio-economic factors, their family situation or external appearance. As evidenced by other EU Member States or the EU Charter of Fundamental Rights, it is possible, in principle, to add to the list of reasons for protection contained in Section 1 of the General Equal Treatment Act. This expert opinion discusses the need to reform the protected characteristics included in the Act. Within the framework of a comparative legal analysis, it explores whether and to what extent it would be appropriate to further specify the characteristics referred to in the AGG in greater detail or expand them. The legal opinion includes a survey of existing German and European case law as well as an overview of the current state of research. Moreover, drawing on the example of other EU Member States, it analyses the extent to which the latter’s anti-discrimination law uses more specifying or additional characteristics to protect further areas of characteristics from discrimination.

**Title and authors of the study:**

This study was carried out by Ulla Kuniß-Nickel, lawyer and Bärbel Kuhlmann, lawyer, Ernst & Young Law GmbH Rechtsanwaltsgesellschaft. It is cited as follows:


**Method**

In order to analyse the potential need to reform section 1 AGG, existing criteria and legal consequences under German law were examined and the legal consequences outlined. In addition, the existing case law and the current state of research, both in Germany and on the European level, were mapped. As a next step, the legal systems of Belgium, Bulgaria, Finland and Great Britain were chosen as examples to compare with Germany’s anti-discrimination law. Specifically, the legal consequences and numbers of actions or complaints brought in each country were analysed.

For a more in-depth analysis, structured expert interviews with legal experts and actors engaged in anti-discrimination activities were held on the national, international and supranational levels. The study results were incorporated into the legal experts’ opinion in the relevant places and correlated with the German regulations on discrimination grounds and the existing body of case law.
Results

Various approaches to improving and broadening the protection from discrimination afforded by the AGG can be considered, especially the inclusion of additional characteristics or the specification of existing ones, as well as the shift to an open catalogue of characteristics.

Overall, the study revealed that many case situations that are protected in the European legal systems under study, either by means of added characteristics or a broadened scope of application, could, in the individual case, be covered by the characteristics listed in the AGG. Consequently, the level of protection afforded by German anti-discrimination law is almost on a par with the level of protection in the four EU Member States included in this study.

Legal clarification of the characteristics “ethnic origin” and gender

Regarding the identified differences in the scope of application of individual characteristics, consideration might be given to defining the AGG’s existing characteristics more precisely, especially: “nationality”, “language” and “gender identity”. These are closely associated, in terms of content, with existing grounds for discrimination. Language and nationality, for instance, are strongly linked to a person’s origin. As a result, specifying the characteristic “ethnic origin” in greater detail might bring it under the scope of protection. Defining gender identity as pertaining to the “gender” set of characteristics might afford greater legal certainty.

Nevertheless, there are still a few characteristics that have not enjoyed protection from discrimination under the German AGG so far, since they are not connected to any of the existing characteristics. This applies especially to: “family status” and “socio-economic status”.

Potential inclusion of the discrimination characteristic “family status”

Given that marital status and registered partnership/civil status/family status/family relationships are categories of protected characteristics in other countries, Germany might wish to consider adding them as well. Personal relationships, such as the status of “married person” or “single parent” or the existence of underage children or relatives with care needs are not currently covered and protected by the AGG. Marriage and the family enjoy special protection both under the constitution and at European level.

Considering inclusion of “adverse socio-economic status” as a characteristic

When the study looked at discrimination grounds linked to socio-economic aspects, it became obvious that discrimination on socio-economic grounds increasingly occurs in combination with already protected characteristics and that legal uncertainties persist with respect to their definition and the delimitation of the scope of such a characteristic. These could argue against a broadening of the catalogue of characteristics.

Nevertheless, none of the structural models discussed, neither the opening up of the conclusive catalogue of characteristics, nor the broadening or specification of the protected characteristics, could be prioritised conclusively. What all of the models have in common is that they would require an amendment of the AGG that, in each case, would be preceded by time-intensive and controversial discussions among the legislator, representatives of those affected, the legal community and other actors engaged in anti-discrimination activities, for the purpose of political knowledge creation.

This study has analysed and discussed the benefits and drawbacks of the possibilities for further development of the statutory catalogue of characteristics contained in section 1 of the AGG. The remaining open question for research is how to improve the legal enforcement of existing and yet-to-be included grounds of discrimination. Indeed, it was possible to demonstrate that a larger number of characteristics does not necessarily result in more effective protection from discrimination. In light of the foregoing, it can be assumed that a higher level of protection covering more characteristics
will be unable to make up for any deficits relating to legal access and law enforcement for those affected. Here, more knowledge is needed on the concrete barriers that hinder the willingness to litigate and the factors that stand in the way of effective law enforcement.

More information

The study “Rechtsexpertise zum Bedarf einer Präzisierung und Erweiterung der im Allgemeinen Gleichbehandlungsgesetz genannten Merkmale” can be downloaded => here.

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