



Federal
Anti-Discrimination
Agency



Annual Report

2018

Equal rights, equal opportunities

**Annual Report of the Federal
Anti-Discrimination Agency**



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Dear Readers,

2018 was a special year for the Federal Anti-Discrimination Agency. After heading up our establishment for eight years, Christine Lüders has taken a well-earned retirement. With #DarüberReden, we have been able to implement our most important public campaign against discrimination to date. And recent debates about sexual harassment, the “third option” and everyday racism have provided important pointers when it comes to equality.

All of these themes come up again in our Annual Report, which is being published by the Federal Anti-Discrimination Agency for the first time. We feel that it provides an important complement to the comprehensive report to the Bundestag which we, along with the Commissioners for Matters relating to Persons with Disabilities and for Migrants, Refugees and Integration and other competent commissioners, submit to the members of parliament in every legislative period. The aim of the Annual Report in future will be to give you a brief overview of what is happening at the Anti-Discrimination Agency, what the latest developments in the field of equality are and the facts and figures relating to the counselling we offer.

The report is packed with information and, in my view, is a worthwhile read for everyone who cares about fighting discrimination. In this, the anniversary year of the Basic Law, we are reminded once again that equal treatment and freedom from discrimination are not just the justified concerns of minorities; they are crucial foundations for fair, just coexistence which must constantly be defended.

With best wishes,

Bernhard Franke

Bernhard Franke

Acting Head of the Federal Anti-Discrimination Agency



The Federal Anti-Discrimination Agency

The Federal Anti-Discrimination Agency is defined by the General Equal Treatment Act (AGG) as the national equality body for the Federal Republic of Germany.

Its task is to protect people from discrimination on grounds of age, disability, ethnic origin, gender, religion or belief, or sexual orientation. The AGG protects people primarily in the field of work and daily affairs, such as shopping or on the housing market.

The Anti-Discrimination Agency advises people affected by discrimination, undertakes public relations work, carries out research into discrimination and gives recommendations for avoiding 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

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



Research

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

Awareness raising

The Anti-Discrimination Agency enhances the public awareness of unequal treatment with campaigns, events and publications, informs victims of their rights and tells people what types of discrimination are prohibited.

Eve



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



Positions and events

An overview of the year



Culture wants change!

This was the heading with which the Anti-Discrimination Agency brought the #MeToo debate to the 2018 Berlinale, with a panel discussion about protection from sexual harassment in the world of film and TV. The Anti-Discrimination Agency provided support and advice for the development of Themis, an industry-wide counselling body founded in October 2018.

“ Christine Lüders has carried forward the concepts of anti-discrimination and equality in this country with dedication and lots of passion.

Dr Franziska Giffey, Federal Minister for Family Affairs, said farewell to the long-standing head of the Anti-Discrimination Agency on her retirement in April 2018.



Greater accessibility

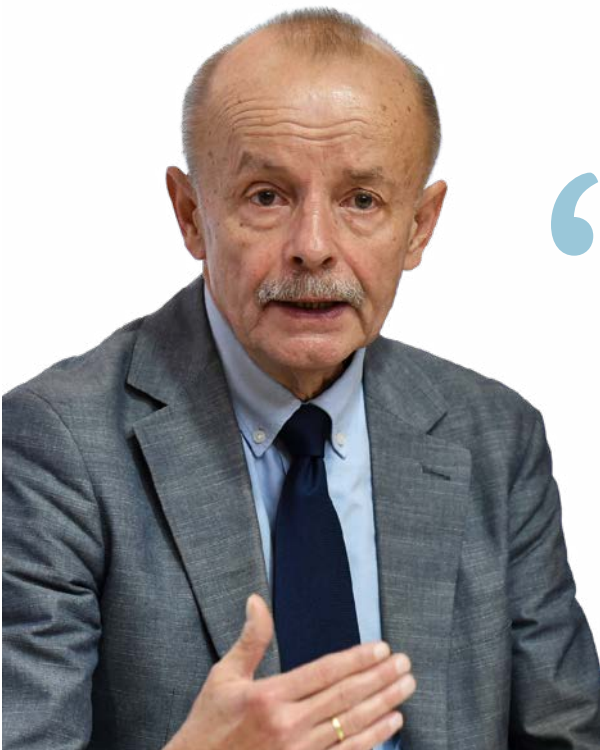
A legally enforceable right to reasonable accommodation which allows people with disabilities to participate fully in the workplace or in leisure activities must be anchored in the General Equal Treatment Act. This is an inevitable consequence of the UN Convention on the Rights of Persons with Disabilities, argues Prof. Dr Dr h.c. Eberhard Eichenhofer in a legal report for the Anti-Discrimination Agency which was presented in November 2018.



“ Anti-discrimination is one of the fundamental principles of the European Union.

In my view, we are going through an absolutely crucial time when it comes to anti-discrimination policy. We have to uphold this fundamental principle and be committed to it at all levels: federal, regional and local.

Bernhard Franke at the official ceremony celebrating 20 years of the local Anti-Discrimination Agency in Hanover





Instagram

“ My boyfriend and I are afraid to walk hand in hand in some parts of the town or in stations. We’re really afraid of being stabbed. But we also let go when we see certain groups of people. It’s just not fair. ”



Facebook

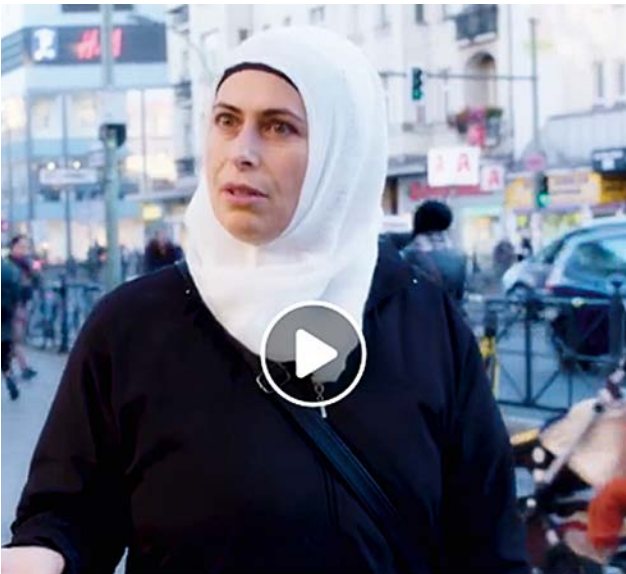
“Do people get aggressive because you wear a kippah? Maybe you’ve been beaten up? It’s happened too often. So should you just leave it off? That can’t be the answer to anti-Semitism! How do you react in cases like this? And what would you like the people standing watching to do?”



#DARÜBER



Facebook



WARUM STREITEN WIR UNS?



Instagram

“ In 2013 I suffered from a slipped disc and had to go to hospital, and when I was allowed home again, the paramedics asked me: ‘Do you live somewhere permanently?’ And I thought to myself ... WTF?! (I have lots of roots, but yes, I am Sintesa.) ”

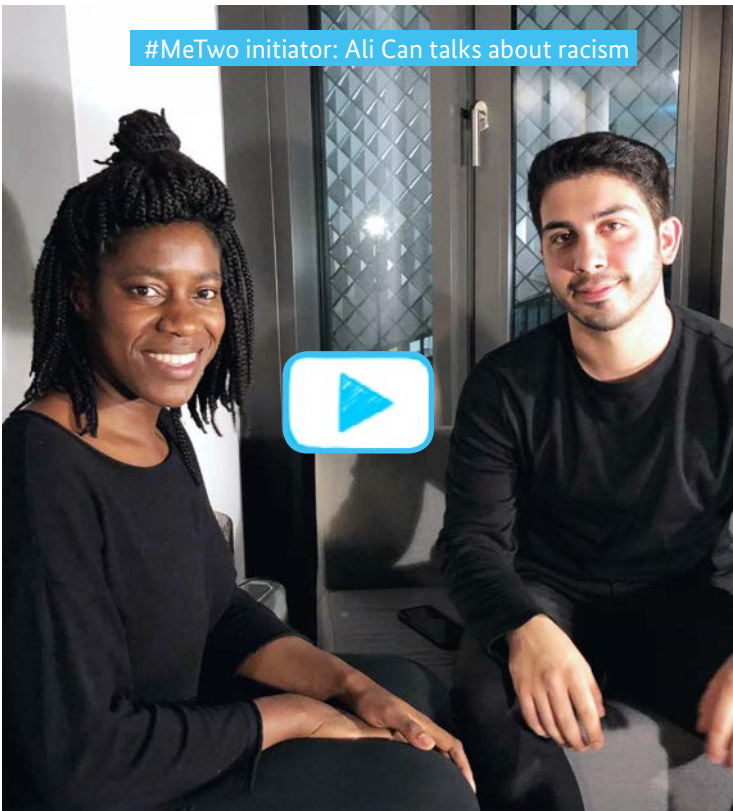


Campaign #DarüberReden

In 2018, #DarüberReden (talk about it) prompted thousands of young people to talk about discrimination on social media. The aim of the biggest national campaign run by the Federal Anti-Discrimination Agency to date was to make everyday discrimination visible and to talk with young people about how to combat discrimination. “Only when we have succeeded in making discrimination visible, in taking it seriously, will we be able to actively change things,” said Bernhard Franke, acting director of the Federal Anti-Discrimination Agency, at the start of the campaign.

The editorial team was busy on Instagram, Facebook and Twitter from October to December 2018. Posts, stories, video clips, live events with celebrities and a participative campaign for hearing-impaired people triggered discussions and chats with the community around the clock. The website darueberreden.de provided anyone interested with further information about how to fight discrimination. Advertising on public transport and online drew attention to the campaign and the website.

#MeTwo initiator: Ali Can talks about racism



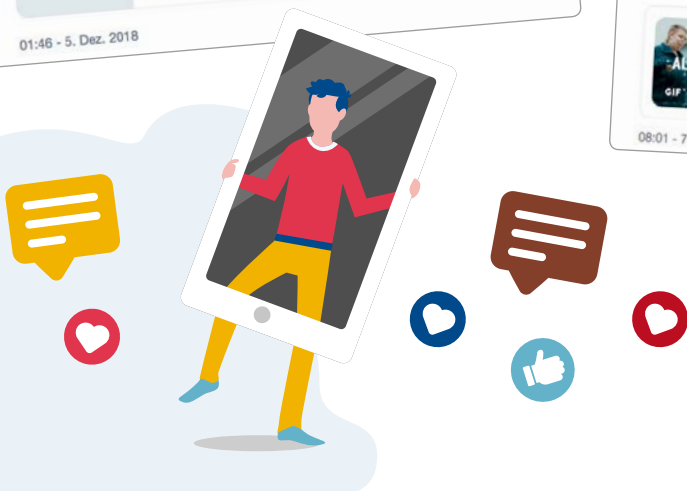
Web and social media

www.migazin.de

According to a representative survey carried out by the Federal Anti-Discrimination Agency, almost one in four people in Germany (23.7%) experiences discrimination in the area of education.

www.tagesspiegel.de

Anti-Discrimination Agency condemns everyday racism





www.tagesspiegel.de

Anti-Discrimination Agency pushes for a complaints office for actresses in the #MeToo debate.

www.queerpride.de

Anti-Discrimination Agency criticises bill for the “third option” and calls for the rights of intersex people to be strengthened.



Development



ents

What were the milestones in terms of preventing discrimination in 2018? Who got things going? What still needs to be done politically?

Everyday racism and #MeTwo


It all started with three tweets. The short messages in which Mesut Özil told people why he was pulling out of the German national football team in July 2018 triggered a wide-scale, intense debate about everyday racism and discrimination. “I’m a German when we win and an immigrant when we lose,” Özil wrote.

And no matter what people thought about the controversial photos of the footballer with the Turkish President, many people felt that the discussion would have taken a different course if this had been a national player without a migration background. In particular, people who have a visible migration background themselves shared the view that double standards apply in German society.


The activist Ali Can gave voice to this feeling by creating the #MeTwo hashtag. Within just a view hours, thousands of social media users, like Miriam Davoudvandi and YouTuber Oğuz Yılmaz, were sharing their own experiences of marginalisation and discrimination.

The viral hashtag was soon picked up by journalists and politicians. Beyond the usual debates on Islam and integration, the public agenda now also covered discrimination and everyday racism:

Miriam Davoudvandi @labiledeutsche

 4th class, talking about the next level of schooling, I’m the best in class. Teacher recommends secondary modern school so that I’m “with people of my own type”. Parents hardly speak German and trust teacher. Luckily an acquaintance steps in.
5th class: I’m top of the class at the grammar school. #metwo

Oğuz Yılmaz (@oguz)

 When you contact available flats via Immoscout & just don’t get an answer, but your German friend gets answers straight away to the same ads. After getting married & changing her name, she didn’t get an answer either. Flat found thanks to paying agent commission. #metwo

Racial discrimination already has a high priority when it comes to the counselling provided by the Anti-Discrimination Agency. In 2018, discrimi-

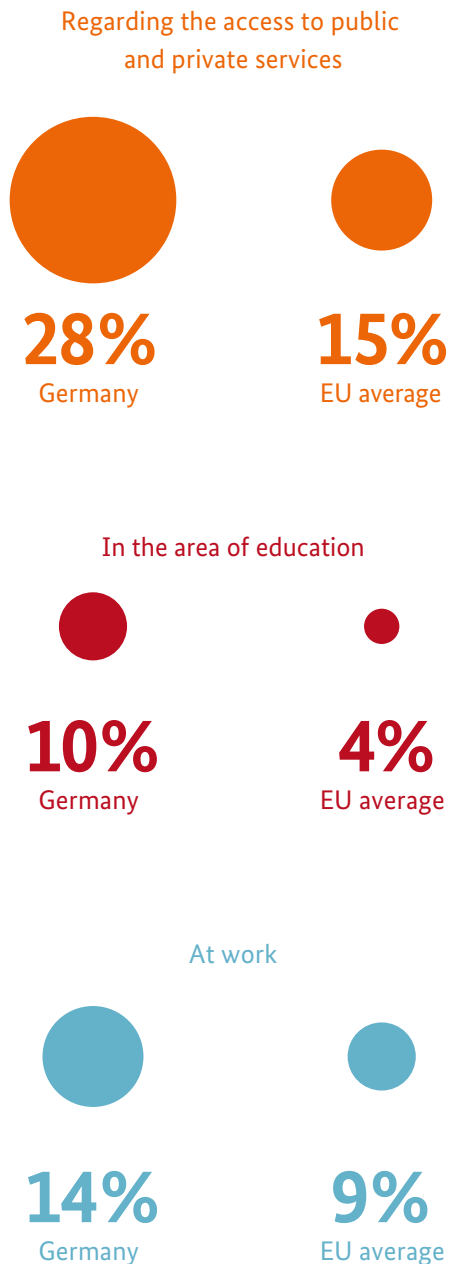
nation on the grounds of “ethnic origin” once again accounted for the highest proportion of all counselling requests, at 31 percent. Mostly, people asked for counselling on discrimination at work or in the labour market, but there were also frequent reports of incidents in everyday situations and in the area of education.

However, the number of requests for counselling alone cannot paint a representative picture of the situation. To counter the lack of viable data, the Federal Anti-Discrimination Agency has been working for a long time on making sure that anti-discrimination data is collected more systematically and in a way that will allow comparison over longer periods of time (see also page 49). With this objective, the agency took part in an EU group of experts in data gathering which will be presenting its report in spring 2019.

In 2018, in a special evaluation of the Second Survey of the European Union on Minorities and Discrimination (EU MIDIS II), the European Union Agency for Fundamental Rights (FRA) looked particularly at the situation of people of African descent. Thirty-three percent of the people who took part in the survey in Germany stated that they had experienced discrimination within the last year – more than the European average.

This happened particularly when it came to public and private services, in the area of education and at work.

Frequency of experiences of discrimination amongst people of African descent:



Source: EU MIDIS II

The Anti-Discrimination Agency discussed the EU MIDIS II figures in March 2018 with representatives of migrant organisations, with anti-discrimination associations and with the Federal Ministry of the Interior. Here too, it became clear that racial discrimination in Germany is an everyday occurrence for many people and that counselling structures must be strengthened. Within the UN Decade for People of African Descent, for

them to channel their legitimate anger and to work on examples of successful coexistence: “I think if you actually experience diversity in action, you’re less susceptible to racism.”

As with #MeTwo, the theme of discrimination in the area of education kept coming to the fore with #DarüberReden. The General Equal Treatment Act provides no protection in school, since the Federal Government does not have

“

I think if you actually experience diversity in action, you’re less susceptible to racism.”

Ali Can

which the German opening event in 2016 was organised by the Federal Anti-Discrimination Agency, the Agency will therefore also continue to look at discrimination against Black people.

Between October and December 2018, everyday racism also played a central role in the Anti-Discrimination Agency’s biggest social media campaign to date, aimed at young people in particular: #DarüberReden (see page 14).

Ali Can, amongst others, supported the campaign and talked with social media users about everyday racism and about the question of what should follow after #MeTwo. He encouraged the victims to insist on visibility, but also called on

the necessary legislative power here. The Anti-Discrimination Agency has recommended that legislation in the individual states should close this loophole.

In 2018, Berlin was the first federal state to draft a bill to this effect which would also cover the field of education. The importance of strengthening protection against discrimination in schools in this way is proved – also in Berlin – by the track record of the anti-discrimination commissioner in the Senate Education Administration, Saraya Gomis. Her position as the first point of contact in all matters relating to discrimination in schools is exemplary. The Federal Anti-Discrimination Agency recommends setting up centres for complaints



Award ceremony of the 2018 fair@school competition.

about discrimination in the school administration bodies of all the federal states.

To provide specific pointers for everyday school life, the practical manual “Recognising and avoiding discrimination in schools” was published by the Federal Anti-Discrimination Agency in 2018. The handout, which is aimed mainly at teachers and head teachers, highlights practical ways of reducing the risks of discrimination in schools.

In order to support model projects in the world of education, the Anti-Discrimination Agency, along with Cornelsen Verlag publishing and with the expert assistance of the University of Hildesheim, for the second time, in spring 2018, organised the nationwide competition fair@school. All school initiatives and projects aimed at combating discrimination and promoting peaceful coexistence were eligible to compete.

Alongside schools from Hamm and Deggendorf, the winners – in first place – were the Berufsfachschule Sozialassistenten Berlin with their project “Intercultural Learning”. Cemre Öztürk (page 24) was among the students involved. Her head teacher Anja Kullmann is convinced that a respectful view of diversity offers powerful potential:

“ We live with each other day in, day out, work together and have to deal with each other all the time. There are some pretty vocal discussions and arguments. But this is exactly where we benefit. Our differences represent a value that has so much potential, so much power that it’s truly a joy to come into the school in the morning and come into contact with these pupils as complete people. ”

The competition was also organised in 2019 (more details at fair@school.de). The winning projects will be announced in June. Practical examples of a successful fight against discrimination and racism are urgently needed. ●



Interview

Cemre Öztürk

Cemre Öztürk is a student at the Berufsfachschule Sozialassistenten vocational college in Berlin. In 2018, she and her fellow students won the fair@school competition. At her school, subject areas such as prejudice, discrimination and racism are tackled in intercultural learning projects and on project days. These not only increase awareness of these issues amongst the people attending; the general climate in the classroom also improves, because there are open, in-depth discussions about different origins, ways of living and traditions. When she leaves school, Cemre Öztürk would like to work as a social education worker and eventually run her own nursery school.

Where have you yourself suffered discrimination? How did you react?

I have been in Germany for seven years now and couldn't speak a word of German to start with. At that time, I had to give a talk in school and I mispronounced a word. The whole class laughed at me, including the teachers and teaching assistants.

So then I thought: "OK, I'm not talking German any more! I want to go back to Turkey". I cried outside for nearly two hours. Because of being laughed at, I really didn't go back to school for one or two weeks. It was horrible. But then I thought to myself: "It can't go on like this, you need to do something so that you can show them that you can speak German." So then I just watched German TV programmes and read German books, and I only spoke German at home. After a year, I could understand everything.

But in everyday life, I still suffer from discrimination sometimes. If I talk Turkish on the train, for example, or at work, it's only then that people notice I'm Turkish. Many people then become cold, distant and unfriendly. I've experienced it lots of times, and so have my friends. If they're wearing a headscarf, then people think they're going to start begging.

What did the project change in your school?

It changed a lot. Before the project, we still had discrimination, though not blatantly, but now we don't have that any more. We used to have sorts of situations in the class between the Turks or foreigners and the Germans.

When something happened, they always said: "Foreigners!" And when they did something, we always said: "Germans!" Thanks to the project, we don't have these prejudices any more, because we have understood that prejudice doesn't help solve conflicts. If there are problems today, we go straight up to the person and say: this is my problem. We don't say "Turk" or "German" any more.

What do you say to young people who want to defend themselves against racism but who feel they're alone?

I would advise other young people simply not to listen. People who discriminate against other people mostly feel bad about themselves and so they want people to feel worse than they do. So just don't listen. Smile and walk away. ●

Third option

It was a great step towards the equal treatment of all genders, and yet for many it came with disappointment. In December 2018, the Bundestag and Bundesrat passed the “Law on the Amendment of Information to be Entered in Birth Certificates” – shortly before the deadline that the Federal Constitutional Court had set a year earlier for creating a positive “third option” for gender registration.

The law, which came into force at the beginning of 2019, now allows people registering a birth to choose between “female”, “male” or “diverse”, rather than leaving the entry blank. To correct the entries of older people, a medical certificate is required, which may in exceptional circumstances be replaced by a sworn affidavit.

Ultimately, this solution only represents a minimal consensus that does not fully reflect the principle of self-determination. The acting head of the Federal Anti-Discrimination Agency, Bernhard Franke, regards it as an improvement. However, he regrets that the law has turned out to be “not completely in the interests of the people concerned.”

The Anti-Discrimination Agency is convinced that the non-binary gender entry, for which a simple application to the Civil Registry would be sufficient, should be open to all people, including people who do not identify as a man or a woman and also do not come into the

category, as formulated by the new law, of “variations of gender development”.

And yet the Federal Constitutional Court must be thanked for one great step forward: Germany is now one of the few countries worldwide who legally recognise more than two genders. The decision does not just affect civil status legislation; it also has consequences for many other areas (see also “The Third Option and the General Equal Treatment Act” on page 32).

In October 2017, the First Senate of the Federal Constitutional Court had upheld a complaint by the intersex person Vanja N. and decided: the right to the recognition of gender diversity is to be concluded from the general right to protection of the individual sphere of life and the ban on discrimination based on gender in the Basic Law.

Intersex people, in fact, suffer particularly from discrimination on the grounds of gender. The social pressure

to fit into the binary gender model of masculine and feminine continues to be high. It is also felt by the parents of intersex children who were advised in the past (and today, to some extent) to have their children operated on so that they fitted the norm. These operations represent serious attacks on their physical integrity, and many victims suffer all their lives as a result. We must therefore welcome the fact that in the Coalition Agreement, the CDU/CSU and SPD agreed to introduce a ban on operations on intersex children that are not medically essential. In order to compensate, at least symbolically, for the consequences of these interventions for the victims, the Anti-Discrimination Agency has also recommended setting up a support and compensation fund.

To implement the Karlsruhe decision, the Federal Anti-Discrimination Agency had pleaded for a comprehensive solution. For many years, it has been advocating a modern law on gender self-determination which could also replace the totally antiquated Transsexuals Act (TSG), which has been declared as non-constitutional in parts.

The Federal Government ultimately limited its legislative approach to intersex people. In addition, in its first draft legislation, it required a mandatory medical certificate, which reminded the people concerned of the compulsory medical assessment in the Transsexuals Act, which was perceived as

humiliating. The Anti-Discrimination Agency was involved in the legislative process by the Federal Ministry for Family Affairs, and actually recommended removing this mandatory evidencing process.

After widespread criticism of the certificate obligation, which was also expressed by legal and medical experts in a hearing in an internal parliamentary committee in November 2018, the possibility of replacing the medical certificate by a sworn affidavit in certain circumstances was incorporated into the wording of the law.

I believe that people themselves know best what gender they are.

Vanja N.

For the time being, the government thus missed the opportunity to use the pressure to act with regards to the third option to create a truly modern law on gender self-determination. However, the government coalition has announced that it intends to address a reform of the Transsexuals Act in 2019. The renewed opportunity to implement a truly non-discriminatory, self-determined approach to gender diversity should not be missed this time. ●

 Interview with Vanja N.

Why did you go to court and what did the decision of the Federal Constitutional Court mean for you?

I went to court because I was looking for a solution for myself; a solution to the problem that my entry in my passport was increasingly moving out of line with how people perceived me from the outside and how I identify myself in terms of gender. I realised that there was absolutely no option that was right for me.

For me, the Court's decision means a type of recognition that wasn't there before. A feeling of really being seen for who I am and not being invisible any more.

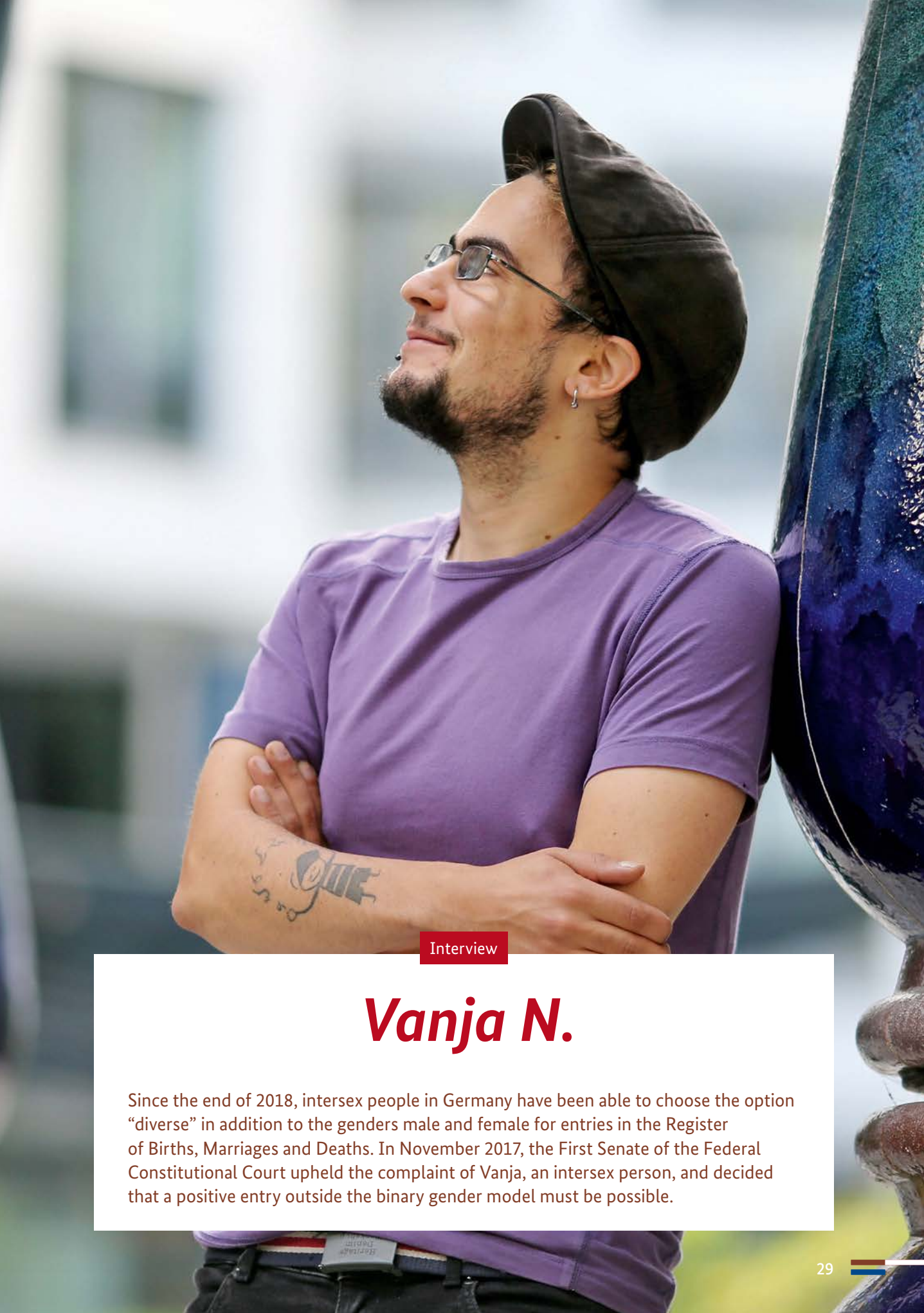
What is your view of the Law to Amend the Civil Status Act which was passed by the Bundestag after your complaint was upheld?

Well, it's a bit of a double-edged sword. I'm pleased that something is happening now. And I hope that the law will not always have to be as it currently stands. Of course, it's great that the law is a form of recognition by the state of the fact that there are not just two genders. The negative side is that the entry of "diverse" can generally only be obtained with a medical certificate,

which leaves the power to define gender with the medical authorities. I find that very difficult. It excludes people who don't identify as a man or a woman. I believe that people themselves know best what gender they are. And so from that point of view, it's a shame, of course, that the people who wrote the law have decided not to do it like that.

What still needs to change, for you personally, in terms of equality?

Firstly, it's still important to fight for medical attitudes to intersexuality to change. At the moment, if intersex people have contact with the medical world, it often still happens that the doctors push them automatically – without any real reason – towards a norm of "masculine" or "feminine". Naturally, I would like this to change. This is partly about operations carried out on very young children, who are obviously totally unable to agree to them. But it's also about hormone treatments, where I would like people to explain more about the various options instead of always going in one direction. For me, it's all about physical self-determination, which sadly still doesn't exist for intersex people. ●



Interview

Vanja N.

Since the end of 2018, intersex people in Germany have been able to choose the option “diverse” in addition to the genders male and female for entries in the Register of Births, Marriages and Deaths. In November 2017, the First Senate of the Federal Constitutional Court upheld the complaint of Vanja, an intersex person, and decided that a positive entry outside the binary gender model must be possible.

Access to the labour market

Courts have recently strengthened the rights of employees when dealing with religious employers in two cases. With the decision in the Egenberger case in October 2018, the Federal Labour Court made it plain that, for religious employers, religious denomination may only be considered in the filling of a post if the activity essentially defines the perception and identity of the religious community in question, as would be in the case of a priest or the directors of a religious charity.

In September, the European Court of Justice (ECJ) had already upheld a case brought by a doctor in Düsseldorf. The man had been discharged from a Catholic hospital because he had married a second time after a divorce. However, the ECJ decided that in this case there was no legal occupational requirement to comply with the Church's concept of marriage. Consequently, in 2019, the Federal Labour Court declared the dismissal invalid. The Anti-Discrimination Agency welcomes this strengthening of protection against discrimination, because these rulings make it clear that the special status of the Church does not apply across the board; it must be transparent and appropriate for the activities in question.

The tension between what is allowed and not allowed in terms of job requirements plays an important part in all areas of work when it comes to accessing the job market.

Both employers and employees are not always sure about which requirements, wording and questions are justified in the recruitment process and which constitute discrimination under the General Equal Treatment Act. In 2018, the Anti-Discrimination Agency published two studies examining this area of tension and showing that protection against discrimination is still not a matter of course in the world of work.

For example: "Are you pregnant?" or "Is German your mother tongue?" are questions which could be discriminatory under the General Equal Treatment Act.

In job interviews, HR managers should clearly avoid questions like this and job applicants are actually allowed to lie if these questions are asked. Despite this, in the study entitled "What employers (are allowed to) ask", 6 percent (pregnancy) and 18 percent (mother tongue) of

employees surveyed stated that they had been asked such a question in job interviews in the past. At the same time, however, only 59 percent (pregnancy) and 32 percent (mother tongue) actually knew that these questions are not allowed.

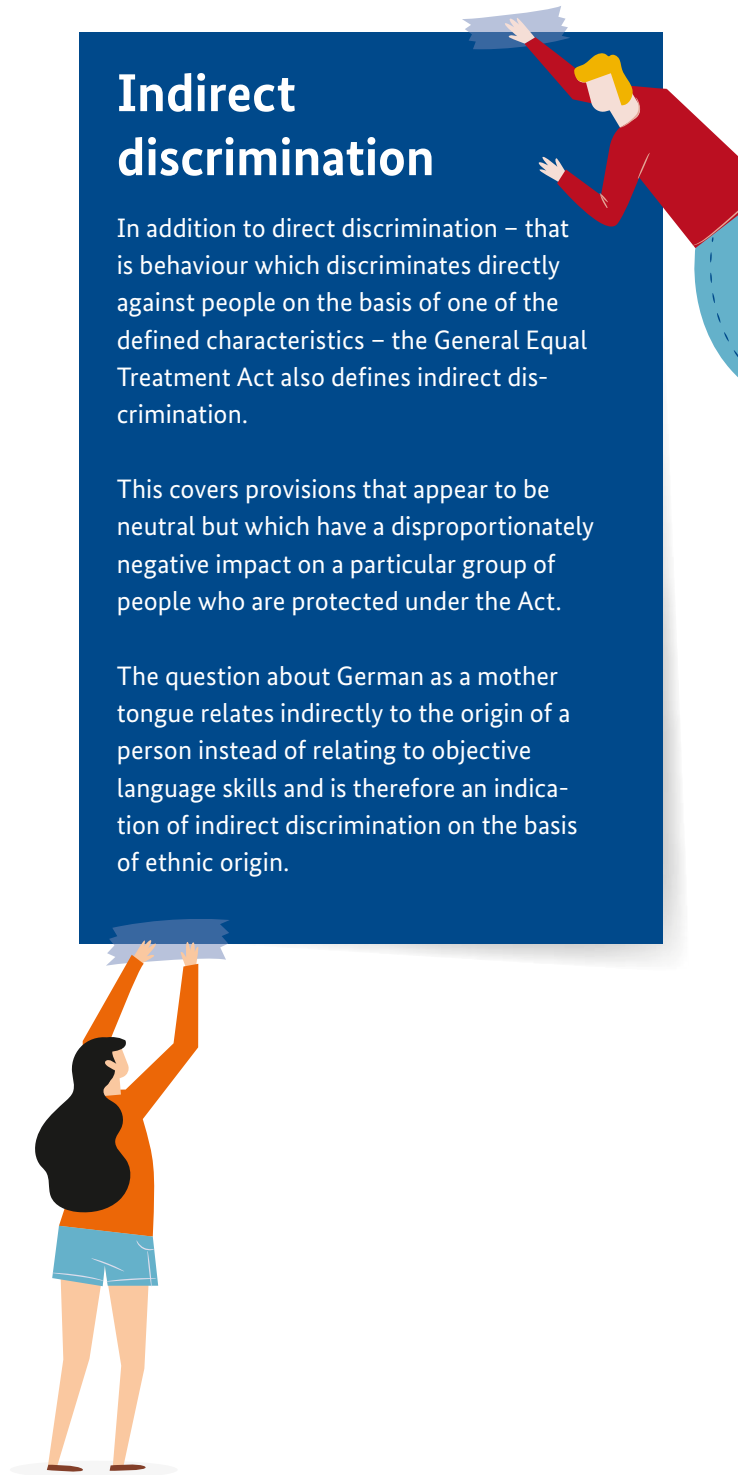
There is also a risk of discrimination in job adverts. Twelve years after the General Equal Treatment Act was passed, there are fortunately only a few examples of obvious discrimination in job adverts, but many types of wording or content exclude certain job applicants indirectly. More than 5,000 job advertisements were evaluated for the second study carried out by the Anti-Discrimination Agency on “Discrimination in Job Advertisements”. Whilst only 2 percent of adverts are blatantly discriminatory, over 20 percent contain what we call “risks of discrimination”. Often, for example, only the male form of address is used outside the “(m/f)” statement at the beginning of the ad. In advertisements for what are traditionally women’s jobs, on the other hand, the photos often only show women, and if a company describes itself as a “young team”, this can exclude older people.

Indirect discrimination

In addition to direct discrimination – that is behaviour which discriminates directly against people on the basis of one of the defined characteristics – the General Equal Treatment Act also defines indirect discrimination.

This covers provisions that appear to be neutral but which have a disproportionately negative impact on a particular group of people who are protected under the Act.

The question about German as a mother tongue relates indirectly to the origin of a person instead of relating to objective language skills and is therefore an indication of indirect discrimination on the basis of ethnic origin.



Job adverts and interviews are also ways in which a company presents itself. They play a large part in determining whether qualified people feel that a company is interested in them and whether they will choose to work there. Employers not only need to think about whether they are breaking the law; they also need to be attractive to as many applicants as possible.

Companies are relying increasingly on diversity. “Diversity is THE coping strategy in times of accelerating global development,” stated corporate consultant Robert Franken at the

“Diverse, fair and digital” conference, to which the Anti-Discrimination Agency had invited over 100 representatives from business, public administration and civil society in October. However, at the same time, he said, there was also a gap between the theoretical goal of “diversity” and the way it was actually implemented within companies. This was often due to gaps in knowledge, as was shown, for example, in one of the workshop discussions about the right way of considering intersex and transgender people in job advertisements.

The Third Option and the General Equal Treatment Act

The General Equal Treatment Act provides protection against discrimination on the basis of gender – any gender. In working life and access to employment in particular, the recognition of the Third Option in civil status legislation has a direct effect, since language that is appropriate for all genders must be guaranteed even in job advertisements.

The Anti-Discrimination Agency advises on gender-neutral wording of job adver-

tisements. This can mean not just using gender-neutral professional titles but also adding supplements after the job title such as “f/m/x” or “f/m/div” or by the use of what is called the gender gap (␣) or gender asterisk (*). But outside the recruitment process, the new legislation also encourages employers to take non-binary people into account more, in the wording of job references or contracts, for example, or by introducing unisex toilets.



Examples of people with a migration background shown in photos in job advertisements



Source: study by the Anti-Discrimination Agency on discrimination in job advertisements

There was also some discussion about the fact that companies can only be sustainable if they make their theoretical concepts of diversity come true in practice. One of the central results of the conference was therefore that the promotion of diversity and protection from discrimination must go hand in hand. Corporate culture can only change if there are people who want to change things. At the same time, job descriptions that show an awareness of

discrimination risks and an according selection of applicants are, in the view of the Anti-Discrimination Agency, not only legally required but also guarantee a fair, sustainable labour market.

To support employers in this, in spring 2019 the Anti-Discrimination Agency will be publishing a guideline on implementing a discrimination-aware recruitment process. ●

Interview with Vera Egenberger

Your case took several years. Why was it important to you to pursue this lawsuit?

Because I had been active in anti-discrimination work for many years, I'd long been aware of the discrepancy between the European Directive on Equal Treatment in Employment and Occupation and the German Equal Treatment Act. The essential fact is, of course, that the European Directive allows an exemption for religious organisations which is very narrowly defined; however, the definition is much broader in the German legislation, so that churches are, in practice, completely exempt from the ban on discrimination. This difference is very serious and obvious, which is why I wanted to clear up the matter when I was rejected by the Diakonie (German charitable church organisation). In addition, I also felt that the situation was simply unfair, because I thought I was ideally qualified for the job.

What do you think was successful about your suit?

That it was actually found that the exemption provision for the churches in the General Equal Treatment Act in Germany did not comply with the Directive. The lawsuit showed that job applicants cannot always be required to

belong to a church if they want to work for a religious organisation. It's not legal and it may only be a requirement if it is of central importance for the job. And this is something that potentially affects a vast number of people, not just me. I am delighted that this problem, which many people have actually felt the same about for years, has now been clarified at least legally.

The Basic Law guarantees the right of self-determination for churches. Don't you think that religious employers should be able to choose freely when it comes to employing people?

Naturally, churches have a right of self-determination and I don't want to interfere there. Whenever there are jobs for which religious faith is essential, I think that it is absolutely right that the churches should decide who they want in this job and that this employee should belong to a church. I can totally support this exemption. But because the church, as the second-largest employer in Germany, has lots of jobs that have absolutely nothing to do with belonging to a religious denomination – such as caretakers or cooks or drivers of disability vehicles – I don't think that it's right in these circumstances that the church should decide this for itself. ●



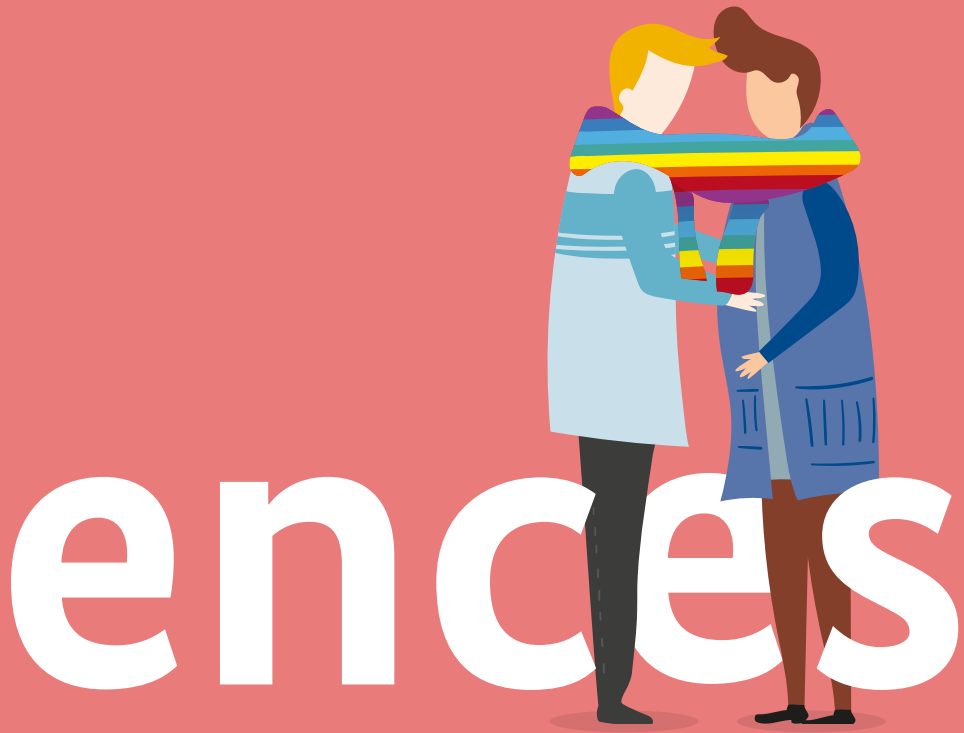
Interview

Vera Egenberger

In Paragraph 9, the General Equal Treatment Act gives religious employers the right to insist that employees belong to a particular denomination. People of other faiths or no faith can thus be excluded from recruitment. In 2013, Vera Egenberger took legal action against the exemption provision because, as a non-religious applicant for a research position, she was not invited to the interviews by the Diakonie. The case went to the European Court of Justice and from there back to the German Federal Labour Court, whose decisions limited the special status of the churches in employment law and came to the conclusion that church employers may not insist that all employees belong to a religious denomination.

Who has sought counselling from
the Anti-Discrimination Agency?
For which reasons? And what
support do people need?

Experi



3,455

requests for counselling relating to a characteristic protected by the General Equal Treatment Act were received by the counselling unit of the Federal Anti-Discrimination Agency in 2018.

Requests for counselling – facts and figures

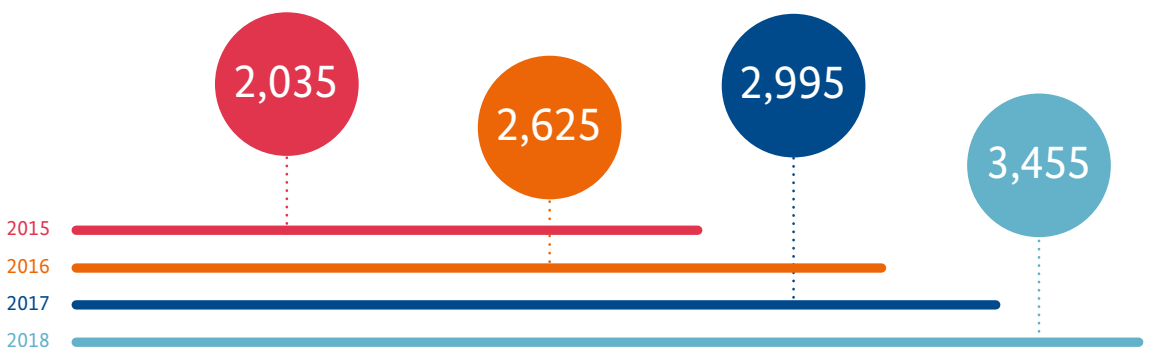
Every day, people contact the Anti-Discrimination Agency to ask for advice and legal counselling and to report experiences of discrimination. The counsellors provide them with an initial legal assessment and support them in taking action. They can also work towards an out-of-court conflict settlement by contacting the accused party. However, the Anti-Discrimination Agency cannot provide individual psychosocial support, accompany people in court or take legal action itself against discrimination.

In 2018, the Anti-Discrimination Agency counselling unit received 3,455 requests for counselling relating to at least one of the discrimination characteristics protected under the Equal Treatment Act. In total, the counselling unit received 4,220 inquiries.

The difference in the figures comes, for example, from cases relating to characteristics (such as social origin) or to areas of life (such as the public sector or the internet) that are not protected under the AGG.

In comparison with the previous year, inquiries relating to characteristics covered by the Equal Treatment Act have shown a clear rise of around 15 percent. The number of inquiries has risen steadily in past years which appears to be mainly due to the fact that the Anti-Discrimination Agency is becoming better known and that the people affected are better informed about their rights within the General Equal Treatment Act.

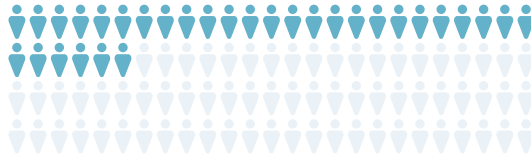
Development of requests for counselling relating to a characteristic under the Equal Treatment Act:



Frequency of inquiries for each protected characteristic (2018).
Including multiple answers in the case of multidimensional discrimination.

31%

Ethnic origin



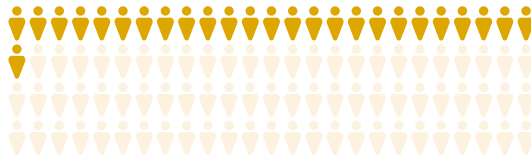
29%

Gender



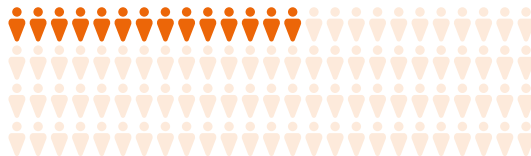
26%

Disability



14%

Age



7%

Religion



5%

Sexual identity



2%

Belief system



In 2018, most requests for counselling related to the characteristics of ethnic origin/racist attributions and gender, followed by disability, age, religion, sexual identity and belief system. Fourteen percent of cases are related to more than one characteristic.

The area of life that was by far mentioned most frequently was the labour market. More than one in three requests for counselling (36%) in 2018 related to discrimination in the working life. The second-largest group of people to contact the Anti-Discrimination Agency was made up of those suffering discrimination when seeking access to goods and services (27%). So most of the requests related to the central areas of protection by the General Equal Treatment Act. But people also contacted the Agency last year about discrimination in areas of life not covered by the Equal Treatment Act, with public services (7%), access to public health and social services (6%) and education (6%) being mentioned particularly frequently.

The extent and the development of counselling requests show that discrimination is an everyday problem.

Counselling is thus a key factor in the battle against discrimination; both so that people can know their rights and also to provide support in specific situations. The possibilities are still limited in Germany.

Many people affected do not take any action about discrimination because they do not have the necessary resources to take legal measures, they do not believe a solution will be found, or they are afraid of negative consequences. It is important here to strengthen counselling structures nationwide. In addition, for some time now, the Anti-Discrimination Agency has been calling for a right for anti-discrimination associations to take legal action and for the authority of the Anti-Discrimination Agency to be strengthened, for example by allowing it to accompany particular cases to court. The present situation places too much of a burden on many people and means that a large proportion of discrimination experiences are not recorded, making major legal and social changes impossible to implement. ●



193

requests for counselling were received by the Federal Anti-Discrimination Agency in 2018 relating to cases of sexual harassment in the workplace.

Main areas of counselling

Sexual harassment in the workplace

In the past 18 months, #MeToo has triggered a long-overdue debate about power structures and discrimination in the workplace. Across the world, people have talked about their experiences of how they have been affected by sexual harassment.

The General Equal Treatment Act defines sexual harassment in the workplace as a form of discrimination and protects employees from any form of unwanted sexualised behaviour – whether this is suggestive looks, comments with sexual content or physical contact of sexual nature.

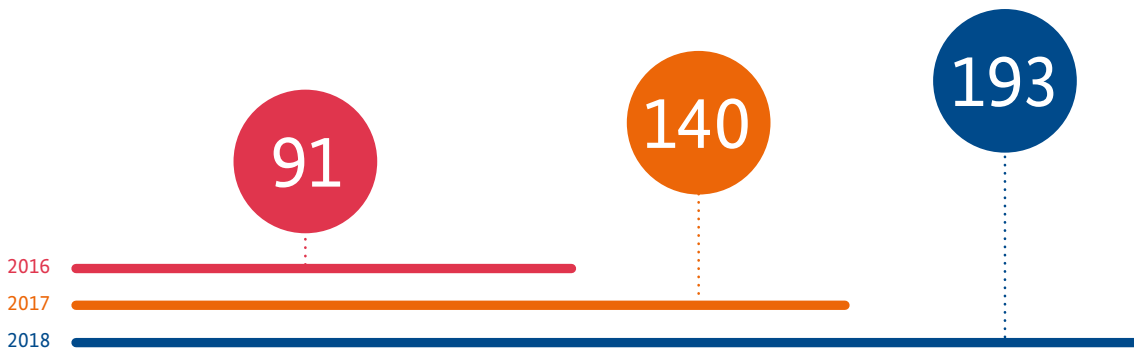
A total of 193 cases of sexual harassment at the workplace were reported to the counselling unit at the Anti-Discrimination Agency in 2018.

The public debate seems to have played a major role in increasing general awareness of the problem and encouraging the people affected to talk about their own experiences, with reports growing in number since the start of the debate in 2017. Requests for counsel in the last two years have risen at an above-average rate (around 54% in 2017 and a further 38% in 2018).

The overwhelming majority of the people affected were female.

Only 13 of the 193 cases reported in 2018 were situations in which a man was subjected to sexual harassment. It is also worth noting that in most cases, it was men who were accused of harassment, and only five enquiries related to harassment by women.

Requests for counselling about sexual harassment:



In many cases, sexual harassment is an expression of power and the abuse of power. In around four out of ten cases (83 in total) reported to the counselling team at the Anti-Discrimination Agency, harassment was committed by managers. However, other factors such as stereotypical role images and hierarchical gender concepts also play a part in sexual harassment.

In addition to violating personal integrity, sexual harassment at the workplace can have serious health consequences for the people affected – even making them unfit for work. The Equal Treatment Act therefore sets out very specific rights aimed at protecting employees, such as the right to complain to an employer or to compensation or damages from him. At the same time, employers are obliged to protect their employees from sexual harass-

ment and to take effective action against it if it does occur. Amongst other things, the Act requires a complaints body to be set up in every company as well as preventive measures, such as training courses, implemented. However, the counselling requests received by the Anti-Discrimination Agency show that this obligation to protect is not always taken seriously.

A woman reported, for example, that her manager regularly stares at her, spends ages sizing up her body and winks suggestively at her. After she had complained to the competent female site manager about this behaviour, the woman was told that physical closeness was expressly welcomed in the company and that she should apologise to her manager. There was no company complaints body or staff council,

which is why the woman in question could only complain to the managing director or take legal action. Unfortunately, this is not an isolated example. Employers often fail to take appropriate measures to protect their staff. There are frequently no clearly regulated complaint structures or people to talk to.

In addition to ensuring legally watertight handling of complaints, however, transparent structures also have a preventive effect. Employers can make a clear statement here: sexual harassment will not be tolerated in this company. This also has a major effect on how a complaint is dealt with in a company. Victims are constantly finding that they are often blamed after they filed a complaint. For example, a woman working as a cleaner in a company contacted the Anti-Discrimination Agency and reported that she had been sexually harassed for a third time by a male colleague who had put his arms round her and kissed her, during which she had been held tight and her breasts touched. Although the employer had given a warning to the offender, the woman had to continue working with the man. In addition, shortly after she had made the complaint, her boss and other colleagues had accused her of behaving incorrectly; she had allowed “her (male) colleague to offer her a coffee.”

This kind of dynamic often means that the person making the complaint is ultimately the one who leaves the company.

The requests for advice received by the Anti-Discrimination Agency show clearly that sexual harassment occurs in every area of industry and in companies of all sizes. This is why it is important for employers to take preventive measures and thus bring about changes in the corporate culture. Protecting people from sexual harassment should be seen as a self-evident part of protecting employees and not treated as a taboo subject.

It is encouraging that the Anti-Discrimination Agency also received more requests for advice from employers and HR representatives in 2018 who want to provide lasting protection from sexual harassment and discrimination in their own companies.

In order to be able to better identify gaps in how measures to prevent discrimination are implemented and to offer better support to employers in implementing strategies for handling sexual harassment, the Anti-Discrimination Agency has commissioned a comprehensive study on sexual harassment in the workplace. Its results will be released in 2019. ●



35

people contacted the Anti-Discrimination Agency in 2018 after they were unable to open a bank account or sign a phone contract because they had a foreign passport.

Proof of identity for online transactions

They come from India, Laos, Greece, Portugal, Romania, Poland, Afghanistan, Syria, Italy, Spain and Sudan and they have one thing in common: they all have the “wrong” passport and were therefore unable to open an account or sign a telephone contract with various providers. In 2018, 35 people in total contacted the Anti-Discrimination Agency because in such a situation they felt discriminated against because of their origins. They represent thousands of other people with the same problem.

All banks and telecommunications companies are legally obliged to ask their customers for some form of identification before signing a contract. Many banks and phone companies do not carry out the ID check themselves; instead, they employ external service providers, for example Deutsche Post AG uses the 'Postident' process. These processes are often automated and are based on German standards for ID documents. And although only three items of information are legally required – the person’s signature and place of birth and the name of the

authority that issued the ID documents – many foreign documents are not accepted by the providers of checking services. This may be because the information is not in Latin script or because not all three items are given on a single ID document. Paper documents are often not allowed at all.

The people affected are then unable to open a bank account with these providers or sign a phone contract. For people who have just arrived in Germany, this not only makes everyday life, which is full of challenges already, even more difficult; it also makes them feel excluded. A petitioner writes:

“I’m so fed up. Although I live without any problems in Germany with my passport and I work and I pay taxes here, this discriminatory practice means that many services offered online, such as good, cheap online banking, are out of reach for me.”

Nationality is not protected under the Equal Treatment Act and this problem does not relate directly to ethnic



origin, because the discrimination within the ID checking process is not related to where the people come from. These are actually requirements that look objective at first glance. However, the procedure is problematic because groups of people of particular origins are often discriminated against indirectly in above-average numbers.

In the view of the Anti-Discrimination Agency, there is no practical reason why the checking procedures cannot be made more flexible, with the missing information, for example, being obtained in a personal interview. As a result, these procedures could legally be regarded as indirect discrimination.

To allow everyone to have unrestricted access to bank accounts and phone

contracts, the Anti-Discrimination Agency has been trying for several years to make banks and service providers such as Deutsche Post AG more sensitive to the problem.

Providers, in turn, are hoping that matters could be simplified by the introduction of electronic residence permits, which our legislators will not allow. Overall, the discussions have shown that the bodies involved are not prepared to accept responsibility. Encouragingly, at least Deutsche Post AG has announced that it will be making its ID checking processes more flexible by 2019 and thus allowing more types of ID than previously. The Anti-Discrimination Agency is working to improve procedures so that everyone can benefit. ●



Surveys of discrimination experiences

Scientific data about discrimination experiences is important in fighting discrimination. It can highlight deficits, show a need for political action and allow people to monitor whether situations are improving, getting worse or staying the same over time. Regular representative surveys, such as the Micro-Census or the Socio-Economic Panel (SOEP), are very significant here because, firstly, they provide wide-ranging information about society and, secondly, they provide an important source of reference for other social-science investigations.

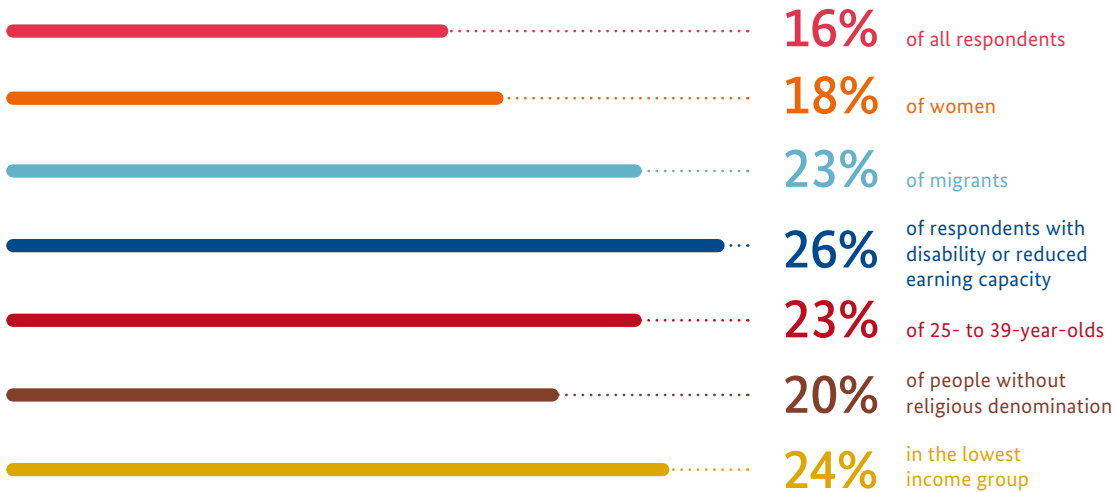
But what part has discrimination played in this type of survey so far? In October, the Anti-Discrimination Agency published an expert report on 20 large longitudinal surveys in Germany in terms of their contribution to measuring discrimination. The study comes to the conclusion that the current status of data is insufficient for

reporting on discrimination in a way that meets the protection requirement of the General Equal Treatment Act.

Fortunately, the surveys examined already ask relatively frequently whether the respondents have ever experienced discrimination. However, the questions are mostly limited to discrimination suffered by particular groups (immigrants, for example, or older people) or to particular areas of life. On the basis of the data collected, these surveys therefore generally do not allow for any study of discrimination on the basis of all the characteristics protected under the Equal Treatment Act and of forms of multiple discrimination. This is made all the more difficult by the fact that it is not possible to break down all the groups of people with a high risk of discrimination statistically. For example, most surveys do not ask about sexual orientation.



Frequency of discrimination experiences in social sub-groups



Source: own calculations on the basis of the SOEP Innovation Sample 2016

Against this background, at the request of the Anti-Discrimination Agency, two questions on the frequency of discrimination experiences were already included in the SOEP Innovation Sample in 2016. This is a survey in which innovative questions can be tested and so it is also a way of testing the ground for new questions within the SOEP core sample which, because of its scale and regularity, is one of the most important social science surveys and which could considerably improve the data situation with regards to discrimination experiences.

The results of the Innovation Sample show that 16 percent of respondents stated that they themselves had suf-

fered discrimination in the previous 24 months. Certain groups of people suffer much more often from discrimination than others. For example, 23 percent of people with a migration background reported discrimination, and the figure reached 26 percent for people with a disability.

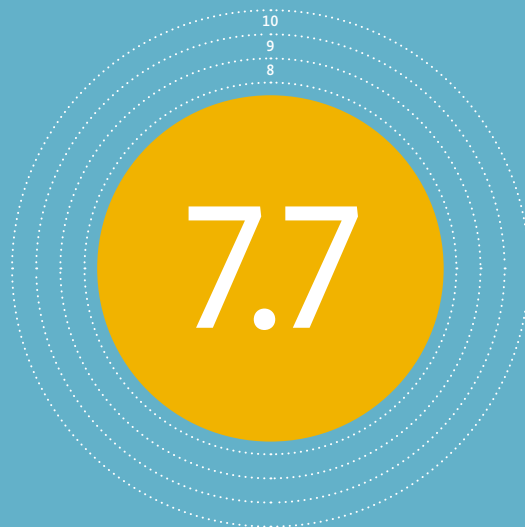
On the basis of the data, however, it was also possible to examine connections between discrimination experiences and other aspects of life. Further evaluations, for example, show that there is a connection between discrimination experiences on the one hand and satisfaction with life and/or health and well-being on the other.

The SOEP Innovation Sample also asks about how satisfied people are with their lives, on a scale from 0 to 10. People who have experienced discrimination give a much lower rating here than people who have not suffered this.

The figures do not allow any unambiguous conclusions to be drawn, because other factors alongside discrimination could have a major influence on satisfaction with life. However, this pilot project underlines the opportunities that regular measurement of discrimination experiences offers.

In the view of the Anti-Discrimination Agency, major regular surveys should continue here, since many studies in research into discrimination have failed to date because the case numbers are too low. It is essential to involve the people affected in the research process. This is the only way to ensure that the groups of people at risk of discrimination can trust these surveys enough so that really useful data can be collected. At the same time, this information is not only significant for analysing social correlations; it is also a vital tool to allow politics and society to document developments, fight discrimination and promote equal opportunities. ●

On a scale of 0-10,
the average rating that people
without any experience of discrimination
give for satisfaction with life is:



On a scale of 0-10,
the average rating that people **with experiences of discrimination**
give for satisfaction with life is:



Source: own calculations on the basis of the SOEP Innovation Sample 2016

Publications and studies

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 the publications are available online at antidiskriminierungsstelle.de.



Expert report: “Collection of anti-discrimination data in regular representative surveys”

What is the contribution of the major regular representative surveys in Germany in measuring discrimination? This is the subject covered by scientists Dr Anne-Luise Baumann, Vera Egenberger and Dr Linda Supik in this report. It provides a snapshot of the discrimination-related content of 20 regular representative surveys throughout Germany and presents proposals for the further development of the collection of discrimination data.

Film explaining the General Equal Treatment Act

What is discrimination? How can the General Equal Treatment Act help in cases of discrimination? What can the Federal Anti-Discrimination Agency do? The Anti-Discrimination Agency has produced a film providing brief answers to these questions.





Study: “Discrimination in job advertisements”

The study evaluated 5,667 job advertisements from print media and online portals with a view to risks of discrimination. It comes to the conclusion that only a very low proportion of 2 percent discriminate as defined in the law. However, discrimination risks were found in around 20 percent of the adverts examined. The study assesses the various risks and offers suggestions for improvements. In addition, the Anti-Discrimination Agency has also examined, in a representative study, what illegal questions applicants are asked in job interviews.

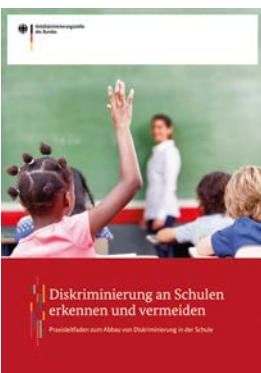
Film about questions in job interviews

You go to the interview for your dream job and then the interviewer asks some odd questions. Do you need to answer the question about whether you want children? Is a question about disability OK, or whether German is your mother tongue? The film explains how the General Equal Treatment Act provides protection in the job application process.



Legal report: “Reasonable accommodation”

The expert report by Prof. Dr. Dr. h.c. Eberhard Eichenhofer states that “reasonable accommodation”, that is measures that allow people with disabilities to participate equally, should be included in the General Equal Treatment Act. Everyone protected under Section 1 of the General Equal Treatment Act, and not just people with disabilities, would then have a legal right to reasonable accommodation.



Guideline: “Recognising and avoiding discrimination in schools”

This guideline for practical use helps teachers, educators and others working in schools to prevent discrimination. The leaflet shows where discrimination occurs in schools, what effect the discrimination has on those affected and what legal protection against discrimination in schools is available.

Legal information

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