

# **Dossier**

## **Legal complaints assistance by associations**

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BUG e.V.,  
Greifswalder Str. 4, 10405 Berlin  
Phone: 030 688 366 18  
E-Mail: [info@bug-ev.org](mailto:info@bug-ev.org)

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## Legal complaints assistance by associations

### 1. Introduction

People affected by discrimination often do not take legal action – the obstacles faced by individual complainants are difficult to overcome alone. These are the costs and duration of the proceeding, the lack of specialisation of many lawyers and fundamentally the inaccessibility of the law.

[Here](#) you can find the Annual Report 2020 of the Federal Anti-Discrimination Agency as a PDF download or order a hard copy to take home.

Legal proceedings can take several years – especially if they go through various instances. For many people affected, this is an unacceptable period, as they often want to achieve a result quickly, for example, the refraining of discriminatory behaviour of the defendant.

Legal proceedings can generally be expensive. In addition to the costs of lawyers, which vary depending on the amount in dispute, there are also court costs. The party who loses the case shall bear the costs of the proceedings and the costs of the other party. Although there are legal expense insurances or legal aid, not all complainants have these at their disposal. The more protracted a procedure is and the more instances it goes through, the more costs may arise. Potential high costs of legal proceedings through the various instances deter many potential complainants.

Moreover, there are only a few lawyers that are specialized in the General Act on Equal Treatment (AGG). Most of these lawyers are working in the sector of labour law in which the AGG regularly finds application. The lack of specialisation of these lawyers within judicial anti-discrimination proceedings results in obstacles, because, with insufficient knowledge, rights are not recognized and enforced.

Most people affected by discrimination have not undergone a legal education and have not received knowledge about their own rights in terms of equal treatment, therefore they cannot defend themselves. Even though some of them know the basics of the General Act on Equal Treatment, it is not guaranteed that they are able to recognize the legal criteria for discrimination and which rights may be applicable. Furthermore, the legal language of the General Act on Equal Treatment is difficult to access. There are anti-discrimination agencies where affected people can get clarification and advice regarding their rights and claims.

Due to these obstacles, it is important that potential complainants get the opportunity to be supported in their concerns by qualified associations. This dossier will supply information about support through associations in Germany and other European countries.

## 1.1. National Situation

Associations in Germany have various options through which to support plaintiffs. These are found in general procedural law, anti-discrimination law and consumer law. On the one hand, associations can support the plaintiffs on trial as [legal advisors](#). In this case, the affected person is guiding the proceeding and the association is just supporting the plaintiff on the side.

[Representative action](#) presents another opportunity for the association to appear in court. Where associations would otherwise act as an assistance on the side of the plaintiff, a representative action allows the association to impose the rights of the affected person in one's own name. The plaintiff transfers her\*his right to bring a suit.

Additionally, there is the possibility of a [group action](#).

A group action allows the association under particular conditions to appear in court as the plaintiff. No one else is represented.

These possibilities are provided by various laws and are presented in detail in this dossier.

### 1.1.1. Legal Advisor

Within legal actions, the plaintiff usually has a lawyer. The lawyer is the plaintiff's legal advisor -which means that he/she represents the plaintiff in court and takes all actions for them.

In addition, the plaintiff can consult an Ombudsman or outside assistance if desired. Usually this is someone the plaintiff can trust or an institution, for example a friend or a specialized association. The association can appear next to the plaintiff and his/her lawyer and can make further suggestions within the trial up to a certain point. The associations' presentation is evaluated as if the plaintiff introduced it independently, provided that the testimony is not immediately revoked. Consequently, it is necessary that the plaintiff is personally present during trial. The assistance can portray moral support as well. Ideally, there is an exchange between the association and the lawyer, to ensure coordinated action.

The request of assistance is only possible if there is a legal basis. Assistance is possible within different proceedings, specifically within administrative proceedings, administrative action, criminal procedure and civil action.

Legal requirements in order to receive a legal advisor depend on the prevailing field of law.

§ 23 AGG

...

(2) Anti-discrimination associations are, within their purpose, allowed to appear as assistance for the affected person in court and in the trial. Furthermore, the regulations of the rules of court, especially those that prohibit the assistance of further oral presentation, stay untouched.

BUG supported, as a legal advisor, a plaintiff who was not allowed to wear her hijab during her legal traineeship in a district court in Bavaria. She sued after an unsuccessful complaint the district court of Augsburg which [decided](#), that the judicial regulation was unlawful. The higher administrative court in Munich denied the lawsuit after an appeal. This case has been revised in a third legal instance. The federal administrative court [confirmed the unlawfulness](#) of the regulation.

### 1.1.1.1. Administrative Proceedings

An administrative proceeding is the occupation of a public authority. Such proceedings are not court proceedings meaning that there are no plaintiff or defendant parties, rather involved people within the process. An involved person can consult a legal advisor according to [§ 14 IV of the Administrative Procedures Act](#) (VwVfG). Although the advisor has no power of representation (the involved person is required to appear in person and the legal advisor just appears next to them), he or she can act in a supportive way during meetings and hearings and make statements on behalf of the party involved, as long as these are not immediately revoked by the party. A legal advisor needs to be rejected according to § 14 V VwVfG, if he/she is, contrarily to [§ 3 of the Act on Out-of-Court Legal Services](#) (RDG), performing legal services without a legal basis.

A legal service, according to [§ 2 I RDG](#) is every action within foreign matters that requires legal examination of the case. § 3 RDG allows a contribution of legal services if there is a legal basis. Legal bases can be found in part 2 (Legal services through non- registered person) and/or part 3 (Legal services through a registered person) of RDG.

Further information about legal service law can be found [here](#).

### 1.1.1.2. Administrative Action

The preconditions of a legal assistance in an administrative action are regulated in [§ 67 VII of the Administrative Procedure Code](#) (VwGO). Cases of ethnic profiling through the police can be punished judicially within an administrative action. The presence of an assistance can be requested.

The regulation regarding the legal assistance only applies to the support of the involved person. Therefore, the involved person who claims an aid needs to be personally present during trial.

The BUG has been active as a legal advisor in various legal actions regarding ethnic profiling. More information about these legal actions can be found [here](#). Further information about ethnic profiling can be found [here](#).

A legal advisor can be anybody who has been registered as an authorized representative by an administrative court. Legal advisors could be employees of the involved person, family members of age, tax consultants or trade unions and employee unions. Other people can be registered too if it is relevant and necessary to that case. According to § 67 VII VwGO the court can deny people as an advisor if they are of the view that this particular person is not able to present the ratio properly or that this person is not suitable. However, the court has to allow lawyers and people with qualifications for judicial office.

In cases where associations are rejected as a legal advisor, they can recruit a person with a qualification for judicial office who is part of the association and cannot be denied, as a legal advisor on trial. This person can appear simultaneously as a representative of the association. It is not possible for an aid to submit written pleadings. However, in practice, this depends on the judge. If a request to submit written pleadings is rejected, there is an option for the representative lawyer to take into account the pleading and use it in the proceeding.

### 1.1.1.3. Criminal Procedure

There are two different types of assistance in the law of criminal procedure. According to [§ 68b of the Code of Criminal Procedure](#) (StPO), there is a witness advisor who has to be a lawyer at the same time. The witness counsel informs the witnesses about their procedural rights and shall properly accompany them in all stages of the proceeding. The witness can choose if they require a witness advisor. Alternatively, under certain conditions a witness advisor can be assigned. Usually this is the case within sex crimes. According to [§ 149 I StPO](#), the partner of the accused person must be allowed as assistance during the main hearing and needs to be listened to on demand. According to [§ 149 II StPO](#), this also applies for legal representatives.

### 1.1.1.4. Civil Action

The regulations regarding recruiting legal assistance in civil actions can be found in the Code of Civil Procedure (ZPO). A legal assistance is usually possible in all [civil proceedings](#). This also applies to a [discrimination lawsuit](#), which might be submitted because of the characteristics mentioned in [§ 1 AGG](#). Associations can perform the role of a legal advisor and have a further advisory function.

#### 1.1.1.4.1. § 90 Code of Civil Procedure (ZPO)

The consultation of a legal advisor in civil actions is regulated in [§ 90 I ZPO](#). The prevailing court decides who they admit as an advisor. The precondition of being a legal advisor is expediency and a need on the part of the involved person. That is why family members of age, people with a qualification for judicial office, consumer advice centres, employees of the involved person and legal entities of public law can appear as legal assistance. If someone who wants to be a legal advisor does not fit into the mentioned categories, the court can separately declare them as a legal advisor. This means that the court itself can decide if they want to admit the person as a legal advisor if they do not fit in the categories.

In civil proceedings there has to be a representative lawyer within a civil proceeding at the district court. In addition, a legal assistance is possible.

#### 1.1.1.4.2. §23 II General Act on Equal Treatment (AGG)

The [anti-racism guideline](#), as well as the [employment guideline](#), claims that associations should support plaintiffs or act for them due to the national equal treatment legislation.

The AGG only provides the legal advisor, which is regulated in [§ 23 AGG](#). Therefore, anti-racism associations can appear as a legal advisor in a discrimination lawsuit. The precondition is that the association has at least 75 members or that they form a union of at least seven associations. They are not allowed to be professionally active.

The BUG offers assistance to people who have been discriminated against and want to pursue judicial action within the limits of the AGG. Further information about the BUGs offers of assistance can be found [here](#).

The lawyer is under certain conditions to only have limited familiarity with equal treatment and the AGG. An anti-discrimination association that offers assistance is usually well informed about the topic and could also provide specialized knowledge. Therefore, the legal advisor can contribute specialised knowledge and support the lawyer.

Discrimination always affects the affected person personally. The self-esteem of an affected person can be significantly affected. Emotional support is therefore another reason that an assistance through an anti-discrimination association could be helpful. Furthermore, an assistance can usually explain the complex and technical course of the lawsuit and act as a bridge to the lawyer.

Affected people mostly find the initial approach with an anti-discrimination association easily accessible compared to a lawyer. The legal advisor is thus the first contact in practice and may get in touch with a lawyer on their behalf.

However, a legal advisor does not have the same authority as the lawyer. The aid does not have the right to inspect the files, question witnesses or to submit their own applications for trial. Most judges do not have many experiences with legal assistance, as such they are flexible if associations who are accompanying a lawsuit want to submit a brief or interview a witness.

### 1.1.2. Representative Action

A representative action is the locus standing of a third-party. This means that the third-party does not appear as a legal advisor but sues for a foreign right in its own name. The plaintiff assigns his/her right to bring a suit to the association which appears as the plaintiff on trial. Above the declaration of a violation of a legally protected matter, claims for damages can get through.

A representative action within the AGG is not envisaged. The BUG supports the introduction of such a possibility for support for associations. Please click [here](#) for further information.

A representative action does not only portray the assignment of a legal proceeding. It also represents the support of the involved person by sharing the mental burden of the proceeding or even completely taking over the burden. There is a legal representative action as well as an arbitrary representative action. The difference between the two is that the legal representative action is scheduled in relevant laws while the arbitrary representative action is chosen and is only possible under certain conditions. Within the arbitrary representative action, the legal entity whose rights have been violated, authorizes a person or an association to conduct the legal proceeding.

A representative action distinguishes itself from a group action, which is further explained [here](#).

At first, the representative person needs to be authorized by the involved person. This results in the principle that an involved person needs to sue for themselves. Furthermore, the representative person must have an interest worth protecting to assert the rights of the involved person. Significant reasons for a representative action are required. The representative person is not allowed to participate in the proceeding outside of the representative action to avoid a conflict of interests. The representative person is not allowed to be a joint plaintiff or the representative of the opposing side. This does not exclude the acquisition of a benefit in case

of a successful lawsuit. It is important that the interests of the association do not contradict the interests of the involved person.

The general regulation that the party who loses the proceeding has to pay for legal costs is valid. The legal costs comprise of court costs and costs regarding legal advice and representation. Legal costs include the costs of the opposing side. Since the affected person is not the plaintiff within a representative action, the representative person carries the risk for the legal costs.

The German [Equality for People with Disabilities Act](#) (BGG), as well as the [German Social Code](#) intend a legal representative action for associations in Germany. A new legal representative action has been introduced through the [Berlin State Anti-Discrimination Act](#) at a regional state level.

### 1.1.2.1. Equality for Persons with Disabilities Act (BGG)

Certified associations have, within the area of discrimination of people with disabilities according to [§ 14 BGG](#), the right to sue in the form of a representative action in administrative and social law proceedings.

The BUG belongs to the certified associations since 2015. The list with all certified associations can be found [here](#).

The possibility of a representative action only exists in certain cases of infringements of rights, usually in terms of discrimination against a person with disability through a public authority. [§ 7 BGG](#) regulates who a public authority is. Discrimination exists when there is a different treatment of people with and without disabilities without justification, resulting in a disabled person experiencing thereby disadvantages. The state has the obligation to guarantee accessibility in buildings and needs to conveniently provide people with disabilities access to information from departments.

Only associations which are acknowledged through the federal ministry of labour and social affairs (BMAS) can sue in the form of a representative action. If the preconditions in [§ 15 III BGG](#) are given, recognition can be granted. Therefore, an association has to (1) constantly support the interests of people with disabilities, (2) represent the interests of people with disabilities at federal level, (3) exist at least three years at the moment of recognition, (4) offer a proper task fulfilment, type and scope of the previous occupation of the members as well as the performance of the association need to take in consideration. The association has to be free of the corporation tax.

### 1.1.2.2. German Social Code

The authorization of a representative action with regard to the rights of people with disabilities are regulated in [§ 85 SGB IX](#). An essential precondition in terms of a representative action is a violation of the rights mentioned in SGB IX. SGB IX mainly regulates the rights of people with disabilities in the employment sector and the resulting obligations of the employers. Obligations may be the support of severely handicapped people and their integration in the company or office.

The reform of the SGB IX, which came into force in 2018, caused a change of the term of disability and adapted it to the UN Convention on the Rights of Persons with Disabilities. You can look up the new definition of disability in [§ 2 I SGB IX](#).



Associations provide support to people with disabilities at a federal and regional level. Only local working associations are excluded. The work of an association does not have to be limited on assistance of a person with disability. Beside classic disability organisations, there are charities, unions and anti-discrimination associations that can sue through a representative action according to § 85 SGB IX.

### **1.1.2.3. Berlin-State Anti-Discrimination Act**

The [Berlin State Anti-Discrimination Act](#) (LADG) was passed in June 2020 in Berlin. Berlin is the first state to enact a law against discrimination by authorities. The LADG provides representative action in § 9 III LADG.

According to § 9 III LADG, a justifiable association can apply for legal protecting instead of the person who has the right to sue if there is approval. § 10 LADG regulates the preconditions that associations must exhibit to be beneficiary of a group action. The associations will be registered if requested and if they fulfil the preconditions. You can find further information with regard to the preconditions [here](#). The association is not allowed to be involved in the proceeding. Furthermore, all requirements of the proceeding need to exist with regard to the person who has the right to sue.

Although § 9 LADG is classified as a legal anti-discrimination group action, it also includes representative actions. The formulation “instead of the person who has the right of action“ represents that, due to the fact that the association is not going to appear next to the person (assistance) and the association is also not going to appear independently on trial in terms of a violation of a legally protected matter (group action).

### **1.1.3. Association Action**

The association asserts the violation of rights of the general public within a group action. The violation of some rights cannot be asserted in the form of a group action. In general, there is only a right of action if the plaintiff is violated in his/her rights. An exception is given in the right of group actions where associations have the possibility of leading a lawsuit without asserting a violation of their own rights. This exception provides the possibility of taking action against certain disadvantaged structures and procedures even though there is no directly affected person who wants to sue. The group action serves the collective legal protection. Associations have to fulfil the preconditions to make use of a group action. This provides for proper usage and the security that collective interests are being pursued.

Associations completely bear the court costs because they sue independently.

There are possibilities to lead a group action on the federal and the state level.

#### **1.1.3.1. Federal Level**

There are different laws at a federal level that allow a group action such as the Equal Opportunities for People with Disabilities Act (BGG), the law of injunction suit (UKlaG), the law against unauthorized competition (UWG) and the federal nature conservation law

(BNatSchG). A special form of the group action exists in the General Act on Equal Treatment (AGG). It is called “small” group action.

#### **1.1.3.1.1. Equal Opportunities for Persons with Disabilities Act**

The Equal Opportunities for Persons with Disabilities Act (BGG) only applies on a federal level. The states have their own regional laws to dispose discrimination against people with disabilities in certain federal states.

[Here](#), you can find a checklist in terms of the preconditions regarding to a group action.

The right of associations to initiate legal proceedings within the Equal Opportunities for People with Disabilities Act is regulated in [§ 15 BGG](#). Therefore, authorized associations can file a suit even though their own rights are not violated or there is no certain affected person. Individual discrimination is not required. A group action only looks toward an ascertainment of an infringement against the act, a regulation of accessibility and a regulation of the use of sign language or other assistance of communication.

##### Subject and aim of the lawsuit:

§ 15 BGG contains special demands regarding the subject and aim of the lawsuit. A lawsuit is only possible if a public force offends the requirement of accessibility or the regulations of federal law regarding the use sign language or other communication systems. [§ 1 Ia BGG](#) regulates who are public authorities.

##### Preconditions of the proceeding:

A lawsuit is only admissible if a measure touches the statutory area of responsibility of the association. As a result, the association has to be active in areas in which problems are settled. Furthermore, associations cannot sue against measures that were already examined by the social or administrative tribunal. An association is generally not allowed to file a suit if a disabled person is able, or would have been able, to defend the rights for themselves. An exception under this condition is possible if the case is of particular significance. This is to affirm if multiple similar cases exist, and an elucidation might clarify that or if the case is relevant for public interest. This is typical within cases regarding accessible railway stations.

##### Justifiable associations:

According to the AGG, associations need to be acknowledged to file a suit. The recognition occurs through the Federal Ministry of Labour and Social Affairs (BMAS). The advisory council of the claims of people with disabilities suggests the recognition of associations to the BMAS, which the BMAS can grant. The BMAS is not obliged to recognize the associations. Although according to [§ 15 III BGG](#), the BMAS should recognize those associations which constantly support rights of people with disabilities on account of their constitution. The associations, including all their members, must have a vocation for representing the interests of people with disabilities at a federal level and must have existed for at least three years at the time of recognition. Further they have to guarantee a proper task fulfilment. The association needs to be free of corporation tax.

### 1.1.3.1.2. German Act on Injunctive Relief

The consumer protection law schedules a right of associations to initiate legal proceedings which is regulated in the Act on Injunctive Relief (UKlaG). Since individual applications are mostly insufficient in the enforcement of consumer protection, the UKlaG has been created to guarantee better consumer protection. [Here](#) you can find an example for an association action in the context of the UKlaG.

Consumer associations must be registered on the list of qualified institutions. This [list](#) is published twice a year by the Federal Justice Office on the first of January and on the first of June.

Moreover, a lawsuit pursuant to § 1 UKlaG, is possible if terms and conditions violate the AGG. This is the case if terms and conditions exclude rights that are provided in the AGG. So long as associations want to sue, consultation and the support of consumers must be part of their aims.

#### Subject and aim of the lawsuit:

If terms and conditions prevent the protection of consumers, associations can safeguard their interests. Omission, as well as revocation can be claimed, according to [§ 1 UKlaG](#). The UKlaG does not only protect the law of terms and conditions, but also aims for the compliance of consumer protection legislation (cf. [§ 2 II Nr. 1 UKlaG](#)).

#### Preconditions of the proceeding:

The lawsuit needs to be submitted at the particular district court where the defendant lives or has his/her commercial branch (cf. [§ 6 I UKlaG](#)). Associations initially strive for [pre-trial measures](#), mostly by sending a warning before the commencement of action. This is not a duty but can be advantageous. If the warning is ignored and the opposing party confesses his/her liability during trial, the complaining party has to bear all court costs (cf. [§ 93 ZPO](#)), since the hearing was not necessary if a previous warning would have been sent.

#### Entitled associations:

Associations can sue for an injunction or a revocation if invalid terms and conditions are being used in cases of invalid individual complaints or unlawful consumer protection business practices. Entitled departments are, according to [§ 3 I UKlaG](#), qualified public institutions, judicable associations which promote industrial or independent interests or chambers of industry and commerce. Qualified institutions are specified in [§ 4 UKlaG](#). They can only be acknowledged as an authority to sue on application. The registration takes place if all preconditions which are mentioned in § 4 UKlaG are fulfilled: only associations with legal capacity that pursue the aim of safeguarding interests of consumers through non-commercial information and consultation are registrable. Furthermore, they must have at least 75 members or comprise of at least three associations which are active in the same task fields and have existed for at least a year. They also need to ensure a proper task fulfilment.

#### 1.1.3.1.2.1. Example of an Association Action in accordance with UKlaG

An example of an association action can be found within the German Act on Injunctive Relief.

The case deals with the ban on carrying mobility aids, in particular electronic roll chairs and electric vehicles on public transportation. At the end of 2014 various transport federations limited the transportation of electric scooters state-wide with the justification that it portrays a safety risk, especially on buses. A lot of concerned people experienced the limitation as a restriction of their right of participation and self-determined mobility. A blanket ban on carrying electric scooters was announced in Kiel at a press conference. Users found out about the ban because mobility aids were prohibited on the bus. The Federal Self-help Association for Disabled People e.V (BSK) which is, according to § 4 UKlaG, authorized to sue as an anti-discrimination association, took legal action in 2015 against this ban in Kiel, Bochum and Mannheim. In this case, the association's action served as collective legal protection, otherwise there would have been an excess of individual lawsuits.

The decision of the higher regional court in Schleswig Holstein can be found [here](#).

The judgment of the higher regional court in Hamm can be found [here](#).

The present association action ensured legal clarification. § 1 UKlaG and § 2 UKlaG were considered as a legal basis for the claim of injunctive regarding the carriage ban. A precondition of a claim in accordance with § 1UKlaG is the existence of invalid terms and conditions. It is questionable if a press release can be considered as terms and conditions. A claim regarding § 2 UKlaG requires a violation of the Consumer Protection Act. § 22 PBefG can be considered as a special norm, whereby it is not clear if the claim includes the carrying of mobility aids regarded for transportation. § 19 AGG further comes into consideration as a consumer protection law. However, it is controversial if the AGG is acknowledged as a consumer protection act. The BSK urged certain transport companies and passed an injunction procedure, as well as a main proceeding in Kiel and Bochum with filed legal remedies.

The BSK was successful within the second instance in Kiel with a preliminary injunction, the higher regional court in Schleswig Holstein accepted a claim, in accordance with § 1 UKlaG in conjunction with § 19 AGG, and also a violation of § 19 AGG regarding terms and conditions within a press release. The defendant party is obligated to lift the blank ban and to set differentiated criteria regarding that prohibition. The higher regional court in Schleswig Holstein does not mention the AGG in the main proceedings because they decided that the Public Transport Act is the priority. Additionally, transportation can be refused if it is necessary to fulfil the given safety requirements.

The higher regional court in Hamm decided that there is no comparability between the AGG and § 2 II UKlaG and therefore the claim was denied, and a revision was not approved.

Simultaneously, there was a political development which led to a decree from the highest traffic authorities. That decree regulates on a national level under which requirements an electric scooter can be carried on buses. These particular scooters are marked with a seal.

### **1.1.3.1.3. Act Against Unfaire Competition**

The Act Against Unfair Competition (UWG) also includes the possibility of an association action. In contrast to the UKlaG, which focuses on consumer protection law, the UWG deals with competition law.

The UWG protects competitors, consumers and other attendees of the market. According to [§ 3 UWG](#) actions which are suitable for affecting the competition to the detriment of competitors, consumers and other attendees, are forbidden. For example, it is not allowed to disparage the goods of a competitor, to disguise the advertising nature of a competitive action, to impede competitors systematically or to exploit the commercial inexperience of children and adolescents (cf. [§ 4 UWG](#)). If the mentioned actions take place, associations stated in [§ 8 III Nr. 1-4 UWG](#) can sue for elimination or an injunction.

The Federation of German Consumer Organisations (VZVB) sued Verivox, within the limits of the UWG. Verivox has been accused of including just insurance companies, which have a commission agreement with Verivox, in an insurance comparison. It was not evident for the consumers that just a particular part of the market was portrayed in the comparison. The regional court in Heidelberg assumed a violation against the insurance contract law in [their judgment](#) on 06.03.2020.

#### Subject & Aim of the lawsuit:

An elimination or injunction of an action is generally the aim of the lawsuit. According to [§ 10 UWG](#), a claim regarding the absorption of profit can be asserted if the competitive disadvantageous actions were committed intentionally. This means that associations, as well as competitors and consumers, can demand the surrender of profits. According to [§ 9 UWG](#), competitors can demand compensation if they suffered damage.

Preconditions of the proceeding:

A [warning](#) should take place before the complaint elevation. One is trying to persuade the opposing party to submit a declaration of discontinuance with the warning. This is not a duty but usual. If a warning did not take place and the opposing party confessed his/her liability during trial, the complaining party has to bear all court costs (cf. [§ 93 ZPO](#)). The trial would not have been necessary if a warning previously took place. Disputes could have been clarified without court.

#### Entitled associations:

The feature of the UWG is that the affected consumer cannot enforce his/her rights and thus is not authorized to take legal action. The affected consumer can only contact an authorized consumer advice centre. Competitors, associations with legal capacity which support commercial and independent interest, qualified institutions and chambers of industry and commerce as well as chambers of handicrafts can be authorized to take legal action (cf. [§ 8 UWG](#)). Qualified institutions within the meaning of § 8 UWG are, according to § 4 UKlaG, institutions which are authorized to take legal action. The UWG itself does not decide preconditions regarding qualified institutions but refers to the UKlaG. Therefore, the [same preconditions](#) as in § 4 UKlaG need to be fulfilled. Anti-discrimination associations can also make use of the avenues within the UWG, although they need to include consumer protection in their statute first. Actions with regard to the UWG as well as the AGG would be conceivable in terms of discriminating advertising.

#### **1.1.3.1.4. Federal Nature Conservation Act**

The need for association action is particularly evident in terms of environmental law. In most cases it is not individuals, whose rights are violated.

If a motorway is to be built through a nature reserve, this affects nature, which cannot file a lawsuit itself. Therefore, authorized nature conservation associations have the possibility to assert legal violations of nature conservation legislation (cf. [§ 64 BNatSchG](#)).

The legal position of nature conservation and environmental organisations has been strengthened most recently due to the so-called [Aarhus-Convention](#). It introduced the [Environmental Remedies Act](#) (UmwRG) to Germany. Thus, environmental associations can file a lawsuit if, for example, the prescribed environmental impact assessment was not carried out or not carried out correctly during the construction of industrial plants.

Further information about the development of the association action regarding nature conservation law can be found [here](#).

This way environmental associations are entitled to sue when for example Environmental Impact Assessments are either incorrectly or not at all implemented in the construction of industrial facilities. (cf. [§ 2 UmwRG](#)).

Likewise, the European Court of Justice (ECJ) has strengthened the association action with the [Trianel-Judgement](#). The ECJ stated in this case, that an association must in general be able to rely on regulations that only protect the interests of the general public and not only the legal interests of individuals.

#### Subject & Aim of the lawsuit:

Authorized associations can file an action against decisions without being violated in their own rights. This is possible in cases dealing with the preparation of regulations or laws regarding nature conservation legislation or the granting of liberations of bids and bans for the protection of protected marine areas (cf. [§ 64 BNatSchG](#)). Furthermore, when preparing regulations, a statement needs to be made by the associations and there has to be the opportunity for an inspection of expert reports with regard to nature conservation.

#### Entitled associations:

The right to file an association action pursuant to the BNatSchG only applies to associations that are authorized, in compliance with [§ 3 UmwRG](#). According to § 3 UmwRG, associations have to exist for at least three years and also need to constantly strive and promote environmental protection within their statutes. Furthermore, they must guarantee a proper task fulfilment and enable membership for everyone.

You can find a list of authorized environmental and nature conservation associations [here](#).

#### **1.1.3.1.5. General Act on Equal Treatment**

The General Act on Equal Treatment (AGG) does not schedule an extensive association action. Nevertheless a special form of an association action can be found in [§ 17 II AGG](#) in conjunction with [§ 23 III S. 1 BetrVG](#). It is called “small” association action. Collective legal injunctive reliefs and removals can be established. The employer can also be urged to tolerate or take actions.

Preconditions for this kind of lawsuit are the entitlement of the complainant and a gross infringement against the regulations of the second section of the AGG.

Those entitled are unions that are represented in a company as well as in works councils. A union is represented in a company if at least one of their members is an employee of the company without being an executive. Affected parties can only appear as witnesses. The union and the works council also does not need the authority from those affected to be authorized to take legal actions.

§ 17 II AGG:

(2) In case of gross violation of the regulations of § 1 I S.1 of the Industrial Constitution Law by the employer, works councils and unions of businesses meeting the conditions of this section and the condition of § 23 III 1 of the Industrial Constitution Law can claim the rights referred to in the latter, § 23 III S. 5 applies accordingly. With the demand, no rights of the disadvantaged may be claimed.

Furthermore, there has to be a gross infringement against the regulations of the second section of the AGG. This includes the discrimination ban in accordance with [§ 7 I AGG](#), organisational duties according to [§§ 11, 12 AGG](#) and the ban on disciplinary treatment in accordance with [16 AGG](#). In the case of a violation of the duties, it is generally not a question of fault and not a question of whether they were violated by action or omission.

Whether an employer is at fault for a violation of the duties, is to be considered within the limits of a gross violation. The breach of duty must already have taken place during the suit. A breach of duty is gross if it is objectively significant and also obviously serious. The relevance can result out of repeated breaches of duty or the serious nature of the individual breaches of duty. It needs to be given objectively.

An example of a small association action is the unequal payment between male and female employees. Within the logistics company „Süderelbe GmbH“ women got paid 300 Euros less for the same work because they were paid through an employee collective agreement. Men who did the same work did get paid through an appreciably higher collective wage agreement. Therefore, the workers council submitted a request to take legal action against the gender discrimination. After the case became known through the press and also key customers found out about the discrimination, the management agreed to a settlement. The outcome was only partially satisfactory because the settlement only clarified the situation of the last six months even though a few women were employed even longer than that.

### 1.1.3.2. State Level

Associations also have the possibility of filing a suit at the state level. One of those possibilities is the association action which is regulated in the Berlin State Anti-Discrimination Act (LADG). Furthermore, you can find association actions within the [Animal Protection Law](#) and the [Equal Treatment of People with Disabilities Acts](#) of various federal states.

### 1.1.3.2.1. Berlin State Anti-Discrimination Act

The [Berlin State Anti-Discrimination Act](#) was passed in June 2020 in Berlin. The Federal State of Berlin is the first state which enacted a law against official discrimination. The LADG provides an association action in § 9 LADG.

#### Subject and Aim of the lawsuit:

With the introduction of the collective action, the LADG establishes collective legal protection to counteract the enforcement deficiencies of anti-discrimination law. Institutional and structural discrimination is to be counteracted so that associations must prove in their lawsuits that a violation has occurred not only in an individual case. Associations can only submit a declaratory action to objectively determine an infringement against the ban on discrimination and the ban on disciplinary treatment. The association action does not target claims for damages but is supposed to prevent structurally effective and discriminatory conduct.

The BUG is the first association that has been authorized on 10.09.2020 under the LADG as an association entitled to sue.

The Federal State of Berlin is the first German state to enact an anti-discrimination law. The LADG attracted attention from union parties that threatened to stop sending police officers to Berlin. You can read [here](#) how the state of Berlin reacted to those threats.

#### Preconditions of the proceeding:

An authorized association is only allowed to file a declaratory relief if an importance beyond individual consternation exists. Before filing a suit, the association must raise a complaint regarding the violation committed by an authority. This complaint is supposed to give authorities the opportunity to provide a remedy. A suit is invalid if an authority provides a remedy. This also applies if the authority provides a remedy after a complaint has been filed. If the public authority does not comply with the obligation to remedy the situation within three months of the complaint, an action by an association is admissible.

#### Entitled associations:

According to § 10 LADG, an anti-discrimination association can be acknowledged as an entitled association in terms of association actions. According to paragraph one, anti-discrimination associations are unions of people who do not perceive the interests of disadvantaged people within the meaning of § 2 LADG commercially or temporarily. A recognition of this kind of associations depends on different preconditions. Therefore, an anti-discrimination association has to have its location in Berlin and its field of activity has to include the state of Berlin. At the moment of application, the association has to exist for at least five years and needs to guarantee a proper task fulfilment. It also needs to be free of corporate tax, which means that the circle of associations that are able to be entitled is limited to professional associations without public nature and charitable associations. Professional associations without public nature can belong to associations of employers, for example unions. Trade associations as well as construction unions can also be included in the term of professional associations. Those are not anti-discrimination associations. The association is authorized if all preconditions are given.



#### 1.1.3.2.2. Animal Welfare

Bremen was the first federal state in Germany that established an [association law in animal welfare](#) in 2007. It also was the first state that established an Association Law in Nature Conservation in 1979 on a state level. Thereupon, the Saarland ([Association Law for recognised Animal Welfare Associations, TSVKG](#)) and North Rhine Westphalia ([Law on the Right of Associations to initiate legal proceedings and Rights of Participation for Animal Welfare Associations, TierschutzVMG NRW](#)) established an Association Law on Animal Welfare in 2013, whereby North Rhine Westphalia abolished the law again in 2018. In 2014 Rhineland-Palatinate ([State Law on the Rights of Participation and the Right to File Actions for recognised Animal Welfare Associations, TierSchLMVG](#)) and Schleswig Holstein ([Law on the Right of Animal Welfare Associations to sue](#)) followed, Baden-Wuerttemberg ([Law on Participation Rights and the Right of Associations to File Suits for Recognised Animal Welfare Organisations, TierSchMVG](#)) followed in 2015 and Lower Saxony ([Law on the Rights of Animal Welfare Organisations to Participate and to sue](#)) followed in 2017. On 20th August 2020, the Berlin House of Representatives also passed an association law regarding animal welfare ([Act on the Introduction of the Right of Animal Welfare Associations to sue, BlnTSVKG](#)).

Further information about association law regarding animal welfare can be found [here](#).

An association action is useful within animal welfare and nature conservation because violations do not concern individual rights but animals and nature. Since animals and nature cannot take legal action, they need to be represented through an association.

Due to association law, various kinds of suits are possible within different states. One can only claim for declaration in Bremen while an action for annulment, writ of mandamus and declaratory action is possible in Saarland or Rhineland-Palatinate.

The recognition requirements to use association law as an association are mostly identical in the federal states. An association that wants to be recognised needs to be registered as an unincorporated association or an independent foundation. Furthermore, the association has to constantly pursue the support of animal welfare, its registered office has to be within the relevant state and its field of activity has to extend within the whole national territory. Moreover, the association must have existed for at least five years and guarantee a proper fulfilment of its tasks. As in the context of other association actions, the applying association must be exempt from corporate income tax due to its non-profit status and offer the possibility for any person to join the association as a member.

#### 1.1.3.2.3. Equal Opportunities for Persons with Disabilities Acts

There are also Equal Opportunities for Persons with Disabilities Acts (BGG) at the state level. Every federal state has its own regional BGG. They are structurally and in terms of content based on the Federal BGG. Examples for the national BGGs are the [Bavarian Act on Equal Opportunities for Persons with Disabilities](#) (BayBGG), the [Act on Equal Opportunities for Persons with Disabilities of Hamburg](#) (HmbBGG), the [Act on Equal Opportunities of Persons with Disabilities of North Rhine Westphalia](#) (BGG NRW) as well as the [Act on Equal Opportunities for Persons with Disabilities of Mecklenburg-Western Pomerania](#) (LBGG M-V).

An overview of all state laws on the equality of persons with disabilities can be found [here](#).

All mentioned BGGs include the possibility of bringing an association action. Authorized associations are associations that are acknowledged by the [Federal BGG](#) and their associations on the federal state level. A public authority must violate the ban on discrimination, the equality requirement or the obligation to achieve accessibility in order for the association to be able to sue.

The association actions are regulated in [§ 17 BayBGG](#), [§ 13 HmbBGG](#), [§ 6 BGG NRW](#), [§ 15 LBGG M-V](#).

## 1.2. Lawsuit Support through Associations in Europe

Association actions do not only exist in Germany. EU bodies agreed on a European association action in summer 2020. Furthermore, collective law enforcement is provided in various European countries.

### 1.2.1. European Guideline regarding Association Actions

The European Parliament and the European Council have suggested a guideline with regard to association actions to protect collective interests of consumers and to cancel the directive 2009/22/EG. Key elements of this guideline should be a domestic as well as an international association action to specifically proceed against violations of Union law regarding consumer protection. In the following section, you will find further information about the [development](#), the [subject and aim](#) of the new directive as well as the [qualified institutions](#).

The suggestion by the European Parliament and Council can be found [here](#).

#### 1.2.1.1. The Development of the Draft Directive

The risk of breaches of Union law that affect collective interests of consumers increased due to economic globalisation and digitisation. It happens that consumers are affected in more than one member state. The possibility of legal redress is very important because the violations affect consumer protection law as well as a variety of consumers. A few Member States do not have this possibility and in other Member States this possibility is distinctly different.

In 2009 the [directive on injunctions for the protection of consumers' interest](#) (Directive 2009/22/EC) was adopted. This directive allows qualified institutions to bring an association action in order to protect collective interests of consumers. This procedure is mostly used successfully in cases of national violations. Regarding cross-border violations, this procedure seems less successful. The mentioned procedure shows considerable shortcomings that seem obstructive. For example, costs are high, the procedure is long and complex, the decisions have limited impact and it is difficult to enforce them.

There are significant differences within the Member States regarding enforcement and effectiveness of the directive. The defects of the procedure in accordance with the directive 2009/22/EG show that the problems regarding the enforcement of consumer law are not solved satisfactorily. Therefore, the European Union interferes to guarantee collective legal protection within international cases. The directive 2009/22/EG should be modernised and replaced.

For this purpose, the [directive 2018/0089](#) has been presented in early 2018 to harmonise collective legal protection within the Union. The draft was published in summer 2020. In accordance with the new directive, qualified institutions are supposed to bring a suit on behalf of consumers regarding an injunction, removal, or damages. The directive has to be accepted

by the Council of the European Union. Afterwards, the Member States have 24 months to implement it within national legislation. The proposed directive is supposed to regulate key elements and create a scope for association actions so that the legal traditions of member countries can be respected.

### 1.2.1.2. Subject and Aim of the Directive

The draft directive 2018/0089 (COD) strives for different aims. The scope of application of the former directive is supposed to extend with it. Besides consumer law, areas of data protection, financial services, tourist traffic and tourism, energy, telecommunications, and environment are supposed to be covered. With the new directive, minimum criteria are getting set for qualified institutions.

Within the scope of the draft directive 2018/0089 (COD) there is the possibility of third-party financing of judicial proceedings. Consequently, qualified institutions have to be transparent regarding their financial sources ([article 7 of the draft directive](#)). The funder is not allowed to influence the procedure and there must be no conflict of interest for the qualified entity.

Furthermore, the efficiency of the procedure of the association action is supposed to be guaranteed. According to [article 12 of the draft directive](#), the procedure is supposed to be carried out with due speed and in accordance with [article 15](#), member countries are supposed to prevent qualified institutions from being hindered by financial obstacles through high procedural costs. Further, they need to guarantee that consumers are informed about the outcome of the suit and that legal decisions, injunctions and statement decisions by courts and authorities apply as irrefutable evidence in individual legal protection procedures within the same member country, whereas in other countries, they apply as rebuttable presumption ([article 10 of the draft directive](#)).

The person who is affected by the presumption (the consumer) does not have to prove the assumed factual or legal situation. The opposing party can bring proof of the contrary to disprove the presumption. Thereby, legal uncertainty and unnecessary costs are supposed to be avoided.

If a French association files a suit against company X and the French courts affirm a violation against consumer protection, an association in Germany which also file a suit against company X can appeal to this finding. The French court decision does not have a probative force but acts as an assumption. It is assumed that company X also violates consumer protection in Germany as in France. Company X can provide proof to refute the presumption.

Furthermore, the draft directive does not only strive for omission, but also various measures. Generally, there should be decisions regarding a remedy and observation in terms of complex quantification of damages for consumers. Therefore, authorities and courts have a margin of discretion which is interpreted tightly. A possibility of a declaratory decision is supposed to be given in explained cases. In terms of mass charging events, there should not be declaratory decisions. This is the case if consumers who have similar damages from the same practice can be identified. Another case involves small claims. Regarding small claims, it is unlikely that the consumer is going to take legal action because there are only small damages. Courts could decide that it would be disproportionate to return means to the consumer.

Nevertheless, the loss can be substantial. That is why there needs to be the possibility that qualified institutions can file a suit in terms of damages, which should serve to the protection of consumers collective interests by using them for public purposes (as for example paying into a Legal aid fund, use of funds for awareness-raising campaigns etc.).

### 1.2.1.3. Qualified Institutions

In [article 4 of the draft directive](#), the harmonised criteria for the recognition of qualified institutions are mentioned. Institutions must be properly established under the applicable law of the respective member state. Furthermore, they must have a charitable character and are not allowed to strive for pecuniary rewards. They must also have an entitled interest on guaranteeing the compliance of relevant regulations of the union. The mentioned criteria are supposed to be fulfilled to guarantee a proper representation of consumer interests.

Member countries can decide domestically about the requirements regarding qualified institutions as long as the criteria correspond with the aims of the draft directive. In terms of supranational suits, the qualified institutions need to fulfil the requirements of the draft directive.

Furthermore, the draft directive intends a mutual acknowledgement between the Member States regarding the recognition of qualified institutions ([article 16](#)).

The list of qualified institutions must be accessible in a public register.

## 1.2.2. Möglichkeiten der kollektiven Rechtsdurchsetzung in Europa

The possibility of collective redress or rather the possibility that associations can appear as a third-party is given in other European countries. Selected examples are Great Britain, Sweden, Switzerland, Belgium and Austria.

You can find an overview of European equality and anti-discrimination associations [here](#).

### 1.2.2.1. Great Britain

Great Britain has a long history of anti-discrimination law. Current laws regarding to this topic are the Equality Acts 2006 and 2010. The Equality Act 2006 specifically allows associations to support a suit. The [Equality and Human Rights Commission](#) (EHRC) in Great Britain is an independent equality body. Its tasks and rights are regulated in the [Equality Act 2006](#). The EHRC must ensure that British equality laws are respected and can also take legal action. The different procedural laws include the right to provide legal assistance, to file a suit on one's own behalf and to participate in a discrimination procedure as a third-party.

You can find further information about the EHRC [here](#).

In section 28-1 of the Equality Act 2006 the EHRC gets the power to offer individual plaintiffs legal assistance if the dispute lays within the scope of the [Equality Act 2010](#). According to section 28-4 of the Equality Act 2006, this means that the EHRC may give legal advice, may legally represent plaintiffs, may find extrajudicial solutions, and may offer any type of help.

The possibilities to file a suit by oneself and to be active as a third-party are regulated in section 30-1 of the Equality Act 2006. The EHRC is allowed to go to court and initiate a legal examination if a public establishment acted in a way that violates the Equality Act 2010. This possibility exists as long as a subject of review is given that falls into the area of responsibility of the EHRC and that is regulated in the Equality Act 2006. Furthermore, the so called “*third-party intervention*”, the possibility of third-party participation in the procedure, is regulated in this section. This is also called an Amicus Curiae letter (Letter from a friend of the court). A third-party can bring their legal opinions and legal analysis to the court but are not part of the procedure. These letters serve as an exchange of legal arguments and less as moral support of the complaining parties. In terms of suits that are brought to court by another plaintiff, the EHRC is allowed to submit independent proof and legal analyses regarding to the disputed topic if an approval exists. These legal analyses are the focus of amicus curiae letters, rather than legal support for the plaintiff.

### 1.2.2.2. Sweden

The [Ombudsman’s Office for Equality](#) in Sweden is a government authority that advocates for a non-discriminatory society. A task of this office is to take legal action against discrimination. The office either files a suit on one’s behalf (association action) or on behalf of the complaining party (representative action). This is regulated in chapter 6 section 2 of the [Swedish Anti-Discrimination Act 2008:567](#). If the office appears on behalf of the complaining party, the plaintiff must consent to the representation.

You can find further information about the [Ombudsman’s Office for Equality](#) in different languages on their homepage.

This also includes non-profit organisations that look after the interests of their members and are not employee associations. Non-profit organisations can also file a suit on one’s behalf or on behalf of the complaining party if an approval is given. This kind of organisations have to fulfil certain preconditions. In order to file a suit, the association has to be able to represent an individual considering its activity, interests on the case, financial ability to act and general circumstances.

### 1.2.2.3. Switzerland

The Federal Constitution of Switzerland has guaranteed equal payment for equal work between men and women since 1981. [The Federal Act on Gender Equality](#) (GEA) regulates the most important instruments and rules of procedure regarding to an association action since 1996. One can file a suit in Switzerland if, for example, men and women are paid differently.

You can find a report about the evaluation of the Equality Act [here](#).

Associations which promote the equality between men and women or safeguard the interests of employees can file a suit regarding wage discrimination, if more than one person is affected. Affected people do not have to consent. Arbitration needs to take place before leading an association action. The affected employer must have the possibility of giving a statement before calling the arbitration body and filing the suit. Only after an unsuccessful arbitration a suit can be filed.

Association actions in the limits of this law are always declaratory actions. This means that discrimination is only determined. Compensation cannot be claimed here. The approximation of wage needs to be achieved with another suit by the concerned individuals.

#### **1.2.2.4. Belgium**

There are two anti-discrimination laws in Belgium which offer associations the possibility to support a suit or even file a suit. On the one hand, the anti-racism law that is based on the directive [2000/43/EG](#) and on the other hand, the anti-discrimination law which is based on the [directive 2000/78/EG](#). The protected features within the Belgian anti-racism law are the alleged “race”, skin colour, origin or national or ethnical background. Protected features within the anti-discrimination law are age, sexuality, marital status, birth, capital, religious or ideological beliefs, political beliefs, language, the current or future state of health, a disability, a physical or genetical feature and social background.

In Belgium, there is an independent public body to combat discrimination and promote equal opportunities ([UNIA](#)). UNIA is a national human rights organisation that is active on a federal, regional and Community level. UNIA has been established by law as the “Centre of Equal Opportunities and Combat of Racism”, which explains that the anti-racism law as well as the anti-discrimination law refer to the ‘Centre’ when UNIA is meant.

According to article 31 of the [Belgian Anti-Racism Law](#), UNIA is allowed to file a suit if the facts are giving reasons regarding the application of the Anti-racism Law. Furthermore, institutions, associations and organizations can also file a suit according to article 32 of the Anti-racism Law if the facts give reasons and those institutions strive to combat racism. If the victim can be identified, the institutions as well as the UNIA need to gather approval to file a suit.

The [Belgian Anti-Discrimination Law](#) also includes an association action. The UNIA’s right to file a suit is regulated in article 19 f., 29. The UNIA is certainly not allowed to file a suit in cases of discrimination because of language. According to article 30, institutions, associations and organisations that strive to combat discrimination can file a suit. According to article 31, there must be approval by the victim if he/she is identifiable.

##### **1.2.2.4.1. The Feryn-Decision by the ECJ**

Feryn is a Belgian company that is specialized in sales and installation of garage gates. In April 2005, a director communicated that the company was not hiring people with certain ethnical background because it did not comply with the costumers’ interest because employees have access to private living areas for a longer period. UNIA sued for determination that Feryn practices discriminatory hiring policy. The Directive 2000/43/EG regarding the application of the principle of equality obligates EU Member States to proceed against discrimination against employers because of racist reasons. The Labour Court in Brussels presented the procedure to the ECJ and asked them about the interpretation of that directive and the conformity with Belgian law.

You can find the decision of the ECJ [here](#).

The first question submitted dealt with the question whether the public statement by the employer to not hire people with certain ethnical background portrays discrimination which is

forbidden according to the directive. The ECJ affirmed discrimination because it keeps a certain group of people from applying to this job, whereby the access to the labour market is hindered. Furthermore, the lack of an identifiable affected person should not lead to a denial of direct discrimination.

The second question submitted dealt with the reversion of the burden of proof to the disadvantage of the employer. The ECJ decided that statements of employers about not wanting to hire people with a certain ethnic background, are enough to assume discrimination.

The last question submitted concerned sanctions and their appropriateness. The ECJ claimed that in cases in which direct victims do not exist, a determination of discrimination or a conviction of the employer to refrain from discriminatory practices comes into question. Further, one could award the complaining institution compensation.

### 1.2.2.5. Austria

#### Proceeding in front of the Equal Treatment Commission

In Austria, in cases of discrimination, it is possible, in addition to judicial actions, to initiate proceedings in front of the [Equal Treatment Commission](#). The Equal Treatment Commission creates reports and carries out individual assessments. If an application is submitted by an entitled person, the commission checks if a violation against the Equal Treatment Law exists. An introduction ex officio is also possible. The procedure in front of the Equal Treatment Commission is not a legal procedure. The courts must recognise the results of the commission but are not obliged to follow them because they do not have the force of law. The commission cannot pronounce a claim for damages even though discrimination was determined. That is the responsibility of the courts. In comparison to a legal procedure, the procedure in front of the commission is free and non-public.

Click [here](#) for further information about the Equal Treatment Advocacy. Further information about the Equal Treatment Commission can be found [here](#).

Within a procedure at the Equal Treatment Commission, applicants can be represented through a representative or an NGO (cf. [§ 12 II GBK/GAW-Law](#)). Furthermore, they can be represented by an Equal Treatment Advocate. The Equal Treatment Advocate is a public institution that enforces the right of equal treatment and protects from discrimination. It operates independently. The basis of its work is the Austrian Equal Treatment Law. The advocate consults people affected by discrimination and informs them about legal remedies. Furthermore, the advocate can accompany the affected person to settlement discussions and hearings and initiate a procedure at the Equal Treatment Commission. The consultation and support are free and private.

#### Litigation Association

In Austria, a [litigation association](#) exists (Litigation Association for the Implementation of Rights of Victims of Discrimination) that is an umbrella association of different NGOs. Its aim is to help victims of discrimination to enforce their rights. According to [§ 62 Equal Treatment Act](#) the litigation association can appear as an intervenor in a legal procedure. An intervenor is somebody who is not a party to a suit but has a legal interest regarding the procedure and participates in order to support a party. In general, everybody can be an intervenor. § 62 Equal Treatment Act names the Litigation Association explicitly so that it does not have to state legal

interests. Legal interests are assumed. The intervenor can take own actions with regard to the procedure if they do not contradict with the plaintiff's interests. The specific procedure is regulated in [§§ 17, 19 Code of Civil Procedure](#).