

Antidiscrimination Directive of the University of Cologne

as of 15 June 2022

Pursuant to Sections 2 subsection 4 sentence 1, 22 subsection 1 sentence 1 no. 3 of the Higher Education Act of the State of North Rhine-Westphalia (Higher Education Act – HG) as amended by the Higher Education Future Act (Hochschulzukunftsgesetz – HZG) of 16 September 2014 (GV.NRW. p. 574), as last amended by Article 1 of the Act to further amend the Higher Education Act and the Arts University Act of 25 November 2021 (GV.NRW. p. 1210a), in conjunction with Section 12 subsection 5, 13 subsection 1 of the General Equal Treatment Act (AGG) of 14 August 2006 (BGBl. I p. 1897), last amended by Article 8 of the Act of 3 April 2013 (BGBl. I p. 610), the University of Cologne enacts the following Directive:

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Preamble

In accordance with its mission statement 'Diversity and Equal Opportunities', the University of Cologne sees itself as a non-discriminatory, safe and non-violent place to study, teach and work, where everyone treats one another fairly, respectfully and appreciatively. To this end, the university calls on all members and associates to assume responsibility for

¹themselves and others, and promotes a culture of noticing and identifying discriminatory, encroaching or violent behaviour. From the point of view of those affected, it is important to ensure the greatest possible security and protection. Perpetrators must be held accountable for their actions. If appropriate in individual cases, they should receive support to change their behaviour.

With this Directive, the University of Cologne strongly emphasizes that it does not tolerate discrimination and – within its sphere of competence – assumes responsibility for safeguarding the personal rights of all its members and associates. The purpose of this Directive is to raise awareness and to outline prevention measures and intervention procedures.

Section 1

Scope

(1) This Directive applies to all members and associates of the University of Cologne (Section 9 HG), irrespective of temporary/tenured employment or guest stays, as well as to all trainees or other persons employed in the context of their training.

(2) This Directive applies to all functional areas of the University. In the scope of application of the General Equal Treatment Act (AGG), it substantiates the employer-side measures and obligations pursuant to Section 12 AGG.

Section 2

Definitions

(1) The following definitions are based on and supplement the definitions pursuant to Section 3 AGG. They do not represent an exhaustive catalogue, but rather serve to provide a better description of conduct and cases that fall under this Directive.

(2) Discrimination means disparagement, contempt, disregard, exclusion or violence against persons based on one or several actual or attributed group-specific characteristics such as gender², sexual orientation/identity, origin, disability/illness, religion/belief, age or based on other individual differentiating characteristics (e.g. appearance, institutional membership in an organization, family status, familial aspects).

a) Direct discrimination by persons or the institution occurs where an act, regulation or measure demonstrably results in objectifiable, i.e. comprehensible and verifiable, unequal treatment of a person or a group of persons in accordance with a feature listed under sentence 1.

b) Indirect discrimination by persons or the institution occurs if an act, regulation or measure is at first glance neutral and does not obviously disadvantage certain groups, but its concrete application has a demonstrable effect that regularly disadvantages members of a certain group in accordance with a feature listed under sentence 1. This

¹ THIS TRANSLATION OF THE 'Antidiskriminierungsrichtlinie der Universität zu Köln vom 15.06.2022' IS NOT LEGALLY BINDING. IT IS FOR INFORMATION PURPOSES ONLY.

² This includes gender in the legal sense as well as individual gender identities.

does not apply if the acts, regulations or measures in question are objectively justified by a legitimate aim and the means of achieving this aim are appropriate and necessary.

(3) Harassment pursuant to Section 3 (3) AGG is also discrimination if unwanted conduct related to a feature pursuant to paragraph 2 sentence 1 has the purpose or effect of violating the dignity of the person concerned and creating an environment characterized by intimidation, hostility, humiliation, degradation or insult.

(4) Discrimination shall also be deemed to be sexual harassment pursuant to Section 3 (4) of the General Equal Treatment Act (AGG) if unwanted, sexually oriented conduct, including unwanted sexual acts and requests for such acts, sexually oriented physical touching, remarks of a sexual nature and unwanted display and visible placement of pornographic images, has the purpose or effect of violating the dignity of the person concerned, in particular if an intimidating, hostile, degrading, humiliating or offensive environment is created.

(5) The conduct covered by the concept of harassment and sexual harassment shall include, above all, acts and conduct punishable under criminal law. Behaviour referred to as mobbing or stalking may also constitute harassment or sexual harassment in the above sense.

(6) Bullying is understood as a conflictual communication or act between/among one or more parties in which the person subjected to it is in a vulnerable situation and is repeatedly and systematically tormented, excluded, or directly or indirectly treated with hostility by one or more persons, often over a longer period of time. Bullying can also take place on the Internet ('cyberbullying'), e.g. on social media, forums, chats, video platforms or by e-mail.

Bullying includes, among other things:

- the systematic dissemination of discrediting rumours, photos or videos,
- the systematic dissemination of personal or intimate data and information,
- the systematic exclusion of individuals or whole groups of people,
- the systematic refusal of information relevant to studies or work,
- insults, defamatory and humiliating treatment.

Bullying may be linked to a feature pursuant to paragraph 2 sentence 1 (feature-related bullying). However, bullying does not have to be linked to such a feature, but can, for example, be based on tensions at the workplace, power struggles, or personal dislikes. Bullying constitutes discrimination within the scope of this Directive if it is linked to or motivated by a feature as defined in sentence 1 of paragraph 2.

(7) Violence is understood to include all forms of behaviour and action that constitute physical coercion through the deployment of force or through other physical influence that, according to its intensity, is suitable for impairing the free resolution of the actuation of the will of another. If the violence is linked to or motivated by a feature referred to in sentence 1 of paragraph 2, it shall also constitute discrimination within the meaning of this Directive (including sexual assault).

(8) An instruction to discriminate against a person on a ground referred to in sentence 1 of paragraph 2 shall be deemed to be discrimination. In particular, such an instruction shall be deemed to exist if someone instructs a person to behave in a way that discriminates or may discriminate against a person on a ground referred to in sentence 1 of paragraph 2.

(9) An act of discrimination shall be deemed to be particularly severe if it is carried out by taking advantage of relationships of dependence and/or in the context of relationships in which there is a duty of care.

Section 3

General prohibition

The forms of discrimination described in Section 2 are prohibited. This also applies if the person committing the discrimination merely assumes the existence of a feature listed in Section 2 paragraph 2 sentence 1 when discriminating. Due to their disruptive and damaging effect on university operations, they constitute a violation of contractual, service, civil service and/or university law obligations and may also constitute criminal offenses.

Section 4

Duties of the university headship and persons in leadership positions

(1) The University of Cologne shall take appropriate measures to protect, support and encourage persons affected by discrimination to defend themselves.

(2) Rectorate, Faculties, the administration and the central institutions are responsible for designating specific contact persons and for implementing appropriate measures to safeguard against and reduce discrimination in their areas of responsibility.

(3) Particularly university officials as well as persons with teaching, training and management responsibilities are responsible for compliance with this Directive in their areas of responsibility:

a) Through exemplary behaviour, awareness raising and appropriate preventive measures, they contribute to promoting respectful and non-discriminatory interaction with one another and protecting the integrity of all university members – employees as well as students.

b) They shall ensure that relationships of dependency between managers and employees or faculty and students are organized in a responsible manner and not exploited.

c) If they become aware of cases of discrimination, they may take measures in accordance with Sections 7 and 8 or consult their superiors on the next management level or a relevant advisory body in accordance with Section 7 paragraph 3.

Section 5

Awareness raising and prevention

Awareness-raising and prevention measures include the following:

- a) making this Directive known to all members and associates of the University of Cologne
- b) providing counselling services (with the possibility of anonymous information and counselling)
- (c) providing information to persons with supervisory, managerial or training responsibilities
- (d) integrating the issue into training courses, in particular for managers and teachers
- (e) providing information, publicity and empowerment measures
- (f) integrating accessibility and security (e.g. avoiding places of fear) in building concepts for the campus.

Section 6

Rights of persons concerned

(1) Persons who feel discriminated against under Section 2 have the possibility to

- seek counselling (Section 7)

and/or

- complain (Section 8).

At any stage of the procedure, persons concerned are free to make use of other internal and external counselling services.

(2) Affected persons may not be discriminated against for exercising their right to seek advice and/or lodge a complaint. The same applies to supporters and witnesses of the persons concerned.

Section 7

Informal procedure: initial contact, advice, possible further steps

(1) The informal procedure serves to advise and support persons concerned. It consists of initial contact (paragraph 2), individual advice (paragraph 3) and possible further steps (paragraph 5).

(2) Initial contact:

The initial contact is made by the person concerned or by a third party with the contact person chosen by the person concerned. Official channels do not have to be followed. The contact person shall refer the person concerned to suitable contact persons at the University of Cologne for advice and/or shall refer to external advisory services and the possibility of lodging a complaint in accordance with Section 8 if they are not responsible for the specific case constellation or are not in a position to provide qualified advice.

Contact persons for initial contact are all persons with teaching, management and training functions (e.g. managers/supervisors, professors, members of the university headship or the dean's offices of the Faculties).

The initial contact can also be made at the advisory/counselling centres detailed in paragraph 3.

(3) Advice:

The task of the advisory centres/contact persons at the University of Cologne is to offer the person concerned an opportunity to speak out and to inform them about possibilities of support as well as about a possible complaints procedure (Section 8). They clearly communicate the possibilities and limits of their offer as well as the advisory procedure. If necessary, they refer to internal and/or external advisory services. The advisory centres/contact persons can recommend possible further steps (paragraph 5).

Possible advisory centres/contact persons are:

Generally:

a) The decentral Equal Opportunities Officers of the Faculties and the central Equal Opportunities Officer (primarily in the case of discrimination based on gender or sexualised discrimination).

b) Department Gender & Diversity Management

For employees, beyond the general centres/persons:

c) The General Equal Treatment Act complaints office at the UoC's Legal Department (Sections 12 paragraph 5, 13 paragraph 1 AGG)

d) Staff and management counselling

e) Staff council for technical and administrative staff, staff council for scientific and artistic staff, staff council for scientific staff at University Hospital Cologne, if responsible; youth and trainee representation

f) Representative of severely disabled persons

g) Representative for racism critique

h) Racism-critical advice from the Department Gender & Diversity Management

For students, beyond the general centres/persons:

- Faculty liaison officers in the event of discrimination against students
- Inquiry and Complaints Office at the Vice-Rectorate for Teaching and Studies
- Representative for racism critique
- Advice of the Gender & Diversity Management Department on racism critique
- Representative for students with disabilities or chronic illnesses
- Student representative bodies
- Members of the student union AStA, the Autonomous Women's and Lesbian Affairs Office, the Autonomous Lesbian and Gay Affairs Office, the Autonomous Queer Affairs Office (AQUK), the Autonomous 'Studying without Barriers' Office, the Autonomous BIPOC Office (Black, Indigenous, People of Color)

(4) Confidentiality:

The initial contact and advisory services at the offices of the University of Cologne detailed in paragraph 3 are subject to confidentiality, whereby possible limits (e.g. legal disclosure obligations) should be made transparent in the advisory sessions.

(5) Possible further steps:

Possible further steps, with the agreement of the person concerned or their representative, are, for example:

- accompaniment to further informal talks
- conflict mediation
- establishing contact to a psychosocial counselling centre
- accompaniment in the event of a complaint in accordance with Section 8.

Section 8 Complaint

(1) The purpose of a complaint is to inform the responsible body at the UoC of the allegations and, where appropriate, to take further action against the accused person(s) or the accused institution. The complaint can be initiated by the person concerned or by a third party without prior informal proceedings.

(2) The complaint can be lodged with the following offices/persons:

- the person's supervisor/manager
- the General Equal Treatment Act complaints office for employees

- the Human Resources Division (Division 4 of the central administration) in the case of employees
- the Suggestions and Complaints Office (SCO) for students
- the Student Affairs Division (Division 2 of the central administration) in the case of students
- the Faculty dean's offices
- the university headship

Insofar as the aforementioned bodies are not responsible for the verification of the complaint pursuant to paragraph 5, the complaint shall be forwarded to the competent body pursuant to paragraph 5 for verification.

(3) The complaint shall be made in writing and shall describe the facts and circumstances perceived as discriminatory as precisely as possible. It shall contain the following information:

- a detailed description of the facts and circumstances perceived to be discriminatory
- the naming of witnesses and evidence, if available
- indication of which other persons have already been informed about the incident and whether any measures have already been taken; if so, these should be indicated.

(4) The complaint is not subject to confidentiality. The person making the complaint has the possibility at any time to request the suspension or withdrawal of the complaint procedure. However, the procedure may also be continued against the changed will of the person concerned if the University is obliged to act (e.g. by labour or service law requirements).

(5) In the case of employees, the procedure shall be pursued by the Human Resources Department, in the case of students by the Student Affairs Division or by the Legal Department.

(6) The responsible body shall investigate the facts and circumstances of the case, determine the nature and scope of the investigation and request the accused person to comment on the content of the complaint in a personal interview or in writing. In doing so, it may question witnesses and obtain and examine further evidence. Hearings, evidence and established facts are generally documented.

Section 9

Measures

(1) Violations of this Directive will effect appropriate, necessary, and reasonable measures to be taken in each individual case to protect the person concerned. These measures depend on the employment, service, civil service or higher education law status of the offender, and hence specific requirements apply. The powers of the University under employment, service, civil service, and higher education law shall not be restricted by the provisions of this Directive.

(2) The following measures may be considered in the case of employees of the University of Cologne, depending on the seriousness of the act of discrimination:

- a regulating talk
- instruction
- warning
- ban from the use of university facilities
- house ban (e.g. partial or temporary)
- disciplinary warning letter
- transfer out of or to another position at the university
- withdrawal of a teaching assignment
- disciplinary measures as prescribed by law (in the case of civil servants)
- criminal charge

(3) In the case of students and all those mentioned under Section 1 who are not employed at the University of Cologne, the following measures may be considered, depending on the seriousness of the act of discrimination:

- a regulating talk
- instruction
- warning
- ban from the use of (certain) university facilities
- ban from courses
- house ban
- de-registration, if the preconditions in accordance with Section 51a HG are met
- criminal charge

Section 10

Reporting, collection of data, evaluation

Advisory sessions and complaints are documented by the responsible advisory and complaints offices. All of the UoC's official advisory and complaints offices collect data on the number of complaints lodged as well as types of discrimination reported in anonymous form and in compliance with all data protection regulations. The data is queried by the Department Gender & Diversity Management at the end of the year in an anonymous form. This serves to

ensure the quality of the advisory and support services and helps the university develop appropriate prevention services.

Section 11

Entry into force

This Directive shall enter into force on the day following their publication in the Official Bulletins of the University of Cologne. At the same time, the Guideline on Dealing with Discrimination, Sexual Violence and Bullying of the University of Cologne of 15 February 2019 (Official Bulletins 22/2019) shall cease to apply.

Issued by decision of the Senate of the University of Cologne on 15 June 2022.

Cologne, 12 July 2022

sgd.

The Rector
of the University of Cologne
Professor Dr Axel Freimuth