

# Strategic Plan

## Summary

### Bureau for the Implementation of Equal Treatment (BUG)

for

**2018 – 2020**

The Strategic Plan for 2018-2020 was prepared by Vera Egenberger and Camille Ionescu. It was passed by the Board of BUG at the 10<sup>th</sup> board meeting on the 18<sup>th</sup> of November 2017. This is an English translation of the original German document.

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## A. Summary

With the Strategic Plan 2018-2020, BUG sets its thematic priorities for this period of time. Due to the experience gained in BUG's first two planning phases, the thematic priorities will be in the following fields:

- 'Racial profiling' by the Bundespolizei
- Discrimination at the access to housing
- Discrimination of transgender people

In the following field, BUG intends to develop an expertise in order to examine whether the work in these fields should be intensified.

- AGG amendment
- Gathering of data about equality and participation
- Internal complaints office

Complaints will be supported with legal assistance to the claimant ('Beistand'); PR work will promote the complaints, as well as the topics mentioned above. The influence on political decision makers will be increased to reinforce the principle of equal treatment. To keep BUG financially sound, fundraising will continue in the following planning phase.

## B. Introduction

The Bureau for the Implementation of Equal Treatment (BUG) is an association based in Berlin and registered under German law. It was founded in the spring of 2009, and has more than 80 individual members. Since summer 2009 the BUG is a registered charity organisation.

The primary aim of this Strategic Plan (SP) is to focus on BUGs strategic orientation and thematic decisions from 2018 to 2020. Due to the limited capacities and resources of the organisation, and despite the need to implement equality work as comprehensively as possible, BUG has to make decisions on how to achieve a targeted and effective use of its competences and capacity. These decisions are outlined in this strategic plan. BUG directs its attention to the impact we would like to achieve, and not primarily on the activities we intend to carry out. Our activities are described in separate annual work programmes.

Through the organisation's Strategic Plan (and its subsequent work programmes) we intend to give BUG a public and clearly recognisable profile.

## C. Situation analysis

The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz (AGG)) has been in force since August 2006. It is the result of various EU Equal Treatment Directives 2000/43, 2000/78 and 2002/73. Although Germany was not obliged to implement those directives at such a broad level, the federal government choose to go beyond the minimum requirements with the development of the AGG. It took quite some time until the first lawsuits were brought before the courts. Only since 2010 has the number of AGG complaints seemed to increase. Nonetheless, there was no wave of lawsuits as was expected. From 2006 to July 2017 there were approximately 1540 complaints based on the AGG, covering all grounds of discrimination.

There are some positive examples which have contributed to bringing to justice cases of discrimination. BUG was able to further clarify the AGG within several years. Through a judgement from the Federal Labour Court, it is clarified that people who are infected with the HIV virus, or are chronically ill are protected by the AGG. Such examples can affect people who were victims of discrimination in a positive way, especially when regarding their readiness to lodge a claim. In general, the inhibition threshold of using the AGG appears to have decreased within the past years.

In 2016 the AGG had been in force for 10 years. Along with the federal anti-discrimination office, other institutions and associations have made assessments concerning the use of the AGG within this period and have come to rather different conclusions. Furthermore, many proposals were disclosed. This demands policy compliance, just like the closing of inappropriate exemptions, and therefore, suggests further standards of protection. BUG disclosed more detailed suggestions to this already in 2014, which have been constantly developed and complemented.

In the course of the federal elections in 2017 some parties showed a certain willingness to amend the AGG in the upcoming legislative period. The next four years will show if it is possible for the AGG to be extended and strengthened. BUG will use its capabilities within the scope of the present Strategic Plan to support this.

## D. Aim and purpose of the strategic plan

The aim and purpose of this Strategic Plan is to identify the priorities of the organisation for the period 2018 to 2020. Annual work plans will address the outlined priorities of this Strategic Plan, and will identify concrete steps, actions and goals, which BUG would like to achieve. The work plans are created by the director, and adopted by the executive board.

## E. The vision of BUG

### 1. Vision

The Bureau for the Implementation of Equal Treatment (BUG) has a vision of a German society free from discrimination, in which its proclaimed principle of equality and equal treatment for people living in Germany is realised in all areas of life.

### 2. Mission

In order to realise this vision, BUG advocates the use, implementation and reinforcement of the General Equal Treatment Act (AGG). To this end, in strategically important cases the organisation provides legal assistance by supporting lawsuits and legal proceedings which have the potential to foster legal certainty and contribute to the development of the law. BUG campaigns for the legal, political, and social implementation of legal precedents and case law, seeking to put an end to discriminating structures, regulations, and procedures. This aim is also pursued through lobbying, information sharing, and outreach work.

By networking relevant stakeholders, BUG fosters the development of synergies and facilitates strategic exchanges.

### **3. The fundamental principles of the organisation**

#### **‘Committed to human rights and equality – acting independently’**

The starting point of BUG’s work is the belief that all people are equal before the law and should therefore be treated equally in comparable situations. International human rights law, in particular the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD), the European Convention on Human Rights (ECHR) with its 12th additional protocol, the European legal system, the Basic Law of the Federal Republic of Germany, and the General Equal Treatment Act (AGG), are acknowledged and used as frames of reference. Another important point of reference is the right to equal treatment and to non-discrimination, as expressly laid down in EU law.

The BUG was established and operates independently of political parties or foundations, organisations pursuing ideological aims, or organisations which are part of or close to the government. It is particularly important that the work undertaken by the BUG is kept strictly independent of state structures. This is essential if BUG’s work is to be devoted exclusively and without restriction to equal treatment as set out in the relevant EU directives and the AGG.

In addition, BUG safeguards the interests of those it represents who have experienced discrimination and seeks to protect them in all its activities. If they wish to, individuals supported by BUG in legal proceedings, may remain anonymous. BUG will fully implement the current laws regarding the protection of personal data.

#### **4. Motto of the organisation: ,Litigation not lamentation’**

The BUG motto means not simply complaining about or “lamenting” an intolerable situation, but to actively put an end to an unacceptable situation using legal and political means. With its motto BUG wants to support people who have suffered discrimination, help them overcome their victimhood, and show that one can influence its alleged destiny by court action and accompanying lobby work. BUG won’t lament but instead litigate!

## **F. Goals of the Bureau for the Implementation of Equal Treatment**

The organisation is based on an explicit human rights based approach, which views non-discrimination and equal treatment as human rights. Human rights are not only a social duty, but an inviolable right.

In the hope of achieving a largely discrimination-free society, the organisation pursues the following goals:

1. Clarifying, strengthening and expanding non-discrimination legislation and the legal concepts contained therein
2. Creating and promoting legal precedents
3. Obtaining legal certainty
4. Educating and informing the population about legal means of combating discrimination, and raising public awareness of the AGG

5. Influencing political decision-making processes in the non-discrimination field
6. Further develop political and social non-discrimination strategies in an innovative manner
7. Enshrining the principle of equality and equal treatment measures in the relevant areas of life
8. Strengthening synergies between stakeholders in the field of equality advocacy on a national and international level.
9. Implementing a more sensitive handling of discrimination
10. Promoting an objectification of the German public debate on equality and non-discrimination

These goals are based on the idea that an increasing amount of complaints in court can clarify the different concepts of law in the context of cases of discrimination, as well as establish precedents. Courts will examine new cases on the basis of already decided cases and establish a new legal practice in this way. Lawyers then can apply the established argumentation for new cases. This will increase the legal certainty. Cooperation with further organisations on equal treatment is requested and intended.

BUG's PR work will form a basis to raise awareness of the precedents among lawyers, affected people, politicians, and the media. BUG's lobbying will influence decision makers and therefore political decisions relevant for equal treatment.

In order to eliminate discrimination for the long term, BUG will initiate public debates and influence discriminatory institutions if necessary. Therefore, discriminatory structures and regulations need to be analysed. Eventually, if it appears to be helpful, these can be denounced in public, but only by suggesting alternatives.

The crucial aim is to encourage companies, administrations and service providers to implement regulations and laws on equal treatment in order to prevent discrimination step by step. For example, this can be achieved by company agreements, affirmative action, and positive obligations.

## G. With whom we work

### 1. Beneficiaries of the services of BUG

### 2. Target groups of the work

### 3. Direct und active partner of BUG

- a) Anti-discrimination counselling offices
- b) Anti-discrimination Agency (ADS)
- c) Interest groups of communities affected by discrimination
- d) NGOs in the area of non-discrimination
- e) Attorneys-at-law
- f) Lawyers Associations
- g) Integration Counsellors / Offices for Multicultural Affairs

- h) Trade unions
- i) Research Institutes and Universities of Law
- j) Consumer Organisations / Tenant Protection Associations

#### **4. Supporters and sponsors of BUG**

- a) Foundations, with a focus on equality
- b) Members of BUG
- c) Individuals willing to support ‘testing<sup>1</sup> procedures’ of BUG

## H. Geographical area of activity

The geographic scope of the Bureau for the Implementation of Equal Treatment is Germany. This means that the Bureau potentially works in all federal states (‘Länder’) in situations where national issues are relevant towards the EU, the Council of Europe or the United Nations. BUG works internationally as well.

## I. Utilized legal instances

In its legal proceedings BUG will approach first and second instance courts. If there is no positive judgment, BUG will make use of federal court levels. If needed it will also approach the European Court of Justice, the European Court of Human Rights, and UN Committees, as for example the CERD.

## J. Central recitals

### **1. Which key topics provide the greatest impact?**

Through the last 9 years of experience we can now better estimate in which areas BUG can have a constructive impact concerning protection from discrimination, and where lawsuits may have a positive effect. BUG has to estimate how many goals can realistically be set, and which of them can be executed by the available capacity.

During its fourth planning phase, and based on an analysis of the current environment in Germany BUG came to the conclusion that the following areas should be given special attention over the next four years:

- a) *Religious Discrimination*
- b) *‘Racial Profiling’ by federal police force*
- c) *Discrimination regarding the access to housing*
- d) *Discrimination of Sinti and Roma*
- e) *Discrimination of transgender people*
- f) *Ethnic Discrimination in access to recreational facilities*

Legal requirements, which are missing in the present AGG, but should be included in a long term perspective, emerge increasingly through the use of the AGG. Based on amendment papers developed in the last years, BUG will perform lobby work as The Bureau for the

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<sup>1</sup> Testing will be explained further on page 22.

Implementation of Equal Treatment, or in cooperation with other associations to strengthen the legal protection against discrimination in the upcoming planning phase. This is understood as a long term task, since it will probably take several years.

Besides this BUG will cover thematic areas that only indirectly connect to the narrow context of the law, but strengthen legal protection against discrimination including:

- a) *AGG amendment*
- b) *Data collection in the field of discrimination*
- c) *Internal complaints office*
- d) *Positive measures*

## 2. Which mix of methods facilitates the attainment of our goals?

The following methods form the basis of BUG activities with the aim to achieve our set targets.

- a) Strategic litigation and creating test cases
- b) Political lobbying inter alia with focus on legal policy
- c) Networking with relevant stakeholders in the non-discrimination field

## 3. How do we choose strategic cases to achieve our goals?

The following principles are used in the selection of strategic lawsuits<sup>2</sup>:

- a) The case falls within the legal framework of the AGG or contradicts the principle of equality of Art. 3 III GG
- b) The case is strategic in the legal sense or promises to become strategic<sup>3</sup>
- c) The case falls within the thematic scope of the Strategic Plan
- d) The case has potentials for lobbying
- e) The case falls into a work area which is covered by sponsors, or offers new funding sources

There are three avenues to identify cases:

- a) Clients, associations, or lawyers request assistance whether BUG can take a case on. The cases are then assessed along above listed criteria.
- b) BUG announces a certain case constellation and reaches out to people that may have had such discrimination experience.
- c) BUG initiates situations where discrimination can be proven (testing) in order bring a well-documented lawsuit to the court.

## 4. How do we facilitate decision-makers to improve policy and practice?

If required BUG will reach out to relevant decision makers and hold lobbying meetings. This shall take place in a constructive setting to ensure envisaged outcomes can be met. BUG intends to convince with well-founded arguments. Its aims are not only on 'converted' people, but also on people holding up change. Depending on the situation BUG will directly or

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<sup>2</sup> Further details can be found in the relevant information sheet.

<sup>3</sup> e.g. affect any aspect of the case with a need for clarification in the AGG or touches a legal concept with a need for clarification, the existing interpretation of the concept is far too narrow, bears the capacity to develop jurisprudence or to work educationally.

indirectly make use of people supporting its objectives. BUG would like to convince through its expertise and make use of opportunities to develop sound advice that can possibly be used by other organisations as lobbying instruments.

After a successful completion of any complaint BUG does not stop its activities. It takes any necessary further steps until the discriminatory patterns or systems have been changed.

## **5. How do we embed the work of BUG into the existing framework of equality work in Germany?**

There is a colourful variety of local, regional and national organisations, associations, networks, etc. in Germany that have taken up the cause of equality and non-discrimination. This existing structure should be made or kept accessible to BUG. Local anti-discrimination counselling offices for example, have access to people that have experienced discrimination, which the BUG does not naturally have. We therefore rely on mutual support and networking in order to achieve synergies.

The BUG is aware that so far no other organisation has the resources and skills to handle lawsuits in a strategic fashion. BUG is also aware that constructive cooperation with other actors in equality work facilitates a high quality of work with a sustainable impact.

## **6. How do we identify future trends and developments?**

BUG closely monitors current developments and trends concerning equal treatment and assess their relevance to BUG's work. Therefore, scenarios brought to BUG by affected persons are important. Through these BUG is able to identify and determine key topics. Only in this way is BUG able to develop and maintain a clear profile, as well as maintain mutual support of other organisations active in the field.

## **7. How do we ensure the best possible organisational capacities?**

A 'healthy' and stable organisational structure is required to gain influence and positive impact in policy and practice. A constructive way of working and a pragmatic approach was achieved during the consolidation phase by solid statutes, a professionally and competent management and prudent and helpful (board) members. Internal rules are clearly defined and transparent in order to keep the organisation operational, and to establish clear rules and responsibilities. A transparent and accountable management has in the past allowed the board to shoulder its accountability. This has satisfied donors of BUG – both with the implementation of activities, as well as the financial administration.

## **8. How do we secure necessary resources?**

Since 2009 BUG has gained experience in fundraising in the following areas:

- a) Core funding
- b) Project-related funding

Although BUG would not like to apply for a project funding, it has continued doing so because there are limited other options. Nevertheless, the promotion of BUG increased between 2009 and 2015. Since then it has decreased again. The annual budget plan and the financial report demonstrate the subsidy amount, and can be found on the website. So far it has been just possible to acquire momentary means for the staff.

## 9. How do we document our results and achievements?

The organisation has set itself systematic goals and clearly formulates them. The Strategic Plan is a key instrument for doing so. All envisaged activities indicate a goal that shall be achieved. In the work programmes those objectives are specified and concrete methods with set deadlines of when these targets should be met are made. This allows BUG to evaluate whether, when, and up to which level defined goals are achieved.

**The above-listed central recitals indicate the main focus of BUG during the period 2018-2020. They form the basis and justification for the formulation of aims and objectives for the organisation. The plans and objectives of BUG in the following chapters are seen as appropriate responses to the above challenges of the organisation. The central goal of BUG is to bring positive change with regard to equal treatment for people in Germany.**

## K. Strategic objectives for 2018 - 2020

The primary purpose of this Strategic Plan for the period 2018 to 2020 is to achieve visible and measurable results with regard to the overall objectives, as well as the programmatic and structural goals of BUG.

### **A. Programmatic goals**

1. Create precedents (1, 2, 3, 4, 6, 7, 9)
2. Influence the implementation of political and social equal treatment (5, 6, 7, 8, 9, 10)
3. Achieve synergies (1, 2, 4, 5, 6, 8, 9, 10)

### **B. Structural goals**

4. Develop organisational structures
5. Strengthen organisational capacities
6. Secure funding

The following chapter identifies medium-term goals that BUG within the timeframe of this Strategic Plan (2018-2020) intends to implement. Besides this BUG has developed annual work plans which are built upon this strategic plan. These indicate specific goals, activities, and timetables for implementation in all listed areas.

## **A. Programmatic goals**

### **1. Create precedents**

- a) Choose strategic lawsuits (1, 2)<sup>4</sup>

*Objective 1:*

*Lawsuits with strategic potential are detected*

*Objective 2:*

*BUG searched actively for strategic lawsuits*

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<sup>4</sup> The numbers indicate which aim BUG wants to achieve with the named activity.

To work in a focussed way, BUG proactively searches for cases concerning the its topics. This takes place through communication with the ADS and Non-discrimination offices, the website of BUG, or through contact with other relevant organisations.

Objective 3:

***Strategic lawsuits are initiated***

**b) Filing of strategic lawsuits (1, 2, 3, 4)**

The following activities are the key tasks of BUG. BUG holds the role of an initiator, mediator, and coordinator. It ensures that necessary expertise is integrated in the event of court action, communication between the participants takes place, and that the work is implemented on schedule. BUG has gained experience throughout the last years, which is appreciated by its clients.

The overarching goal of BUG is to influence the AGG in a positive way, and to create a strong legal protection against discrimination.

As listed above BUG will accompany cases of the following thematic fields in court through third party assistance:

- a) *Religious Dsicrimination*
- b) *'Racial Profiling` through Federal Police*
- c) *Discrimination regarding the access to living space*
- d) *Discrimination of Sinti and Roma*
- e) *Discrimination of transgender people*

Furthermore, BUG will accompany the juridical work with presswork, with positive decisions and obtained precedents BUG will do lobby work.

Objective 1:

***Identify attorneys with expertise in the AGG***

Objective 2:

***Ensure extensive support for clients***

Objective 3:

***Provide professionally competent lawyers to clients***

Objective 4:

***Bundle expertise***

Objective 5:

***Accompany pre-litigation procedure***

Objective 6:

***Develop a comprehensive line of argumentation***

Objective 7:

***Present Amicus Curiae<sup>5</sup> to the court***

Objective 8:

***Verify policy compliance of the AGG***

Objective 9:

***Use of options of international legal remedies***

- *International legal standards were quoted in the typeset*
- *Take international legal action*

Objective 10:

***Support selectively the filing of complaints without third party***

- c) **Follow up judgements (6, 7, 9)**

Objective 1:

***Interrupt discrimination patterns and identify responsibilities of relevant stakeholders***

- d) **Develop and strengthen skills (1, 2, 3, 6)**

Objective 1:

***Develop skills and knowledge of lawyers in applying the AGG***

**2. Influence the implementation of equality policies**

- a) **Explore potentials for action (6)**

Objective 1:

***Detect developments in the subject area in timely fashion***

- b) **Carry out lobbying work (1, 6, 7, 9, 10)**

Objective 1:

***Use information from lawsuits in interaction with political deputies (ADS, ministries, political parties, parliament)***

Objective 2:

***Make use of the follow up of concrete lawsuits in interaction with relevant stakeholders***

Objective 3:

***Strengthen the AGG***

Objective 4:

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<sup>5</sup> Amicus Curiae is a legal report, which can be presented to the court by an uninvolved party and can (but does not have to) be taken into account by the judge.

***Stop `Racial Profiling` as a form of institutional racism/discrimination through adequate rules of procedure***

Objective 5:

***Further anti-discrimination paragraphs are added to further State Licensing Acts (Landesgaststättengesetz)***

Objective 6:

***Initiate discussions on horizontal issues***

Objective 7:

***Use shadow reports as a lobbying tool***

Objective 8:

***Accompany negotiations about the 5<sup>th</sup> Equal Treatment Directive***

**c) Accompany lawsuits with PR work (5, 6, 9, 10)**

Objective 1:

***Publicise the work of BUG***

- i. Cooperation with media*
- ii. Website*
- iii. Thematic files*
- iv. Facebook*
- v. Revise information materials*
- vi. Produce information materials*
- vii. Articles about BUG topics*
- viii. Newsletter*
- ix. Legwork to studies and investigations*

Objective 2:

***Public relations at EU level***

**d) Strengthen BUG's profile (4)**

Objective 1:

***BUG is perceived as the NGO concerning the AGG and strategical process control***

**3. Achieve synergies**

**a) National networking (2, 8, 10)**

Objective 1:

***Network expertise concerning anti-discrimination work of NGOs***

- i. Network NGOs in the field of racism*
- ii. Network associations of Sinti and Roma*
- iii. Network lawyers in the field of discrimination*

Objective 2:

*Cooperate with anti-discrimination/ counselling offices*

Objective 3:

*Cooperate with lawyers*

Objective 4:

*Integrate domain expertise*

Objective 5:

*Work with tenant protection organisations and legal practitioner organisations*

Objective 6:

*Stay in close contact with minority community organisations*

Objective 7:

*Include ADS and other relevant organisations*

**b) Bundle expertise (6, 8, 9)**

Objective 1:

*Connect extern expertise for innovative approaches to fight discrimination*

- i. Bundle expertise concerning the topic independent complaint office for the police*
- ii. Bundle expertise concerning collection of equality data*

**c) Create publicity for innovative approaches (4, 5, 9)**

Objective 1:

*Feed new equality approaches into expert discussion*

**d) International network (1, 8)**

Objective 1:

*Use of international network*

## **B. Unpredictable Undertakings**

As not all activities can be planned and foreseen, the organisation has to be flexible to an acceptable extent. Up to 20% of the activities may be unpredictable, and should be available as labour and financial resources. The BUG is of the opinion that the Strategic Plan, as well as the targeted budget should provide sufficient flexibility in order to take this into account. In year-end reports, additional activities are listed in order to make them visible to the Board and doors.

## **C. Structural objectives**

While thematic priorities can be directly linked to objectives of the organisation, this is not possible to the same extent with structural objectives. Structural issues, such as fundraising, are decisive for the general function and the survival of the organisation. It will not be possible to achieve thematic objectives without a solid structural foundation, and the well-functioning of the organisation.

### **4. Strengthen the structure of BUG**

Objective 1:

*Develop a competent staff*

Objective 2:

*Appropriately use competences of the board and members*

Objective 3:

*Internal decisions are taken transparently*

Objective 4:

*The performance of BUG is appreciated*

### **5. Professional planning and evaluating**

Objective 1:

*Ensure systematic and strategic planning*

Objective 2:

*Provide annual work programmes*

Objective 3:

*Ensure quality assurance and evaluation*

Objective 4:

*Achieve annually set goals and present to board*

Objective 5:

*Increase competencies concerning the AGG of staff*

### **6. Secure funding**

Objective 1:

*Ensure sufficient funding*

Objective 2:

*Achieve constructive cooperation with donors*

***L. Attachment 1: Thematic priorities within 2018-2020 at a glance***

<b>Thematic priorities</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>1. Create precedents</b>			
1. a) Choose strategic cases			
1. b) Lodge strategic complaint			
1. c) Revise judgements			
1. e) Develop and strengthen skills			
<b>2. To take influence on implementation of equal treatment</b>			
2. a) Explore opportunities for action			
2. b) Lobbying			
2. c) Accompany lawsuits with PR work			
2. d) Strengthen profile of BUG			
<b>3. Achieve synergies</b>			
3. a) National network			
3. b) Bundle expertise			
3. c) Create publicity for innovative approaches			
3. d) International Network			

<b>Structural priorities</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>4. Strengthen the structure of BUG</b>			
Groom competent staff			
Use expertise of membership			
Transparent decision making			
<b>5. Ensure professional planning and evaluation</b>			
Ensure systematic and strategic planning			
Ensure annual work programmes			
Ensure quality assurance and evaluation			
Achieve annually set goals			
Increase competence of staff concerning the AGG			
<b>6. Secure funding</b>			
Ensure funding			
Achieve constructive cooperation with donors			

<i>White:</i>	<i>no priority</i>	2	2	2
<i>Light gray:</i>	<i>low priority</i>	11	11	11
<i>Dark gray:</i>	<i>medium priority</i>	8	8	8
<i>Black:</i>	<i>absolute priority</i>	3	3	3