



Federal
Anti-Discrimination
Agency



Annual Report

2019

Equal rights, equal opportunities

Annual Report of the Federal
Anti-Discrimination Agency



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Dear Readers,

To look back on 2019 is to look back on a world before Coronavirus. There are risks of new kinds of discrimination associated with this current crisis, as evidenced by the experiences of people of Asian heritage. But even though we understand the desire to return to a lost normality, we must not forget: 2019 was a year in which hatred and hostility to those deemed different have left deep and painful memories, from the murder of Walter Lübcke to the Halle terrorist attack, but also in many marks incidents in ordinary day-to-day discrimination.

The need to gather our forces against exclusion and discrimination has hardly ever been as clear as it is now. To this end in December 2019 we organised the first German Anti-Discrimination Days as a forum for all in business and politics, academia and counselling who are working to fight for real equality. The overwhelmingly positive response has encouraged us to make the Anti-Discrimination Days a regular part of our ongoing agenda. You can gain some impressions of the day in the chapter on “Events”.

This report also provides a summary of the Federal Anti-Discrimination Agency’s campaigns and publications, as well as our work on social media and the legal questions in which we have been deeply involved. Last, but by no means least, it presents the key facts and figures from the counselling services we provide.

I hope this report makes for thought-provoking reading.

With best wishes,

Bernhard Franke

Bernhard Franke

Acting Head of the Federal Anti-Discrimination Agency



Research

The Anti-Discrimination Agency commissions research and subsidises scientific studies on discrimination. It regularly evaluates statistical data and analyses legal questions in this field.

Awareness-Raising

In its campaigns, events and publications, the Anti-Discrimination Agency reinforces public awareness of discrimination, informs victims of their rights and provides information about the ban on discrimination.

The Federal Anti-Discrimination Agency

Under the General Equal Treatment Act (AGG), the Federal Anti-Discrimination Agency is the national equality body for the Federal Republic of Germany.

Its task is to protect people from discrimination on grounds of age, disability, ethnicity, gender, religion or belief, or sexual orientation. The primary aim of the AGG is the protection of people at work and in their daily lives, such as shopping or when flat or house hunting.

The Anti-Discrimination Agency advises victims of discrimination, works to raise public awareness, undertakes research into discrimination, and shares recommendations on how to avoid it. It is an independent body within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

Bernhard Franke has been Acting Head of the Federal Anti-Discrimination Agency since May 2018.

Counselling

The Anti-Discrimination Agency provides free initial legal advice to people who have experienced discrimination. The Agency can also mediate amicable settlements or put people in contact with other counselling bodies.



ments



**What were the milestones in terms of preventing discrimination in 2019?
Who got things going? What still needs to be done politically?**

Racism

On 09 October 2019, a heavily armed right-wing extremist attempted to force his way into a synagogue in Halle, intending to murder the worshippers gathered for the festival of Yom Kippur. His attempt failed, but the attacker still managed to kill two people at random: one outside the synagogue and one in a nearby Turkish-Kurdish fast-food shop.

And the trail of violence continues into this year: in February 2020, nine people – all from migrant backgrounds – were killed in a far-right terrorist attack in Hanau.

Such shameful attacks display racism at its most aggressive. They are in line with a social climate in which racism is becoming more visible in all walks of life. One example can be found in the crime statistics published by the Federal Criminal Police Office, where the number of racist, Islamophobic and anti-Semitic offences have been increasing for years. 2019 also saw an increase in attacks on mosques. And just as in previous years, in 2019 there was a marked rise in the number

of requests made to the Anti-Discrimination Agency for counselling concerning racist discrimination.

The agency's counselling unit has received 1,176 such requests from people who felt discriminated against in their workplace or in their daily lives due to their ethnicity. It is striking that the number of people contacting the Anti-Discrimination Agency to report racial discrimination has more than doubled since 2015.

33% of enquiries concerned racist discrimination, yet again accounting for the highest proportion of all enquiries (turn to page 43 for detailed statistics on counselling).

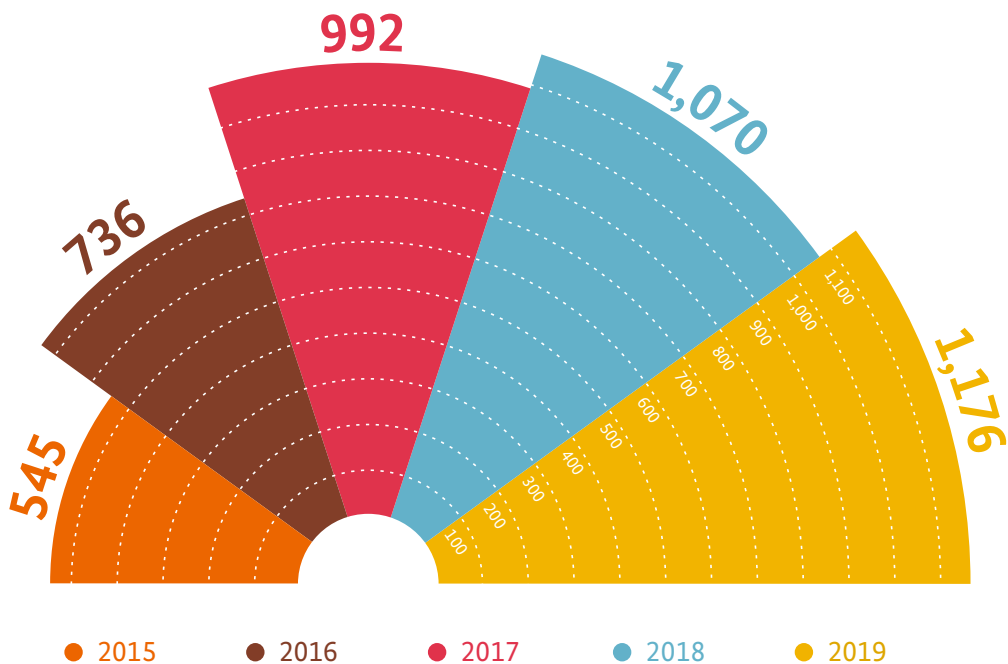
The counselling work of the Anti-Discrimination Agency clearly shows that victims experience this kind of discrimination in all aspects of their daily lives.

“ I work in a hairdressers. One customer recently called out down the shop, ‘Where’s my n*gro? I like it best when he massages my head!’ ”

“ A child made fun of my brother at school because he has dark skin. Then he hit him. The teacher saw everything but did nothing. ”

“ Two men who work in a different department asked me, laughing, if I worked for the company as the woman who makes the coffee. I am a civil engineer from Syria, employed as a statistician. When I told them that, they laughed even louder and asked if I worked to German or Syrian standards. ”

Trends in requests for counselling made to the Anti-Discrimination Agency relating to ethnicity/racist discrimination, 2015–2019:



These accounts and statistics document the rise in hate and prejudice in German society, a development which migrant organisations, People of Color, Jews, Muslims, Romani, Sinti and Black people have been warning of for a long time. Many victims of racism feel that for years there has been no improvement to the overall situation, and that while attacks and killings such as those in Halle or Hanau create a stir in the

wider society, the worries, fears and exclusion experienced by those with migrant backgrounds are still not taken seriously. The publicist Ferda Ataman, who represents the umbrella group Neue Deutsche Organisationen (new German organisations) on the advisory council of the Federal Anti-Discrimination Agency, describes her frustration:

“ When I now see baffled faces, confusedly asking where all these racists and neo-Nazis are coming from all of a sudden, it makes me furious. Seriously, how blind do you have to be not to have noticed for all this time how far a fear of extinction has spread among many Germans, and not just in the East? Or how deeply resentment towards Muslims reaches into the very heart of society? A best-selling book with sales of over a million copies propounding “a crudely Darwinist theory of society”, demonstrations against the “Islamification of the Occident”, “concerned citizens” chanting slogans about “fake news” – these [...] should already have set the alarm bells ringing. ”

Violence, hate and rabble-rousing are but the tip of the iceberg of racist attitudes and resentment which were already manifesting themselves through daily marginalisation long ago. The rental advert, saying “no foreigners”; the nightclub where “people like you” apparently always cause trouble; or the manager who says of a colleague’s racist joke that he “definitely didn’t mean it like that”.

A 2019 survey carried out on behalf of the Anti-Discrimination Agency reported that one in three people with migrant backgrounds who had been flat- or house-hunting in the last decade had experienced discrimination during their search. At the same time, 41% of those interviewed in a representative sample of the national population said they would have serious or profoundly serious concerns about letting a flat to an immigrant. While the AGG may in principle forbid discrimination like this, legal protection against discrimination in the housing market is riddled with exceptions. In a legal opinion commissioned by the Anti-Discrimination Agency, Professor Dr Gregor Thüsing from the University of Bonn states that EU Racial Equality Directive is only inadequately implemented in Germany.

The Federal Anti-Discrimination Agency is therefore arguing for a change to Section 19 of the AGG, in which exemptions for private

landlords and housing associations create the potential for discriminatory treatment in a wide range of forms. The Anti-Discrimination Agency believes that a specific ban on discriminatory rental advertisements should be instituted, as is already the case for job advertisements. Giving anti-discrimination associations the right to initiate proceedings would also help to improve the enforcement of anti-discrimination legislation in Germany.

The Anti-Discrimination Agency has funded the #Afrozensus, the first-ever survey focusing specifically on the perspectives and experiences of discrimination among Black people in Germany as a means of improving the quality and quantity of data held about racial discrimination. One aim of the survey is to better understand the support required in fighting racial discrimination. Nonetheless, it is already clear that local assistance must be strengthened through sustainable anti-discrimination advice services. Germany’s federal states can also make a crucial difference by setting up their own anti-discrimination agencies and enacting state-level anti-discrimination laws. The fight against racism does not begin by stopping violence, but in our daily efforts to achieve genuine equal treatment. ●



Has there been a significant heightening of tensions in politics and society following the events of recent months?

In recent years, right-wing extremism, racism and everyday racism have made their way into the mainstream of society, as many statistics and surveys confirm. This is a profoundly serious situation, and in my view it has two central causes. The first is how we make use of social media. Some see the internet as a legal vacuum, but justice and laws apply there, too. The second cause is that the tone of the political debate has coarsened, not just in the Bundestag, but in state parliaments as well. Minorities are sometimes spoken of in aggressive and derogatory terms, something which particularly adds to the increase in tensions in our social climate.

How do these developments affect you personally?

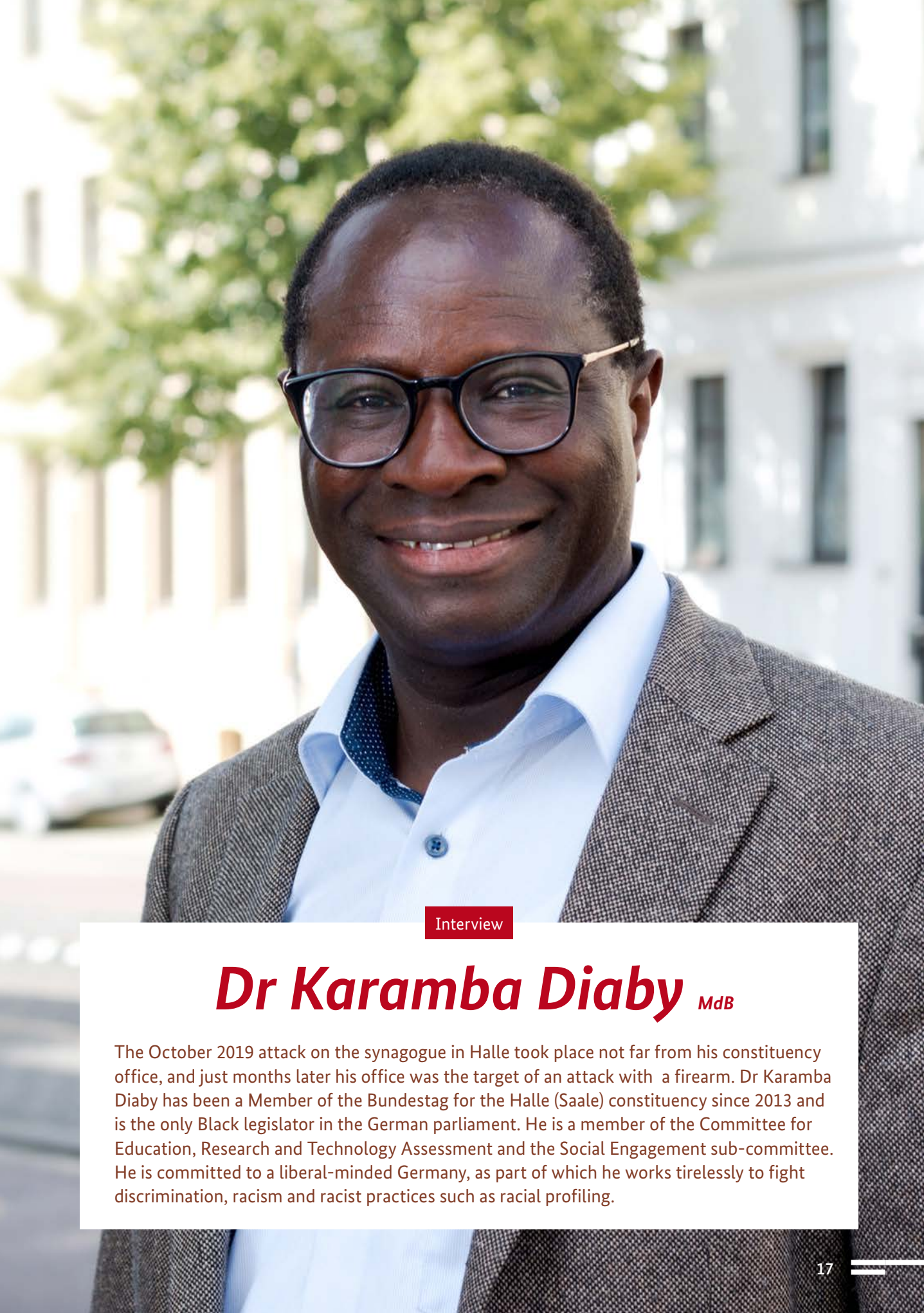
Every day I receive at least two or three messages or comments where I am insulted or threatened. Of course, this affects me, because I constantly have to deal with those things instead of my actual work. For example, my team and I always press charges when we think a line has been crossed. I will not let myself be intimidated because I think it is vital you make it clear that this kind of behaviour is unacceptable.

In your view, what needs to happen now to fight racism and discrimination?

First, we urgently need to become more civil again when engaging with each other. Politicians above all should reflect on the negative contribution they make through insulting and degrading speech.

The second challenge is for society: Everyone has to speak up and step in when they see something which crosses a line, whether it is on social media, at granny's 80th birthday or over a beer with colleagues.

The third thing is for politicians to take responsibility. We need to create the basic conditions where everyone feels protected. For example, when it comes to fighting racism and right-wing extremism, those who run social media platforms should not just be required to delete hateful comments, but to report them to the Federal Criminal Police Office, too. I also absolutely want to see Section 188 of the penal code, which protects those in political life from defamation and slander, expanded to cover local politicians as well. Last but not least, we really need to strengthen support for political education in this country, because people, young and old alike, are often overloaded with fake news and hate speech. We have to improve how we give them the skills they need to deal with it in an informed way – not just in schools, but in adult education and facilities for older citizens. ●



Interview

Dr Karamba Diaby MdB

The October 2019 attack on the synagogue in Halle took place not far from his constituency office, and just months later his office was the target of an attack with a firearm. Dr Karamba Diaby has been a Member of the Bundestag for the Halle (Saale) constituency since 2013 and is the only Black legislator in the German parliament. He is a member of the Committee for Education, Research and Technology Assessment and the Social Engagement sub-committee. He is committed to a liberal-minded Germany, as part of which he works tirelessly to fight discrimination, racism and racist practices such as racial profiling.

Discrimination by Algorithms

When a US tech company launched a digital credit card in collaboration with a major bank in 2019, it did not attract the good publicity they had hoped for. Customers quickly noted that some married couples – even though they submitted the same tax return and shared bank accounts – were being offered wildly different credit lines.

The credit limits being offered to men were at times 10 and even 20 times higher than those than those offered to the wives. However, the lenders strenuously rejected the claim they were discriminating on the basis of gender. The algorithm used to evaluate the applications, they said, had no idea of the applicant's gender. But were other variables then causing indirect discrimination? Financial regulators in New York began an investigation on the grounds that gender discrimination is prohibited, even if it is unintentional.

This is just one example, but it reveals the speed with which questions about discrimination can arise in cases where algorithmic decision-making systems are used. Another example is in the software used by the US justice authorities to determine which offenders were likely to reoffend, but which massively overestimates the risk for black people. Or the controversial algorithm used by the Austrian

Public Employment Service which was intended to improve how people were helped to get qualifications, but which may, it is feared, disadvantage an individual due to their gender or origin.

In the end, an algorithm is nothing more than a set of instructions for solving a problem in a series of steps. If x is present, then do A; if y is present, then do B. More complex, so-called “learning” algorithms, sometimes described as “artificial intelligence”, look for these rules by evaluating huge datasets. They work by recognising patterns and statistical correlations. The key principle of anti-discrimination law, on the other hand, is precisely to prevent characteristics – real or attributed – associated with certain groups from negatively affecting an individual, and to protect the individual from being treated as part of a pattern if that pattern may be discriminatory.

What are the implications for protecting against discrimination whenever more sensitive decisions in our lives – in recruitment procedures and HR development, insurance contracts, in police work and medical care – are made wholly or in part by computer programmes? The AGG lists a catalog of grounds (age, disability, ethnicity, gender, religion or belief, and sexual identity) on the basis of which it is illegal to discriminate against someone in work life or with regards to free access to goods and services. These protected characteristics also apply in the digital world. But how should anti-discrimination law deal with discrimination which may be buried in code, especially for courts deciding on actions under the AGG and often for victims themselves?

2019 saw considerable movement in this discussion. The European Commission, the Council of Europe and the United Nations made contributions in the form of memoranda and recommendations. Civil society organisations such as Algorithm Watch have driven the debate forward through studies and projects. The German Federal Government's Data Ethics Commission submitted their final report which makes specific recommendations on the regulation of algorithmic systems as well as the prevention of discrimination. The Federal Anti-Discrimination Agency has also published an expert opinion on "Discrimination through

the use of algorithms", which attracted considerable attention from experts and in the media.

Its author, Dr Carsten Orwat of the Institute for Technology Assessment and Systems Analysis at the Karlsruhe Institute of Technology, compiled a comprehensive inventory of the challenges in protecting against discrimination with regard to big data and algorithmic systems. He concluded already now there are risks of discrimination from algorithmic decision-making systems, risks which affect all areas of life protected by the AGG and potentially all protected characteristics, and extending even beyond those areas (see page 21 for more on the actions recommended by the study).

Elsewhere in Europe, there is already case law on questions of the use of algorithms to support decision-making. The Finnish anti-discrimination tribunal imposed a fine of €100,000 in the case of a young man who was refused an online loan. The National Non-Discrimination and Equality Tribunal was satisfied that the victim would have been given the loan if he had been a woman and a member of the Swedish-speaking minority. It determined that he had been discriminated against on ground of several characteristics protected under Finnish law.



The increasing use of algorithmic decision-making systems and artificial intelligence poses new challenges to anti-discrimination law. The Data Ethics Commission rightly held that it will be almost impossible for victims to present evidence of discrimination independently to a court, and hence the introduction of a right to collective action under the AGG is required. Such a right is only logical in that algorithms, by definition, make such decisions systematically; in practice, they never only affect individual cases.

In Germany, it is already significantly more difficult to bring a successful discrimination case to court than in many other EU member states. If the present situation is not to deteriorate further, it must be ensured that judges remain in a position to understand the bases on which a human resources department took its decisions even if these relied on the use of software.

It is only a matter of time before the first reported cases of discrimination due to algorithms occur in Germany. For this reason, the Anti-Discrimination Agency is arguing for businesses and administrations which use

algorithms in legally sensitive areas to be subject to specific obligations around documentation. The Agency endorses anti-discrimination agencies having the right to inspect algorithms. “Algorithm audits” should be established to simplify how evidence of possible discrimination by algorithms is identified and gathered, and also to strengthen the rights of victims. It is also necessary to offer preventative measures, such as training for staff responsible for HR or IT.

As the national equality body for the Federal Republic of Germany, prevention of discrimination is a legal duty of the Federal Anti-Discrimination Agency. The Agency will, therefore, make the regulation of the implementation of algorithmic systems a particular field to which it will contribute its legal expertise. ●

Discrimination in algorithmic systems – what is to be done?*



The Law:

- ✓ Data protection law enshrines people's "informed consent" in how their data is used. This concept must be reviewed and adapted where necessary to make it possible to assess the effects and risks of discrimination arising from the use of algorithms.
- ✓ Specific data protection regulations should be put in place governing the use of automated decision-making systems.
- ✓ It may be difficult to submit evidence of discrimination by algorithmic systems if victims are not even aware they have been affected. A duty to document algorithmic processes should ensure that decisions can be inspected. In case of doubt, state anti-discrimination agencies should have access to this type of documentation.
- ✓ The AGG must provide collective legal protection / a right of associated action. The protected characteristics and scope of application should be reviewed to determine if they should be expanded.



Society:

- ✓ We must deliberate where the use of algorithmic systems is advantageous or at least harmless, where it is feasible but should be regulated, and where it should be limited or prohibited.



The Federal Anti-Discrimination Agency:

- ✓ Developers and users of algorithms should be able to seek advice from the Anti-Discrimination Agency to prevent potential risks of discrimination.
- ✓ Public institutions should be obliged to involve the Anti-Discrimination Agency when procuring software which can make decisions on the basis of algorithmic systems.
- ✓ The Anti-Discrimination Agency should gain access to methods for the empirical analysis and testing of algorithms and software systems for risks of discrimination by seeking partners with the necessary expertise.
- ✓ The Anti-Discrimination Agency must take part in the public debate around risks of discrimination. Its expertise in anti-discrimination law should be part of all regulatory activity.

*Actions Required and Suggestions for Implementation, from: Institute for Technology Assessment and Systems Analysis, Karlsruhe Institute of Technology (KIT). Orwat, Carsten (2019): Risks of Discrimination from the Use of Algorithms.

Interview

Professor Dr Katharina Zweig

For years, Katharina Zweig has studied the impact of algorithmic decision-making systems on society. She is a Professor of Computing Science at the TU Kaiserslautern and her work primarily focuses on questions of transparency in algorithms and the results of data analyses. Professor Zweig is a member of the German Parliament's Enquete Commission on Artificial Intelligence and is author of the book, "Ein Algorithmus hat kein Taktgefühl" (An algorithm has no sense of tact). Her core concern is to empower a wide readership to play a part in the development and application of artificial intelligence.

What does artificial intelligence (AI) have to do with discrimination?

Machines acquire their “intelligence” either by following man-made rules or by looking for patterns in large data-sets. Modern AI systems are based on this type of pattern recognition. That is why we put “intelligence” in quotation marks: they have no understanding of what goes into the rules they follow. We could give a computer the résumés of the last 10,000 job applicants. It would then use statistics to look for the characteristics frequently associated with successful applicants but only rarely found in unsuccessful applicants. It happened to one company in the USA, where the computer discovered a discriminatory pattern in which people from certain colleges had been recruited less often in the past. It emerged that some of them had come from women-only colleges, whose graduates had worse chances. If this cannot be justified on the basis that their education really was worse, then it is a case of unjustified discrimination.

What risks arise from using algorithmic decision-making systems?

Using patterns from the past for future decisions can even reinforce those pre-existing patterns. A second problem is that the machine also decides to check a person against every pattern it finds. If they fit a

pattern, they are treated like other people who fitted that pattern in the past. In the end it comes down to simple prejudice: “because those people behaved in that way, this person will do, too.”

So how can the risks of discrimination be minimised?

There are a range of strategies at both technical and societal levels, and the data itself should be free of discrimination. Moreover, the results the machine delivers should also be free of discrimination, which means you have to decide exactly how potential discrimination should be measured. Should a certain percentage of applicants from minority groups be recruited? Or should the percentage reflect the numbers in the population? Or should the computer assign applicants to (supposed) performance categories and call them to interview in equal proportions? There are dozens of ways of doing it. How you answer these questions also changes the decisions the computer later makes. Because of this, machine-generated results should be open for those they affect to scrutinise so that discriminatory decisions can be brought to light. However, I believe it is also especially important that the regulations we certainly need are applied with a sense of proportion – after all, not all AI systems need the same level of scrutiny. ●

Sexual Harassment in the Workplace

The testimonies many women gave in the run up to the trial of the US film producer Harvey Weinstein shaped the #metoo debate. More than 80 women publicly accused Weinstein of sexual harassment. Weinstein was subsequently convicted after it was proved in court that he had raped and sexually assaulted several women under the threat of harming their careers.

At the beginning of the trial in January 2020, Weinstein's attorney was asked if she had ever had to experience a sexual assault in her own life. "I have not", she replied, "because I would never put myself in that position."

Her reply is typical of how, two years after #metoo, victims are far too often still being blamed for their sexual abuse – almost as if their abusers were incapable of being anything other than predatory in certain situations. And the ludicrous blame-shifting turns full circle in reports and studies about men in positions of authority who are reluctant to be alone with women in their offices, or even recruit fewer women out of fears of false accusations.

It is true that in recent years there has been a significant increase in both

public awareness and a desire among employers to take protection against sexual harassment in the workplace seriously. Nonetheless, Bernhard Franke, acting head of the Federal Anti-Discrimination Agency, speaking in October 2019 at an Agency symposium on dealing with sexual harassment in the workplace, underlined how:

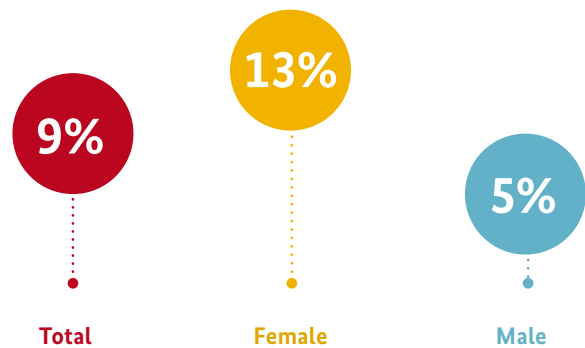
“ The public debate around sexual harassment has also made clear that preventative measures and effective complaints structures to protect against discrimination are sadly lacking in many businesses. ”

The General Equal Treatment Act prohibits all forms of sexual harassment in the workplace, regardless of whether it concerns a suggestive look, showing pornographic images or unwanted



touching. In spite of this, one in eleven gainfully employed people (9%) experienced sexual harassment in the workplace in the past three years (13% of women, 5% of men). This statistic was revealed in a study titled “Dealing with Sexual Harassment in the Workplace” which the sociologist Dr Monika Schröttele carried out for the Anti-Discrimination Agency.

Percentages of victims of sexual harassment in the workplace (total and by gender). Sample: All respondents

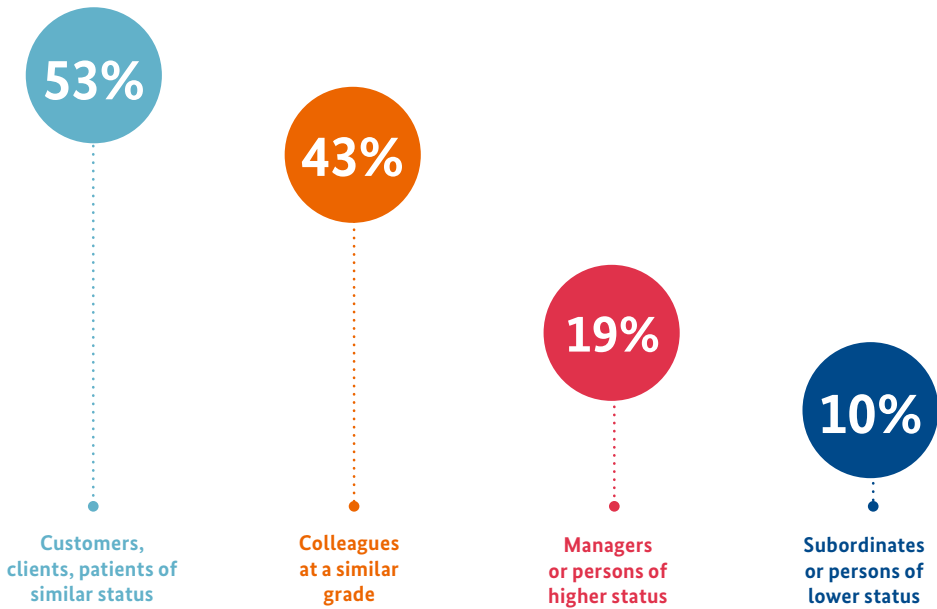


Source: Anti-Discrimination Agency study on sexual harassment in the workplace.



Relationship between victims and perpetrators in cases of sexual harassment in the workplace in the last three years. Sample: Victims of sexual harassment in the workplace

Harassment came from:



Source: Anti-Discrimination Agency study on sexual harassment in the workplace.

Much of the harassment comes from customers, clients and patients. 53% of respondents who had experienced sexual harassment reported being subjected to harassment by such outside parties. 43% said they were harassed by a peer at work, with 19% saying it came from superiors. Women were harassed significantly more often by patients and customers and by higher-status colleagues; men were more often

harassed by peers or colleagues with a lower status. It was also striking that 82% of victims identified men as their harassers.

Under the AGG, all employers are obliged to implement measures to prevent sexual harassment and to set up an internal complaints office to review all complaints. However, according to the Anti-Discrimination Agency's study, over 40% of employees



interviewed were unaware if a complaints office of this type existed in their workplace.

At the Anti-Discrimination Agency symposium more than 200 representatives of business and management, works councils and civil society discussed the study's findings, complaints procedures, employers' responsibilities and ways of providing support. The principal conclusions were:

- ✓ Leadership teams and managers have a key role to play, not only in setting an example, but also in ensuring that measures to prevent and protect against harassment are properly implemented. Sustainable improvements in a business are only possible when protecting against sexual harassment is taken seriously at a management level.



betriebsklimaschutz

Antidiskriminierungsstelle des Bundes

betriebsklimaschutz

NUR EIN KLAPS

—
IST SEXUELLE BELÄSTIGUNG.

Belästigungen passieren – vielleicht auch in Ihrem Unternehmen. Das schadet Ihren Angestellten und dem gesamten Betriebsklima. Jede elfte Person hat einer Studie der Antidiskriminierungsstelle des Bundes zufolge in den letzten drei Jahren sexuelle Belästigung am Arbeitsplatz erlebt.

Ihre Beschäftigten vertrauen darauf, dass Sie für ein sicheres Arbeitsumfeld sorgen. Wir unterstützen Sie dabei mit einem ausführlichen Informationsangebot zum Thema „Sexuelle Belästigung am Arbeitsplatz“.

www.betriebsklimaschutz.de

- ✓ Clear procedures are essential: Victims can only trust a complaints procedure when there is a transparent process for both employees and HR managers that sets out the actions required in the case of sexual harassment.
- ✓ Employers must support victims by providing information – including information from external agencies – and must communicate an unambiguous message to all employees that sexual harassment will not be tolerated.

The Anti-Discrimination Agency's #betriebsklimaschutz (protect the working environment) campaign supports employers through a comprehensive range of information materials, posters and postcards. There can be no doubt that occupational health and safety includes protection from sexual harassment in the workplace. The Anti-Discrimination Agency will continue this work, updating the "Sexual Harassment in the Workplace – What Can You Do?" guide and making available a good practice database with examples of tried-and-tested methods preventing sexual harassment.

But legislators have a responsibility to act, too, as legal protection from sexual harassment in the workplace remains patchy. For example, people with disabilities who work in workshops, freelancers and the self-employed and also students at higher education institutions are not at all or only partly covered by the AGG's ban on harassment. Furthermore, the two-months deadline set down in the AGG for making claims for damages and compensation is too short, as is the three-months limit for filing a complaint. Given how long it takes to process a violent experience, these limits ignore the reality of victims' lives and should be extended to six months at least.

The focus must be on the victim, particularly when dealing with sexual harassment. Yet, most still choose not to start proceedings against harassment due to fear of negative consequences from their employer. It would make a great deal of sense if the Federal Anti-Discrimination Agency could accompany victims in court and give them legal support, given the often-grave psychological burden on victims ●

How does the “make it work” project help victims of sexual harassment in the workplace?

On the one hand, we help victims through our awareness-raising work, to give them the information and encouragement they need to seek help in cases of harassment. Often, victims do not know what their rights are and where to turn for help. On the other hand, we provide indirect support by empowering our counsellors in their work with victims. That can take the form of providing materials to use in their workplaces, and also of building up regional and national spaces for them to interact with each other. A third case is the way in which we support victims by raising awareness and providing information to their colleagues in management. Often the way that those around you react is a decisive factor when people open up and report an assault.

Can you describe your work with businesses?

We work with employers on a range of levels. On the one hand, we are a point of contact for training, where our approach is to start with management, because they are the people who can and must bring about change in a business. An important further step is to train and share knowledge with all employees. On the other hand, we also

offer support for businesses in drawing up service agreements and action guidelines. This is an area where we always find the biggest challenge for employers getting hold of information on how to implement protection against sexual harassment properly and to bring the whole workplace culture along with them.

How would you like to see protection against sexual harassment in the workplace improved?

Among employers I would like to see more courage to make sexual harassment a subject of discussion and adopt the attitude where they say, “we want to tackle this subject, not because it is happening here, but because everyone should be doing something about it”. Secondly, I really want to see employers better supporting people who make complaints or who call for change. So often we find that those who dare to raise the subject of sexual harassment at work or who make complaints are at times smothered into silence, especially in strongly hierarchical organisations. A third thing would be that protection for employees against sexual harassment is not treated as a one-off job, but given equal status alongside other tasks as an ongoing duty and responsibility for management. ●



Interview

Anita Eckhardt

Anita Eckhardt has worked at the Federal Association of Rape Crisis Centres and Women's Counselling Centres for 12 years. The Association incorporates some 190 rape crisis centres and women's counselling centres, providing counselling and support facilities across Germany for victims of violence. Since 2019, Anita Eckhardt has been co-leader with another colleague of the "make it work!" project, working with employers and victims to improve protection against sexual harassment in the workplace.

Eve



What topics have defined the year for the Federal Anti-Discrimination Agency?
Which issues did it get involved in?

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Dates and Events

“By signing this, we are sending a clear signal for in North Rhine-Westphalia: We will not tolerate discrimination. We stand for a diverse and open society.”



Dr Joachim Stamp, deputy prime minister of North Rhine-Westphalia

In September 2019, North Rhine-Westphalia became the twelfth German state to sign up to the Coalition Against Discrimination, a project begun by the Anti-Discrimination Agency.



Reinforcing Equality

Equality bodies need a strong mandate in the fight against discrimination, so victims are not left on their own. To this end, the European Commission has proposed a set of EU-wide standards. At a symposium in June 2019 the Anti-Discrimination Agency met with Equinet, the European Network of Equality Bodies, and the European Commission to discuss why these standards are so important for European equality bodies. One takeaway was that there are weaknesses in the General Equal Treatment Act itself – the lack of a right of associated action, for example, or the ambiguous legal position of the Anti-Discrimination Agency itself.





Overcoming Differences and Building Bridges

This was the title of a project at Rheydt-Mülfort Vocational College, winner of the 2019 fair@school competition. Students of 13 nationalities built bridges for tolerance in the playground and wrote a song against racism together. Another outcome from the project was a sponsorship scheme in which businesses offer short work-experience placements to refugees. Through their annual fair@school competition, the Anti-Discrimination Agency and Cornelsen celebrate school projects which embrace diversity as an opportunity and set examples of living together without discrimination.



“ It would be an important signal at times such as these, when prejudice and hatred are being expressed with greater force, to afford constitutional protection against discrimination for lesbians, gays and trans* and intersex people and also on the grounds of age. ”

Bernhard Franke, Acting Head of the Federal Anti-Discrimination Agency, on occasion of the 70th anniversary of the German Basic Law.

WAS DIVERS MACHT



German Anti-Discrimination Days 2019

Over 400 participants, more than 30 workshops, discussions and an outstanding cultural programme organised by the Haus der Kulturen der Welt. In December of 2019, the Federal Anti-Discrimination Agency invited participants from civil society, academia, business, management, finance, culture, media, education and politics to the first-ever Anti-Discrimination Days for discussions on the state of the problems facing us now and questions about the future of anti-discrimination work. In workshops and round-table sessions, participants tackled topics such as the “Third Option” in working life, police complaints bodies, the collection of anti-discrimination data and inclusion in the workplace.

Accompanied by music, performances and much more, the Anti-Discrimination Days created a space for cultural engagement with diversity and discrimination and the fundamental tension between exclusion, respect and equality in modern society. Bernhard Franke underlined the importance of the event in his welcome remarks:

“Anti-discrimination policy is about protecting our fundamental rights. It serves our society as a whole. And in doing that, it serves each and every one of us.”



Online and in the Media

The Anti-Discrimination Agency calls for a third gender option for all. Acting head Bernhard Franke laments continued discrimination against non-binary and trans people.

Queer.de 03 April 2019

Anti-Discrimination Agency:
Outlaw discrimination based
on nationality

AFP 29 November 2019

BMAS @BMAS_Bund

Wenden Sie sich bei Fällen von #Diskriminierung an die Hotline der @ADS_Bund: (030) 18555 1855,

 ALTER	 BEHINDERUNG UND CHRONISCHE KRANKHEITEN	 ETHNISCHE HERKUNFT / RASSE/HAUT
 GESCHLECHT	 RELIGION / WELTANSCHAUUNG	 SEKUELLE IDENTITÄT

Startseite
Homepage des deutschsprachigen Auftritts
antidiskriminierungsstelle.de

2:04 nachm. · 19. März 2019 · Twitter Web Client

WDR Aktuelle Stunde @aktuelle_stunde

In Unternehmen müssen Führungspersonen entschieden handeln, um sexuelle Belästigung zu verhindern, sagt die Soziologin Monika Schröttle, Leiterin der @ADS_Bund-Studie „Umgang mit sexueller Belästigung am Arbeitsplatz“.



Das hat unsere Studie gezeigt: Der Hauptpunkt ist eben, dass die

9:21 nachm. · 25. Okt. 2019 · Twitter Web App

Lukas Möller @Mollerzeit

Alle #AI Interessierten finden hier das Gutachten zu „Diskriminierungsrisiken durch Verwendung von Algorithmen“, der @ADS_Bund unter Federführung von Carsten Orwat @KITKarlsruhe. Must-read für die aktive Gestaltung und Begleitung von KI-Projekten.

antidiskriminierungsstelle.de/SharedDocs/Dow...

10:05 vorm. · 24. Sep. 2019 · Twitter Web App

Strengthen legal equality for homosexuals: the Federal Anti-Discrimination Agency adds its voice to calls for change to Article 3 of the Basic Law

NDR 22 May 2019

FC Schalke 04 disciplinary committee clears Clemens Tönnies after racism accusations. The Federal Anti-Discrimination Agency responds with sharp criticism.

Tagesspiegel 07 August 2019

Amaro Drom e.V.
@amarodrom_ev

Im Rahmen der Kampagne #machen der @ADS_Bund erzählt Advija, warum sie sich bei Amaro Drom & @RomanoSumnal gegen Diskriminierung einsetzt. Mehr Infos zu unseren Workshopangeboten gibt es hier: amarodrom.de/workshop-teame... #SintiundRoma #dikhenamen #romnjapower #empowerment



4:57 nachm. · 9. Dez. 2019 · Twitter Web App

Michael O'Flaherty
@MichaelCJT

A second day of meetings in Berlin and more ways to cooperate with the German Presidency identified. Productive exchanges with State Secretary Schmachtenberg @BMAS_Bund State Secretary Seifert @Juliane_Seifert @BMFSFJ Mr Franke @ADS_Bund and Dr Rudolf @DIMR_Berlin



4:42 nachm. · 5. Dez. 2019 · Twitter Web App

IG BCE
@igbce

„#Diskriminierung ist für uns nicht hinnehmbar - weder in der Gesellschaft noch im Betrieb. Eine Reform des #AGG, wie von der Antidiskriminierungsstelle vorgeschlagen, ist längst überfällig.“ Petra Reinhold-Knape, IG-BCE-Vorstandsmitglied. @ADS_Bund

Antidiskriminierung @ADS_Bund · 2. Apr. 2019
Die Zahl der Fälle, in denen die @ADS_Bund rechtlich zu Diskriminierung beraten hat, ist erneut deutlich gestiegen. Um rund 15% im Vergleich zum Vorjahr, um fast 70% seit 2015.

Diesen Thread anzeigen



Jahr	Anzahl der Fälle
2015	2.035
2016	2.625
2017	2.995
2018	3.455

11:10 vorm. · 3. Apr. 2019 · Twitter Web Client

Who turned to the Anti-Discrimination Agency for advice? Why? What support do victims need?

Experi



3,580

is the number of requests for counselling received in 2019 by the Anti-Discrimination Agency's counselling unit on issues concerning a protected ground under the General Equality Act.

Requests for counselling – Facts and Figures

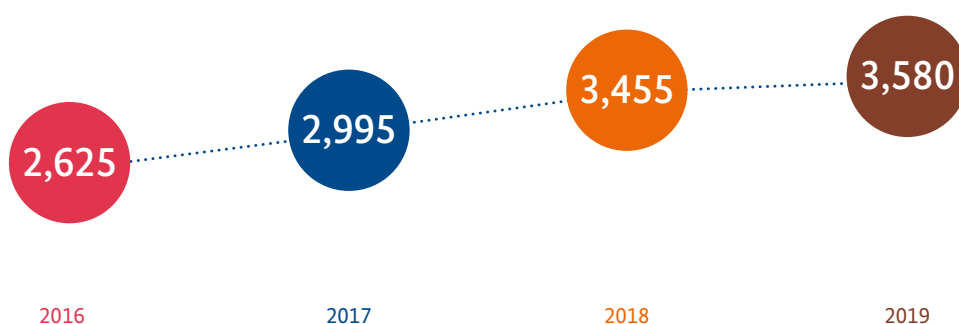
In 2019, Anti-Discrimination Agency counsellors took 3,580 enquiries relating to at least one ground protected by the AGG. Some of these cases concerned discrimination in areas of life not covered by the AGG. This includes the whole field of state activity, for example, as well as abuse in public spaces and hate speech online. There was also a large number of other enquiries, such as those concerning grounds of discrimination not protected by law: family status, for example, nationality or social origin. The counsellors took a total of 4,247 enquiries.

In 2019, the largest number of enquiries once more concerned ethnicity or racist assumptions. The percentage has

increased again, rising from 31% to 33% of all enquiries concerning grounds protected under the AGG. The next largest categories were discrimination on the basis of gender (29%) and then disability (26%). This year the number of cases concerning discrimination on more than one protected ground fell, accounting for approximately 10% of reports.

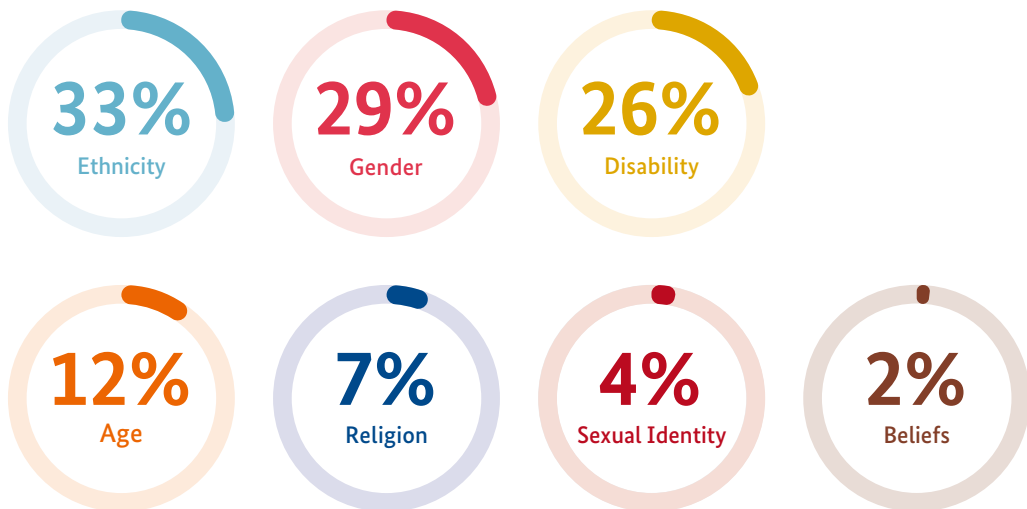
People most often contact the Anti-Discrimination Agency for advice on discrimination in their working life. 36% of enquiries relating to a protected ground concerned access to work, experiences in the workplace or the termination of an employment contract. Discrimination in everyday transactions such as shopping, eating

Trends in enquiries concerning grounds protected under the AGG



Distribution of enquiries across AGG grounds (2019)

Including multiple answers referring to multi-dimensional discrimination



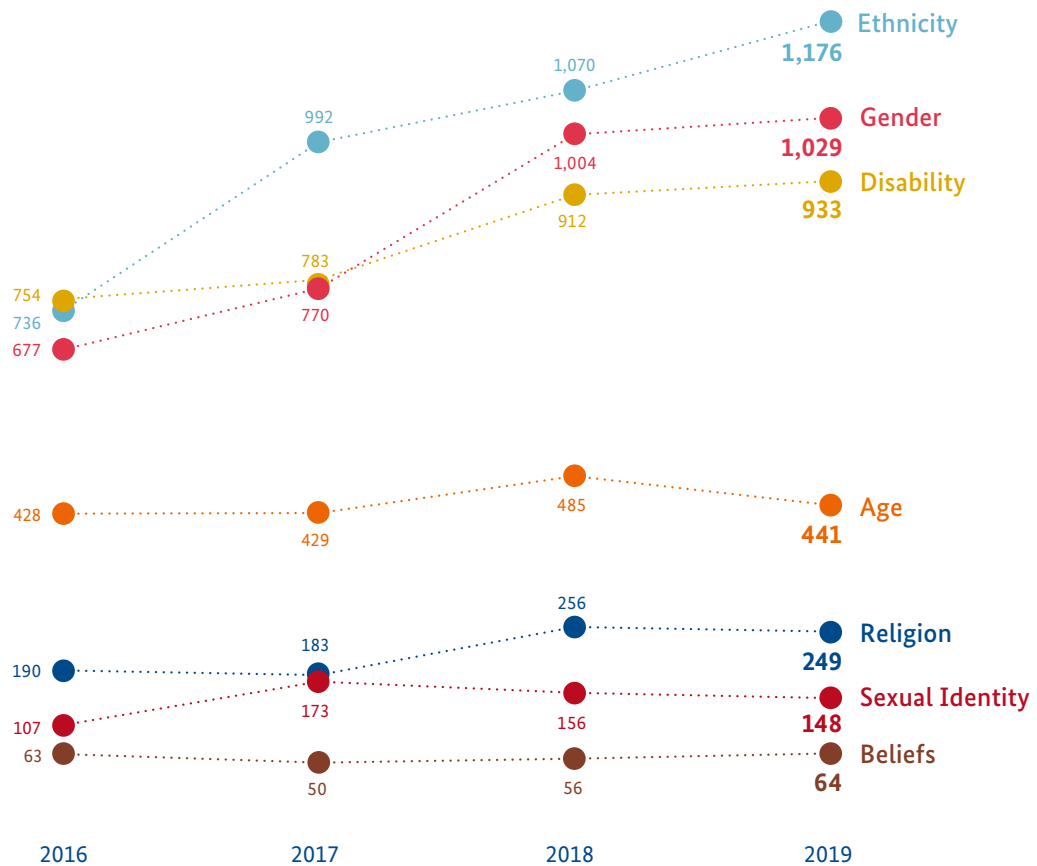
out, holidays or dealings with banks or insurers was the second-largest category. 26% of cases concerned access to goods and services, which is also protected by the AGG. The remainder of the enquiries were distributed across other areas of life where people experience discrimination, but which are not, as a rule, directly protected under the AGG. The actions of state institutions frequently fall into this category, as, while they are subject to the ban on discrimination under Article 3 of the constitution, they are not subject to the AGG Act. This includes complaints about

discrimination by public authorities, access to public health and social services and in education.

The number of requests for counselling received by the Anti-Discrimination Agency remains high. Nevertheless, it only partly shines a light on how often discrimination really occurs in Germany. On the one hand, many victims seek advice from other counselling centres in their own states or local areas, or from civil society organisations. On the other hand, studies show that the majority of people who experience discrimination do

Trends in enquiries, split by AGG characteristic

Including multiple answers referring to multi-dimensional discrimination



nothing about it, due in part to a lack of awareness of the support available to them, fears of adverse effects, or the belief it would be futile.

Frequently, Anti-Discrimination Agency counsellors palpably sense advice-seekers' disappointment at how limited the agency's powers are.

To better assist victims, the Anti-Discrimination Agency should urgently be empowered to bring cases of particular importance to court: this is already possible in neighbouring countries and is something the European Commission and the Council of Europe recommend. ●

Case Studies

A Muslim teacher applied for a job at a catholic kindergarten. The kindergarten applied to the archdiocese for permission to hire her but were refused on grounds of her faith. Recent court decisions , however, place limits on religious organisations regarding the roles for which they may require adherence to a particular religion. In this case, the Anti-Discrimination Agency succeeded in brokering an amicable settlement, and the teacher was ultimately offered a contract of employment.



Case Studies



A man was interested in a job at a retail store. Yet in response to his application he received an email – evidently sent in error – which the store manager apparently intended only to send to a staff member responsible for HR matters. “Please say no,” it said. “He’s over 60!” This is strong evidence of direct discrimination on grounds of age. His local anti-discrimination agency provided ongoing support after his initial consultation.

News from the counselling center

Equal Treatment? Discrimination at the doctor's surgery

Our health matters more than anything else. Which is why doctors must, under their code of conduct, treat everyone without discrimination. Nonetheless, 53 people turned to the Federal Anti-Discrimination Agency for help in 2019 after they were refused treatment in a medical practice or hospital on the grounds of a protected characteristic. In several cases they were turned away because they did not speak German well or were HIV positive, though some were also rejected on grounds of their sexual identity or religious affiliations.

It is difficult for victims take action against discrimination like this because the law is not clear on the extent to which the AGG covers medical consultations. On the one hand, medical treatment is, in essence, a service, but the AGG only applies (with the exception of discrimination on the basis of origin) to those services considered "Massengeschäfte" (generic

commercial transactions) or suchlike (AGG Section 19 (1) no.1). "Massengeschäfte" refers to transactions normally carried out without regard to an individual's status or characteristics, or where their status or characteristics are of little importance. The primary concern in such transactions is the customer's readiness to pay, not their personal characteristics or circumstances. Shopping in a supermarket or going to a swimming pool are examples of this type of transaction; in contrast, when credit checks are carried out for loan agreements, the individual comes to the fore.

There is, therefore, a crucial question here: does medical treatment count as a service which is, generally speaking, offered and delivered without regard to, or where the regard of person is at least of little importance? Or, is it rather a particular service in which the unique doctor-patient relationship is crucial?

Contracts for medical treatment concern personal services specifically tailored to a patient's needs, which speaks in favour of the latter view. Moreover, medical treatments rely on a special relationship of trust between doctor and patient. Accordingly, contracts for medical treatment cannot be categorised as "Massengeschäfte" and legally are not covered by the AGG's ban on discrimination.

Even allowing for the special doctor-patient relationship, however, it is the Anti-Discrimination Agency's view that an individual and their associated personal characteristics, as protected by the AGG, are not the decisive factor where access to, and the actual provision of medical services are concerned. This is because contracts for medical treatment do not provide fully individualised services, but rather a personalised service which will, as far as possible, be delivered in an integrated way. While contracts for medical treatment are drawn up around the specific needs of one person or diagnosis, when it comes to the actual treatment itself, they are essentially standardised. A health resort provides a fair point of comparison, where a range of cosmetic or therapeutic treatments are offered, depending on skin type or symptoms of stress.

Hence, contracts for medical treatment do not constitute a standard "Massengeschäft", as the individual patient always factors into the choice of treatment. However, set against their need for treatment and, the process of medical decision-making, the regard of the individual involved is only of minor importance. Generally speaking, similar conditions apply to the treatment selected for each individual, meaning it is, therefore, comparable with a "Massengeschäft". In 2018, the Court of Appeal in Berlin found in the case of a physiotherapy practice that contracts for medical treatment are similar to "Massengeschäfte" (KG Berlin, non-legally binding decision 12/12/2019–20 U 160/16). Unfortunately, in the absence of comprehensive case law on this problem, a number of medical practices continue to take a different view.

In the view of the Anti-Discrimination Agency, it is especially important to raise awareness among these practices and to set up arbitration boards to decide on individual cases. The Agency would also welcome regulatory clarification that contracts for medical treatment do fall within the scope of the AGG. For the majority of victims what matters most is not fighting for damages in court but getting treatment without discrimination ●

Case Studies

“ A lesbian couple took their son to the pediatrician. But instead of treating the boy’s cough, the doctor asked repeated questions about the child’s family context and eventually refused to treat him at all. So, the mothers appealed to their state medical board for help. The board’s written response stated that they did not consider that the doctor had in any way breached his professional obligations: contracts for medical treatment were not, they said, “Massengeschäfte” therefore this was not a case of discrimination. ”



212

is the number of enquiries received by the Anti-Discrimination Agency in 2019 concerning discrimination against people with disabilities and chronic diseases when accessing goods and services.

Access to goods and services

A family cannot go on their summer holiday because the travel agency rings up shortly before they go and tells them their daughter's wheelchair is not allowed on the ferry. A woman is asked to leave a supermarket by one of the shop assistants because she brought her guide dog into the store with her. A deaf man cannot order museum tickets because bookings can only be made over the phone.

On a total of 212 occasions in 2019, people with disabilities or chronic diseases contacted counsellors at the Anti-Discrimination Agency after they experienced discrimination when trying to access goods or services. This frequently means blunt exclusion and discriminatory statements.

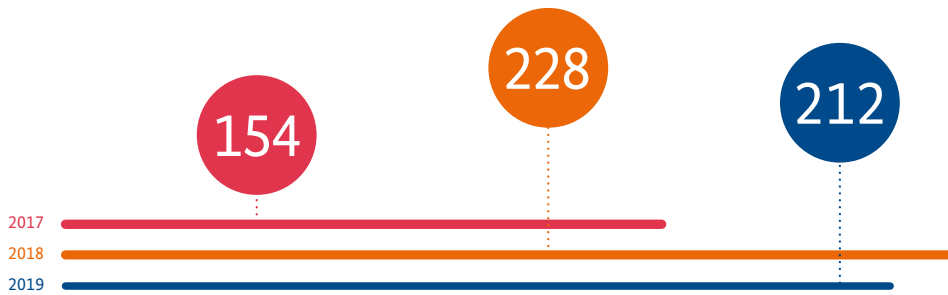
In most cases, however, the problem is one of accessibility, as many businesses still give no thought to people with disabilities when they design their stores or products. In cases like these, people with disabilities cannot make use of services because any number of barriers stand in their way. These include physical obstacles such as the

steps outside a restaurant door or a metro station having no lifts, but also online registration forms which lack a read-aloud function, or films and videos with no subtitles.

The General Equal Treatment Act forbids discrimination based on disability as regards goods and services. Nonetheless, private businesses are under no obligation to provide barrier-free access to the goods or services they provide. What this means is that a restaurant owner cannot refuse entry to his premises to people with disabilities, but he is not required to install a ramp or lift if there are steps outside the entrance. Such an obligation exists only in certain areas, such as access to public buildings or public transport (in these cases, the requirement comes from the codes of social law).

As a consequence, in many places, victims are denied the chance to participate in social life. As long ago as 2008, the European Commission has proposed a directive which intends to reduce discrimination by private businesses with regards to accessibility

Trends in enquiries concerning Goods and Services relating to the ground of disability and chronic diseases



and even in individual cases to create a right to reasonable accommodation in order to remove physical obstacles. Sadly, this proposal has since been blocked by a number of member states, Germany among them.

In the 2019 European Accessibility Act, the European Union passed a directive to ensure everyone has access to certain services, such as ATMs and ticket machines, smartphones and computers, and also banking and phone services. Although the act is largely limited to digital products and services, it does provide for a right of associated action.

The Anti-Discrimination Agency considers this a step in the right direction: for the first time, private businesses are obliged to ensure the accessibility of certain products and services. Nevertheless, the directive does not go as far as the UN Convention on the Rights of Persons with Disabilities. If people with disabilities are to be enabled to participate, fully, comprehensive regulations are required to sweep away barriers in all aspects of life, and the private sector in particular. ●

More grounds = better protection?

The Kuwait Airways case caught the headlines in 2019. The airline had refused to carry an Israeli passenger who filed a lawsuit under the General Equal Treatment Act. The Frankfurt district court, however, decided in the first instance that there had been no discrimination on the basis of religion or ethnicity, as the airline turned away Jewish and Arab Israelis in equal measure. Nor is nationality protected by the AGG, as it would be under French anti-discrimination law, for example. In many European countries, anti-discrimination protection extends far beyond the grounds of age, disability, ethnicity, religion and belief, gender and sexual identity which are protected under Germany's AGG law. The protection they afford includes, for example, social origin, nationality, family or marital status, and external appearance. An open list has been in place in Finland for some years now. But in Germany, much discrimination falls through the legal cracks.

Even though the Frankfurt higher regional court took a different view to the district court, the Kuwait Airways case was just one proof among many of the need to discuss expanding the grounds protected by the General Equal Treatment Act. The legal counsellors at the Anti-Discrimination Agency also receive many enquiries about discrimination related to grounds which fall outside those currently protected by law.

Following an evaluation of the AGG in 2016 which considered expanding the range of protected grounds, in 2019 the Anti-Discrimination Agency published its "Legal Opinion on Clarifying and Expanding the Grounds Named in the General Equal Treatment Act". Legal experts at Ernst & Young Law GmbH make a series of specific recommendations:

The protected ground of "ethnicity" could be further specified, so that nationality (as in the Kuwait Airways

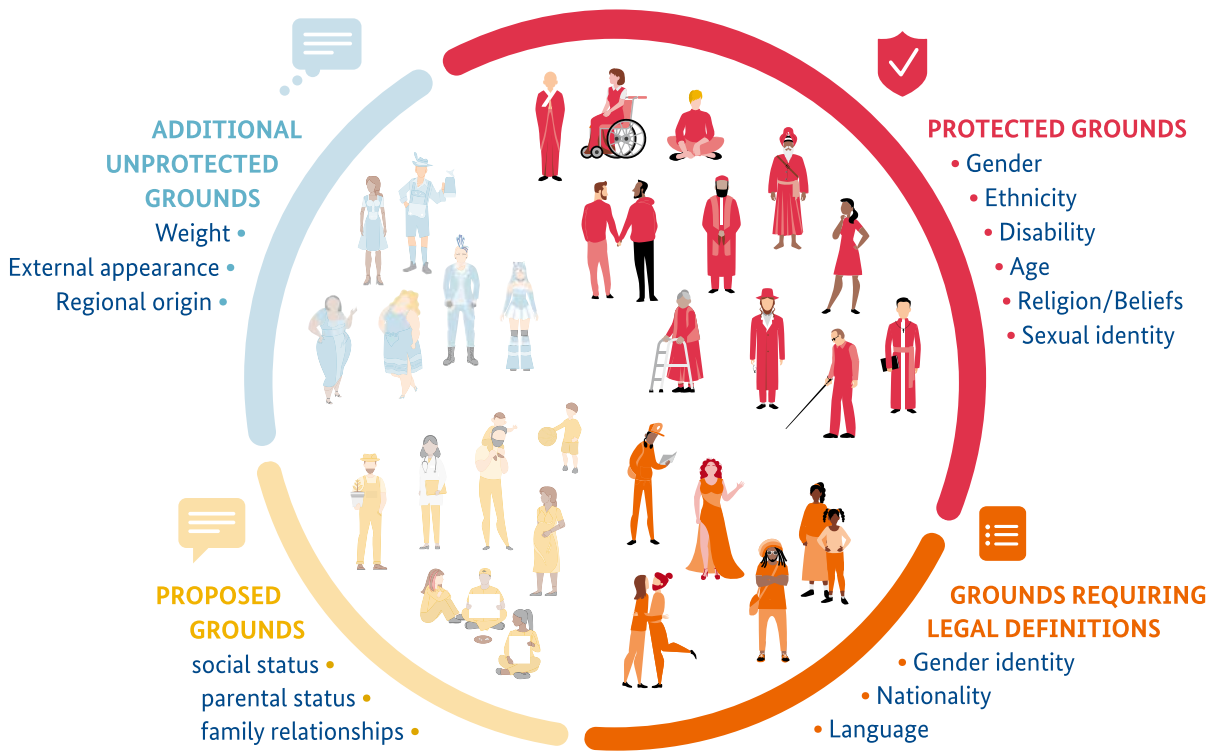
case) and language come under the AGG's protection. At present, neither is expressly protected and can only hint indirectly at discrimination on grounds of ethnicity. This link is often difficult to determine in individual cases which leaves the victim in an ambiguous legal position. By expressly including language and nationality, legal uncertainties of this kind could be avoided.

There is also room for clarification of the law's protection against discrimination on grounds of gender. It is true that the Federal Constitutional Court has made clear that gender identity is protected under the ground of gender. But clarifying the AGG's text could send a clear message about discrimination against trans* and intersex people. Belgian law already states that discrimination on the grounds of gender reassignment, gender identity or gender expression are all discrimination on the grounds of gender.

The Anti-Discrimination Agency receives many requests for counselling in connection with family status, mainly in the labour and housing markets. While marital status and civil partnerships, family and marital status and family relationships are

protected characteristics in other EU countries, this is not yet the case in Germany. In the majority of cases, where people have been discriminated against due to their status as married or single parents, fathers, mothers or caregivers for dependent relatives, the Anti-Discrimination Agency is unable to act. Expanding the AGG would be in accordance with the constitutional protection of marriage and family. It would also follow the line taken by recent European legislation, namely the EU Work-life Balance Directive, which seeks to strengthen the compatibility between family and work, and also defines disadvantages suffered due to taking maternity or paternity leave as discrimination. It is the view of the Anti-Discrimination Agency, that this directive, which was passed in 2019, certainly justifies the need for additional changes to the AGG.

The Agency knows from its own counselling work and its large-scale survey of victims, "Experiences of Discrimination in Germany", that many people feel discriminated against due to their social or socio-economic statuses. It is evident that poverty and social exclusion increase the risk of discrimination and that a reciprocal effect of discrimination can be to cause



poverty and social exclusion themselves. As such, it would be worth considering giving protection to the ground of socio-economic status. The authors of the legal opinion

note, however, that it is specifically frequency of multiple discrimination which poses significant challenges to creating a clear and legally watertight definition this ground. ●

Studies and Publications

Every year, the Federal Anti-Discrimination Agency publishes a wide range of material on the subject of discrimination, including information leaflets, FAQs, scientific studies and videos. All publications are available online at www.antidiskriminierungsstelle.de.



Study: Dealing with Sexual Harassment in the Workplace – Solutions and Interventions

In the last three years, one in eleven people has experienced sexual harassment at work. This study, led by Dr Monika Schröttle, probes the extent of sexual harassment in German businesses and examines complaints procedures and prevention measures. The study includes a representative telephone survey, qualitative depth interviews and focus group discussions as well as an evaluation of court judgements.

Poster and postcard sets from the #betriebsklimaschutz campaign

When it comes to protecting their employees from sexual harassment, many employers want to lead by example, taking their duty seriously to provide a safe working environment for their employees. The Anti-Discrimination Agency is supporting them through its #betriebsklimaschutz (protect the working environment) campaign. The campaign materials can be ordered as posters and sets of postcards.





A Fair Start at Work! Flyer and guide to help fight discrimination when job hunting

How can employers keep recruitment processes free from discrimination? What are the legal requirements, and what are the chances of greater diversity at work? How can victims protect themselves from discrimination when looking for work? The “A Fair Start at Work” publications answer these questions. The guide is chiefly aimed at employers, while the flyer provides employees and those looking for work with information about discrimination protection in recruitment processes.

Legal Opinion on Clarifying and Expanding the Characteristics Named in the General Equal Treatment Act

The legal opinion, commissioned by the Anti-Discrimination Agency, considers the legal protection against discrimination under the AGG in international comparison with Belgium, Bulgaria, Finland and the United Kingdom. The opinion describes how additional characteristics such as language, nationality and gender identity might be included as well as whether and how protection against discrimination for family and social statuses can be improved.



70 Years of the Basic Law: A survey on expanding the legal ban on discrimination under Article 3 of the Basic Law

How do the German people view the Basic Law on its 70th anniversary? Are fundamental rights sufficiently protected, or should the ban on discrimination be expanded to cover characteristics such as sexual identity or age? The Anti-Discrimination Agency put these and other questions to a representative sample of over 1000 members of the population. The results included finding that the majority of respondents consider the constitution to be one of the greatest achievements of the Federal Republic of Germany, though at the same time many fear that anti-constitutional forces may one day gain the upper hand.

