



Federal
Anti-Discrimination
Agency

Guide to the General Equal Treatment Act

Explanations and Examples



Foreword

Dear Readers,

Every person is equally important and has the same rights – regardless of their ethnic background, gender, disability, religion, belief, age or sexual orientation. It is our goal to convince our citizens of the fact that diversity means advancement for all of us. A society free of discrimination not only results in a higher quality of life, it is also more productive. Germany is to become a country shaped by a culture free of discrimination.



The legal framework for what is nearly uniform protection against discrimination was created by the General Equal Treatment Act (Ger. abbr. AGG), which came into force in 2006. There have been quite a few changes in social consciousness since then – but this is still not enough. The elimination of prejudice, and changing attitudes and points of view are part of a long process and require more than just a law. Our most important concern is filling the General Equal Treatment Act with life and enforcing it in everyday life.

This brochure provides people who are affected by discrimination, or who are interested in learning more about their rights, a initial overview over the protection offered by the AGG. It applies both to jobs and professions as well everyday transactions and searching for a flat. Business owners can find information concerning which measures that should be taken to prevent discrimination and how they should react if they encounter discrimination in their companies.

We will gladly assess the legal implications of any matter that concerns you. You can reach us through our telephone hotline or by using the e-mail contact form on our homepage.

I hope you find this informative reading.

A handwritten signature in black ink, reading "Christine Lüders". The signature is written in a cursive style with a large initial 'C'.

Christine Lüders
Director of the Federal Anti-Discrimination
Agency

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I.

The Legal Basis for Protection Against Discrimination in Germany

1.1 Human Rights in the Basic Law: The Basic Right to Equal Treatment in Germany

The precept of equality and the prohibition of discrimination play an important role in international and constitutional law.

The General Assembly of the United Nations adopted a Universal Declaration of Human Rights as early as 10 December 1948. It acknowledges that every human being has the same rights.

The most essential precepts of equality contained in the Universal Declaration of Human Rights were adopted in the Basic Law of the Federal Republic of Germany (German abbreviation: GG), which was ratified in 1949.

In Article 1 of the Basic Law the state pledges to honour and protect the dignity of every human being and to acknowledge human rights as the basis of every community.

The **equality** of all human beings before the law is anchored in Article 3 GG. The equality of women and men is regulated in a specific section, which was augmented in 1994 by a provision to promote equality. It stipulates that the state shall promote

the implementation of equal rights between women and men and take steps to eliminate disadvantages that currently exist. The third paragraph addresses diverse characteristics and states that no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. This prohibition of discrimination was augmented in 1994 by the prohibition of discrimination against disabled persons.

The most important fundamental rights are enumerated in these articles of the Basic Law. They are accorded highest priority and they charge the German state with ensuring that these rights are not compromised.

The laws to ensure equal rights and to prevent discrimination in Germany were developed on the basis of these rights of equality.

1.2 The Protection of Human Rights in the European Union

In 1999 the **Amsterdam Treaty** unanimously empowered the Council of the European Union to undertake measures to combat discrimination on grounds of race, sex, ethnic origin, religion or belief, disability, age or sexual orientation.

European legislators passed four guidelines on the basis of Articles 13 and 141 of the Treaty Establishing the European

Community (equality in the workplace, including equal pay for women and men):

1. The Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment irrespective of race or ethnic origin (**European Racial Equality Directive**).
2. The Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Through the **Framework Directive on Employment**, the EU pursues the objective of creating a general framework to combat discrimination on grounds of religion or belief, disability, age or sexual orientation in employment and occupation.
3. The Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (**Gender Directive Civil Law**).
4. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (**Gender Guideline Employment Law**).

The EU equality directives designate certain groups of people as requiring special protection. The objective is to improve their integration into the labour market and to prevent or eliminate discrimination in the access to and supply of goods and services.

1.3 Implementation in Germany: The General Equal Treatment Act (German abbreviation: AGG)

The General Equal Treatment Act implements these four European directives in German law. In terms of civil law, i.e. with regard to access to goods and services, the prohibition of discrimination in the AGG goes beyond the provisions in the EU directives by also applying to the discrimination characteristics of race/ethnic background and sex as well as to religion/belief, age, disability and sexual orientation.

In its rationale for the AGG, the German Bundestag pointed out that not everyone has the same chances in Germany. Hence, the objective of the General Equal Treatment Act is to prevent and to eliminate discrimination. The protection offered by the AGG also includes difference of treatment on grounds of a number of characteristics, so-called multiple discrimination.

II.

The Concept of Discrimination in the AGG

Unless there is a justification for it, discrimination is inadmissible. Grounds that provide justification, i.e. exceptional conditions under which differences of treatment in relation to working life or access to goods and services are admissible, are also cited in the AGG.

2.1 Justified Difference of Treatment

Difference of treatment in working life is admissible within very narrow limits, provided that the characteristics required are genuine and a nearly determining prerequisite for performing the task.

Migrant women are to be interviewed within the framework of a research survey. In this case, it may be admissible to hire women with a certain ethnic background to perform the task, since sex and ethnic origin constitute genuine and determining occupational requirements.

In cases where there is an objective reason, it is also conceivable that different treatment with regard to access to and supply of goods and services might also be admissible.

A pregnant woman or a person with a disability fails to submit a medical certificate confirming that it is safe for her or him to fly. An airline may be justified in refusing to honour the booking for a flight in order to protect the person in question from harm or injury that can result from air travel.

2.2 Unjustified Difference of Treatment

The General Equal Treatment Act cites five forms of discrimination:

Direct discrimination shall be taken to occur when a person is treated less favourably than another person would be.

A woman earns markedly less than a male colleague for the same work. This constitutes a case of direct discrimination on grounds of sex.

The AGG also offers protection against **indirect discrimination**. This pertains to regulations that appear to be neutral, but which put people at a disadvantage due to one of the AGG characteristics.

A wage agreement fails to provide certain benefits to part-time employees for reasons not related to the work at hand. If most of the part-time employees of the company are women, this constitutes a form of indirect gender-related discrimination.

Harassment on grounds of any of the characteristics cited in the General Equal Treatment Act is also not admissible. The following conditions must be met for actions to be classified as harassment:

1. Unwanted conduct with the effect or purpose of violating the dignity of the person involved.
2. An intimidating, hostile, degrading, humiliating, or offensive environment is created in the wake of harassment.

Sexual Harassment is defined as unwanted conduct of a sexual nature that has the effect or purpose of violating the dignity of the person involved. Unlike harassment, sexual harassment does not necessarily involve the creation of an environment of humiliation.

Male employees make suggestive remarks in the presence of a female colleague. They also send her e-mails with pornographic content.

Mobbing is a form of harassment in the sense of the AGG when it is motivated by one of the discrimination characteristics cited in the Act.

Incessant racist remarks or verbal abuse by colleagues or superiors in the workplace on grounds of a certain ethnic origin are considered mobbing.

Instructing others to discriminate also constitutes a form of discrimination. The purpose of this stipulation is to provide more effective protection against discrimination. The potential victim must not necessarily wait until an act of discrimination has taken place, but can instead already take action against instructions to practice discrimination.

An employer instructs the head of personnel not to hire anyone with disabilities.

The person affected by discrimination is obliged to provide **proof** of the fact that an act of discrimination as defined by the General Equal Treatment Act has taken place. However, measures have been foreseen in this conjunction to make it easier to provide proof, since those affected will not always be in a position to produce conclusive evidence of discrimination. It is, therefore, initially sufficient to cite evidence indicating that discrimination has taken place. The other party is then obliged to prove that there was no difference of treatment or that there was a justifiable reason for it in this specific case.

III.

Scope

Within the scope of the General Equal Treatment Act, a differentiation is made between personal and objective forms of discrimination.

3.1 Personal Scope – To whom does the law apply?

The AGG protects people who are discriminated against on grounds of race or ethnic background, gender, religion or belief, disability, age or sexual orientation. Everyone always has a gender and an age. However, not everyone is affected by discrimination in the same way.

Legislators have expanded the prohibition of discrimination under civil law solely with regard to the characteristics of **race/ethnic origin** to conform with the provisions of the European Racial Equality Directive. It applies to all agreements regulating the access to and supply of goods and services, including **living space**. In relation to the other characteristics, for which there are no, or not such extensive, European regulations, the prohibition of discrimination is limited to so-called **bulk business**, which will be discussed in detail in conjunction with the AGG's application to objective forms of discrimination.

A person's **nationality** does not figure among the characteristics protected by the AGG. In cases of discrimination that seem to be outwardly related to nationality, it is often a matter of indirect discrimination on grounds of ethnic origin.

If an employer explains that she or he has no intention of hiring Algerians, this is deemed to be a form of indirect discrimination on grounds of ethnic background.

The General Equal Treatment Act provides protection against discrimination on grounds of the characteristic of **sex** not only for women and men, but, according to a ruling by the European Court, also for transsexuals and intersexuals. Transsexuals are persons who seek to change their bodies through the use of hormones and surgery in order to live their lives as a member of the sex opposite to the one with which they were identified at birth. Intersexuals are people whose bodies exhibit both male and female sexual characteristics.

Special protection extended to employees during **pregnancy** and **motherhood** is specifically regulated in the General Equal Treatment Act. If a woman is treated unfavourably as a result of pregnancy or motherhood, this is deemed to be discrimination on the basis of sex. If a woman is treated less favourably as a result of her wish to become pregnant, this also represents a form of discrimination on grounds of sex.

At the end of maternity leave, women have the right to return to their previous jobs or to a comparable job under conditions that are no less favourable than they would be for any other person. In addition, they are entitled to benefit from all

improvements in working conditions from which they would have benefited during their absence.

If an employee working on a limited-term contract is denied a contract extension because of a pregnancy, this represents a form of direct discrimination on grounds of sex.

The text of the General Equal Treatment Act deals jointly with the discrimination characteristics of **“religion or belief”**. According to a definition by the Federal Constitutional Court, religion and belief are characterised by a sense of certainty with regard to assertions concerning heaven and earth, as well as to the origin and the purpose of human life.

Religion is based here on a reality that extends beyond and transcends the sphere of human perception. Belief is limited to relationships within the material world.

The General Equal Treatment Act protects against discrimination on grounds of belief only with regard to labour law, while the protection of the characteristic of religion is related to labour and civil law.

With regard to discrimination on grounds of religion, it is not always possible to determine whether it is a case of discrimination on grounds of ethnic origin or religion. Many cases involve both, for example in the case of an African Moslem. In a legal dispute, however, a distinction is important, since the protection against discrimination on grounds of ethnic origin offered by the AGG is more extensive than the legal protection against discrimination on grounds of religion or belief.

Under certain conditions, differences of treatment by religious communities and by facilities established by them are admissible under labour law. The extent to which such differentiations in treatment are legally admissible has not yet been conclusively determined by the courts.

For example, an Evangelical school is allowed to stipulate membership in the Evangelical church as a prerequisite for being hired as a religion teacher.

The AGG uses the definition of the term **disability** found in the Social Code. “A person is considered disabled when there is a high probability of the person’s physical ability to function, intellectual abilities, or mental health diverging from a state considered typical for the person’s age for a period of longer than six months, thereby limiting the person’s ability to participate in society” (Section 2, para. 1, Ninth Book of the Social Code).

The AGG makes no differentiation in this context with regard to the degree of disability; hence the legal protection does not only apply to people with severe disabilities. Since the differentiation between an illness and a disability can be difficult, each individual case must be assessed. Classifications regarding cases of addiction are also subject to dispute and also often require individual assessment.

Providing support for people with disabilities does not represent a form of discrimination against people without disabilities. On the contrary: employers are expressly obliged to provide support measures, since disabled people are subject to unemployment at a rate far above average.

According to the most recent ruling by the European Court of Justice, treating an employee with a disabled child less favourably than other employees have been treated in similar situations is already seen to constitute a case of discrimination on grounds of disability.

Discrimination on grounds of **age** is also inadmissible according to the AGG. This prohibition is related to biological age, thus it is prohibited to treat both older and younger people differently.

For example, regulations concerning pay, which are exclusively related to age, and regulations concerning promotion, which take effect automatically with age, discriminate against younger employees.

Clearly distinguishing between old and young is, however, much more difficult than distinguishing between woman and man, or between Catholic and Muslim. Accordingly, the implementation of the provisions of the AGG in relation to the discrimination characteristic of age is often more difficult.

The AGG foresees extensive options for justification in cases in which a difference of treatment is a result of age.

Specifically promoting young people may be admissible in order to ensure their integration into a profession. Determining a minimum age for the benefit of older employees may also be justified.

The term **sexual orientation** is broadly defined in the General Equal Treatment Act and is linked to the way a person relates sexually to others. Lesbians, homosexuals, heterosexuals and bisexuals are protected against discrimination by the AGG.

The term **multiple discrimination** was coined in 2001 during the United Nations World Conference against racism in South Africa; it is related to difference of treatment on grounds of a number of discrimination characteristics. The AGG foresees the protection of people who have been affected by multiple discrimination.

One example of multiple discrimination is when a woman looking for a job or a flat is turned away because she comes from a migrant background and is disabled.

The causes that lead to discrimination cannot always be clearly differentiated. However, even in cases where discrimination is admissible in relation to one characteristic, it is not possible to automatically justify the discrimination on grounds of another characteristic. Every form of discrimination must be examined in order to determine whether it is justified.

The General Equal Treatment Act does not, however, designate any consequences resulting from multiple discrimination. However, the official rationale for regulations concerning the provision of indemnification for damages and compensation under labour law does point out that an **increased level of compensation** is appropriate if an employee is discriminated against in an inadmissible manner on a number grounds.

3.2 Objective Scope – In which situations does the AGG apply?

3.2.1 Employment and Occupation

The protection offered by the General Equal Treatment Act in the field of employment and occupation pertains to **employment** and **self-employment**. **Employment** includes every activity performed with the long-term objective of creating and maintaining an income. Part-time employment, secondary employment, and sidelines are considered forms of employment. The AGG protects against discrimination with regard to access to employment, self-employment, and promotion.

The **access to employment** also encompasses aspects such as selection criteria and recruitment conditions. All forms of discrimination related to access to employment are prohibited by the AGG.

An **advertisement of a vacancy** stating that a “friendly young waitress” is being sought represents two forms of discrimination: the term “young” is a form of discrimination on grounds of age, while the female form “waitress” can be equated with discrimination on grounds of sex.

For example, in a **job interview** it would be unfair to ask a female applicant questions about her family planning.

Most of the people who are self-employed are professionals. A person is also considered self-employed when they join an organisation in order to work within one of its **bodies**. The protection against discrimination applies here to access to activity as a member of such a body and to professional advancement in this activity. That is, for example, the case when a lawyer enters a law firm organised as a company under civil law. Members of the board of directors and the director of a company are also seen as self-employed. The protection offered by the AGG does not apply to activities that are related to a higher purpose, for example within churches, parties, or labour organisations. Voluntary activities in a self-employed capacity are also not covered.

In addition to access to employment and self-employment, the prohibition of discrimination stipulated by The General Equal Treatment Act also covers **professional advancement**. This is understood as a change in a person’s area of activity or responsibility. This is generally the result of a **promotion**, after which the employee takes a higher-level position. The **remuneration** is of particular importance in this context. Problems related to promotions often arise in conjunction with two characteristics protected under the AGG, age and sex.

Women are often paid less than men for the same work or for work of the same value. Older employees, on the other hand, are often not promoted when the period of employment remaining before they reach retirement age or before they go into retirement, is relatively short.

Performance evaluations, which are often a prerequisite for a possible promotion, are also a part of advancement.

Other working conditions, including **dismissals**, must also be free of discrimination. Such working conditions include instructions and orders given by employers such as reassignments or transfers.

With regard to the termination of employment in Germany, the **Act on the Protection against Unfair Dismissal** (German abbreviation: KSchG), along with special regulations in the Maternity Protection Act, and the Federal Act on Parental Allowance and Parental Leave are of primary importance. Correspondingly, the AGG determines that with regard to dismissals only the stipulations providing general and specific protection against unfair dismissal apply. The relationship between the AGG and the KSchG is still not fully clarified. Thus, the courts must make decisions in individual cases.

The protection provided by the General Equal Treatment Act also applies to the laws pertaining to vocational training. This includes access to all types and to all levels of **vocational guidance, vocational training, advanced vocational training and retraining**, including **practical work experience**. Unlike the extensive protection in the field of employment, the protection offered by the AGG in relation to vocational training

only applies to access to such training. If a person is employed while receiving vocational training, the conditions of this employment are protected.

Unjustified discrimination is also admissible in relation to membership of, and involvement in, an organisation of workers or employers, or any organisation whose members pursue a particular profession, as well as to the benefits provided by such organisations.

The AGG consciously refrains from using the word **trade union** and gives preference to the term **employees' association** in order to illustrate that the protection provided by the law not only applies to workers but rather to all employees. **Works or staff councils** are not considered employees' associations and are not subject to the AGG. The protection against discrimination also applies to membership and work within **employers' associations, professional organisations** and associations with an overwhelming position of power in the economic sector (e.g. the Federation of German Industries), or in a social context (e.g. the German Red Cross), as well as **sport federations**. If a person has been denied **membership** or **participation** in one of these organisations for reasons that represent a breach of the prohibition against discrimination, it is possible to legally enforce a **claim to acceptance** into the organisation.

3.2.1.1 Admissible Difference of Treatment and Exceptions in the Context of Employment and Occupation

Difference of treatment in the field of employment and occupation on grounds of ethnic origin, sex, religion or belief, disability, age or sexual orientation are only admissible when one of these characteristics represents a genuine and determining **professional requirement** or represents grounds for the rejection of an applicant. In this conjunction, the purpose pursued by an employer in adopting such measures must be legitimate and appropriate to the demands placed upon the employee.

The characteristic of **ethnic background** might be seen as a genuine and determining professional requirement when members of a certain ethnic group are being sought in order to provide counselling for people with a migrant background. In such cases, it is important to recruit employees from countries of origin that are not involved in a conflict with the homeland of those seeking advice. Ethnic background can also be an essential prerequisite for developing a relationship of trust between a counsellor and the person seeking advice.

When sex represents a genuine and determining requirement for a job, women/men may be given preferential treatment in hiring. A counselling agency for men can be cited as one example, while a female teacher for a girls' boarding school represents another.

If the person in question is not suited to take on a job because of a disability, this will not be deemed a form of discrimination. However, social law requires that the employer take steps to ensure that the workplace is appropriately equipped.

The installation of a ramp for an employee confined to a wheelchair is considered such an appropriate measure, to the extent that the installation does not place an excessive burden on the employer in terms of the costs or the necessary changes in the building.

Employers cannot rationalise the rejection of an applicant by arguing that productivity generally sinks with **age**. If the employer intends to justify such an age limit, the drop in productivity must be documented by statistics.

According to a decision by the Higher Labour Court in Frankfurt, the age limit of 60 for pilots is justified. Their employment is terminated at the end of their sixtieth year of life. In this case, the age limit established in a collective bargaining agreement serves air traffic safety and takes consideration of the fact that the risk of unexpected false reactions and lapses in concentration can increase with age.

Fundamentally, **sexual orientation** shall not play a role in relation to professional requirements. It may apply in exceptional cases, as can be seen in the following example:

An employer can decide not to send a lesbian or homosexual employee to a country in which homosexuality is prohibited in order to fulfil an obligation to take due consideration of the employee's safety.

3.2.2 Access to and Supply of Goods and Services

Beyond the fields of employment and occupation, the AGG also applies to **access to and supply of goods and services**, for example when shopping, visiting a restaurant or a discotheque, searching for a flat, or conducting insurance and banking transactions. The procurement of goods and services is generally a form of **bulk business**, which is generally conducted without regard to the individual involved. Individual contracts between private persons are not included in this category.

If, for example, a large hotel chain does not accept disabled persons, it stands in breach of the prohibition of discrimination under civil law.

Letting residential space is a form of bulk business when a landlord lets more than 50 flats. Discrimination on grounds of the characteristic of **race** and **ethnic origin** is generally prohibited, regardless of whether it pertains to bulk business or not.

The comprehensive protection against discrimination on grounds of race/ethnic origin also encompasses **social protection**, including **social security** and **health services, social benefits** and **education**. This also includes contractual agreements with doctors concerning treatment, and private language instruction, but not services provided by the state, such as statutory health insurance and social assistance.

3.2.2.1 Admissible Difference of Treatment and Exceptions in Civil Law

Unlike the characteristic of race/ethnic origin, differences of treatment on grounds of the characteristics of sex, religion, disability, age and sexual orientation are admissible when there is an **objective reason** for it.

Differences of treatment in routine business dealings is common and often even desired.

Price reductions for school children are allowed, as are special opening hours for women in swimming pools.

In addition, the AGG permits differences of treatment when they serve the purpose of **averting danger**.

Hence, it might be necessary for operators of an amusement park to refuse persons with disabilities access to certain amusements, such as Ferris wheels or auto scooters, or to insist that someone accompanies them in order to avoid injury to the disabled person.

Differences of treatment that take the **desire to protect one's privacy** or personal safety into consideration are also admissible.

Separate opening times for women and men in saunas are an example of an admissible exception.

Under certain circumstances there may be no interest in enforcing equal treatment.

These often include **special offers or discounts** for children, school-children, students and senior citizens, since these people do not, or no longer, have their own source of income.

It is also admissible for the operator of a discotheque or a dating service to offer **price reductions** in order to attract female customers, while men are required to pay higher prices.

The elimination of such discounts would be of no benefit to the person not given the discount, since a reprimand would not cause the operator of a business to extend a discount to everyone, but instead to suspend the discount entirely.

Insurance contracts under private law may include exceptions to the principle of equality for all characteristics other than race/ethnic origin. In relation to the characteristic of sex, a difference of treatment may only be related to premiums and benefits. More extensive differences of treatment are, however, admissible in relation to the characteristics of age, disability, religion and sexual orientation. This is admissible when statistical evidence supports the assessment of risk on which this difference of treatment is based.

When persons with disabilities are either unable to obtain life or private health insurance, or can only obtain it when they pay a higher premium, there must be statistical evidence to support this assessment of risk.

Companies that own or manage rental property can give either preferential treatment to, or reject, the applications of certain persons when **letting flats** in order to create or maintain a stable social structure among the residents. However, this provision only applies to companies that let a large number of flats, since they alone will be able to pursue such objectives with a prospect of success.

The provisions of the General Equal Treatment Act do not apply to **obligations towards family and heirs**.

Inherited wealth is distributed among rightful heirs according to the stipulations of the laws of inheritance.

IV.

Courses of Action in the Event of Existing or Threatened Breaches of the AGG

The objective of the General Equal Treatment Act is to prevent or stop discrimination on grounds of race, ethnic origin, sex, religion or belief, disability, age or sexual orientation. In this conjunction a two-fold objective is formulated:

4.1 Preventing Discrimination

Employers have legally mandated **organisational obligations**. This includes their being required to take necessary measures in order to provide **protection against discrimination**. Furthermore, the employees of a company must be made aware of the fact that discrimination and harassment are prohibited and, when necessary, provided with training aimed at preventing discrimination. Employees must also be protected against **discrimination by third parties**, such as customers.

No specific stipulations exist beyond the field of employment and occupation.

4.2 Avoiding Discrimination

When employees are subject to unjustified differences of treatment in their working lives, they are entitled to lodge a complaint with the responsible board within the company or with the authorities. Employers are obliged to establish such complaints boards. If, in cases of **harassment** or **sexual harassment**, the employer fails to adopt appropriate measures to remedy the situation, then the employee has the right to refuse performance for her or his own protection without loss of pay. However, the **right to refuse performance** should only be invoked after prior consultation. Employers can stop discrimination by making use of measures such as **reprimands**, **reassignments**, **transfers** or **dismissal**.

Victims of unjustified differences of treatment and harassment, including sexual harassment, in the field of employment and occupation are entitled to make claims for **damages** and **compensation**. It is, however, not possible to make a claim when an application does not lead to employment. **Claims must be submitted in writing within two months.**

In cases of unjustified discrimination with regard to the access to and supply of goods and services, the person involved not only has a claim to damages and compensation, but also the right to demand the elimination of the obstacles and to apply for an **injunction**. **Claims must also be submitted within two months.**

A young Muslim woman would like to visit a discotheque. However, because of her Middle Eastern appearance and her headscarf, she is refused admission. This is a case of direct discrimination on grounds of ethnic origin and religion. The young woman can demand damages and compensation within two months. In addition, she can also demand an injunction, i.e. to be admitted to the discotheque.

4.3 Positive Measures

In order to promote groups that have been previously subject to discrimination, targeted measures can now be adopted by employers in relation to the field of work and by parties to contracts under private law in relation to the access to and supply of goods and services. By adopting positive measures, it is possible to both compensate for an existing case of discrimination and to prevent threatened discrimination. By including positive measures, the General Equal Treatment Act clearly goes further than simply prohibiting discrimination.

A fundamental indication of discrimination is evident when a group of persons is represented far less frequently in certain areas than in the population at large.

A company that trains apprentices of both German and Turkish origin offers employees of Turkish origin programmes of further vocational training as a positive measure aimed at increasing the proportion of Turkish employees in more advanced positions.

A company that owns or manages flats can also equip a large number of its flats in a manner suitable for disabled persons as a positive measure.

V.

Further Areas of Protection

The fields of social insurance, social assistance (e.g. Severely Disabled Persons Act, housing benefit, child benefit, parental allowances, educational assistance) and social welfare are covered by **social law**.

The AGG cites the fields of social protection, including social security and health services, which are aspects of social law, without designating specific regulations. Thus, other laws must be applied in order to combat discrimination in this area.

The **Books of the Social Code** form the legal basis for social law. They contain provisions against discrimination. Thus, there is a fundamental prohibition of discrimination on grounds of race, ethnic origin, and disability. The Federal Employment Agency is prohibited from passing on discriminatory announcements of vacant positions. Discrimination in access to vocational counselling, vocational training, and advanced training is also prohibited.

Whenever health care services are not regulated by the Books of the Social Code, i.e. in the case of private health care services, the provisions of the AGG apply.

The AGG provides protection in the **field of education** to the extent that **contracts under private law** are involved. If discriminatory behaviour is exhibited at a private language school, then the protection offered by the General Equal Treatment Act applies directly. In the case of education in the state system, the school laws of the individual Länder apply.

VI.

The Relationship between Citizens and the State

The protection of the General Equal Treatment Act does not cover the area of **public law**, which is addressed in this section. Yet discrimination is still prohibited in this context, since the Basic Law ensures that citizens are protected by the state. In order for a law to be adopted, it must be ensured that it does not stand in breach of basic rights. Lawmakers, the courts, and all areas of public administration are obliged to gauge their behaviour according to the same standards and to avoid arbitrary action.

The activities of public authorities in the relationship between citizens and the state are characterised primarily by a **super-ordinate/subordinate hierarchy**. The state is empowered by laws such as those regulating the right of asylum, commercial law, and police authority, to name but a few, to act in a certain manner. As an executing power, the authorities are required to adhere to the provisions of the Basic Law and to uphold the **principle of equality** inscribed therein.

VII.

Support in Cases of Discrimination: The Federal Anti-Discrimination Agency

The Federal Anti-Discrimination Agency (German abbreviation: ADS) is primarily responsible for counselling people who feel that they have been subject to discrimination. The counselling is not subject to any prior conditions, fees, or time limits. People affected by discrimination can contact the agency by telephone, e-mail, letter or fax. It is also possible to arrange a personal meeting with counsellors. Under www.antidiskriminierungsstelle.de those affected by discrimination will find an electronic contact form that can be filled out and submitted. Counsellors can provide information on the legal situation, possible claims, and time limits.

If the parties involved in a conflict seek an amicable settlement, the ADS can attempt, with the consent of the person affected, to contact the other party in order to outline mediation options. The Federal Anti-Discrimination Agency can also make referrals to specialised local counselling services when needed. In cases that fall under the responsibility of a commissioner appointed by the government or the Bundestag, the ADS will refer the matter – with the consent of the person affected – to the commissioner.

The agency continuously collects and analyses research on the topic of discrimination in Germany in order to identify gaps in the research and to ensure that they are filled. In addition, it is also responsible, together with the commissioners appointed by the federal government and the Bundestag, for submitting a report on discrimination on grounds of the characteristics specified in the AGG to the Bundestag every four years.

The Federal Anti-Discrimination Agency wants to make the population more aware of the fact that equality is a human right. Brochures and information campaigns shall be employed to ensure that the AGG unfolds its full effects. The multilingual website www.antidiskriminierungsstelle.de offers information on the work of the ADS both for those who are affected by discrimination as well as for those interested in the topic of equal rights. Employers, landlords, business organisations, unions, researchers, and anti-discrimination organisations can obtain information here on the scope and implementation of the AGG.

Annex

General Act on Equal Treatment

General Anti-Discrimination Act of 14 August 2006 (Federal Law Gazette I, page 1897), last amended by Article 19, para 10 of the Act of 12 December 2007 (Federal Law Gazette I, page 2840)
 Status: Last amended by Article 19 para 10 of the Act of 12 December 2007 I 2840

Text citation as from 18 August 2006

This Act has been adopted by the German Bundestag as Article 1 of the Act of 14 August 2006 I 1897. According to Article 4 first sentence of the latter Act, it entered into force on 18 August 2006.

The Bundestag has passed the following Act:

Part 1

General Provisions

Paragraph 1

Purpose

The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

Paragraph 2

Scope

(1) For the purposes of this Act, any discrimination within the meaning of Section 1 shall be inadmissible in relation to:

1. conditions for access to dependent employment and self-employment, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of professional hierarchy, including promotion;
2. employment conditions and working conditions, including pay and reasons for dismissal, in particular in contracts between individuals, collective bargaining agreements and measures to implement and terminate an employment relationship, as well as for promotion;
3. access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
4. membership of and involvement in an organisation of workers or employers or any organisation whose members carry on a particular profession, including all benefits provided for by such organisations;

5. social protection, including social security and health care;
6. social advantages;
7. education;
8. access to and supply of goods and services which are available to the public, including housing.

(2) Section 33c Social Code, Book I¹ and Section 19a Social Code, Book IV² shall apply to social benefits. The Company Pensions Act (Betriebsrentengesetz) shall apply to company pension schemes.

(3) The application of other prohibitions of discrimination or laws on equal treatment shall remain unaffected by this Act. The same shall apply, mutatis mutandis, to provisions under public law which serve the protection of specific groups of persons.

(4) Only the provisions governing the protection against unlawful dismissal in general and specific cases shall apply to dismissals.

Paragraph 3

Definitions

(1) Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds referred to under Section 1. Direct discrimination on grounds of sex shall also be taken to occur in relation to Section 2(1) Nos 1 to 4 in the event of the less favourable treatment of a woman on account of pregnancy or maternity.

1 Social Code Book I, Section 33c: When claiming his or her use of social rights, no person shall be discriminated against on the grounds of race, ethnic origin or disability. Claims may only be asserted or derived in so far as the conditions of entitlement have been stipulated in detail by the provisions of the specific parts of this Code. *(Non-official translation)*

2 Social Code Book IV, Section 19a: When claiming benefits concerning access to all forms and all levels of vocational guidance, vocational training, advanced vocational training, retraining including practical work experience, no person shall be discriminated against on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual identity. Claims may only be asserted or derived in so far as the conditions of entitlement have been stipulated in detail by the provisions of the specific parts of this Code. *(Non-official translation)*

(2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on any of the grounds referred to under Section 1, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Harassment shall be deemed to be discrimination when an unwanted conduct in connection with any of the grounds referred to under Section 1 takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(4) Sexual harassment shall be deemed to be discrimination in relation to Section 2(1) Nos. 1 to 4, when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.

(5) An instruction to discriminate against a person on any of the grounds referred to under Section 1 shall be deemed as discrimination. Such an instruction shall in particular be taken to occur in relation to Section 2(1) Nos. 1 to 4 where a person instructs an employee to conduct which discriminates or can discriminate against another employee on one of the grounds referred to under Section 1.

Paragraph 4

Unequal Treatment on Several Grounds

Where unequal treatment occurs on several of the grounds referred to under Section 1, this unequal treatment may only be justified under Sections 8 to 10 and 20 when the justification extends to all those grounds for which the equal treatment occurred.

Paragraph 5

Positive Action

Notwithstanding the grounds referred to under Sections 8 to 10 and 20, unequal treatment shall only be permissible where suitable and appropriate measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under Section 1.

Part 2
Protection of Employees Against
Discrimination

Chapter 1
Prohibition of Discrimination

Paragraph 6

Persons Covered

(1) For the purposes of this Act, "employee" shall refer to

1. persons in dependent employment (salaried employees, workers);
2. persons employed for the purposes of their vocational training;
3. persons of similar status on account of their dependent economic status, including those engaged in home work and those equal in law to home workers.

"Employee" shall here also refer to those applying for an employment relationship and persons whose employment relationship has ended.

(2) For the purposes of Part 2, "employer" shall refer to natural and legal persons as well as unincorporated firms with legal capacity employing persons referred to in Subsection (1). Where employees are transferred to a third party for the performance of work and services, the employer shall also be classified as such within the meaning of Part 2. The client or intermediary shall take the place of the employer in the case

of employees engaged in home work and those equal in law to home workers.

(3) Insofar as the conditions for access to gainful employment and promotion are affected, the provisions under Part 2 shall apply, mutatis mutandis, to the self-employed and to members of an organ of an enterprise, in particular directors and board members.

Paragraph 7

Prohibition of Discrimination

(1) Employees shall not be permitted to suffer discrimination on any of the grounds referred to under Section 1; this shall also apply where the person committing the act of discrimination only assumes the existence of any of the grounds referred to under Section 1.

(2) Any provisions of an agreement which violate the prohibition of discrimination under Subsection (1) shall be ineffective.

(3) Any discrimination within the meaning of Subsection (1) by an employer or employee shall be deemed a violation of their contractual obligations.

Paragraph 8

Permissible Difference of Treatment On Grounds of Occupational Requirements

(1) A difference of treatment on any of the grounds referred to under Section 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities or of the context in which they are carried out, such grounds constitute a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

(2) The agreement of a lower rate of remuneration for the same or equivalent work on any of the grounds referred to under Section 1 shall not be justified on account of special regulations applying for any of the reasons referred to under Section 1.

constitute discrimination where such grounds constitute a justified occupational requirement for a particular religion or belief, having regard to the ethos of the religious community or organisation in question and by reason of their right to self-determination or by the nature of the particular activity.

(2) The prohibition of different treatment on the grounds of religion or belief shall be without prejudice to the right of the religious community referred to under Section 1, the facilities assigned to it (regardless of their legal form) or organisations which have undertaken conjointly to practice a religion or belief, to require individuals working for them to act in good faith and with loyalty to the ethos of the organisation.

Paragraph 9

Permissible Difference of Treatment On Grounds of Religion or Belief

(1) Notwithstanding Section 8, a difference of treatment on the grounds of religion or belief of employees of a religious community, facilities affiliated to it (regardless of their legal form) or organisations which have undertaken conjointly to practice a religion or belief, shall not



Paragraph 10

Permissible Difference of Treatment On Grounds of Age

Notwithstanding Section 8, a difference of treatment on grounds of age shall likewise not constitute discrimination if it is objectively and reasonably justified by a legitimate aim. The means of achieving that aim must be appropriate and necessary. Such differences of treatment may include, among others:

1. the setting of special conditions for access to employment and vocational training, as well as particular employment and working conditions, including remuneration and dismissal conditions, to ensure the vocational integration of young people, older workers and persons with caring responsibilities and to ensure their protection;
2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
3. the fixing of a maximum age for recruitment which is based on specific training requirements of the post in question or the need for a reasonable period of employment before retirement;
4. the fixing of upper age limits in company social security systems as a precondition for membership of or the drawing of an old-age pension or for invalidity benefits, including fixing different age limits within the context of these systems for certain employees or categories of employees and the use of criteria regarding age within the context of these systems for the purposes of actuarial calculations;
5. agreements providing for the termination of the employment relationship without dismissal at a point in time when the employee may apply for payment of an old-age pension; Section 41 Social Code, Book VI³ shall remain unaffected;

³ Social Code Book VI, Section 41: The entitlement of an insured person to receive an old-age pension shall not be considered as grounds for the termination of an employment relationship by the employer under the Act on the Protection against Unfair Dismissal. A contract envisaging the termination of an employee's employment relationship without notice at a time when the employee may apply for old-age pension before reaching the standard pension age shall be considered as if envisaging the termination of the employee's employment relationship at the time when the employee reaches the standard pension age, unless such a contract has been concluded within the three years prior to this date or has been confirmed by the employee within the three years prior to this date. (*Non-official translation*)

6. differentiating between social benefits within the meaning of the Works Constitution Act (Betriebsverfassungsgesetz), where the parties have created a regulation governing compensation based on age or length of service whereby the employee's chances on the labour market (which are decisively dependent on his or her age) have recognisably been taken into consideration by means of emphasising age relatively strongly, or employees who are economically secure are excluded from social benefits because they may be eligible to draw an old-age pension after drawing unemployment benefit.

Chapter 2 Employer Obligations

Paragraph 11

Advertisement of Vacancies

A vacancy shall not be advertised in violation of Section 7(1).

Paragraph 12

Employer Action and Duties

(1) The employer has the duty to take measures necessary to ensure protection against discrimination on any of the grounds referred to under Section 1. This protection shall also cover preventive measures.

(2) The employer shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training, and shall use his or her influence to ensure that such discrimination does not occur. Where an employer has trained his or her employees in an appropriate manner for the purpose of preventing discrimination, he or she shall be deemed to have fulfilled his or her duties under Subsection (1).

(3) Where employees violate the prohibition of discrimination under Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to put a stop to the discrimination; this may include cautioning, moving, relocating or dismissing the employee in question.

(4) Where employees are discriminated against in the pursuance of their profession by third persons within the meaning of Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to protect the employee in question.

(5) This Act and Section 61b of the Labour Courts Act (Arbeitsgerichtsgesetz), as well as information concerning the departments competent to handle complaints pursuant to Section 13 shall be made known in

the enterprise or public authority. This may be done by putting up a notice or displaying information leaflets in a suitable place or by using the information and communication channels normally used in the enterprise or authority.

Chapter 3 Employee Rights

Paragraph 13

Right of Appeal

(1) Employees shall have the right to lodge a complaint with the competent department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Section 1. The complaint shall be examined and the complainant informed of the result of the examination.

(2) The rights of worker representatives shall remain unaffected.

Paragraph 14

Right to Refuse Performance

Where the employer takes no or takes obviously unsuitable measures to stop the harassment or sexual harassment in the workplace, the affected employees shall have the right to refuse performance without loss of pay insofar as this is necessary

for their protection. Section 273 of the German Civil Code (Bürgerliches Gesetzbuch) shall remain unaffected.

Paragraph 15

Compensation and Damages

(1) In the event of a violation of the prohibition of discrimination, the employer shall be under the obligation to compensate the damage arising therefrom. This shall not apply where the employer is not responsible for the breach of duty.

(2) Where the damage arising does not constitute economic loss, the employee may demand appropriate compensation in money. This compensation shall not exceed three monthly salaries in the event of non-recruitment, if the employee would not have been recruited if the selection had been made without unequal treatment.

(3) The employer shall only be under the obligation to pay compensation where collective bargaining agreements have been entered into when he or she acted with intent or with gross negligence.

(4) Any claim resulting from Subsection (1) or (2) must be asserted in writing within a period of two months, unless the parties to a collective bargaining agreement have agreed otherwise. In the case of an application or promotion, the time limit shall commence on the date on which the rejection is received; in other cases of discrimination the time limit shall commence on the date on which the employee learns of the discrimination.

(5) This shall be without prejudice to other claims against the employer resulting from other legal provisions.

(6) Any violation on the part of the employer of the prohibition of discrimination under Section 7(1) shall not justify a claim to the establishment of an employment relationship, a vocational training relationship or to promotion, unless such a relationship or promotion results from another legal ground.

Paragraph 16

Prohibition of Victimization

(1) The employer shall not be permitted to discriminate against employees who assert their rights under Part 2 or on account of their refusal to carry out instructions that constitute a violation of the provisions of Part 2. The same shall apply to persons who support the employee in this or who testify as a witness.

(2) The rejection or toleration of discriminatory conduct by an affected employee may not be used as the basis for a decision affecting that employee. Subsection (1) second sentence shall apply mutatis mutandis.

(3) Section 22 shall apply mutatis mutandis.

Chapter 4 Supplementary Provisions

Paragraph 17

Social Responsibility of the Involved Parties

(1) The parties to collective bargaining agreements, employers, employees and their representatives shall be required to become actively involved in achieving the goal set out in Section 1 within the context of their duties and scope of action.

(2) Where the employer commits a gross violation of the provisions of Part 2 in an enterprise in which the conditions pursuant to Section 1(1) first sentence of the Works Constitution Act⁴ are present, the Works Council or a trade union represented in the enterprise may also assert before a court the rights set out in Section 23(3) first sentence Works Constitution Act⁵ if the preconditions therein are present; Section 23

(3) second to fifth sentences of the Works Constitution Act⁶ shall apply *mutatis mutandis*. No claims of the person suffering discrimination shall be asserted in the application.

⁴ Works Constitution Act section 1 para. 1 sentence 1: Works councils shall be elected in all establishments that normally have five or more permanent employees with voting rights, including three who are eligible.

⁵ Works Constitution Act Section 23 para. 2 sentence 1: Where the employer has grossly violated his duties under this Act, the works council or a trade union represented in the establishment may apply to the labour court for an order to the employer enjoining him to cease and desist from an act, allow an act to be performed or perform an act.

⁶ Works Constitution Act Section 23 para. 3 sentence 2 to 5: If the employer does not obey an executory court order to cease and desist from an act or allow an act to be performed, the labour court shall, on application and after prior warning, impose a fine on him for each such violation. If the employer does not carry out an act imposed on him by an executory court order, the labour court shall, on application, give a decision that he shall be made to perform the act imposed on him subject to payment of fines. Such application may be made by the works council or by a trade union represented in the establishment. The maximum amount of the fine shall be euros. 10,000.

Paragraph 18

Membership of Organisations

(1) The provisions set out in Part 2 shall apply, mutatis mutandis, to membership of or involvement in

1. a party to a collective bargaining agreement;
2. an organisation whose members belong to a specific occupational group or who have a dominating position of power in the economic or social sector if there is a basic interest in acquiring membership; as well as any associations thereof.

(2) Where a rejection constitutes a violation of the prohibition of discrimination under Section 7(1), this shall constitute the right to membership of or involvement in the organisations referred to under Subsection (1).

Part 3

Protection Against Discrimination Under Civil Law

Paragraph 19

Prohibition of Discrimination Under Civil Law

(1) Any discrimination on the grounds of race or ethnic origin, sex, religion, disability, age or sexual orientation shall be illegal when founding, executing or terminating civil-law obligations which

1. typically arise without regard of person in a large number of cases under comparable conditions

(bulk business) or where the regard of person is of subordinate significance on account of the obligation and the comparable conditions arise in a large number of cases; or which

2. have as their object a private-law insurance.

(2) Any discrimination on the grounds of race or ethnic origin shall furthermore be illegal within the meaning of Section 2(1) Nos. 5 to 8 when founding, executing or terminating other civil-law obligations.

(3) In the case of rental of housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.

(4) The provisions set out in Part 3 shall not apply to obligations resulting from family law and the law of succession.

(5) The provisions set out in Part 3 shall not apply to civil-law obligations where the parties or their relatives are closely related or a relationship of trust exists. As regards tenancy, this may in particular be the case where the parties or their relatives use housing situated

on the same plot of land. The rental of housing for not only temporary use shall generally not constitute business within the meaning of Subsection (1) No. 1 where the lessor does not let out more than 40 apartments in total.

Paragraph 20

Permissible Differences of Treatment

(1) Differences of treatment on grounds of religion, disability, age, sexual orientation or sex shall not be deemed to be a violation of the prohibition of discrimination if they are based on objective grounds. Such differences of treatment may include, among others, where the difference of treatment

1. serves the avoidance of threats, the prevention of damage or another purpose of a comparable nature;
2. satisfies the requirement of protection of privacy or personal safety;
3. grants special advantages and there is no interest in enforcing equal treatment;
4. is based on the concerned person's religion and is justified with regard to the exercise of the right to freedom of religion or the right to self-determination of religious communities, facilities affiliated to them (regardless of their legal form) and organisations which have undertaken conjointly to

practice a religion or belief, given their respective ethos.

(2) Differences of treatment on the ground of sex shall only be permitted in case of the application of Section 19(1) No. 2 with reference to premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. Costs arising from pregnancy and maternity may on no account lead to the payment of different premiums and benefits. Differences of treatment on the ground of religion, disability, age or sexual orientation in the case of application of Section 19(1) No. 2 shall be permissible only where these are based on recognised principles of risk-adequate calculations, in particular on an assessment of risk based on actuarial calculations which are in turn based on statistical surveys.

Paragraph 21

Enforcement

(1) Where a breach of the prohibition of discrimination occurs, the disadvantaged person may, regardless of further claims being asserted, demand that the discriminatory conduct be stopped. Where other discrimination is to be feared, he or she may sue for an injunction.

(2) Where a violation of the prohibition of discrimination occurs, the person responsible for committing the discrimination shall be obligated to compensate for any damage arising therefrom. This shall not apply where the person committing the discrimination is not responsible for the breach of duty. The person suffering discrimination may demand appropriate compensation in money for the damage, however not for economic loss.

(3) Claims in tort shall remain unaffected.

(4) The person responsible for committing the discrimination shall not be permitted to refer to an agreement which derogates from the prohibition of discrimination.

(5) Any claims arising from Subsections (1) and (2) must be asserted within a period of two months. After the expiry of the time limit the claim may only be asserted when the disadvantaged person was prevented from meeting the deadline through no fault of their own.

Part 4

Defence of Rights

Paragraph 22

Burden of Proof

Where, in case of conflict, one of the parties is able to establish facts from which it may be presumed that there has been discrimination on one of the grounds referred to in Section 1, it shall be for the other party to prove that there has been no breach of the provisions prohibiting discrimination.

Paragraph 23

Support from Anti-Discrimination Organisations

(1) “Anti-discrimination organisation” shall refer to any association of persons which attends to the particular interests of persons or groups of persons discriminated against within the meaning of Section 1; in accordance with their statutes these organisations must operate on a non-profit and non-temporary basis. The powers set out in Subsections (2) to (4) shall be granted to such organisations with at least 75 members or an association comprising at least seven organisations.

(2) Anti-discrimination organisations shall be authorised, under the terms of their statutes to act as legal advisor to a disadvantaged person in the court hearings. Otherwise, the

provisions set out in the rules of procedure, in particular those according to which legal advisors may be barred from being heard, shall remain unaffected.

(3) Anti-discrimination organisations shall be permitted to be entrusted with the legal affairs of disadvantaged persons under the terms of their statutes.

(4) The special rights of action and powers of representation of associations for the benefit of disabled persons shall remain unaffected.

Part 5

Special Regulations Applying to Public-Law Employment Relationships

Paragraph 24

Special Regulation Applying to Public-Law Employment Relationships

The provisions of this Act shall apply, mutatis mutandis, taking into consideration their special legal relationship, to

1. civil servants of the Federal Administration, the Länder, local authorities, local authority associations, as well as other public-law bodies, institutions and foundations under the jurisdiction of the Federal Administration or one of the Länder;

2. judges of the Federal Administration and the Länder;
3. persons undertaking alternative military service (Zivildienstleistende) and recognised conscientious objectors, insofar as they are required to undertake alternative military service.

Part 6

Anti-Discrimination Agency

Paragraph 25

Federal Anti-Discrimination Agency

(1) The federal agency for the protection against discrimination on any of the grounds referred to in Section 1 (Federal Anti-Discrimination Agency) shall be established within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, regardless of the competence of any Parliamentary Commissioners of the German Bundestag or Federal Government Commissioners.

(2) The Federal Anti-Discrimination Agency shall be provided with the personnel and materials required to fulfil its tasks. It shall be identified as a separate chapter in the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth's individual plan.

Paragraph 26

Legal Status of the Head of the Federal Anti-Discrimination Agency

(1) The Federal Minister for Family Affairs, Senior Citizens, Women and Youth shall appoint a person to head the Federal Anti-Discrimination Agency, based on a suggestion put forward by the Federal Government. In accordance with this Act, the relationship between the Agency and the Federal Administration shall be that of an official public-law relationship (öffentlich-rechtliches Amtsverhältnis). The Agency shall be independent in the execution of its duties and only subject to the law.

(2) The official relationship under public law shall commence upon the handing over of the certificate of appointment by the Federal Minister for Family Affairs, Senior Citizens, Women and Youth.

(3) The official relationship under public law shall end, unless by death,

1. with the assembly of a new Bundestag;
2. with the end of the period of office upon the incumbent reaching the age limit set out in Section 51 para. 1 and 2 Federal Civil Servants Act (Bundesbeamtengesetz);
3. upon the incumbent being discharged. The Federal Minister for Family Affairs, Senior Citizens, Women and Youth shall discharge the head of the Federal Anti-Discrimination Agency upon his or her request or when grounds arise which, in the case of a judge appointed for life, would give rise to discharge from duty. In the event of the termination of the official relationship under public law, the head of the Federal Anti-Discrimination Agency shall receive a certificate executed by the Federal Minister for Family Affairs, Senior Citizens, Women and Youth. The discharge shall become effective upon the handing over of the certificate.

(4) The legal relationship between the head of the Federal Anti-Discrimination Agency and the Federal Administration shall be regulated by contract with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The contract shall require the consent of the Federal Government.

(5) Where a federal civil servant is appointed head of the Federal Anti-Discrimination Agency, he or she shall retire from his or her previous office at the same time as the official relationship under public law commences. For the period of the official relationship under public law, the rights and duties associated with being a civil servant shall be suspended, with the exception of the duty to official secrecy and the prohibition of accepting rewards or gifts. Where civil servants are injured in an

accident, their legal right to claim treatment and compensation shall remain unaffected.

Paragraph 27

Tasks

(1) Any person who believes he or she has been discriminated against on any of the grounds referred to in Section 1 may take their case to the Federal Anti-Discrimination Agency.

(2) The Federal Anti-Discrimination Agency shall give independent assistance to persons addressing themselves to the Agency in accordance with Subsection (1) in asserting their rights to protection against discrimination. Such assistance may, among other things, involve

1. providing information concerning claims and possible legal action based on legal provisions providing protection against discrimination;
2. arranging for advice to be provided by another authority;
3. endeavouring to achieve an out-of-court settlement between the involved parties.

Where responsibility lies either with a Parliamentary Commissioner of the German Bundestag or a Federal Government Commissioner, the Federal Anti-Discrimination Agency shall immediately pass on the matters of the person referred to in Subsection (1), with their prior approval.

(3) The Federal Anti-Discrimination Agency shall take on and independently carry out the following tasks, insofar as no Parliamentary Commissioner of the Bundestag or Federal Government Commissioner is competent in the matter:

1. publicity work;
2. measures to prevent discrimination on any of the grounds referred to in Section 1;
3. academic studies into such discrimination.

(4) The Federal Anti-Discrimination Agency and the competent Federal Government Commissioner and Parliamentary Commissioner of the German Bundestag shall jointly submit reports to the German Bundestag every four years concerning cases of discrimination on any of the grounds referred to in Section 1 and shall make recommendations regarding the elimination and the prevention of such discrimination. They may jointly carry out academic studies into such discrimination.

(5) The Federal Anti-Discrimination Agency and the competent Federal Government Commissioner and Parliamentary Commissioner of the German Bundestag shall co-operate in cases of discrimination on several of the grounds referred to in Section 1.

Paragraph 28

Authority

(1) In cases in accordance with Section 27(2) second sentence, No. 3, the Federal Anti-Discrimination Agency may request the involved parties to make submissions, insofar as the person who has turned to the Agency in accordance with Section 27(1) has consented thereto.

(2) All federal authorities and other federal public offices shall be under the obligation to assist the Federal Anti-Discrimination Agency in carrying out its tasks, in particular to supply the necessary information. The provisions regarding the protection of personal data shall remain unaffected.

Paragraph 29

Co-operation with Non-Governmental Organisations and Other Institutions

The Federal Anti-Discrimination Agency shall involve in an appropriate manner non-governmental organisations and institutions active in the field of the protection against discrimination on any of the grounds referred to in Section 1 at European, Federal, Länder and regional level.

Paragraph 30

Advisory Council

(1) The Federal Anti-Discrimination Agency shall be assigned an Advisory Council for the purposes of promoting dialogue with social groups and organisations whose goal is the protection against discrimination on any of the grounds referred to in Section 1. The Advisory Council shall advise the Federal Anti-Discrimination Agency as regards the submission of reports and recommendations to the German Bundestag in accordance with Section 27(4) and may put forward its own suggestions to that end and with regard to academic studies in accordance with Section 27(3) No 3.

(2) The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall, in agreement with the head of the Federal Anti-Discrimination Agency as well the competent Federal Government Commissioner or Parliamentary Commissioner of the German Bundestag, appoint the members of this Advisory Council and a deputy for each member. The Advisory Council shall comprise representatives of social groups and organisations, as well as experts on issues concerning discrimination. The Advisory Council shall not exceed a total membership of 10 persons. The Advisory Council shall be made up of equal numbers of men and women.

(3) The Advisory Council shall adopt its own rules of procedure, which shall require the consent of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

(4) The members of the Advisory Council shall perform their duties in accordance with this Act on a voluntary basis. They shall have the right to claim expenses, travel costs, a per diem allowance and hotel expenses. The rules of procedure shall contain further details on these matters.

Part 7

Concluding Provisions

Paragraph 31

Prohibition of Changing Any Provisions

No agreement derogating from the provision of this Act may be made to the disadvantage of the persons protected thereby.

Paragraph 32

Final Provision

General legal provisions shall apply unless this Act provides otherwise.

Paragraph 33

Transitional Provisions

(1) As regards discrimination in accordance with Sections 611a, 611b and 612(3) of the German Civil Code

or sexual harassment pursuant to the Employee Protection Act (Act on the Protection of Employees from Sexual Harassment in the Workplace, Beschäftigtenschutzgesetz), the law applicable prior to 18 August 2006 shall find application.

(2) As regards discrimination on the grounds of race or ethnic origin, Sections 19 to 21 shall not apply to relationships under the law of obligations entered into prior to 18 August 2006. The first sentence shall not apply to subsequent changes to continuous obligations.

(3) As regards discrimination on the grounds of sex, religion, disability, age or sexual orientation, Sections 19 to 21 shall not apply to relationships under the law of obligations entered into prior to 1 December 2006. The first sentence shall not apply to subsequent changes to continuous obligations.

(4) As regards relationships under the law of obligations whose object is a private-law insurance, Section 19(1) shall not apply where these were entered into prior to 22 December 2007. The first sentence shall not apply to subsequent changes to such obligations.

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