Informal counselling and official complaints procedure in cases of discrimination and sexualized violence at TUK

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Preamble

TUK would like to ensure the best possible working and study conditions, a trustworthy and respectful working atmosphere as well as fair and appreciative cooperation for employees and students. Discrimination, bullying, stalking, disparaging or degrading behaviour, harassment, coercion, violence, especially sexualized assaults, will not be tolerated. Incidents of this kind will be resolutely countered.

Discrimination and sexualized violence are punished in order to counter conflicts and bring about a change in the overall situation. Those who disregard existing rules will be made aware that such conduct is not desirable. In order to ensure a respectful atmosphere at TUK and to prevent imitations, assaults are punished. After all, if there are no consequences, if misconduct is not addressed, people will not change their behaviour. At worst, those affected decide to leave the university, while those who act discriminatorily continue to do so within the university.

Not only a formal complaints procedure, but also the establishment of informal points of contact should lead to repeated acts of discrimination being identified more quickly and the discriminatory behaviour being stopped more effectively.

1. Objectives

Under the General Equal Treatment Act (AGG), which came into force in 2006, every university is obliged to provide those affected by discrimination or sexualized harassment at the university the opportunity to lodge a complaint.

Discrimination based on ethnic origin, gender, religion or belief, disability, age or sexual identity is to be prevented or eliminated (Section 1 AGG). Persons who experience situations of discrimination according to Section 1 AGG are entitled to lodge a complaint pursuant to Section 13 AGG. Members and affiliates of TUK or persons who are in contact with them are entitled to lodge a relevant complaint. In order to ensure the most comprehensive protection possible and to counter conflicts as early as possible, designated points of contact can be addressed prior to and independently of a complaint pursuant to Section 13 AGG.

TUK attaches great importance to the promotion and realisation of a trusting, constructive and appreciative cooperation, mutual respect for the personality of the other, the prevention of violence as well as a responsible handling of assaults. A clear presentation of the procedure in cases of discrimination and sexualized violence is to strengthen confidence in the attitude and actions of TUK in cases of assault. Discrimination, disparaging and degrading behaviour, bullying, stalking as well as sexualised harassment and violence are actively prevented through respectful cooperation.

A respectful cooperation forms the basis for the best possible working and study conditions. This is achieved with the values practised at TUK:

- Collegiality, fairness and politeness;
- Reliability and helpfulness;
- Respectful, open, honest and friendly interaction with each other;
- Equal opportunities;
- Family friendliness;
• Mutual respect and appreciation;
• Mutual information and factual debate;
• Open forms of conflict resolution.

Where these values are not respected in an appropriate manner, in cases pursuant to Section 13 AGG, it is possible to counteract the problem with discussions and, if necessary, sanctions. Nevertheless, it is important to resolve the situation as early as possible together with the contact persons of TUK (for a list, see section 4), even without initiating a complaints procedure, in order to promote respectful cooperation.

Complaints procedures can always be initiated by persons entitled to complain. This is accompanied by preventive measures (cf. section 2) and early clarification of the situation through the possibility of addressing points of contact (cf. section 3).

2. Prevention

For prevention purposes, new employees and students should be made aware of their rights and obligations during information events and/or by means of appropriate information material.

Training measures for all members of TUK include continuing education and training opportunities for acquiring and maintaining social skills as well as sensitisation training. In particular, managers are expected to take part in appropriate further training measures and the implementation of the acquired competences, since they are particularly responsible for the welfare of their staff. Managers (superiors/professors) bear a special responsibility. They are additionally expected to behave as follows:

• Acting in an exemplary manner;
• Justice, credibility and the ability to respond positively to criticism;
• Social competence;
• Contribution to a supportive study and working climate;
• Human understanding and appreciative feedback;
• A cooperative style of leadership (working out goals together, defining areas of responsibility and solving problems);
• Respect for the personal integrity and dignity of employees and students.

The University Board ensures that financial, material, organisational and institutional conditions are in place for the implementation of prevention measures.

3. Possibilities for persons concerned

Persons concerned have the possibility to turn to (a) point(s) of contact or the complaints office (see also section 4).

Points of contact allow for an informal procedure in which persons can report the incident(s) and receive counselling tailored to their needs. Further support, for example in the form of mediation, can also be considered as a measure.

If the point of contact does not bring about a solution, a complaints procedure can be initiated in a further step. It is however also possible to file a complaint directly with the complaints office independently of any consultation at a point of contact.
The counselling provided by one of the points of contact or the reporting of a complaint can always be anonymous, as long as no claims are asserted pursuant to Section 15 AGG (e.g. compensation for damages that employees can receive from employers). However, the person making the complaint should not suffer any disadvantages as a result of the complaint, even if his or her name is mentioned.

### a. Counselling at a point of contact

Persons concerned have the right to turn to points of contact (see section 4.a.). These are also available when there is uncertainty about whether discrimination or sexualized violence has occurred in an individual's case.

At the points of contact, the person concerned shall receive assistance and advice while maintaining the highest level of confidentiality. If necessary, the point of contact, in agreement with the person concerned, shall consult other competent authorities. In all conversations, the person concerned has the possibility to be accompanied by one or several person(s) they trust.

Persons concerned are free to remain anonymous in the counselling process if they so wish. The situation is discussed and steps are considered on how the person(s) concerned should deal with the situation. The main actor is the person seeking counselling (help for self-help). In subsequent steps, both internal TUK contact persons as well as external help institutions can be involved.

A point of contact does not accept complaints within the meaning of the AGG. However, if it becomes clear during counselling that a complaint should be filed, the person concerned is pointed to the complaints procedure pursuant to Section 13 AGG (see section 3.b). If a criminal offence is suspected, the local police will also be informed.
b. Complaint pursuant to Section 13 AGG

Independent of and, if necessary, as an alternative to seeking advice from a point of contact, persons concerned can initiate a complaints procedure pursuant to Section 13 AGG.

The main complaints office is the Gender Equality and Family Affairs Office (also the single point of contact as defined in section 3a).

A core team, which meets in different constellations depending on the complaint, is responsible for processing the complaint. The complainant submits the complaint, indicating which individuals from the core team should be involved in the further process. When visiting the complaints office, the person making the complaint can be accompanied by one or more persons he or she trusts. Procedures and measures are discussed with the appointed individuals from the core team and the results are documented. Further steps will be initiated accordingly.

The complaint can be made informally (e.g. by telephone or e-mail and, in principle, anonymously). However, if claims pursuant to Section 15 AGG (e.g. damages) are asserted in the course of the procedure, employees are required to file such claims in writing.

The following information should be included in the statement:

1. The description of the situation(s) and the conduct of the individuals involved;
2. against whom the complaint is directed;
3. whether any individuals observed the incident and, if so, which ones,
4. whether other individuals have already been contacted, and
5. whether measures have already been taken, and
6. which departments or representatives from the core team are to be involved in the complaints procedure, if applicable with reference to the gender of the persons involved.

The complaint is not subject to a time limit. However, employees have to assert claims pursuant to Section 15 AGG within two months of becoming aware of the discrimination or sexualized violence at the complaints office.

The complaint can be withdrawn or stayed at any time.

Once the official complaint has been submitted, the complaints office and the individual(s) nominated in the core team review the complaint. The review is done based on the General Equal Treatment Act. If the complaint is classified as serious, the person against whom a complaint has been filed is first given the opportunity to comment on it in writing within a specified period of time. After receipt of the statement or after expiry of the deadline (even without a statement), the person against whom a complaint has been filed is invited in writing to a personal discussion. If necessary, additional witnesses can be questioned (in writing / orally). These witnesses may, but do not have to, give a statement.

The complaints office will treat the matter with the necessary confidentiality. However, in the interest of a proper review and clarification of the complaint, anonymity cannot be guaranteed throughout.

The result of the review will be communicated in writing to the complainant and the person against whom the complaint is directed, observing the provisions of data protection law.
If the review reveals that there is no discrimination, the complaints procedure is closed as soon as the result is communicated. In this case, the complainant will be given the opportunity to contact one of the points of contact to discuss further steps. If accusations are not confirmed, the accused person is entitled to appropriate rehabilitation by the university.

If the complaints office identifies discrimination, it sends a report to the positions responsible for the relevant cases (e.g. President, Chancellor or the Human Resources Department or the Student and International Affairs Department), including minutes, written representations and statements. The respective department assesses the facts of the case and, in consultation with the designated individuals from the core team of the complaints office, initiates further measures to prevent discrimination (cf. also Section 12 para. 3 and Section 4 AGG, if applicable, in conjunction with Section 4 para. 5 HochSchG and Section 69 HochSchG).

In addition, the individuals of the core team specified in a complaints procedure must support and advise the persons concerned responsibly and promptly after becoming aware of a disadvantage within the meaning of Section 1 AGG.

4. Contact persons

Persons concerned or persons entitled to lodge a complaint can contact the persons/departments listed below. Both female and male individuals are available so that persons concerned (especially in cases of sexualized harassment) can choose who they would like to talk to about their concerns.

Those concerned are at liberty to turn to an external body such as the Student Union’s psychological counselling centre, the police, the White Ring, doctors, equal opportunities officers from the city and district, therapists, etc.

All contact persons are appropriately competent or, if required, have participated in further training provided by the single point of contact.

a. Points of contact

The single point of contact is the Gender Equality and Family Affairs Office.

In addition, individuals can turn to the following points of contact:

- Supervisors;
- Staff Council;
- Human Resources Department (HA 3);
- Gender Equality Officer of the Senate;
- Gender Equality Officer of the departments;
- Youth and trainee representative body;
- Representative for handicapped persons;
- Addiction counselling;
- Company doctor;
- General Student Committee (AStA).
b. Complaints office

The main complaints office within the meaning of the AGG and thus the first contact for complaints is the Gender Equality and Family Affairs Office.

In the further course of the complaints procedure, (other) contact persons from the core team can be involved:

- Human Resources Department (HA 3);
- Student Services and International Office (HA 4)
- Staff Council;
- (Deputy) Gender Equality Officer of the Senate;
- Gender Equality Officer of the department;
- Trainee representative;
- Representative for handicapped persons;
- Addiction counselling;
- Company doctor;
- General Student Committee (AStA).

5. Documentation

Statements made at the points of contact are recorded anonymously and, if necessary, evaluated according to occasions and different status groups.

Every complaint made to the complaints office is documented in a report. All conversations and occasions for complaints are documented in writing by an individual from the core team of the complaints office who is appointed during the procedure. Verbal statements are signed by the persons reporting the matter so that such statements can be taken into account in the further process. The complaints received, as well as the cases named in the points of contact, are evaluated by the Gender Equality and Family Affairs Office at the beginning of each calendar year.

According to the principles of data minimisation, the number of persons to be informed about a case should be kept as small as possible. Unless otherwise stipulated, all persons involved in this procedure are obliged to treat personal data made available to them confidentially. Further data may not be made accessible to third parties, unless the transfer is regulated by another legal provision or unless the parties to the conflict have given their express consent to this. Documents made available by the persons concerned shall be returned to them or destroyed. The destruction of documents and deletion of data shall comply with the security standards for sensitive data carriers.
Annex 1: Auszug aus dem Allgemeinen Gleichbehandlungsgesetz (AGG)
vom 14.08.2006

§ 1 Ziel des Gesetzes

§ 7 Benachteiligungsverbot
(1) Beschäftigte dürfen nicht wegen eines in § 1 genannten Grundes benachteiligt werden; dies gilt auch, wenn die Person, die die Benachteiligung begeht, das Vorliegen eines in § 1 genannten Grundes bei der Benachteiligung nur annimmt.

§ 12 Maßnahmen und Pflichten des Arbeitgebers
(3) Verstoßen Beschäftigte gegen das Benachteiligungsverbot des § 7 Abs. 1, so hat der Arbeitgeber die im Einzelfall geeigneten, erforderlichen und angemessenen Maßnahmen zur Unterbindung der Benachteiligung wie Abmahnung, Umsetzung, Versetzung oder Kündigung zu ergreifen.

(4) Werden Beschäftigte bei der Ausübung ihrer Tätigkeit durch Dritte nach § 7 Abs. 1 benachteiligt, so hat der Arbeitgeber die im Einzelfall geeigneten, erforderlichen und angemessenen Maßnahmen zum Schutz der Beschäftigten zu ergreifen.

§ 13 Beschwerderecht

(2) Die Rechte der Arbeitnehmervertretungen bleiben unberührt.

§ 15 Entschädigung und Schadensersatz
(1) Bei einem Verstoß gegen das Benachteiligungsverbot ist der Arbeitgeber verpflichtet, den hierdurch entstandenen Schaden zu ersetzen. Dies gilt nicht, wenn der Arbeitgeber die Pflichtverletzung nicht zu vertreten hat.


https://www.gesetze-im-internet.de/agg/BJNR189710006.html [08.10.2021]
Annex 2: Auszug aus dem Hochschulgesetz (HochSchG)
vom 23.09.2020

§ 4 Gleichstellung, Gleichstellungsbeauftragte, Gleichstellungsplan


§ 69 Aufhebung, Rücknahme und Widerruf der Einschreibung

(3) Ferner kann die Einschreibung von Studierenden widerrufen werden, die

1. durch Anwendung von Gewalt, durch Aufforderung zu Gewalt oder durch Bedrohung mit Gewalt den bestimmungsgemäßen Betrieb einer Hochschuleinrichtung, die Tätigkeit eines Hochschulorgan oder die Durchführung einer Hochschulveranstaltung behindern oder zu behindern versuchen oder ein Hochschulmitglied von der Ausübung seiner Rechte und Pflichten abhalten oder abzuhalten versuchen oder
2. die Hochschule, ihre Gebäude oder Einrichtungen zu strafbaren Handlungen nutzen oder dies versuchen oder diesen einen erheblichen Schaden zufügen und sie dadurch ihrem bestimmungsgemäßen Gebrauch entziehen, oder
3. Mitglieder oder Angehörige der Hochschule auf dem Campus im Sinne des § 3 Abs. 4 AGG vorsätzlich sexuell belästigen oder diesen im Sinne des § 238 des Strafgesetzbuchs nachstellen oder
4. rechtsschädigend wegen einer Straftat gegen das Leben, die sexuelle Selbstbestimmung, die körperliche Unversehrtheit oder die persönliche Freiheit verurteilt wurden, wenn die Tat und die Verurteilung einem Verwertungsverbot gemäß § 51 des Bundeszentralregistergesetzes noch nicht unterfallen und die Art der begangenen Straftat eine Gefährdung oder Störung des Studienbetriebs besorgen lässt, oder
5. der Hochschule oder dem Land durch schweres schuldhaftes Fehlverhalten oder die Begehung von Straftaten erheblichen Schaden zugefügt haben.

Gleiches gilt für Studierende, die an den in Satz 1 Nr. 1, 2 oder 5 genannten Handlungen teilnehmen oder wiederholt Anordnungen zuwiderhandeln, die gegen sie aufgrund des Hausrechts (§ 80 Abs. 3) wegen Verletzung ihrer Pflichten nach § 36 Abs. 4 getroffen worden sind.

http://landesrecht.rlp.de/jportal/?quelle=jlink&query=HSchulG+RP&psml=bsrlpprod.psml [08.10.2021]