

# Discrimination when entering nightclubs

You might have already seen this happen: two men want to go to a nightclub. One of them is granted access; the other one does not get in. The only difference between those two men is the colour of their skin. Young men from the “majority population” are hardly ever confronted with that problem. Young men that are categorized as “Africans”, “Arabs” or “Turkish” however experience such kind of exclusion often, even if they behaved appropriately.

This dossier will offer you information about legal provisions that apply to discrimination in accessing leisure facilities.

According to a survey conducted by the Federal Anti-Discrimination Agency in April 2015, almost every third interrogated person was discriminated against in the past two years.

You will also find some examples of discrimination cases when entering a nightclub that have already been dealt with in court, as well as further documents on that matter.

## 1 Legal provisions

The General Equal Treatment Act (AGG) provides the relevant legal framework regarding discrimination. This dossier will offer you information on the legal protection by the AGG as well as on the possibility to file a legal claim in case of discrimination when entering a nightclub.

Being denied access to a nightclub cannot always be considered a form of discrimination because there are some authorized reasons to refuse entry to nightclubs.

Moreover, the Industrial Code contains rules that must be taken into account by club owners. In this dossier we also outline the recent changes in the Statute on Restaurants and Pubs of Lower Saxony and Bremen, which also apply to nightclubs.

The Federal Anti-Discrimination Agency (FADA) provides for an easy to understand version (German) of the General Equal Treatment Act as well as a sign language version.

## 1.1 Legal protection guaranteed by the AGG

The General Equal Treatment Act resulted from the European antidiscrimination directives adopted in 2000. They required Germany as well as the other EU Member States to include antidiscrimination regulations in their domestic law. In Germany the AGG transposed those EU directives into national law. Since the law came into force in 2006, persons affected by discrimination can file an individual complaint.

The AGG prohibits discrimination when accessing publically available services such as nightclubs. Here, the AGG amongst other things focuses on services for the wider public (so-called bulk business).

The central provisions in the AGG regarding the entry to nightclubs are to be found in § 19, § 20 and § 21.

### 1.1.1 § 19 AGG

Discrimination is defined in the AGG when entering a nightclub is denied to someone because of his/her ethnic origin, gender, religion, because of disability, age or sexual orientation. This kind of discrimination is called “direct discrimination”.

In most cases, bouncers do not explain why they deny entry and they sometimes conceal the actual reasons for their refusal.

### 1.1.2 § 20 AGG

Under § 20 section 1 of the AGG, differences of treatment on grounds of religion, disability, age, sexual orientation or gender shall not be deemed to be a violation of the prohibition of discrimination if they are based on justified grounds.

Furthermore, § 20 section 1 states that the prevention of risks, the prevention of damage or other comparable purposes account for the need to protect privacy and personal safety or provide particular benefits, and if there is a lack of an interest in the enforcement of equal treatment, are therefore legitimate exemptions.

However, differences of treatment on grounds of physical appearance or of origin are always prohibited.

### 1.1.3 § 21 AGG

§ 21 of the AGG offers the possibility to file a complaint against discrimination by which the termination of the discrimination or a compensation can be enforced.

The termination of discrimination means in this case that the nightclub must no longer discriminate against the plaintiff and is obliged to let him/her enter the nightclub,

provided he/she respects the domiciliary right. Compensation generally provides a sum of money defined by the court according to the circumstances of the individual case.

## **1.2 Permissible criteria of denial**

Permissible criteria for a denial exist because the nightclubs are allowed to select their customers according to particular criteria or situations. Those criteria of denial are i.e. concerning people under the age of majority, the prevention of danger for the public and the recourse to domiciliary right.

In case of permissible criteria of denial, one does not talk about discrimination.

### **1.2.1. Minors**

Low age constitutes one of the permissible criteria of denial when entering a recreational facility (for instance a nightclub). The German law on the Protection of Young Persons stipulates that young people under 16 years are not allowed to enter nightclubs. Youngsters between 16 and 18 years of age can stay in the clubs until midnight. Other rules can emerge according to the location and the type of the event. If a person is denied entry to a nightclub, according to the Protection of Young Persons Act, because s/he is not admitted to such an event, it is not to be considered discrimination on grounds of age. On the contrary, the nightclub acts according to the statutory provisions.

According to § 2 of the German Civil Code (BGB), majority begins at the age of eighteen. Before that, minors are under parental custody (§ 1626 and § 1773 of the BGB).

### **Minors in restaurants or in clubs**

Youngsters are only allowed to go to a restaurant or to a nightclub until 11 p.m. and they must be accompanied by a custodial person. The owners shall not accept any minor in the nightclub between 11 p.m. and 5 a.m.

Youngsters between 16 and 18 years of age are only allowed in until midnight.

The German Law on the Protection of Young Persons stipulates that children and youngsters under 16 years are not allowed to take part in dancing events, while youngsters between 16 and 18 years old can do so until midnight without any monitoring. Other rules can apply on an exceptional basis when the events are especially organised for youngsters.

## 1.2.2 Prevention of danger for the public

If someone might represent a danger to other guests, the costumers' safety is more important than the individual right to enter a nightclub. For example, persons can represent a danger when s/he is too drunk or acts aggressively. In that case, the nightclub has the right to deny access to that person. The same shall apply to customers that are in possession of or under the effect of drugs.

Club owners have the legal possibility to refuse access to customers on account of their inappropriate outfit or excessive consumption of alcohol (domiciliary right). This domiciliary right is at times misused to cover unlawful discrimination.

## 1.2.3 Domiciliary rights

Nightclubs can make use of their domiciliary right, meaning that the owner or the tenant of a living or working place (in that case the nightclub) can largely determine how to use that space. The nightclub owner is thus free to choose the way the discotheque should be thematically orientated. That is: they are free to choose the kind of music that is played, the kind of events that take place, the beverages they sell, the atmosphere that should reign and which group they target. That encloses their right to determine who can enter their nightclub. The domiciliary right is based on the German constitutional right of inviolability of the home.

The German General Right of Personality was developed by the Federal Constitutional Court. This right derives from Art. 1 Section 1 of the Basic Law (GG) in conjunction with Art. 2 section 1 of the GG. It protects the personal living sphere and the right of informational self-determination.

In this respect, the nightclub owner can set rules with which the customers shall comply. This domiciliary right can for example contain a dress code or other general rules of conduct. In case of violation of these domiciliary rights, the owner has the right to ban the customer from the nightclub. That right of banning arises from the German general right of personality, Art. 2, paragraph 1 constitution related to Art. 1 section 1 of the Constitution and the right of ownership is to be found in Art. 14 of the Constitution.

If a person regularly violates the domiciliary right: by acting aggressively for example, or if that person is drunk, s/he can be banned from the nightclub. In such cases, this does not constitute discrimination.

### **1.3 Provisions for nightclub owners**

Nightclub owners have not only to comply with the AGG but also with the Statute on Restaurants and Pubs and the Industrial Code.

#### **Violations of the Statute on Restaurants and Pubs and of the Industrial Code**

Should a restaurant, a pub or a commercial business have a discriminatory conduct, their owners could be deprived of the licence to run the business. § 4, section 1 No.1 of the Statute on Restaurants and Pubs describes this as “unreliable behavior”. Unreliable behavior occurs when the owner allows minors in the nightclub or does not comply with health or noise regulations. And if the owner discriminates against the costumers, this could also be considered an unreliable behavior.

§ 35 of the Industrial Code requires a “orderly” running of a commercial business, which is not given when the owner violates the law.

### **1.4. Amendment of the German Statute on Restaurants and Pubs**

Beyond the scope of the AGG, it would be advisable to include a more specific protection against discrimination also in other laws.

Many people with migration background regularly experience refusals to nightclubs. Since 2010, BUG has been assisting several complaints of racially motivated refusals to nightclubs, among others in Lower Saxony.

In order to tackle this practice in the long term, BUG contacted relevant political actors. BUG encouraged an amendment to the German Statute on Restaurants and Pubs in Lower Saxony in order to permit protection against discrimination not only in civil, but also in administrative law. Thereby, people that faced discrimination do not have to file a complaint on their own but a discriminatory refusal at the entrance of a nightclub can then be sanctioned by the local public order office.

Subsequently, the Länder Parliament accepted BUG’s suggestions. In late 2015, Lower Saxony and Bremen amended their Statute on Restaurant and Pubs. So far, they are the only two Länder that did so. In case of discrimination, the public order office can on this basis impose a fine. Should there be several breaches, the owner of the nightclub or of the restaurant could subsequently loose his/her business license.

As a consequence of the federalism reform of 2006, the Bundesländer were given the exclusive legislative competence on pubs and restaurants law. This law on pubs and restaurants at federal level remains applicable as long as the Länder do not adopt their own law.

### **1.4.1 Lower Saxony**

Since 2013, an increasing number of cases regarding ethnic discrimination when entering a nightclub were brought to court. While supporting such cases, BUG suggested an amendment of the Statute on Restaurants and Pubs in order to enable authorities to play an active role in such discrimination cases and not leave this solely to persons concerned by discrimination.

The “Landtag” of Lower Saxony adopted an amendment of the Statute on Restaurants on December 19, 2015. This amendment allowed the public order office to inflict sanctions in case of discrimination when entering a nightclub. When people are denied entry because of their origin or their religion, the court can impose a fine of up to 10.000 € and in case of repeated breaches, the court can withdraw the license. Thereby, the principle of equal treatment from civil law was introduced to public law for the first time. People concerned do not necessarily have to get active themselves, but the local order office, responsible for enforcing rules for restaurants and pubs, has now the legal competence to impose sanctions in such cases.

### **1.4.2 Bremen**

In December 2015, Bremen was the first ‘Land’ to adopt the amendment of the Bremen Statute on Restaurants and Pubs, so that discrimination when entering a nightclub on account of (ascribed) ethnic origin, disability, sexual or gender orientation, religion or ideology could be punished with a fine of up to 5.000 €. If a person is discriminated against for the same reasons while s/he is in a pub or a restaurant, that conduct can also be sanctioned.

## **2. Cases brought to court**

Legal claims can be filed when a case of discrimination has occurred while entering a nightclub.

If the court concludes that there has been discrimination in accessing a nightclub, it can oblige the nightclub to pay compensation to the plaintiff. Moreover, the court can urge the nightclub to abstain from any discrimination in future (provided that s/he behaves according the house rules). The court can also impose a fine.

Since 2010, complaints have been filed in the context of the General Equal Treatment Act (AGG) in German cities such as Tübingen, Hanover, Leipzig and Munich on account of ethnically motivated denials to enter a nightclub.

[Click here to have a look at the complaints assisted by BUG as well as other complaints.](#)

## **2.1 Complaints assisted by BUG**

BUG assisted several young men that have been discriminated against when entering a nightclub on account of their ethnic affiliation. This happened to David G. in Tübingen in 2010, and to Murat F. in Hannover in 2013.

### **2.1.1 Lawsuit in Tübingen**

On 6 November 2010, young David G. wanted to go to a nightclub with a friend in Reutlingen. Both have been denied entry. David G. decided to file a legal complaint at the regional court in Tübingen. To do so, he was supported by BUG. The association took the role of “Beistand”.

The judgement concluded that it was a case of discrimination on account of the skin color of the plaintiff. The judgement stated that David G. was discriminated against and that the nightclub had to let him enter in the future as long as he respects the house rules. [Click here to find the LG Tübingen judgement.](#)

However, no compensation was granted. In December 2011 the second instance at the Higher Regional Court of Stuttgart granted a compensation of 900 € to David G. on account of discrimination.

### **2.1.2 Lawsuit in Hanover**

BUG supported Murat F’s complaint. He was denied entry to a nightclub in Hannover on account of his suspected migration background in 2012. The bouncer refused entry and explained that the owner had ordered him not to accept any costumers of Turkish or Arabic background.

On August 14, 2013 the District Court of Hannover pronounced the judgement of Murat F’s case. The court declared the nightclub had to pay a compensation of 1.000 € to the plaintiff and shall not deny entry on unfounded reasons in the future. Should the judgement not be respected, the nightclub could be imposed a fine of up to 250.000 €. [Click here to find BUG media reports concerning the judgement.](#)

## **2.2 Other complaints**

Hereinafter we present some exemplary judgements concerning discrimination when entering a nightclub.

You will find documents regarding the judgement of the Oldenburg District Court, in which the plaintiff was granted a 500 € compensation for having been discriminated against on account of his ethnic origin. You will also find some information on a judgement of the Bremen District Court, in which the court granted a compensation of 300 € to the plaintiff for having been denied entry to a nightclub.

You will also find information concerning the complaint of a student at the Saxony District Court. He was also refused entry to a discotheque and felt discriminated against. And furthermore you will find information on two complaints introduced at the District Court of Munich regarding an ethnic discrimination at a nightclub.

### **2.2.1 Complaint in Oldenburg**

On February 10, 2007, the plaintiff wanted to go to the defendant's nightclub in Oldenburg together with three friends. The door man denied entry to the plaintiff, saying that he had received order from his boss not to let enter any foreigner. The plaintiff consulted a counselling office that organised a meeting between him and the nightclub owner. During that meeting, the owner promised the plaintiff that such refusal would not happen again. The following night, the plaintiff wanted to check if the owner's commitment had been respected, but he was denied entry once more.

In principle, the Oldenburg District Court acknowledged that there had been a violation of the AGG. However, the court reduced the plaintiff's compensation, claiming that he had tried to enter the nightclub in the context of a "testing procedure". The plaintiff wanted to prove that the discotheque practiced racist conduct and could therefore have foreseen the exclusion. "The conscious and accepted causation of a discriminatory act by the plaintiff" leads to halving the financial compensation.

Had the plaintiff tried to enter the nightclub not as a test person but as a "normal customer", the court would have considered a more severe damage.

The court finally decided that the defendant had to pay compensation of 500 €.

[Click here to see the whole court decision.](#)

### 2.2.2 Complaint in Bremen

On December 20, 2009 the plaintiff went to the defendant's discotheque with three other persons. One of them could enter the nightclub, but the plaintiff was immediately denied entry. He believed that it was on account of his skin colour.

The defendant claimed that the plaintiff was not denied entry on grounds of the colour of his skin, but because his outfit did not meet the requirements of the "premium club". The plaintiff was supposedly dressed in a "hip-hop style", which does not constitute the target group of the nightclub.

However, the witnesses unanimously testified that the plaintiff was smartly dressed, and not dressed in a "hip-hop style" as the defendant claimed. The court reached the conclusion that the plaintiff was denied entry not only because of his outfit, but also on account of the colour of his skin.

In its judgement the District Court imposed a fine of 300 €.

### 2.2.3 Complaint in Leipzig

A student filed a complaint against a nightclub in Leipzig after having been denied entry in October 2011. The plaintiff suspected a racist discrimination because more customers with supposedly "German" appearance could enter the nightclub before and after him. However, he did not receive any justification from the personnel. Since the nightclub did not react to his complaint for weeks, he decided to take up legal action.

The court considered that the plaintiff was refused entry on account of his ethnic origin and granted him compensation amounting to 500 €. It also forbade the nightclub to deny access to the plaintiff in future.

"This judgement has a signaling effect on other cases.

Nightclubs and discotheques can simply not rely on their domiciliary right, look away and do nothing. They must ask themselves how to ensure access to their club is carried out in a non-discriminatory way."

- Press release of the anti-discrimination office of Saxony.

### 2.2.4 Complaints in Munich

Several complaints of discrimination when entering nightclubs were filed in Munich. They did not all come to the same conclusion.

Here you will find some information on a judgement of the Munich District Court, in which the plaintiff was granted compensation.

Additionally here you can find information on a judgement of the Munich District Court in which the claim was rejected.

## **Complaint in Munich from December 17, 2014**

On December 17, 2014 at a court hearing in the Munich District Court, a man from Burkina Faso requested a Munich based discotheque to stop denying him entry to the nightclub.

That night, the plaintiff was carrying out a “testing procedure” together with other colleagues from the Munich Foreigners’ Council. He tried to enter several nightclubs in order to document racist practices at the entrance of nightclubs. The plaintiff tried to enter 25 nightclubs. He was denied entry five times that night.

The court decided that one of those discotheques denied him access on account of his ethnic origin. The court convicted this particular nightclub to pay compensation amounting to 500 € and to bear the attorney’s fees.

Earlier the Munich District Court rejected a complaint from the same plaintiff. More information on this case can be found [here](#).

Discrimination when entering a nightclub is part of the daily life of many students with migration background: Illy explains in a compilation of testimonials by students who experienced discrimination: “at some point, a bouncer with migration background told me that his boss ordered him not to accept too many “black people”. It would harm the nightclub’s reputation.”

### **2.2.5 Complaint in Munich from July 23, 2014**

The plaintiff tried to enter a discotheque located in the city centre of Munich together with friends for testing purposes. This test was meant to determine whether the nightclub practiced discriminating access controls. That kind of measure is called “testing”.

The plaintiff and his friend are dark-skinned and were denied entry to the nightclub on account that only students were admitted. When shortly after two other friends of Turkish origin tried to get in, the bouncer refused them entry for the same reason. However, two other fair-skinned friends of the plaintiff were accepted to enter the nightclub.

The District Court of Munich on 23 July 2014 rejected the complaint on grounds that the plaintiff did not present sufficient proof for discrimination. The court did not exclude the possibility of discrimination, but considered that other reasons were plausible. The court referred to the outfit, the mood and the appearance of the plaintiff. All those examples could be considered plausible reasons for the refusal to enter that were not related to the color of the plaintiff's skin. The court lacked proof that none of the other mentioned reasons lead to the refusal to enter. The court outlined that it was not a decision on the merits but a matter of compliance with the law.

### **3 Further documents**

BUG compiled comprehensive material concerning “discrimination when entering a nightclub” that contains information for people that faced discrimination and for witnesses of such practices.

#### **Information material**

BUG postcard (German) on discrimination when entering a nightclub

BUG Brochure on discrimination when entering a nightclub

BUG Brochure on discrimination when entering a nightclub in Arabic ( منشوراتنا حول ' التمييز في النوادي الليلية ' متوفر الان باللغة العربية. للمزيد من المعلومات اضغط هنا )

BUG poster (German) on discrimination when entering a nightclub.

BUG flyer (German) on discrimination when entering a nightclub.

Printed material can be ordered from BUG's office.

#### **Court judgements**

District Court Tübingen judgement (German) 29.07.2011

District Court Bremen judgement (German) 20.12.2009

District Court Stuttgart judgement (German) 12.12.2011

District Court Hannover judgement (German) 14.08.2013

District Court Oldenburg judgement (German) 10.02.2007

#### **Studies and articles**

Expertise commissioned by the Federal Anti-Discrimination Agency: Applicability of testing procedures, in order to furnish proof, section 22 of the General Equal Treatment Act.

## **Press**

Public relations department of Lower Saxony's government on the amendment to the industrial code (German)

Commissioner for migration of Lower Saxony: "Diskriminierung an der Diskotür? - Nicht mit uns in Niedersachsen!" (German)

Migazin- Fachzeitschrift for Migration in Germany: „Rassistische Einlasskontrollen an Diskotüren“ (German)

Süddeutsche Zeitung: „Niedersachsen geht gegen Rassismus an der Diskotür vor“ (German)

Die Welt: „Diskriminierung an der Diskotür soll härter bestraft werden“ (German)

Neue Presse: „ Stadt geht gegen Diskriminierung an der Diskotüren vor“ (German) (Hannover)

Taz: „Diskriminierung an der Diskotür“ (German)

Unispiegel: „Urteil zu Discotür-Diskriminierung: Club muss Student mit 1000 Euro entschädigen“ (German)

Frankfurter Rundschau: „Diskriminierung an der Diskotür“ (German) (Darmstadt)

Süddeutsche Zeitung: "Zu wenig Fakten für eine Diskriminierung" () (German) (München)

Legal Tribune Online: „Abgewiesener Gast bekommt Schadensersatz und Einlassgarantie“ (German)

Press release of the anti-discrimination office of Leipzig on the judgement of the regional court of Saxony (German)

Pressemeldung des BUG zum Urteil des AG Hannover (German)