

Guidelines for responding to sexualized discrimination and violence at MHH

Adopted by the Senate of Hannover Medical School
on 9 August 2017

About this publication

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Text

Gender Equality Office, Gender Equality Committee

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Guidelines for responding to sexualized discrimination and violence¹ at Hannover Medical School

Preamble

Hannover Medical School (MHH) is, at all levels, committed to protecting the dignity of persons of all genders, and values working relationships based on trust with all employees, students and trainees. Sexualized discrimination and violence constitute a breach of obligations under employment law (including laws applicable to civil servants) and higher-education law, and, as such, MHH shall rigorously take action against this (see, for example, Section 12(3) of Germany's General Act on Equal Treatment [AGG]). Employees and students affected by sexualized discrimination and violence are specifically encouraged not to tolerate their situation but to stand up to this behaviour and seek third-party involvement with a view to putting a stop to inappropriate conduct and, if necessary, to penalizing it. All employees and students at MHH are encouraged not to turn a blind eye to incidents of sexualized discrimination and violence, but, having the courage to do the right thing and by exercising supportive responsibility, to offer assistance

¹ The term 'sexualized discrimination and violence' used in these Guidelines was preferred over the previously used term 'sexual harassment' because, in current discourse, it is regarded as more appropriate and all-encompassing. Sexual harassment is defined as "unwanted conduct that is sexualized and gender-related" (see Was tun bei sexueller Belästigung am Arbeitsplatz 2016, p. 4).

and support to those affected. Supervisors and teaching staff are, within their work area, responsible for ensuring that the personal dignity of all employees and students is respected.

1. Introduction and definitions

Sexualized discrimination and violence may manifest themselves in a variety of ways and may constitute a criminal offence (see Sections 177, 184i, 185 and 240 of the German Penal Code [StGB]). When it takes place, sexualized discrimination and violence is generally unexpected and is not based on mutual consent. It may take the form of verbal, non-verbal and physical assault, or demeaning remarks and acts. Sexualized discrimination and violence "constitutes an exercise of power arising from the power structures of the societal gender hierarchy. Under recent legislation, it is properly classed as a form of gender discrimination and as a violation of the principle of equal treatment" (Kocher/Porsche 2015, p. 8).

Sexualized discrimination and violence may be perceived differently by different individuals depending on the perspective of the affected person². Experience of sexualized discrimination and violence is, on the part of the victim, generally accompanied by self-doubt, feelings of guilt and a deep sense of shame potentially culminating in psychiatric illness. Many people remain

² Cases of defamation are not included.

silent because they are afraid, for example, of jeopardizing their job situation, their future, their ongoing studies or the completion of their degree.

Sexualized discrimination may be associated with stalking. Stalking is defined as “continued pursuit, harassment or intimidation of another person”³. It is boundary-crossing and undesired behaviour involving a power imbalance in favour of the perpetrator.

2. Forms of sexualized discrimination and violence and of stalking

Sexualized discrimination and violence, as well as stalking, may in principle occur by means of any form of communication, including that within social networks.

- (1) Remarks of a sexual nature, especially:
 - i. use of sexually derogatory language;
 - ii. remarks about persons and/or their bodies that are degrading and constitute an attack on their personhood, which are placed in a (perhaps subtly) sexually suggestive context;
 - iii. sexually derogatory comments about one’s intimate life and body;
 - iv. verbal descriptions of a suggestive, sexually degrading nature.

- (2) Unwanted showing⁴ or public exhibition of pornographic images, especially:
 - i. suggestive and sexually degrading images in public spaces;
 - ii. the graphical or electronic presentation of suggestive images that are sexually degrading or include sexual violence;
 - iii. the copying or use of suggestive, sexually degrading computer programs and Internet sites on IT systems in offices or buildings of MHH or on its campus.
- (3) Unwanted sexual acts and requests to carry out the same, in particular:
 - i. gestures and other non-verbal communication with sexual undertones;
 - ii. physical contact of a sexual nature; (e.g. touching, fondling, groping, pinching, kissing);
 - iii. requests for sexual favours;
 - iv. directly or indirectly sexually motivated pursuit and coercion;
 - v. physical assault and rape.

³ See Sexuelle Belästigung und Stalking, Universitätsklinikum Freiburg, p. 14.

⁴ The showing of the naked body in the context of medical teaching is not affected.

- (4) Unwanted, persistent stalking, especially;
- i. seeking the victim's proximity (in a home/private or work setting);
 - ii. attempted contact by means of telecommunication and other channels of communication (telephone, e-mail, text message, MMS, Messenger, social media, etc.);
 - iii. recording of images or sound (photos, videos, tape/audio recordings, etc.);
 - iv. threat of loss of life or limb, damage to health or deprivation of freedom;
 - v. another similar act that seriously infringes the victim's lifestyle (lying in wait, observation, pursuit, etc.).

3. Scenarios

Sexualized discrimination and violence may affect anyone of any gender. However, victims tend to be women. This is shown by, *inter alia*, the outcomes of a 2015 study by Germany's Federal Anti-Discrimination Agency, according to which women who are subjected to sexualized discrimination and violence suffer it at the hands of women in 6 per cent of cases and men in 81 per cent of cases. By contrast, sexualized discrimination and violence experienced by men is at the hands of women in 30 per cent of cases and at the hands of men

in 39 per cent of cases⁵. In principle, sexualized discrimination and violence may take place among colleagues or among students. Patients, too, may be involved. A woman in the role of a supervisor may also be affected.

Sexualized discrimination and violence is deemed particularly serious where it involves abuse of authority in a training, work or study setting, possibly with the threat of disadvantages relating to studies or career or the promise of advantages if the victim acquiesces. Particular relationships of dependency include the following: professor → student; senior physician → junior physician; physician (in a training capacity) → trainee (paediatric) nurse; (paediatric) nurse → trainee (paediatric) nurse; doctoral supervisor → doctoral student; patient → nurse.

MHH will also, in accordance with these Guidelines, take action in response to discrimination against students, trainees and employees by patients.

⁵ The reason these figures do not add up to 100 per cent is that another response option, "could not identify", was given. See Sexuelle Belästigung am Arbeitsplatz 2015, p. 7.

4. Institutional complaints policy

- (1) A Coordination Unit⁶ for the filing of complaints of sexualized discrimination and violence shall be set up at MHH. This unit shall be part of the Gender Equality Office. The Gender Equality Officer is either the direct contact person or shall be notified in detail of any proceedings concerning sexualized discrimination and violence. If employees are involved, Personnel Management and the Staff Council shall be included in the process. Other experts shall be consulted in cases where their expertise is required.
- (2) The complainant shall always be in ultimate control of the proceedings and may suspend or terminate them at any time⁷. The affected party and/or their contact persons must not suffer any prejudice as a result of a complaints procedure. Persons included in the proceedings must maintain absolute confidentiality regarding all information and events, personal details and interviews towards third parties who are not involved in them, unless the complainant expressly releases them from this non-disclosure requirement.

⁶ As per an excerpt from the minutes of the meeting of the Presidium held on 4 April 2017.

⁷ This applies as long as proceedings are conducted on a purely internal basis within the School. As soon as investigative authorities (police and the public prosecutor's office) are involved, the proceedings can generally no longer be terminated unilaterally (comment by Norbert Langhorst, MHH Legal Department).

- (3) Equally, the School shall, to the maximum extent possible, take action against sexualized discrimination and violence where the defendants are not employees or students of MHH. In such cases, too, MHH shall take immediate and protective measures on behalf of employees, students and third parties.
- (4) Employees and students of MHH shall be entitled to officially lodge a complaint with the Coordination Unit and in so doing, to initiate a formal, internal complaints procedure. The complaint must be lodged in writing, or else made verbally to, and recorded by, the Coordination Unit. If an oral statement is made by the complainant, the Coordination Unit shall document in writing the substance of the complaint as communicated during the interview in question. This record shall be presented to the complainant at the end of the interview for review and signature.
- (5) The complaint must give a full account of the events perceived as prejudicial and discriminatory. Any witnesses and, if possible, any existing evidence should be mentioned. The complaint should also mention any other persons who are already notified of the incident(s) and whether steps have already been taken.
- (6) After receipt of the complaint, the complainant shall be informed by the Coordination Unit of the options available to them and the subsequent

course of action. They shall be informed of support measures available from advocacy groups and from sources of guidance.

- (7) The Coordination Unit may involve in the proceedings experts⁸ and persons in positions of responsibility from the areas within which the reported incident/behaviour occurred. The latter shall apply particularly where immediate action to put a stop to violence and/or discrimination is necessary.
- (8) The Coordination Unit shall request the accused to submit a written response to the complaint in a timely manner. On this basis, the Coordination Unit shall – within ten working days if possible – conduct a face-to-face interview with the accused. If requested by the accused, a person of their choice may attend the interview with them.
- (9) The Coordination Unit shall document all interviews and the ascertained facts of the case, and shall notify both parties of the outcome of the interview and internal investigations.
- (10) The Coordination Unit shall ascertain the facts of the case, notify the member of the Presidium (MHH's governing body) who has appropriate responsibility, and propose a course of action.

- (11) The member of the Presidium who has appropriate responsibility shall then, pursuant to Section 6 of these Guidelines, decide on further steps and any necessary action to be taken in response.

⁸ See point 4 (1).

5. Contact points

There are many points of contact within the School for employees, trainees, students and managers:

(1) Contact points within MHH:

- i. Coordination Unit ('Koordinierungsstelle');
- ii. MHH governing board (Presidium);
- iii. Personnel Management;
- iv. Legal Department;
- v. Supervisor / managers;
- vi. The management of a given school within MHH;
- vii. Gender Equality Officer;
- viii. Staff Council ('Personalrat');
- ix. Offices of the Deans of Studies ('Studiendekanate');
- x. Welfare advisory service of the General Students' Committee ('AStA-Sozialberatung');
- xi. Dental Medicine Students' Group ('Fachgruppe Zahnmedizin');
- xii. Young People's and Trainees' Representative Body ('Jugend- und Auszubildendenvertretung', JAV);
- xiii. Representative Body for People with Disabilities ('Schwerbehindertenvertretung');
- xiv. In-house Welfare Advisory Service ('Betriebliche Sozialberatungsstelle');
- xv. Coordination Office of the Hannover Biomedical Research School (HBRS);

xvi. International Office.

(2) Other contact points within MHH:

- i. General Psychiatric Outpatients' Clinic ('Allgemeinpsychiatrische Sprechstunde');
- ii. Psychosomatic Outpatient Clinic ('Psychosomatische Ambulanz');
- iii. 'ProBeweis' network (which provides medical examinations for victims of violence);
- iv. Clinical point of contact ('Anlaufstelle Klinik') (for patients).

(3) Contact points outside MHH:

- i. Welfare Advisory Service of Student Administration Hanover ('Sozialberatungsstelle des Studentenwerks Hannover');
- ii. 'Notruf für vergewaltigte Frauen und Mädchen e.V. Hannover' (an association for female victims of rape);
- iii. 'Hilfetelefon Gewalt gegen Frauen' ('Violence Against Women' support helpline).

The Coordination Unit shall be notified by the contact points within MHH of cases reported there and shall, depending on whose area of responsibility it is in a given instance, involve other relevant sources within MHH such as Personnel Management, the Gender Equality Officer or the Staff Council. This will, of course, take place only at the request of the affected person.

All cases shall be statistically recorded by the Coordination Unit; the anonymity of those affected shall be preserved in all cases.

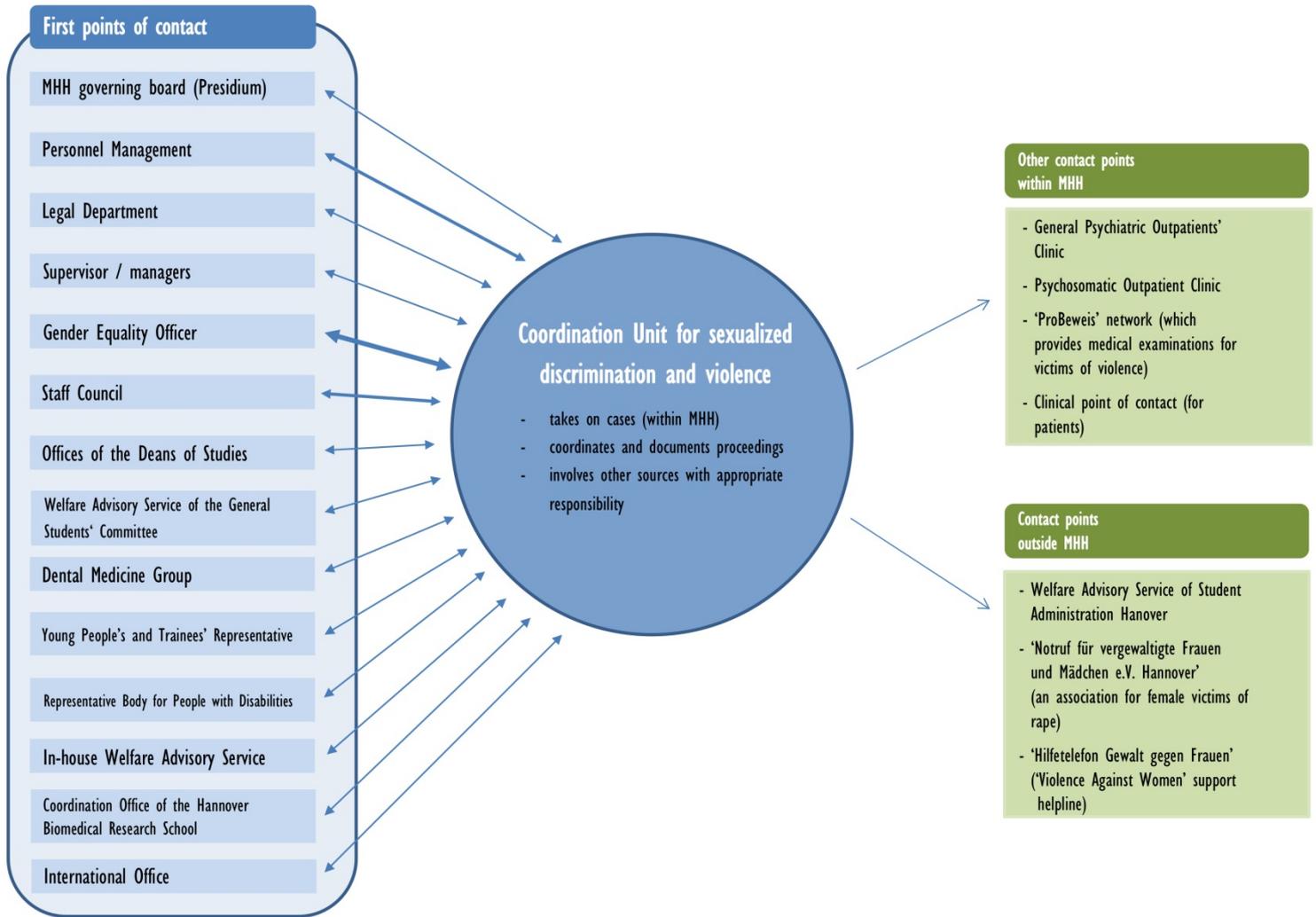


Figure 1: Contact points and Coordination Unit for sexualized discrimination and violence

6. Punitive outcomes for perpetrators

Perpetrators of sexualized discrimination and violence can expect punitive outcomes under both employment and criminal law. These may include:

- (1) official meeting/interview;
- (2) oral or written reprimand;
- (3) written caution;
- (4) being relocated;
- (5) being moved;
- (6) dismissal;
- (7) exclusion from lectures;
- (8) initiation of disciplinary proceedings;
- (9) revocation of teaching position;
- (10) exclusion from use of MHH's various institutions;
- (11) a ban from the premises;
- (12) deregistration;
- (13) filing of criminal charges by the Presidium member who has appropriate responsibility.

Irrespective of the above-mentioned measures, the Coordination Unit must, upon becoming aware of an incident of sexualized discrimination and violence, consider the extent to which provisional measures to protect the affected person need to be carried out in a given case. In response to the complaint by the affected person, their supervisor shall be required to take appropriate measures to prevent repetition or continuation of any ascertained harassment. It must be noted that the affected person may under no

circumstances be relocated. The perpetrator must expect to be moved or face another of the above-mentioned punitive outcomes.

7. Preventive measures

- (1) Publication of these Guidelines on MHH's Intranet site (under various keywords in the organizational guide ('Organisationshandbuch');
- (2) Awareness training for all employees, trainees and students;
- (3) Mandatory in-service training for personnel managers within medical, nursing, scientific and administrative areas of operation;
- (4) 'Guidelines for responding to sexualized discrimination and violence' to be presented and issued at the induction session for new employees and the introductory session for new students;
- (5) Work-related in-service training and professional-development opportunities (including individual and relatively small groups);
- (6) Taking into account social skills, particularly gender competence, when appointing new executives to fill management (especially professorial) posts;
- (7) Production of booklets and leaflets (e.g. on prevention and intervention, and providing general information on the issue);

- (8) Other outreach activities to raise awareness (e.g. publication of articles, talks, exhibitions, circular e-mails);
- (9) Conducting of surveys and empirical studies;
- (10) Creation of a physical and technical environment that eliminates unsafe and anxiety situations.

8. Budgeting for appropriate organizational and preventive measures

The Presidium of MHH shall approve funds (initially for one year) for personnel and professional-development events.

9. The Guidelines' entry into force and making them known

These Guidelines shall enter into force on the day of their adoption by the Senate of Hannover Medical School.

The 'Guidelines for responding to sexualized discrimination and violence at Hannover Medical School' were prepared at the President's instigation and approved by the Senate on 9 August 2017. All employees and students of MHH shall be made aware of the Guidelines. They shall be issued when new employees are appointed and when they take up their posts, as well as to new students, and published on MHH's Intranet and Internet sites.

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Annexes

Statutory regulations

German Basic Law (GG)

Article 3

(1) All persons shall be equal before the law.

(2) Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.

(3) No person shall be favoured or disfavoured because of gender, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

General Act on Equal Treatment (AGG)

Section 3 Definitions, Subsections 3 and 4

(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.

Section 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 their influence to ensure that such discrimination does not occur. Where an employer has trained their employees in an appropriate manner for the purpose of preventing discrimination, they shall be deemed to have fulfilled their 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 (ArbGG), 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.

Section 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.

German Penal Code (StGB)

Section 177 Sexual assault; sexual coercion; rape

(1) Anyone who, in violation of the clearly expressed will of another person, performs sexual acts on this person or has he victim perform such acts on the perpetrator, or causes this person to perform or tolerate sexual acts on a third party, shall be punished by between six months' and five years' imprisonment.

(2) Additionally, anyone who performs sexual acts on another person or has this person perform such acts on

the perpetrator, or causes this person to perform or tolerate sexual acts on a third party, shall also be subject to punitive action where:

1. the perpetrator takes advantage of the fact that the person is not able to mentally demur or express their lack of consent;
2. the perpetrator takes advantage of the fact that, due to their physical or psychological condition, the person is severely compromised in their ability to mentally demur or express their lack of consent, unless this person's consent has been obtained;
3. the perpetrator takes advantage of an element of surprise;
4. the perpetrator takes advantage of a situation in which there is a threat of appreciable harm if the victim resists;
5. the perpetrator has coerced the person into performing or tolerating the sexual act by threatening appreciable harm.

(3) Attempts shall be punishable.

(4) A custodial sentence of not less than one year shall be imposed where the victim's inability to mentally demur or express their lack of consent is the result of illness or disability on their part.

(5) A custodial sentence of not less than one year shall be imposed where the perpetrator:

1. uses violence against the victim;
2. threatens the victim with actual bodily harm or death;

3. takes advantage of a situation whereby the victim is completely vulnerable to the perpetrator's influence.
- (6) In particularly serious cases, a custodial sentence of no less than two years shall be imposed. Such a case exists where:
1. the perpetrator completes an act of sexual intercourse with the victim (or has the victim perform this act on the perpetrator), or performs similar sexual acts on the victim (or has the victim perform them on the perpetrator) that are of an especially degrading nature, where they are associated with penetration (rape), or;
 2. the act was committed by several persons acting together.
- (7) A custodial sentence of not less than three years shall be imposed where the perpetrator:
1. carries a weapon or another dangerous instrument;
 2. otherwise carries an instrument or means in order to prevent or overcome the resistance of another person by force or threat of force; or
 3. places the victim in danger of serious injury.
- (8) A custodial sentence of not less than five years shall be imposed where the perpetrator:
1. carries a weapon or another dangerous instrument while carrying out the act; or
 2. a) subjects the victim to severe physical abuse during the act; or

b) places the victim at risk of death by means of the act.

- (9) In less serious cases referred to in subsections 1 and 2, a custodial sentence of between three months and three years shall be imposed; in less serious cases referred to in subsections 4 and 5, a custodial sentence of between six months and ten years shall be imposed; and in less serious cases referred to in subsections 7 and 8, a custodial sentence of between one and ten years shall be imposed.

Section 184i Sexual harassment

- (1) Anyone who physically touches another person in a sexual manner and harasses them by this means shall be punished by a custodial sentence of up to two years or a fine, provided this offence is not subject to severe punishment under other provisions.
- (2) In particularly serious cases, the custodial sentence shall be between three months and five years. Such a case typically exists where the act was committed by several persons acting together.
- (3) The offence may only be prosecuted upon request, unless the prosecuting authority considers *proprio motu* that prosecution is required because of special public interest.

Section 184j Criminal offences involving groups

Anyone who facilitates a criminal offence by being involved in a group of persons that pressures another person to commit a criminal offence against this person shall be punished by a custodial sentence of up to two years or by a fine where a criminal offence referred to in Section 177 or Section 184i is committed and this offence is not subject to severe punishment under other provisions.

Section 185 Insult

Insult shall be punishable by imprisonment not exceeding one year or a fine and, if the insult is committed by means of an assault, with imprisonment not exceeding two years or a fine.

Section 238 Stalking

(1) Whosoever unlawfully stalks a person by:

1. seeking their proximity;
2. trying to establish contact with them by means of telecommunications or other means of communication or through third persons;
3. abusing their personal data for the purpose of ordering goods or services for them or causing third persons to make contact with them;
4. threatening them or a person close to them with loss of life or limb, damage to health or deprivation of freedom; or
5. committing similar acts

and thereby seriously infringes their lifestyle shall be liable to imprisonment not exceeding three years or a fine.

(2) The penalty shall be three months to five years if the offender places the victim, a relative of or another person close to the victim in danger of death or serious injury.

(3) If the offender causes the death of the victim, a relative of or another person close to the victim the penalty shall be imprisonment from one to ten years.

(4) Cases under subsection (1) above may only be prosecuted upon request unless the prosecuting authority considers *proprio motu* that prosecution is required because of special public interest.

Section 240 Using threats or force to cause a person to do, suffer or omit an act

(1) Whosoever unlawfully with force or threat of appreciable harm causes a person to commit, suffer or omit an act shall be liable to imprisonment of up to three years or a fine.

(2) The act shall be unlawful if the use of force or the threat of harm is deemed inappropriate for the purpose of achieving the desired outcome.

(3) Attempts shall be punishable.

(4) In especially serious cases the penalty shall be imprisonment from six months to five years. An especially serious case typically occurs if the offender:

1. causes another person to engage in sexual activity;
2. causes a pregnant woman to terminate the pregnancy;
or
3. abuses their powers or their position as an office holder.

Section 3 Remit of higher-education institutions

(3) ¹In fulfilling their remit, the higher-education institutions shall promote the actual enforcement of equal opportunities for women and men and shall work towards removing any existing disadvantages (gender equality mandate). ²They shall contribute to the promotion of women's studies and gender studies.

Section 42 Gender Equality Officer

(1) ¹The Senate shall elect a female Gender Equality Officer at the proposal of the Gender Equality Committee. ²The period of office of the Gender Equality Officer shall be up to six years, and up to eight years should she be re-elected. ³Appointment for a further period of office may take place without the post being advertised, with the agreement of the Senate (and notwithstanding sentence 1). ⁴The Gender Equality Officer shall be employed full-time; Section 38(6) sentences 1 and 3 shall apply *mutatis mutandis*. ⁵The statutes shall cover further particulars of the establishment of, and procedures regarding, the Gender Equality Committee as well as the procedure for selecting the Gender Equality Officer. ⁷The Gender Equality Officer and her deputy may not belong to staff representation bodies and may be involved in personnel-related matters only in their capacity as Gender Equality Officer or the deputy thereof.

(2) ¹The Gender Equality Officer shall work towards the fulfilment of the gender equality mandate pursuant to Section 3(3). ²She shall, in particular, participate in developmental planning and in the drawing up of the Gender Equality Plan, as well as in structural and personnel-related decisions. ³She may convene meetings. ⁴She shall have an obligation to report to the Senate and shall inform the public about the carrying out of her remit. ⁵In fulfilling

her remit, she shall not be bound by functional orders or instructions.

(3) ¹The Gender Equality Officer shall have the right to report directly to the Presidential Board. ²As a means of fulfilling her remit, she may attend meetings of other official bodies, committees/boards/panels and commissions, to which she is to be invited to take part as if she were a member, with the right to speak and table motions; in particular, she shall be fully included, in a timely manner, in upcoming personnel-related measures. ³The Gender Equality Officer may access application documentation. ⁴She shall be obliged to maintain confidentiality.

(4) ¹If a decision which concerns the gender equality mandate is made by an official body contrary to the vote of the Gender Equality Officer, she may demand a new decision (appeal) within two weeks, unless this law specifies otherwise. ²The new decision may be made one week after the appeal has been submitted at the earliest and only after considerable effort has been made to reach an agreement. ³Only one appeal shall be permitted on a given matter. ⁴A decision may be implemented only after the time limit for lodging an appeal has ended or the decision has been confirmed.

(5) ¹Gender Equality Officers may be elected to the various faculties by the Faculty Council. ²Gender Equality Officers may be appointed to other organisational units specified in the statutes. ⁴The electoral or appointment procedure, the period of office, the remit and the powers of Gender Equality Officers are covered by clauses 1 and 2 of the statutes.

(6) Section 3 (4) shall apply *mutatis mutandis* to all members and affiliates of the higher-education institution who are not its employees, as shall Sections 7, 12 and 13 of Germany's General Act on Equal Treatment (AGG) dated 14 August 2006 (BGBl. I p. 1897).

Section 9 Prohibition of discrimination

(1) Employees may not be discriminated against, either directly or indirectly, on grounds of their gender.

(2) ¹Direct 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 because of their gender. ²Direct discrimination on grounds of gender shall also be taken to occur where a woman is treated less favourably due to pregnancy or motherhood.

(3) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice may put persons at a particular disadvantage compared with other persons because of their gender, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(4) Different treatment on grounds of gender is permitted where the nature of the duties to be performed or the context in which they are performed constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate.

(5) Notwithstanding the reasons set out in subsections 3 and 4, different treatment shall also be permitted where the intention is, by means of appropriate and proportionate measures and notably pursuant to Section 13(5) of this Act, to prevent or compensate for existing disadvantages on grounds of gender.

Section 66 Co-determination in relation to social and other internal measures

(1) The Staff Council shall play a co-determining role particularly in relation to the following measures:

(...)

10. Regulation of organization in the place of employment and of employee behaviour including protection of employees from sexual harassment.

Please note:

In the German original of this publication, to the best of our knowledge, extracts from legal texts correspond to the most recent version of this legislation at the time the publication went to press. Only the official versions have legal relevance.

This translation is provided for the convenience of English-speaking readers and only the German text is authoritative or has any legal value.

Space for your notes



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