



Federal
Anti-Discrimination
Agency

Federal Government
Commissioner for Migration,
Refugees and Integration

Federal Government Commissioner
for Matters relating to
Persons with Disabilities



Short overview on the

Fourth Joint Report to the German Bundestag:
Discrimination in Germany - experiences, risks
and various constellations of circumstances

Basic facts

The legal basis of the report is section 27 subsection 4 of the AGG (General Act on Equal Treatment). Thus, the Federal Anti-Discrimination Agency and the Commissioners, within its remit, of the Federal Government and of the German *Bundestag* jointly submit reports to the German *Bundestag* on discrimination on the grounds mentioned under section 1 of the General Act on Equal Treatment every four years.

The Fourth Joint Report gives an overview of discrimination experiences during the 19th legislative period. Counselling requests on discrimination and enquiries which were received by the FADA (Federal Anti-Discrimination Agency), the Federal Government Commissioner for Matters relating to Persons with Disabilities and the Federal Government Commissioner for Migration, Refugees and Integration between 1 January 2017 and 31 December 2020 in particular provide the basis of the Fourth Report. Apart from that, information on the amount of counselling at public and civil society anti-discrimination counselling bodies nationwide is taken into account as well as pertinent case law and studies conducted on behalf of the Federal Anti-Discrimination Agency are analysed, first and foremost on the possibility of enforcement of anti-discrimination law in the civil-society sector. Building on that, the Report phrases recommendations for politics and policy-making, law-making, administration, employers and civil society aiming at an improved protection from discrimination and an effective prevention of discrimination on the grounds mentioned under section 1 of the AGG.

The **executive summary of the Report** provides an overview on the number of requests during the reporting period, major findings on the eight selected areas of our lives being key to people in their everyday life and relevant selected action approaches from the viewpoint of the Federal Anti-Discrimination Agency. Furthermore, the three joint recommendations by the Federal Anti-Discrimination Agency, the Federal Government Commissioner for Matters relating to Persons with Disabilities and the Federal Government Commissioner for Migration, Refugees and Integration are being presented. Overarching findings on current developments during the reporting period, AGG characteristics and discrimination grounds not protected under the AGG, forms of discrimination, types of support and possible actions by anti-discrimination bodies as well as research and data requirements have been summarised in a separate chapter (please see chapter 2.10 of the Report) which will not be dealt with in greater detail here.

Overview on counselling requests

During the reporting period there was a total of 16,415 counselling requests addressed to the Federal Anti-Discrimination Agency referring to a single AGG characteristic. An additional 3,757 requests referred to other grounds (social status, health, marital status, residence status, etc.). The number of counselling requests received by the FADA has sharply increased during the years of the reporting period. There was a particularly sharp increase in the year 2000 (increase of 78 per cent as compared to the previous year).

One third of the requests containing a reference to an AGG characteristic referred to discrimination on grounds of ethnic origin / racism (33 per cent) and/or disability (32 per cent), respectively. 24 per cent of the counselling requests were based on discrimination on grounds of gender, 12 per cent on grounds of age, 7 per cent on grounds of religion/belief and 4 per cent on grounds of sexual identity.

Most requests (31 per cent) are related to working life, 24 per cent to discrimination as regards access to goods and services and 11 per cent to discrimination in public authorities and administrations.

6,413 enquiries (complaints, requests for help and requests for information) were addressed to the Federal Government Commissioner for Matters relating to Persons with Disabilities.

The public enquiry service of the Federal Government Commissioner for Migration, Refugees and Integration accepted 12,929 enquiries during the reporting period.

Overall, all three institutions have registered an increase in the number of requests generally speaking.

The case rate in other public or civil society anti-discrimination counselling bodies was recorded by way of an online survey to get an overview with 76 of them taking part in it. Also in this instance, many public or civil society anti-discrimination counselling bodies record an increase in the number of requests received. However, the increase differs depending on the counselling body (please see chapter 2.1 to read in greater detail on the counselling requests).

Findings on individual areas of life and approaches for action from the viewpoint of the Federal Anti-Discrimination Agency (FADA)

Working life

The most frequent topic is presumed discrimination within the context of existing employment relationships, in particular on grounds of gender (discrimination due to pregnancy and parental leave, pay gaps, discrimination of transgender or intersex persons). But also cases of sexual harassment are by comparison quite frequently part of counselling requests. Further topics, among others, are bullying or turning down severely disabled persons in job interviews as well as discrimination of older persons looking for a job (please see chapter 2.2).

Selected action approaches (please see chapter 2.2.5):

- Especially in working life, affected people's decision to stand up against discrimination is often linked with existential worries. Therefore, possibilities of collective legal redress are required. Part of this is a **right allowing qualified anti-discrimination associations to take legal action** in order to conduct test cases.
- The prospect already held out by the Federal Government (but up to now not implemented) of an **expansion of the deadlines to assert claims under the General Act on Equal Treatment from two to six months** would lead to an improvement of the legal protection against discrimination as well.
- If employers do not fulfil their duties (e.g. setting up an internal complaints body), **legal sanctioning possibilities and investigatory powers for the FADA** will make sense. In this context, the establishment of **superordinate complaints bodies for small and medium-sized enterprises** (e.g. sector-specific with chambers of handicrafts) would also be helpful.

Private services / access to goods

Most requests during the reporting period referred to discrimination experiences in the retail trade in connection with the obligation to wear medical masks. This can be ascribed to requests in connection with the coronavirus pandemic in the year 2020 and is an exception. Apart from that, many requests focused on a lack of accessibility, discrimination of older persons when buying insurance, discrimination on grounds of ethnic origin when opening a bank account and racist discrimination and/or discrimination on grounds of religion when it comes to access to clubs, private gyms or in public transport. The requests also refer to disregard for the needs of transgender and intersex persons, for instance on online shopping sites (please see chapter 2.3).

In order to show which possibilities other than an individual lawsuit exist to stand up against discrimination when providing reasons for, conducting and ending civil law obligations, in an excursus based on the **study** commissioned by the Federal Anti-Discrimination Agency on **"Possibilities of legally enforcing protection against discrimination when providing reasons for, conducting and terminating civil law obligations.**

Stock-taking, alternatives and further development" (*"Möglichkeiten der Rechtsdurchsetzung des Diskriminierungsschutzes bei der Begründung, Durchführung und Beendigung zivilrechtlicher Schuldverhältnisse. Bestandsaufnahme, Alternativen und Weiterentwicklung"*) the legal enforcement of relevant anti-discrimination legislation is dealt with in greater detail. In this context, in particular the role of arbitration bodies and ombudspersons' offices is also dealt with (please see chapter 2.3.2).

Selected action approaches (please see chapter 2.3.6):

- To counter the lack of accessibility and lacking appropriate precautions in the field of access to private services and goods, an **obligation on private service providers of accessibility and reasonable accommodation** should be enshrined in the General Act on Equal Treatment.
- In order to support people effectively in enforcing their rights under the General Act on Equal Treatment, an **administrative AGG ombudsperson's office specialised in discrimination issues** should be set up **with the FADA to conduct arbitration proceedings**.
- The *Länder* should enshrine **bans on discrimination under Land law**, comparable to the Licensing Acts for example, **incorporating a penalty** and comprising all of the grounds protected under the AGG as well as discrimination-free access to clubs, restaurants and other venues.

Housing market

Racist discrimination plays the biggest role in the area 'housing market' - 55 per cent of all counselling requests in this field relate to racist discrimination. In this context, throughout Germany, racist harassment and bullying by neighbours are increasingly at the heart of the counselling work. During the past reporting period risks of discrimination when looking for a flat were clearly more often a topic (please see chapter 2.4).

Selected action approaches (please see chapter 2.4.4):

- The difference between bulk business and non-bulk business is hard to comprehend for the individuals concerned. This is why the **limit of 50 flats in the exemption clause in section 19 subsection 5 sentence 3 of the AGG should be critically reviewed**. Moreover, the exemption clauses in section 19 subsection 5 sentence 3 of the AGG might be subject to abuse and might provide justifications for racist discrimination.
- Sensitive and personal information of those looking for housing might be gateways for discrimination. In order to prevent discrimination in this context, **consistent and transparent selection procedures of those interested in finding housing** should be developed, tested and implemented.
- Discrimination experiences in connection with housing search are disproportionately often tied to **social status or marital status**. This is why **an expansion of the protection grounds mentioned under section 1 of the AGG by these characteristics** should be considered.

Health care and long-term care

In this field, a disproportionately great number of people with disabilities asked the FADA, the Commissioner for Persons with Disabilities and other counselling bodies for support. Here all kinds of issues are concerned: the initial consultation and access to care services, the diagnosis, in the course of the treatment as well as during after care and rehabilitation. On the one hand, there is a lack of structural

accessibility. On the other hand, language barriers also contain discrimination risks, e.g. when making appointments and during treatments (please see chapter 2.5):

Selected action approaches (please see chapter 2.5.4):

- To protect patients effectively against discrimination in the field of health and long-term care, a **legal clarification is required that the medical treatment contract pursuant to section 630a German Civil Code falls within the scope of section 19 subsection 1 of the AGG.**
- To create an additional contact point for patients in case of litigation regarding claims pursuant to the AGG in connection with a treatment contract, the **setting up of conciliation offices with the German *Länder* medical associations** is necessary.
- In order to avoid and penalise discrimination through **lacking accessibility to medical and dental practices**, there needs to be an **enforceable claim to accessibility** which is based on Article 25 of the UN Convention on the Rights of Persons with Disabilities.

Administrative bodies and public authorities

In this field, frequently laws and/or their application are criticised as discriminating - for instance the lacking assumption of costs for reproductive services for lesbian spouses by the statutory health insurance. However, employees of administrative bodies and public authorities can also act in discriminating ways, for instance when a job centre rejects retraining due to the person's age or if transgender persons are not addressed in accordance with their gender identity. Furthermore, there were numerous requests as regards lacking recognition and discrimination of persons with the gender specifications "diverse" and "no entry" in administrative provisions, applications and forms (please see chapter 2.6).

Selected action approaches (please see chapter 2.6.5):

- Discrimination in administrative bodies and public authorities (but also in the fields police and justice as well as education) plays an important role in the counselling activities of the FADA and other anti-discrimination bodies. **Thus, the scope of the AGG should be expanded to include the public sector.**
- To close gaps in protection against discrimination in the field of government actions, the adoption of **anti-discrimination laws in further *Länder*** is furthermore recommended.
- To replace the dated Transsexual Persons Act which is in part against the constitution, the FADA speaks out in favour of a **law for sexual self-determination**. Moreover, the **requirements for transgender and intersex persons as regards the change in the gender entry should be harmonised and simplified.**

Justice and police

In more than one in two counselling requests in connection with the police and regulatory agencies, people felt discriminated against on racist grounds. Racial profiling continues to play a major role here. Another topic was addressed by counselling requests in the field of family law. On the one hand, fathers but also persons with disabilities or with an immigration or refugee history felt they were discriminated against with regard to access to their children. Furthermore, for persons with disabilities there is often no communicational accessibility in courts of law (please see chapter 2.7).

Selected action approaches (please see chapter 2.7.5):

- To ensure a low-threshold access, **contact persons** should be named at **police offices** that individuals affected by acts of crime based on race may get in touch with. Also the establishment of **public prosecution offices for racist crime** should be looked into nationwide.
- The creation of a **nationwide independent complaints body** that persons affected by discrimination by the police and racial profiling by federal policemen and policewomen (civil servants) can contact and the setting up of **independent Land police commissioners** in all federal *Länder* would make sense to ensure a neutral handling of complaints.
- Employees in the fields of police and justice should be sensitised to the topics of **protection against discrimination, anti-discrimination law and different forms of discrimination**. Such pertinent **topics should be made compulsory for training, further training and continuing education** to ensure a professional handling of those concerned.

Education

Whereas in particular racist discrimination and discrimination on grounds of a disability have been reported from child day care centres and schools, in the field of higher education an increasing number of discrimination based on gender and age of the students is reported. Also social status plays an increasingly important role. Often there are verbal forms of discrimination, such as insults, bullying and degradation, but there is also discrimination when it comes to access to day care, school and institutions of higher education and when the rating of performance is concerned. It can be rated as positive that in the educational field awareness and sensitivity of discrimination have been strengthened and that there is an increasing number of counselling services (please see chapter 2.8).

Selected action approaches (please see chapter 2.8.5):

- More **specific counselling bodies that are able to provide counselling on discrimination in the educational sector should be created** to support affected pupils, students and parents in cases of discrimination.
- To enable a swift handling of discrimination cases, **low-threshold contact points and complaints procedures for children, pupils and students within the respective institutions** should be created as well.
- It should be made clear that the **General Act on Equal Treatment applies to all care contracts under private law in child day care centres pursuant to section 19 I No 1 of the AGG**, so that parents can take legal action against discrimination when it comes to access to child day care centres. Moreover, **gaps in discrimination protection in the relevant federal and Länder laws (child day care, school and university laws as well as the AGG and Social Code Book VIII) should be closed** to reach legal certainty and legal protection for those affected and for the stakeholders.

Public sphere and leisure, media and the Internet

Those spheres of life take a rather subordinate role when it comes to the number of cases. In the public sphere, requests on the basis of ethnic origin, religion/belief and sexual identity are disproportionately

often. Recently, reporting of such incidents has increased, in particular also with regard to anti-Asian racism. In the field of leisure, it is more often a matter of excluding certain groups of people from associations or voluntary activities on the basis of age, among other things. Especially the Commissioner for Matters relating to Persons with Disabilities received complaints about insufficient accessibility of contributions in the media (please see chapter 2.9).

Selected action approaches (please see chapter 2.9.5):

- To improve framework conditions for older people for their **voluntary or civic engagement, maximum age limits in these fields should be overcome.**
- To report hate speech at a low-threshold level and to deal with it effectively, all *Länder* should consider **setting up reporting offices to report hate speech.**
- The coronavirus crisis has shown yet again how important it is to provide news and information for everybody in an accessible way. Here we need further efforts to **considerably increase accessible media services.**

Joint recommendations

The Federal Anti-Discrimination Agency, the Federal Government Commissioner for Matters relating to Persons with Disabilities and the Federal Government Commissioner for Migration, Refugees and Integration have issued the following joint recommendations (please see chapter 3):

1. Strengthening counselling structures and setting up *Land* anti-discrimination bodies

- The sharply increased number of counselling requests for the Federal Anti-Discrimination Agency and for other anti-discrimination counselling bodies shows that there is a growing need of qualified anti-discrimination counselling in Germany. Low-threshold accessible and locally based contact points provide the necessary confidential and partisan support to affected individuals in the enforcement of their rights, they form a reliable network of counselling referral structures and initiate superordinate developments in municipalities and *Länder*.
- The nationwide expansion of public and private anti-discrimination counselling bodies at *Land* and municipal level is therefore recommended. Expanding anti-discrimination counselling for affected persons requires long-term institutional funding by the Federal Government, the *Länder* and municipalities as well as a long-term legal basis. *Länder* without *Land* anti-discrimination bodies are recommended to set up such public bodies. Public and non-government anti-discrimination counselling bodies must be recognised as an intrinsic part of democracy promotion and an important contribution to combating racism and right-wing extremism.

2. Making discrimination more visible by collecting data

- Large-scale representative panel surveys form an indispensable basis for socio-scientific long-term observation of society. However, the current data situation does not suffice for a reporting on discrimination that meets the protection standard of the AGG. It has also become obvious that research on discrimination in institutions (e.g. in public authorities) in Germany can and should be expanded.
- For this reason, firstly, the Federal Anti-Discrimination Agency and the Commissioners recommend the use of a question module on discrimination experiences in a population-representative panel survey, such as the socio-economic panel (*SOEP*), at regular intervals. The federal legislator is recommended to check to what extent questions on all AGG characteristics can also be asked in the Microcensus in the future in order to be in a position to provide information on the representation of population groups in different sub-areas. Secondly, the Federal Government is recommended to create a diversity equality monitoring within the federal administration on the basis of key employee surveys.

3. Expanding alternative dispute resolution procedures

- Individuals concerned oftentimes refrain from an individual enforcement of rights in the form of lawsuits. Reasons for that being limited knowledge on anti-discrimination law, on the one hand, relatively high hurdles of the burden of proof, tight deadlines and long duration of proceedings as well as the limited number of attorneys qualified in anti-discrimination law. On the other hand, another hurdle is also posed by incalculable costs and very small amounts of compensation. However, alternative dispute resolution procedures compared to settling any accusations of discrimination in court can bring about tremendous advantages for those affected as they are emotionally less stressful and less costly. However, in practice the potential of dispute resolution procedures is hardly tapped as the multiple mechanisms of the fragmented dispute resolution landscape have not been sufficiently geared towards discrimination cases and as they are hardly known to counselling bodies and persons affected.

- The Federal Anti-Discrimination Agency and the Commissioners of the German *Bundestag* and of the Federal Government within its remit therefore recommend to check whether a one-sided obligation for respondents to participate in dispute resolution procedures when it comes to claims under the AGG and an information obligation for providers of goods and services regarding protection against discrimination in general and of complaints procedures and arbitration proceedings in discrimination cases specifically could be added in Part 3 of the AGG.
Furthermore, the housing sector is advised to establish a sector-specific, neutral and independent arbitration body on housing. Existing complaints and arbitration bodies are to oblige their staff to take part in training courses on anti-discrimination law, in particular the AGG, and to participate in refresher training courses at regular intervals.

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