

How to deal with discrimination at the entrance of a club





Discriminatory controls at the entrance of nightclubs

While fair-skinned men are granted entry to nightclubs, you are not allowed in. And this is the case even though nothing distinguishes you except for the colour of your skin or your (ascribed) origin.

Are you familiar with that?

“My boss does not want any foreigners in the club”

This is only one of many arguments youngsters have to deal with at the entrance of a nightclub – especially young men with migration background or belonging to an ethnic minority.

“Regular visitors only”

Such a statement possibly hides a discrimination.

People concerned do not have to accept any open or hidden form of ethnic discrimination.

Why?

The General Act on Equal Treatment (AGG) was implemented in 2006 and prohibits discrimination on grounds of (ascribed) ethnic origin or affiliation, gender, religion or belief, disability, age or sexual identity (see §1).

So far, so good.



But what does discrimination actually mean?

Direct discrimination means that a person is treated less favourably than another has been or would be treated in a comparable situation on any of the grounds referred to before.

This means that people trying to get access to discotheques, fitness or sports clubs must not be excluded on grounds of an affiliation to an ethnic or religious group.

Club owner's domiciliary right

Restaurant and pub owners are legally obliged to comply with the German Statute on Restaurants and Pubs. Clear provisions regarding authorized refusals are provided and must be respected:

- ➡ If the person is not yet 16 or 18,
- ➡ If the person's outfit does not comply with the nightclub's style or dress code
- ➡ If the person is drunk or under the effect of drugs
- ➡ If the person was banned from the nightclub.

Clubs are also allowed to temporarily accept only women in order to achieve a gender balance.

However, under no circumstances are ethnic or racist connotations justified by domiciliary rights.



What can be done in case of suspected discrimination?

It is important to stay calm and polite – even if you feel unfairly treated by the bouncer. You should never act aggressively in reaction to their provocative behavior.

First try to find out whether other grounds than origin, skin color or affiliation may have caused the refusal.

- ➡ Ask the doorman if the refusal is due to your outfit
- ➡ Ask yourself if you have ever misbehaved in that club and have therefore been banned
- ➡ Are you drunk or under the effect of drugs?
- ➡ Did you possibly act inappropriately towards other guests or the bouncer or did you insult any of them?

How to recognize discrimination?

Indirect evidence:

- ➡ Security offers a reason for the refusal that does not apply to your situation (for example: you are denied entry for excessive alcohol consumption although you are sober).
- ➡ While you were refused entry to the night club, fair-skinned guests were allowed in.
- ➡ You noticed that other people with migration background were also denied entry.

Should one or several indications apply to your situation, do not hesitate to address this to the security personnel. Ask them about the door policy that applies to the club, if it exists in written form and if you can see a copy.

Here again: stay calm and polite.



Next steps

If you feel that you have been discriminated against, you can proceed as follows:

1. First of all, you should write a protocol as soon as possible to remember all things that have happened. In the protocol, describe the situation and explain:
 - a) When did what happen?
 - b) Who was involved, who was affected?
 - c) Who denied you entry and how did that person look like?
 - d) What was said exactly?
 - e) Are there any witnesses and how can they be contacted?
 - f) Notify the police about what happened

If eventually legal action is taken, the court hearing can sometimes take place several months later. This requires a correct and exhaustive documentation for the complaint to be substantiated when brought to court.

2. After this first step, contact an anti-discrimination organisation and describe the situation. This organisation can then evaluate whether it makes sense to contact the club or to file a legal complaint.
3. Should you intend to file a legal complaint, competent legal support is important. Witnesses who observed the refusal should be willing to testify in court.
4. It is also possible to contact BUG e.V. (www.bug-ev.org) to talk about possible support in your case.

For further information, see page 10.



Deadlines

If you want to file a legal complaint, you must claim the damage (the discrimination) to the club within **two months**. Should the club deny or ignore it, you can then file a legal complaint. However, before doing so, you have to undergo an arbitration proceeding.

Arbitration proceedings

At municipal level, you have to go through an arbitration proceeding before being allowed to file a legal complaint. In this process, it is assessed whether parties in dispute can achieve an amicable agreement. A court case is only possible if no settlement is achieved.

Legal action

A complaint shall (preferably) be submitted to court by your lawyer. The trial will then start only several months later, and witnesses are likely to be interrogated during the court hearing. Since legal complaints cost money, you should verify if you possess a legal insurance or if legal aid could bear the costs. If you do not dispose any of those possibilities, BUG can try to help you find a solution. Legal action can all in all last longer than a year.

Aim and objective of the complaint

Should you win the trial, you might receive compensation for damage. In addition, complaints can also help promote the interpretation of non-discriminatory legislation and explain to clubs how to apply the rules.

Successful actions

In the past few years, several complaints have been litigated successfully. BUG supported a few of them that resulted in favor of the plaintiffs.

- ➔ David G. decided to file a legal complaint after he and his friend were denied access to a club in a small city in the south of Germany. BUG assisted them in court. In the second instance judgement, in December 2011, the High Court of Stuttgart (OLG) acknowledged the discrimination and granted him compensation.
- ➔ In 2012, Murat F. was denied access to a club in Hannover on grounds of his assumed migration background. He decided to file a legal complaint with BUG's support. In August 2013, the District Court of Hannover declared that the defendant club had to pay a compensation of 1.000 € to the plaintiff. Should the defendant club not comply with the sentence, a fine of up to 250.000 € could be imposed.





What else do we need to eliminate discrimination at the entry of nightclubs?

Since club owners are legally bound to comply with the German Statute on Restaurants and Pubs, it would be a paramount step to anchor protection against discrimination in that law.

An increased number of discriminatory practices at nightclubs would enable municipal authorities to impose sanctions, in the form of a fine.

Some clubs begin to write and to implement their door policy in accordance with the AGG or conclude agreements with their security staff. Those agreements contain clear indications guiding their bouncers under which circumstances refusals are legally possible. In doing so, they constitute good practice for other clubs.

At the same time practice of clubs needs to be sustainably changed. Therefore, regular trainings for club owners and bouncers are necessary. Also, information about the AGG should be covered within the courses to qualify as door personnel.

Discrimination in other leisure facilities

Unfortunately discriminatory practices do not only occur at the entry of clubs. People with ethnic or religious attributions are also sometimes denied access to sports or fitness clubs. Some fitness clubs are for example accused of refusing applications for membership to women who wear a veil, to people with a name that “does not sound German” or with a migrant background.

Have you ever experienced any such discrimination?

BUG can support you if you want to file a legal complaint.

BUG e.V.

The Bureau for the Implementation of Equal Treatment (BUG) was founded on 18th April 2009 and offers legal support to individuals who want to file a legal case against discrimination by assisting them in court. BUG's central activities are complaints against discrimination in individual situations that would benefit a whole group, so-called "strategic cases". This should lead to more sustainable equality of treatment in our society.

In order to implement the right to protection against discrimination at a political and social level, BUG tries to influence decision-making processes and politicians in the field of equal treatment.

If BUG decides to support a complaint in the context of the AGG, a qualified lawyer who works together with BUG undertakes the legal representation before the court.

BUG agrees on the strategy together with the lawyer and the plaintiff. If necessary and promising, steps toward the second instance are envisaged where cases have been lost.





Any other questions?

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