

Discrimination in Germany

Key results of the Third Joint Report from the Federal Anti-Discrimination Agency and the Relevant Federal Government and Parliamentary Commissioners

Key Results

Discrimination on the basis of particular actual or assumed characteristics can undermine economic and social cohesion. For democratically constituted societies that are committed to the idea of human rights, the principle that all people should have the same rights and the same opportunities is therefore fundamental and paramount. The Universal Declaration of Human Rights back in 1948 states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The 2006 "Convention on the Rights of Persons with Disabilities", a United Nations human rights convention, refers to the Universal Declaration of Human Rights and to the most important human rights conventions of the United Nations and formulates central provisions of these documents for the living situation of people with disabilities.

The Federal Republic of Germany is also unequivocally committed, in the Basic Law (Art. 3) and at the level of ordinary law, in the General Equal Treatment Act (AGG), to equality and protection against discrimination. This protection against unjustified disadvantage makes it clear that this is not a question of special rights, but of equal rights for all people living in Germany – and that no-one may be disadvantaged on the basis of the characteristics listed in Sect. 1 of the General Equal Treatment Act. On the basis of this concept, it is essential and self-evident, in a diverse, modern society, that discrimination must be prevented and, where it does occur, revealed and punished. In the EU member states, the "Equality Bodies", as they are called, have a central role to play – in Germany, these are the Federal Anti-Discrimination Agency (FADA) and the Federal Government Commissioner for the Interests of People with Disabilities, the Commissioner for Migration, Refugees and Integration, the Armed Forces Commissioner and the Federal Government Commissioner for Matters Related to Ethnic German Resettlers and National Minorities.

The aim of this report is to uncover subjective experiences of discrimination and to identify discrimination risks. Alongside the characteristics of ethnic origin, gender, religion/philosophy, age, disability and sexual identity listed in Sect. 1 of the General Equal Treatment Act, other discrimination – such as that experienced on the basis of "social origin", marital status or appearance – also has a part to play here.

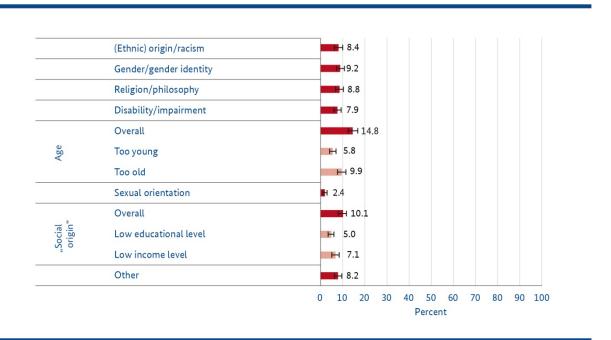
The results are based on the advice requests received by the Federal Anti-Discrimination Agency (FADA), other state and non-state anti-discrimination agencies, the Federal Government Commissioner for the Interests of People with Disabilities and the Federal Government Commissioner for Migration, Refugees and Integration; and finally, the case law at national and European level. The results of the study "Experiences of Discrimination in Germany" commissioned by the FADA are also presented in detail. This study consists firstly of a representative survey which determined how widespread experiences of discrimination on the basis of the various characteristics are in various areas of life. Secondly, it consists of a non-representative survey of people affected, in which around 18,000 participants were able to describe discrimination against themselves or observed elsewhere.

In a more in-depth section, the report deals with discrimination risks and protection against discrimination in public employment services. Alongside the complaints data from state and civil society advice centres and the Federal Commissioners listed above, these also include the results of the **study "Risks of discrimination in public employment services"** carried out on behalf of the Federal Anti-Discrimination Agency.

Discrimination in Germany -Key Results

Experiences of discrimination are widespread: In the representative part of the study "Experiences of Discrimination in Germany", almost a third of those questioned (31.4 percent) reported that they had experienced discrimination on the basis of one or more of the characteristics listed in the General Equal Treatment Act within the two years before the survey. If experiences of discrimination on the basis of characteristics not covered in the General Equal Treatment Act (e.g. "social origin", external appearance) are also included, the proportion rises to 35.6 percent. 14.8 percent reported discrimination on the basis of age, just under a tenth, in each case, on the basis of gender, religion/philosophy, race/ethnic origin and disability or impairment. Experiences of discrimination because of sexual orientation accounted for 2.4 percent of cases reported (Figure 1).

Figure 1: Experiences of discrimination on the basis of characteristics listed in the General Equal Treatment Act and not covered by the Act

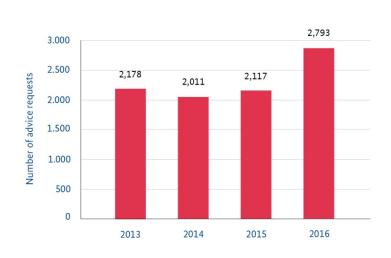


Source: Representative survey within the scope of the study "Experiences of Discrimination in Germany" (n=992, more than one response possible)

Discrimination affects everyone, but it affects some people more: Certain groups – as borne out by the survey – are exposed to a higher risk of discrimination than others. It is primarily women, for example, who suffer discrimination because of their gender (they reported experiences of discrimination on the basis of gender five times as frequently as men). Discrimination on the basis of sexual orientation affects almost solely homosexual people. In addition, people of a non-Christian faith, such as Muslims, run a greater risk of experiencing discrimination. At the same time, multiple discrimination is of major significance. A particularly large cross-sectional category is gender: sometimes in combination with age, for example, when women are not appointed to jobs because of the possibility of pregnancy or because of their children; or if it is mainly lesbian women who are exposed to homophobic and sexually based hostility or if mainly headscarf-wearing Muslim women are affected by a ban on religious symbols.

The range of experiences of discrimination is reflected in the **requests for advice**: In total, in the reporting period 2013–2016, the FADA received 9,099 inquiries about discrimination experiences (Figure 2). The Federal Government Commissioner for the Interests of People with Disabilities und the Federal Government Commissioner for Migration, Refugees and Integration have also received a large number of requests over the past four years. People complain of discrimination primarily on the basis of **ethnic origin, disability and gender**.

Figure 2: Number of advice requests in the years 2013 to 2016 (incl. requests not relating to characteristics listed in the General Equal Treatment Act)



Source: Advice requests to the FADA in the reporting period 2013–2016

Experiences of discrimination beyond the limits of the General Equal Treatment Act: People experience discrimination and look for support even if the discrimination does not occur in an area of life covered by the General Equal Treatment Act or is not associated with a protected characteristic. This applies in particular to the areas of education, departments and authorities, and the public sphere and leisure time. Disadvantages suffered on the basis of characteristics outside the terms of Sect. 1 of the General Equal Treatment Act are also described as discrimination, especially "social origin", marital status, nationality or external appearance.

Discrimination has many faces: The form in which discrimination manifests itself depends a great deal on the relevant areas of life and the characteristics in question. When it comes to important resources such as work, education, accommodation or goods such as insurances, discrimination is often expressed as **denial of access** or in the form of reduced opportunities because of **worse treatment** and stereotypical assumptions. In public life and leisure time, it takes the form of **humiliation**, **insults and attacks**; in departments and authorities, people feel that they suffer discrimination through **rules**, **laws or ingrained administrative practices**.

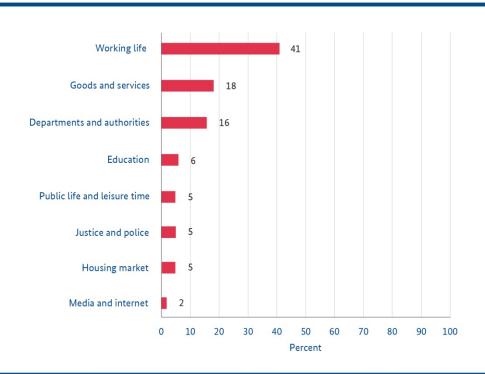
Discrimination in individual areas of life

Working life

The overwhelming share of advice requests relates to the area of working life. Amongst the cases submitted to the FADA, 41 percent are concerned with working life (Figure 3). In particular, **entering the employment market** is associated with a high level of risk of discrimination for certain groups. People with disabilities, for example, complain about not being invited for an interview, irrespective of their qualifications. People with foreign-sounding names also feel excluded, as do older people.

Access to the employment market is often made more difficult for women in connection with pregnancy and parenthood, and this also happens to Muslim women wearing headscarves, because of their religion.

Figure 3:
Allocation of advice requests to areas of life (incl. requests not relating to characteristics listed in the General Equal Treatment Act)



Source: Advice requests to the FADA in the reporting period 2013-2016

Around a quarter of the advice requests to the FADA in connection with working life relate to **gender discrimination**. In addition to non-employment, the problem here is frequently the denial of career promotion opportunities.

Systematic harassment (bullying) in the workplace primarily affects people due to their ethnic origin and in connection with their (non-Christian) religion. Homosexual and bisexual plus trans*gender people are also subjected to bullying. People are often unaware of internal support and complaints structures.

In the study "Experiences of Discrimination in Germany", almost every second person questioned (48.9 percent) who had experienced discrimination also stated that they had experienced this in the search for work, in training or at the workplace. Experiences of discrimination on the basis of age or gender occur here at an above-average rate. Most experiences occur within an existing employment relationship, for example, in the form of poorer performance evaluations, lack of parity in wages and being passed over when it comes to promotions and bonuses.

Risks of discrimination in public employment services

When making the transition into working life, many people depend on the support of institutions such as employment agencies and job centres. Discrimination in public employment services can therefore have particularly serious consequences for the people affected. It is also important for the whole of society, since employment services, as an integral part of modern social states, are designed to balance out opportunity discrepancies, not reinforce them.

The more in-depth part of this report deals with identifying processes with an increased discrimination potential and finding areas of action which could help to avoid discrimination.

In the reporting period, the Federal Anti-Discrimination Agency was notified of 1,484 experiences of discrimination in departments and authorities, e.g. foreigners' authorities, job centres, employment agencies. The FADA recorded **16 percent of all reported cases** in this area, making this area the third most frequent, after requests for advice in the area of working life and in the area of goods and services. The number of requests does not necessarily reflect the number of actual cases of discrimination, because many cases are not reported. However, it provides an indication of the areas in which discrimination can occur. Many requests for advice, for example, relate to job centres and employment agencies. Three quarters of the civil-society anti-discrimination advice centres also receive inquiries in the area of departments and authorities, and a third of them are often asked for advice about job centres and employment agencies. The complaints about job centres and employment agencies relate to **all discrimination characteristics.**

The advice requests and situations described concern the denial of services or unequal treatment. At the same time, **humiliation**, **insults and unfriendly treatment** are reported. Cases are also described in which individual impairments were not taken into account at advice meetings and in the administrative process.

Institutional discrimination risks

Experiences of discrimination can have individual causes (for example, openly discriminating attitudes on the part of specialist staff). However, institutional procedures that could encourage discrimination are of far more fundamental significance for removing risks of discrimination. This is proved by the expert statement "Risks of discrimination in public employment services" which forms the basis for the report (Brussig/Frings/Kirsch 2017), along with discussions with experts, a specialist legal report plus analyses of documents and summary cases analyses.

A perceived problem, for example, is the differentiated **system of indicators** developed by the Federal Employment Agency (BA) which is used by employment agencies and job centres. People working in such agencies run the risk of not focussing their job finding efforts on the individual needs of those seeking work, preferring to tick off the indicators with the minimum effort possible (creaming) and referring people who can only be integrated at increased expense on to cheaper measures or not activating these at all (parking). **Decisions based on personal judgement** are also susceptible to error, if, for example, the individual circumstances of people with disabilities, single parents or trans*persons are not sufficiently taken into account. Information deficits and poor advice along with barriers to accessing services provided by employment agencies and job centres can also represent individual discrimination risks in the form of lack of accessibility (e.g. use of simple language) or reticence in providing interpreter services for migrants. Another risk appears in the form of non-transparent and non-justified decisions. These are often associated with the allocation of measures and possible benefits or decisions about these. It can happen, for example, that wishes for further training measures are ignored when vouchers are allocated without any reason being given. Refusals of this type are sometimes motivated, not only by budgetary reasons, but also by the agency employee's negative prognosis of success which is based solely on externally judged factors or known generalisations (such as age, ethnic origin or a disability).

In addition, **staff turnover** and workplace stress also have a problematic effect here. The temporary employment contracts which are used primarily in job centres but also in the employment agencies can effectively constitute an indirect discrimination risk. Temporary employees can, under some circumstances, be more susceptible to making mistakes because they are unable, in the short preparatory phase allowed for them, to gain any overview or make proper use of the full range of services and benefits. This can have a negative effect in particular on people with complex needs, such as people with a disability or older job-seekers. Further risks of discrimination can be seen in the **insufficient individualisation of the services provided** and the effects on the job search of **discriminatory behaviour on the part of employers**. This discrimination risk arises initially as a result of company recruitment practices if employers exclude women or men, people of a particular religion or older people from the job application process from the start without any factual reason. If personnel officers pass on these requirements to the staff working in public employment services, these staff are caught in a dilemma, since they are obliged, on the one hand, obliged to provide a service to the companies and on the other hand have a duty to work without discrimination.

In the view of the Federal Anti-Discrimination Agency and the Federal Government and parliamentary commissioners involved with the report, most of these institutional discrimination risks can be countered effectively and at a reasonable cost. For example, the **further training management system**, which is already well developed, should be targeted, especially in the employment agencies, even more on increasing people's awareness of the risks of discrimination, on meeting particular needs and taking appropriate measures in connection with discrimination risks.

Job seekers with disabilities should be given a statutory right to the **use of specialist integration services** to provide support in the search for employment. For the job centres, the use of special advisory staff for job seekers with a disability (rehab/SB teams) should be required by law, in the German Social Code (SGB II) and not just be limited to a requirement in the advisory concept (SGB II). The right to a personal budget should be expanded by the right to budget advice, so that people with disabilities who have a right to rehabilitation are fully informed about the opportunities. If necessary for the advice or negotiations, people without sufficient knowledge of German should have a right to **an interpreter**.

The existing **control instruments** (indicator control) must also be reviewed regularly with regard to the risks of discrimination associated with them and modified if necessary. It must be taken into account that protection against discrimination cannot (only) be improved by changing the indicator systems, but also by the professional employees, official complaints centres and parity-based councils at employment agencies and job centres. The customer satisfaction indicator should be supplemented by questions about discrimination, on a temporary basis if necessary.

Duplicated areas of competence at job centres (decision-makers) and employment agencies (responsible for rehabilitation) in the area of participation in employment on the part of job seekers with a disability should be removed, as these lead to non-transparent decision processes which make the continuous participation of those entitled to benefits more difficult and delay the implementation of measures necessary for participation. The creation of a joint coordinating point of contact for job seekers which would clarify areas of competence under SGB II and SGB III (along with Sect. 13 (youth social work), SGB VIII), receive applications, assign dates for personal counselling, profiling and integration planning and broker contact with the competent integration specialist is recommended.

The **transparency of decisions** can be improved by attention being drawn more clearly to the individual right to a written decision – in several languages, in simple language, in Braille and if necessary in sign language or with the help of a speech-to-text interpreter.

Legal protection in public employment services, effectiveness and gaps in legal protection

To avoid discrimination and limit discrimination risks, the public employment services can employ tools such as diversity management, continuing training and the commissioners for equal opportunities. In addition, the customers of the employment services can make use of various options for complaints and objections. However, in some areas, legal protection against discrimination **is still in need of development**. Firstly, the prohibition of discrimination when claiming social rights (Sect. 33c SGB I) should be extended to all discrimination criteria (i.e. gender, sexual identity, age and religion or philosophy). Secondly, the existing customer response management system currently in place in employment agencies and job centres should be supplemented by independent ombudsman services that have an investigative responsibility and an arbitration / appeasement responsibility. Links here could be the existing ombudsman services in job centres. Corresponding ombudsman services should be required by law in SGB II and SGB III.

Goods and services, public life and leisure time

Discrimination based on ethnic origin or disability is especially frequent: Clear trends have been recorded in all advice centres in this respect: On the one hand, there is **"discrimination by appearance"** – people who are perceived as being not German are denied access or admission or they are checked more strictly. Complaints against these forms of direct discrimination, e.g. when entering discotheques or fitness studios, however, are now increasingly successful.

On the other hand, a central problem in the area of goods and services is still the **lack of freedom from barriers**. This includes, for example, barriers in cafés, medical practices, supermarkets, libraries or in transport (e.g. at stations) and the regular refusal to accept wheelchairs, assistance dogs, etc. on local public transport, long-distance buses or rail and aeroplane journeys.

Similarly, within the scope of the study "Experiences of Discrimination in Germany", the people affected mainly reported cases of discrimination on the basis of ethnic origin and lack of access for people with disabilities. The majority of these reports referred to the retail sector and the catering and leisure industry. However, discrimination is also reported in the banking and insurance sectors, particularly on the basis of age, with loans being refused, for example, or high rates being offered.

In the area of public life and leisure time, people described **physical attacks or threats** relatively frequently. Almost a quarter of experiences in the street relate to physical attacks; on public transport, a fifth of reports covered this. In addition to racist attacks, these cases often involve verbal and physical violence on the basis of gender and gender identity, with trans*people being affected in particular. The proportion of physical threats and attacks is also comparatively high in reports of experiences of discrimination on the basis of sexual orientation and belonging to the Muslim faith. It is mainly women who are affected by sexual attacks.

The housing market

In 2016, the number of requests for advice concerning discrimination in the housing market received by the FADA was higher than in the previous year, caused primarily by the rise in the number of asylum-seekers. Overall, it is clear: **Ethnic origin and residence status** in particular increase the risk of suffering discrimination when searching for accommodation. The Federal Government Commissioner for Migration, Refugees and Integration also regularly receives reports of this type. A frequent pattern is for a viewing or a rental agreement to be refused because of a "non-German" name, poor German or the migration background of the people affected. Harassment and bullying by neighbours are also becoming a frequent reason for advice requests. In some cases, advertisements for accommodation exclude particular groups, nationalities or asylum seekers from the start. There is also a lack of barrier-free accommodation. People affected by discrimination are thus directly excluded from equal participation rights.

The study "Experiences of Discrimination in Germany" describes discrimination not only on the basis of ethnic origin but also due to "social origin" and marital status – two aspects that are not covered by the General Equal Treatment Act. Around half (46.7 percent) of experiences concern problems with finding accommodation. A third (33.1 percent) report that certain rights were denied to them, such as the right to view an apartment.

Departments and authorities

This area comes in third place at the FADA, with 16 percent of all advice requests, three quarters of the other anti-discrimination advice centres received inquiries about this area. For the Federal Government Commissioner for the Interests of People with Disabilities, the area of departments and authorities, at 27 percent, was of central significance in the requests for advice. Those affected describe, for example, the denial of benefits or discrimination on the basis of statutory rules which place them at a disadvantage compared with others. People with disabilities are not granted applications within the scope of integration support. People of non-German nationality describe experiences of discrimination at the Foreigners' Office. Statutory rules, however, such as the continuing inability for same-sex couples to marry instead of entering a civil partnership or to adopt children together are seen as discrimination on the part of the authorities.

At the same time, people with disabilities in particular are affected by **lack of access** in departments and authorities. This covers both structural barriers and barriers in communication. There are frequent reports across all departments of discrimination in the form of insults and unfriendly treatment.

Education

The sphere of education figures large in the work of the non-state anti-discrimination centres. Around 90 percent stated that they had received requests for advice in this respect. They related primarily to schools and colleges, and especially to **discrimination on the basis of ethnic origin and religion, disability or sexual identity**, coming both from fellow students and from teaching staff. There were also complaints that teachers and school directors did not respond sufficiently to harassment and bullying. The parents of children with disabilities also complained that their children were denied access to nursery schools or child day-care centres and to schools. As the study "Experiences of Discrimination in Germany" shows, discrimination is also experienced relatively frequently in connection with "social origin".

Health

People with disabilities in particular experienced discrimination in the field of health and care: This is clear both from the requests for advice and from the study "Experiences of Discrimination in Germany". Cases concern, for example, the refusal of particular therapy measures or aids, and also the lack of (structural and communicative) accessibility in medical practices, care costs perceived as disproportionate and discriminatory behaviour on the part of medical staff. Trans* and inter*people, for example, complain that staff have refused to recognise their gender identity. Homosexual couples experience discrimination in the area of fertility treatment.

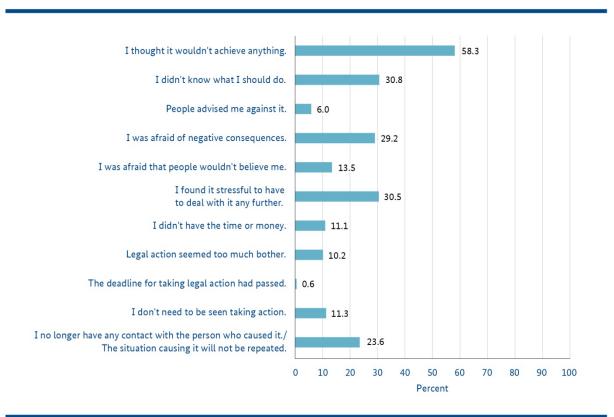
Police and justice

The highest number of advice requests in this field is received by advice centres with regard to **police checks**. Three quarters of advice centres receiving requests for advice in relation to the police and justice regularly provided advice, by their own account, on checks that were felt to be discriminatory which were carried out solely on people considered to be "non-German". Young men in particular reported experiences of this type.

Dealing with people affected by discrimination

As the study "Experiences of Discrimination in Germany" shows, 27.4 percent of the people affected try to draw public attention to discrimination they have experienced. 17.1 percent complain to public offices, 6.2 percent take legal action. However, there are still many obstacles to putting up a fight. 40 percent of people affected do nothing, they state, to counter discrimination. The question was also asked as to why some people affected do not react to an experience of discrimination. The most important reasons are doubts that anything can be achieved by complaining, fear of negative consequences and lack of resources (Figure 4). The latter includes not only too little time or money, but also a lack of knowledge as to how to take action against discrimination.

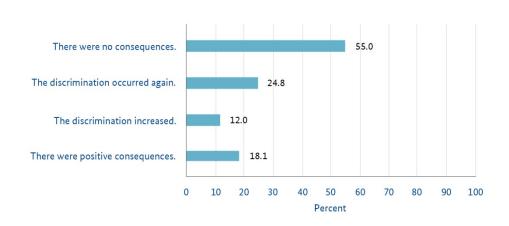
Figure 4: Reasons for not reacting to those causing discrimination



Source: Survey of people affected within the scope of the study "Experiences of Discrimination in Germany" (n=7,853, more than one response possible)

At the same time, the courage to take action against discrimination is often not rewarded: For more than half of those who took action against a case of discrimination, the measures taken had no effect, for around a quarter, the discrimination was repeated and more than one in ten reported that the discrimination had actually increased. Nonetheless, 18 percent reported that there had been positive results, such as an apology or reparations (Figure 5).

Figure 5: Consequences of reaction against the cause of discrimination



Source: Survey of people within the scope of the study "Experiences of Discrimination in Germany" (n=6,124, more than one response possible)

Experiences of discrimination have a directly negative impact on the people affected: Survey respondents reported most frequently that constantly remembering the situation was stressful for them. More farreaching effects such as psychological and physical disorders were connected with this. Four out of ten people affected reported that they had become less trusting because of discrimination. Almost a fifth indicated that they had broken off social contacts because of this.

Around 70 percent of people surveyed do not know of an advice centre where they could find support. The most well-known are general contact and advice centres such as Commissioners, advice centres for particular target groups and works and staff councils. Only 10 percent of those who said that they knew of an advice centre also knew of an advice centre specialising in discrimination.

Most of those affected considered that **legal protection** was **inadequate**. 76.4 percent people who claimed that they themselves had experienced discrimination know the General Equal Treatment Act. The majority consider the extent of protection as insufficient. The same is reported by anti-discrimination centres on the basis of the advice that they provide in practice. The gaps relate primarily to areas of life such as departments and authorities or education which are only inadequately covered by the General Equal Treatment Act, it was stated.

Recommendations for more effective protection against discrimination

The recommendations for action are based on what was learned from the report about the occurrence and extent of discrimination in Germany and deficits in protection against discrimination described by the people affected and the advice centres. They are suggestions for how these deficits can be remedied at legal level and how those affected can be further supported in asserting their rights. The recommendations are aimed at legislators, federal states and local authorities and also at other state institutions and anti-discrimination advice centres.

Improving access to protection against discrimination and enforcement of the law for those affected

To reduce the obstacles to enforcing the law, anti-discrimination associations should be granted the right of collective action. **Representative action** is one of the most important tools in collective legal protection, since the rights of all those affected can be asserted, not just the rights of one individual. In this way, for example, test cases can be brought and protection against discrimination in Germany moved forward. In addition, the **deadlines** within which claims based on discrimination can be made should be extended from two to six months. Ultimately, there is still a need for greater clarification as regards the **rules on the burden of proof**, a review of the existing cap on **compensation claims** and, **in employment legislation**, **a right to obtain information from the employer** so that rejected applicants can find out the reasons for selection or rejection.

Limiting the exceptions to the prohibition of discrimination under civil law

Comprehensive protection against discrimination should be ensured for all characteristics protected in the General Equal Treatment Act in the area of goods and services. In connection with this, the Federal Government should reconsider its resistance to the draft for the 5th EU Equal Treatment Directive in order to treat experiences of discrimination based on age, gender, disability, religion/philosophy or sexual identity equally. Legal protection as regards access to housing should also be improved. This would require the deletion of the justification which exists in favour of housing companies in Sect. 19 Para. 3 of the General Equal Treatment Act. The exemption provision in Sect. 19 Para. 5 sentence 3 of the General Equal Treatment Act should also be critically reviewed.

Strengthening protection against discrimination with regard to action by the state

The scope of the General Equal Treatment Act should be supplemented by a **prohibition of discrimination** with regard to action by the state. It is also recommended that an arbitration centre should be established at the Federal Anti-Discrimination Agency on the basis of Sect. 16 BGG, unless the characteristic of disability is concerned, as the Federal Government Disability Commissioner is competent in this area. In addition, gaps in protection against discrimination should be closed by **Land legislation**.

Promoting protection against discrimination through appropriate measures and freedom from barriers

The term "appropriate measures", i.e. measures that are necessary and suitable in individual cases to allow people with disabilities to participate on an equal basis, should be incorporated **into the General Equal Treatment Act as a blanket clause.** In association with this, it should be added, by analogy with the UN-CRPD, that the denial of appropriate measures constitutes a prohibited discrimination. Private providers of goods and services should be obliged in the General Equal Treatment Act to operate on a barrier-free basis.

Supporting advice in cases of discrimination

It is recommended that state and non-state anti-discrimination centres should be expanded promptly and comprehensively at Land and local authority level. It is recommended that Länder without Land anti-discrimination centres establish these. An expansion of advice services of this type requires long-term institutional financing by the Federal and Land governments and by local authorities.

Systematically collecting data on equality and expanding discrimination research

There should be systematic information gathering in order to determine which existing surveys (official statistics, population surveys, target group questionnaires) can contribute relevant data for the examination of discrimination and inequality. It will then be possible to review, on this basis, how these surveys can be expanded if necessary. To be able to map tendencies and trends relating to experiences of discrimination, surveys of the people affected – as presented in the report – should be regularly repeated. The documentation of complaints and advice cases by state and non-state organisations should be systematised and standardised as far as possible.

This publication is part of the Federal Anti-Discrimination Agency's public relations work; it is offered free of charge and not intended for sale.

Publisher:

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Current at: June 2017