

European Anti-Discrimination Law and its Transformation in Germany

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- (1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22)
- (2) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16)
- (3) Directive 2002/73/EC of the European Parliament and of the Council 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 (OJ L 269, 5.10.2002, p. 15)
- (4) 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 (OJ L 373, 21.12.2004, p. 37)
- (5) *Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)), with European Parliament legislative resolution of 2 April 2009*
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0211&language=EN>

II. German General Act on Equal Treatment

(non official translation)

of 14 August 2006 (Federal Law Gazette I, p. 1897), as amended by Article 8 of the Act amending the Company Pensions Act and other laws of 2 December 2006 (Federal Law Gazette I, p. 2742)

Part 3

Protection Against Discrimination Under Civil Law

Section 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 50 apartments in total.

Section 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.

Section 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

Section 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.