Disability Studies Quarterly
Spring 2006, Volume 26, No. 2
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The Definition of Disability in German and Foreign Discrimination Law

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Abstract: This paper is about the issue of defining disability in the context of discrimination law. It reviews the definition of disability in the German disability discrimination laws, the Act on the Equalization of Disabled Persons (Behindertengleichstellungsgesetz, BGG) of 2002 and the new German rehabilitation law which is encapsulated in the Ninth Book of the Social Law Code (Sozialgesetzbuch, Neuntes Buch, SGB IX) of 2001. The main question of this review is whether the respective definitions of disability perpetuate the medical/individual model of disability, or support the social model/human rights model of disability. According to the medical/individual model of disability the problems disabled persons face in their daily life are mainly caused by their impairment, whereas the social/human rights model locates the problems in societal and environmental barriers outside the individual disabled person. The German disability definition is analyzed and evaluated in comparison to a number of selected countries around the world.

Key Words: Disability definitions; discrimination law; Germany; medical and social models

1) Legal Definitions of Disability: Difficulties and Obstacles

Legal definitions of disability have been an issue of much debate in Europe and around the globe (Bickenbach, 1992; Altman, 2002). Despite the efforts of the World Health Organization (WHO) which resulted in the new International Classification of Functioning (ICF), there is no universal international legal definition of disability, nor is there one in any European Union (EU) country. A recent study of the definitions of disability in various EU countries has shown variations not only from country to country, but also within each country. While there are similarities among the definitions of disability in some areas of social policy, legal disability definitions in each country differ with respect to income maintenance, employment measures or social assistance with daily life activities (Mabbett, 2002).

While legal definitions of other categories such as sex, ethnic background, or sexual orientation also raise questions of demarcation (Minow, 1991; Tobler, 2003) disability is even harder to define because it encompasses numerous conditions of mind and body, and the boundary between ability and disability seems to be less clear. Well-known examples are visual and hearing conditions. When does a visual limitation constitute an impairment? When do we call a person who is hard of hearing a disabled person? In addition, definitions of disability change according to developments in medical science. New impairments emerge with new medical developments and discoveries. Genetic dispositions to certain diseases are recent examples.

Legal definitions of disability vary also in relation to different legal purposes. A social welfare law providing personal assistance benefits, for example, may have a different target group of disabled persons than a discrimination law. The distribution of social benefits has to be needs-based in order to be rational. Equal treatment as a right, not a benefit, should not be offered only to those in need but to all persons potentially affected by discrimination. From a theoretical perspective, disability definitions are challenged by the debate on what causes disability: medical conditions, environmental factors, social structures and/or individual or collective behaviors and attitudes. This debate about the medical (individual) vs. social model of disability has had a large impact on European disability policy because it has led to the paradigm shift from charity-based to rights-based disability policy and it has helped in understanding disability as a social construct.

2) Disability Discrimination Law: Endorsing the Social/ Human Rights Model of Disability or Perpetuating the Medical/ Individual Model?

a) The Discrimination Context

Discrimination Law aims to prevent unequal treatment, which is rooted in stereotypes and stigmata. With respect to disability, the neglect of disability as a human difference has been analyzed as the third source of disability discrimination (Bagenstos, 2000). In the employment sector, stereotypes about disabled persons range from the view that disabled persons are unable to work or unable to compete in the open labor market to the opinion that a disabled worker disturbs the normal process of work in any enterprise, if not being a health and safety hazard to other employees. Disabled workers are stigmatized as unproductive and economically undesirable. The fact that most work sites and work environments are inaccessible to many disabled employees is the result of a neglect of disabled persons' needs.

Disability discrimination law sends a powerful message to the general public. It is based on the assumption that discrimination is wrong and a major problem for disabled persons. Here, they are seen not as problems but as rights holders. Disability discrimination law thus endorses the social model of disability because it locates the problem of disability outside the individual person.(Barnes & Mercer, 2004) Discrimination law neatly fits with an understanding of disability as a social construct. It can help to deconstruct the medical/ individual model of disability and the stereotypes that come with it.

At the same time, of course, law is a tool to construct social reality in modern society. Thus, it is clear that every legal definition of disability takes part in the social construction of disability (Stone, 1984; Degener, 2003; Jones & Basser Marks, 1999). The question then arises whether legal definitions in discrimination law reinstate or perpetuate the individual model of disability. In Germany, where we had over 20 federal and regional disability discrimination laws adopted over the course of the last decade, members of the disability movement often demanded that disability should not be defined as a medical condition, notably as an impairment. Only a non-medical definition, it was argued, could endorse the social model of disability. Similar debates took place in other countries and in the international legal context (Hendriks, 2002). But the social model of disability does not give any guidance as how to alternatively legally define disability. While the various revised WHO definitions have been a valuable contribution to the discussion in that they seek to combine what is true about the medical model and the social model of disability, and have produced the bio-psycho-social model of disability (WHO, 2002), it seems to be less useful in the context of disability discrimination law. This is because the WHO notion of disability as a result of an interaction between an impaired individual and his or her social environment mixes characteristics and treatment. A discrimination law has to separate these two things by saying which treatment is regarded as prohibited discrimination and against whom. Disability discrimination laws thus need to define discrimination as well as disability and it therefore makes no sense to define disability as the outcome of discrimination.

Thus, it seems that the solution might not be to refrain from using medical terms or impairment terminology. Rather the opposite is true if we think about how disability discrimination actually works. Disability-based prejudice and stigma are always related to an actual or presumed abnormality called impairment or chronic illness. The view that a blind person cannot work as a bank accountant, for example, is based on the assumption that a bank accountant needs full visual capacity. The hotel manager, who does not accept disabled guests, assumes that their impaired appearance disturbs able-bodied guests. The impairment may be visible or invisible, it may be real or imputed, but it is always the reference of discriminative treatment. Neglect, the third source of disability discrimination works the same way. It is neglect of differences due to an impairment, which results in discrimination. Neglecting that paralyzed people move on wheels instead of on legs, or neglecting that blind persons read Braille instead of black print leads to inaccessibility and exclusion. Thus, definitions of disability in discrimination laws do not perpetuate the individual model of disability if they, in fact, refer to impairment.

b) Non-impairment related pitfalls

There are, however other pitfalls for the reinstatement of the individual model of disability in discrimination laws. One such pitfall is a definition that portrays disabled persons as helpless and incapable with respect to a range of normal life activities. A recent Organisation for Economic Co-operation and Development (OECD) study on disability definitions has come to a similar conclusion by suggesting that disability should not be equated with employment incapacity (OECD, 2002). Those definitions convey the very same stereotypes about disabled persons that discrimination law seeks to prevent. One of the core values of discrimination law in the context of disability is that it creates space for individual abilities despite any group membership. Such space can be created only if disability definitions are cleared of assumptions about ability or inability.

Another pitfall is to construe the definition of disability too narrowly to persons who are severely disabled or substantially limited in a range of daily life activities. Jurisprudence on the Americans with Disabilities Act (ADA) has shown that such a definition screens out many disabled persons who are victims of discrimination but do not match the "truly disabled" label (Burgdorf, 1997; Bagenstos, 2000, p. 399; Feldblum, 2000). To protect only a certain category of disabled persons against discrimination is problematic for a number of reasons. In this paper I will focus only on how such a definition intersects with the medical/individual model of disability. Such a narrow definition of disability is based on the assumption that only severely disabled persons are in need of anti-discrimination measures. This in turn presumes that disability discrimination is actually and only invoked by a certain degree of impairment, which again locates the problem of disability discrimination inside the individual victim. The opposite is true: disability discrimination is the result of treatment, attitudes and social structures. Often the impairment of the victim does not matter at all, except for being a vent for prejudice and stigma. These are the cases when disability should not be taken into account at all whether it be severe or less severe. A person with only one arm may be denied a job as a secretary even though she can perform all the essential functions of the job without any accommodations. Her disability should not matter at all. The same holds true for the applicant who misses only one finger. What is important is not the impairment but the reaction to it. By obscuring the cause of discrimination, narrow definitions of disability in discrimination laws indirectly support the individual/medical model of disability (Burgdorf, 1997, pp. 536-559; Anderson, 2000, p. 245; Eichhorn, 2000, p. 1112; Berg, 1999, p.13).

Another, yet similar, indicator of the individual model in a disability definition is whether all persons affected or threatened by disability-based discrimination are covered by the definition or not. This group is much larger than the group of persons with present disabilities, because discrimination may be based on past, present, future or assumed disabilities. The reasons for this indicator are similar to those already mentioned with relation to a "truly disabled" definition. In addition, it can be said that a definition that encompasses past, future and assumed disabilities, as well as associates of disabled persons, is a clear approval of the social model of disability because it is firmly based on a notion of disability as a social construct.

c) Tensions between social welfare and discrimination law

Finally, a definition of disability in discrimination law might create tensions with respect to other social (welfare) law definitions on disability. Again, experiences from the US with respect to ADA implementation can be illustrative. Because disabled employees seeking protection under the ADA need to bring evidence that they are "otherwise qualified" for the particular employment, they might face the danger of losing out on disability benefits which require recipients to prove that they have reduced or lost work capacity (Burgdorf, 1997, p. 1112; Waddington & Diller, 2002). Similar conflicts between social welfare and discrimination law have been predicted for Europe (Waddington, 2002, p. 256). While the tension between these two sets of laws might not first of all be a problem of different definitions, it should not be ignored in this context. People with disabilities might have to choose between anti-discrimination protection or social benefits. Or they might be forced to take up two roles: one in which they play the capable and qualified disabled employee, and another one in which they have to play the helpless and needy beneficiary. Such a result would perpetuate the individual model of disability.

3) The German disability definitions in disability discrimination law

Like many other countries, Germany has various definitions of disability within its legal order. The concept of disability varies according to German criminal, civil, education and social law, to name but a few subject areas. Even within one legal subject area, such as social law, there is no universal definition of disability covering all social welfare and social security laws. This is despite several attempts of the German legislature to introduce a single, coherent and comprehensive definition on disability into the German law, the last being the introduction of the new rehabilitation law, SGB IX, in 2001. According to § 2 SGB IX, persons are disabled if their physical functions, mental capacities or psychological health are highly likely to deviate for more than six months from the condition which is typical for the respective age and whose participation in the life of society is therefore restricted.[2]

a) The Act on the Equalization of Persons with Disabilities (BGG)

When the *Act on the Equalization of Disabled Persons (BGG)* was adopted a year later, the same definition of disability was adopted in § 3 BGG. The *BGG* of 2002 is a public law with some links to civil law. When it came into force on May 1, 2002, it was celebrated as a milestone in the disability movement's fight for equality. The act was indeed drafted by the Forum of Disabled Lawyers whose members belong to the disability movement. The original draft was, however, substantially altered by the government before it was introduced into parliament.

The adopted *BGG* contains provisions relating to:

- transposing the constitutional disability discrimination clause into federal administration,
- equalization of disabled women,
- recognition of sign language,
- design of federal internet services and administrative forms for visually impaired persons,
- access provisions for visually impaired persons with respect to elections,
- guarantee of barrier freedom i.e. in the area of federal buildings and transportation,
- goal agreements,
- power of attorney for disability organizations and "class actions,"
- abolishment of discriminating provisions in occupational regulations
- disability ombudsperson,
- transportation.

The act introduces a new statute into German law (*BGG*) and alters 52 existing federal statutes. Three administrative regulations have been adopted so far.

b) Social Law Code, Book No. Nine (SGB IX)

Disability employment discrimination in Germany is not covered by the BGG, but by the rehabilitation law SGB IX. This act consists of two parts, part one being on rehabilitation benefits and part two consisting of provisions for employment for severely disabled persons including some provisions for public transportation. Part two, which replaces the old Severely Disabled Act (*Schwerbehindertengesetz)*, is comprised of provisions for employment quotas, anti-discrimination, protection against dismissal, representation of severely disabled employees and some administrative sections. Thus, the anti-discrimination provision of § 81 (2) SGB IX[3] covers only severely disabled employees. They are defined in § 2 (2) SGB IX as persons whose degree of disability is at least 50% and who either lawfully stay in Germany or have their ordinary (legal) residence or (legally) work in Germany.[4] The percentage of a given disability is determined according to a list of impairments and diseases and according to guidelines prepared by a group of medical and legal experts (Bundesministerium für Arbeit und Sozialordnung, 1996).

In addition to the BGG and the SGB IX, the German constitution encompasses a disability-specific prohibition of discrimination in its equality clause of article 3 Basic Law (GG). It reads: "No one may be disadvantaged because of his handicap" ("*Niemand darf wegen seiner Behinderung benachteiligt werden*" Art. 3 (3) GG)The constitution was amended to add this provision in 1994. The constitutional provision does not, however, include a definition of disability.

Thus, within the German discrimination law context at the federal level two definitions of disability are at stake. The provisions of the BGG apply to all disabled persons defined as persons whose

> physical functions, mental capacities or psychological health are highly likely to deviate for more than six months from the condition which is typical for the respective age and whose participation in the life of society is therefore restricted (§ 3 BGG).

The employment non-discrimination provision according to § 81 (2) SGB IX, on the other hand, covers only severely disabled persons with a disability degree of at least 50%. There are more disability definitions in anti-discrimination laws at the regional level, which have not been taken into account for the purpose of this article.

While the general definition of disability was adopted with a view to moving away from the medical model of disability and to reflect the ICF concept developed by the WHO, the employment discrimination provision was enacted with the legislative intent of transposing one of the EU equality directives, the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, O.J. L 303/16 (Framework-Directive). Both attempts were only partly successful. The general disability definition in § 3 BGG is still based on the medical/individual model of disability because the restrictions to participating in societal life are seen as a consequence of the impairment. In contrast, the ICF concept of health and disability does not draw such a link between impairment and participation. It is left open as to which of the various factors (bodily functions or contextual factors) might be the cause for social exclusion. Thus, the general definition of disability in German law does not accurately reflect the ICF concept. And in German legal literature, it is highly debated, whether an accurate reflection of the ICF would indeed be desirable (Neumann, 2003, p. 897; Reichenbach, 2002, p. 485; Zinsmeister, 2004, pp. 76-92).

Regarding the EU Framework-Directive, it can be said that § 81 (2) SGB IX by no means can be regarded as a sufficient transposition of the European law. Member States of the European Communities have to do much more than to simply adopt an employment discrimination provision for the groups covered by the Framework-Directive. But what is more important, the Framework-Directive covers all disabled employees. Thus, it is insufficient to protect only severely disabled persons against employment discrimination. However, for the purpose of this paper, this criticism on the German legal definitions of disability might be better left aside.

c) Germany between the medical/individual and social/human rights model

The question at hand is whether these definitions of disability perpetuate the medical or social model of disability. Both the general definition (§ 3 BGG) and the definition of severe disability (§ 2 (2) SGB IX) are impairment-related. While the focus of the first is on the deviation factor, the latter is based on a degree standard, which is linked to a list of impairments. As noted above, an impairment-related definition of disability might not *per se* be regarded as perpetuating the medical model of disability, because disability-based discrimination is always linked to a present, past, future or assumed impairment. However, to limit protection against discrimination to a group of "truly disabled" persons supports the medical model because it shifts the focus from the discriminatory attitude, treatment or structure towards the victim as a reason for discrimination. Thus, the definition of severe disability in German employment discrimination law perpetuates the medical model of disability. To exclude less severely disabled persons, as well as those with a past, future or imputed impairment cannot be reasonably justified. Similarly, the general definition of disability according to § 3 BGG excludes persons with a past, future or assumed disability from legal protection against discrimination. Such a legal approach distorts the reality of disability discrimination. It is not an individual feature of the disabled person which triggers discrimination, but the reaction of society towards such an existing or assumed feature. It is therefore necessary to extend legal protection against discrimination beyond the group of presently disabled persons. The German disability discrimination law thus does not comprehensively encompass the social/human rights model of disability.

In addition, tensions between German discrimination law and social (welfare) law might be predicted, because in both areas the same legal definition of disability applies (§ 3 BGG and § 2 SGB IX). When enacting SGB IX the German legislator deliberately chose to adopt a uniform definition for both, social and discrimination law. Three and four years, respectively, after the enactment of the acts, it is yet too early to see any outcome of that tension.

4) Comparison with other countries: Switzerland, Austria, USA, New Zealand and Ireland

Austria and Switzerland, the two German speaking neighbors of Germany have both recently adopted anti-discrimination laws for persons with disabilities. Both acts were enacted after Germany enacted the BGG in 2002. The Swiss Federal Act on the Equalization of Persons with Disabilities (Behindertengleichstellungsgesetz [BehiG][5]) was adopted on December 13, 2002 and came into force on January 1, 2004. The Austrian Federal Act on the Equalization of Persons with Disabilities (Bundes-Behindertengleichstellungsgesetz, [BGStG][6]) was adopted on July 6, 2005, and will come into force on January 1, 2006. Both laws include definitions of disability which are similar to the German law, however, the Austrian law differs in some significant aspects.

The **Swiss** definition of disability reads in Art.2 (1) **BehiG** 2002:

"*In this Act, a person with disabilities means a person, who because of a presumably permanent physical, mental or psychological impairment, is limited or unable to undertake daily activities, to maintain social contacts, to move, study or undergo vocational training, or to perform gainful employment.*"[7]

The **Austrian BGStG,** 2005 defines disability in § 3 as follows:

"Disability in this Act means the result of a physical, mental or psychological functional impairment or sensory impairment, that are not only temporary and that may hamper the participation in societal life. Not only temporary means a period of more than six months."[8]

While the Swiss definition is similar to the German definition, in that disabled persons are described as persons with impairments which cause functional limitations or social exclusions, the Austrian definition differs. According to the latter, the impairment is regarded as a potential factor, which causes functional limitations or social exclusions. It does not necessarily have to be the sole reason, why a disabled person is prevented from carrying out daily life activities, employment tasks, etc. Thus it leaves room for societal barriers. In addition the Austrian disability discrimination law not only protects persons who fall under the disability definition, but also family members and associates.[9]

In the international discrimination law context there are two approaches to defining disability or the group of disabled persons protected under discrimination law. The first is a narrow approach, similar to that in Germany, where disability is defined as an impairment-related feature of the person and discrimination protection is provided to those persons falling under this definition. The other more extensive approach defines disability as an impairment-related condition which might exist presently, might have existed in the past or may exist in the future. The wider approach might also include persons who are not disabled but are treated as if they were disabled, or persons who are family members or associates of a person with disability. In an earlier study, I found more than 40 countries around the world had adopted disability discrimination laws (Degener, 2005). While the narrow approach to defining disability prevailed, more and more countries are now following the route of a wider approach. Undoubtedly, the **ADA of the United States** which was adopted in 1990 (42. U.S.C.A. §§ 1201 et seq.) had the greatest impact as a model law globally because it was the first comprehensive disability discrimination law. Its definition reads:

"(...)(2) Disability — The term "disability" means, with respect to an individual —
(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual.
(B) a record of such an impairment; or
(C) being regarded as having such an impairment."

Based on this concept, **New Zealand** adopted a more far-reaching definition of disability-based discrimination, which reads in Section 21 of the Human Rights Act 1993 (No 82)

> *"Sec 21. Prohibited grounds of discrimination:*
>
> > *(1) For the purposes of this Act, the prohibited grounds of discrimination are —*
> >
> > > *a.– g. (…)*
> > > *h. Disability, which means —*
> > >
> > > > *i. Physical disability or impairment:*
> > > > *ii. Physical illness:*
> > > > *iii. Psychiatric illness:*
> > > > *iv. Intellectual or psychological disability or impairment:*
> > > > *v. Any other loss or abnormality of psychological, physiological, or anatomical structure or function:*
> > > > *vi. Reliance on a guide dog, wheelchair, or other remedial means:*
> > > > *vii. The presence in the body of organisms capable of causing illness:*
> > >
> > > *i.– m. (…)*
> >
> > *(2) Each of the grounds specified in subsection (1) of this section is a prohibited ground of discrimination, for the purpose of this ACT, if —*
> >
> > > *(a) It pertains to a person or to a relative or associate of a person; and*
> > > *(b) It either —*
> > >
> > > > *i. currently exists or has in the past existed; or*
> > > > *ii. is suspected or assumed or believed to exist or to have existed by the person alleged to have (been?) discriminated."*

Such a far-reaching and comprehensive protection against disability-based discrimination is rare. Some countries, which adopted a wider approach, only cover past or future or imputed disabilities, while others also cover associates and/or family members. However, Ireland followed the example of New Zealand in the **Irish Employment Equality Act of 1998**.

Section 2(1) of the Act defines:

> *"'disability' means*
>
> *the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body*
>
> *the presence, in the body of organisms causing, or likely to cause, chronic disease or illness,*
>
> *the malfunction, malformation or disfigurement of a part of a person's body*
>
> *a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or*
>
> *a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behavior,*
>
> *and shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person."*

Taking into account the guidelines for disability definitions described above, the German definitions clearly perpetuate the medical/individual model of disability for several reasons. Both definitions are narrowly construed towards the "truly disabled" person. They do not cover all persons affected by disability-based discrimination, i.e. not those who might have a future disability or who are presumed to be disabled. The German definition additionally ignores past disabilities. While globally the prevailing definition of disability is still narrowly construed towards the medical model of disability, there are European and non-European examples of a wider approach to a definition of disability in the context of discrimination law. Ireland and New Zealand are examples for a comprehensive protection against disability-based discrimination regarding the personal scope of the law.

5) Conclusions and Summary

This paper explored the issue of legally defining disability within a discrimination law context. It first developed some guidelines for a social/human rights standard regarding legal definitions of disability. According to the author, legal definitions of disability must vary according to the legal context and purpose of the law. While a social (welfare) law that provides disability related benefits might serve only a small group of severely disabled persons, a discrimination law must cover a much larger group and, thus, include a more comprehensive definition of disability. This is because not only severely disabled persons are affected by disability-based discrimination. According to the standard developed in this paper, a definition of disability must include persons with a past, a future or an imputed disability. Furthermore, family members and associates should be protected against discrimination too. A disability discrimination law that is restricted to what is called the "truly disabled person" perpetuates the medical model of disability and is in itself discriminatory. In contrast, an impairment-related definition of disability in a discrimination law does not *per se* perpetuate the medical model of disability. Such a definition is an accurate reflection of the reality of disability-based discrimination, which in the eyes of the beholder is always linked to a real or imagined difference, a so-called impairment.

In addition, this paper described why a universal definition of disability, which applies to both discrimination and social law, might create tensions. Whereas social disability benefits are based on the assumption of need and helplessness, discrimination law is based on the assumption of equal qualification. This in turn might and maybe should result in different definitions of disability.

This paper then reviewed the German definitions of disability in discrimination law and finds that both the *Act on the Equalization of Disabled Persons (BGG) of 2002* and the new rehabilitation law of 2001 *Social Law Code, Book No. Nine (SGB IX)* of 2001 do not match up with the social/human rights standard. The employment discrimination provisions of SGB IX only cover severely disabled employees, and neither the BGG nor the SGB IX cover persons with past, future or imputed disabilities. Furthermore, neither are family members nor are associates of disabled persons included in these laws. It is also predicted that the German legislators' intent to create a universal definition of disability for both social and discrimination law contexts might backfire.

Finally, the comparison to legal definitions in Switzerland, Austria, USA, New Zealand, and Ireland showed that Germany falls behind in the current process of moving towards a more comprehensive approach to defining disability in discrimination law context. While the medical model still prevails, there is a significant trend toward a definition of disability that meets the social/ human rights standard laid down in this paper.

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Endnotes

[1] I am grateful to the following persons who provided information or advice: *Jerome Bickenbach, Robert Burgdorf, Ulrike Davy, Martin Ladstädter, Ruedi Prerost, Shivaun Quinlivan, Gerard Quinn. The article is dedicated to Gaetan from South Africa who saved my PC.*
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[2] *The German Text reads in § 2 (1) SGB IX: "Menschen sind behindert, wenn ihre körperliche Funktion, geistige Fähigkeit oder seelische Gesundheit mit hoher Wahrscheinlichkeit länger als sechs Monate von dem für das Lebensalter typischen Zustand abweichen und daher ihre Teilhabe am Leben in der Gesellschaft beeinträchtigt ist. (...)" English Translation T.D.*
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[3] *The rather long text can be visited under URL: http://www.sgb-ix-umsetzen.de/index.php/nav/tpc/nid/1/aid/221 (last visited 30 October 2005). For an analysis in English see my report on the website: European Commission, Employment and Social Affairs, Antidiscrimination and relations with Civil Society, Disability, Country reports from independent experts on the implementation of anti-discrimination laws (April 2004). URL: http://europa.eu.int/comm/employment_social/fundamental_rights/public/pubsg_en.htm (last visited: April 30, 2005).*
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[4] *The German text reads in § 2 (2) SGB IX:*
"Menschen sind im Sinne des Teils 2 schwerbehindert, wenn bei ihnen ein Grad der Behinderung von wenigstens 50 vorliegt und sie ihren Wohnsitz, ihren gewöhnlichen Aufenthalt oder ihre Beschäftigung auf einem Arbeitsplatz im Sinne § 73 rechtmäßig im Geltungsbereich dieses Gesetzbuches haben." English Translation T.D.
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[5] *SR 151.3 see URL: http://www.egalite-handicap.ch/deutsch/download/BehiG%20.doc (last visited 25 October 2005). Note: Translation of this act by author of this text!*
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[6] *See URL: http://www.gleichstellung.at/rechte/bgstg.php (visited 25 October 2005). Note: Translation T.D.*
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[7] *The German text reads: "In diesem Gesetz bedeutet Mensch mit Behinderungen (Behinderte, Behinderter) eine Person, der es eine voraussichtlich dauernde körperliche, geistige oder psychische Beeinträchtigung erschwert oder verunmöglicht, alltägliche Verrichtungen vorzunehmen, soziale Kontakte zu pflegen, sich fortzubewegen, sich aus- und fortzubilden oder eine Erwerbstätigkeit auszuüben." English Translation T.D.*
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[8] *The German text reads: "Behinderung im Sinne dieses Bundesgesetzes ist die Auswirkung einer nicht nur vorübergehenden körperlichen, geistigen oder psychischen Funktionsbeeinträchtigung oder Beeinträchtigung der Sinnesfunktionen, die geeignet ist, die Teilhabe am Leben in der Gesellschaft zu erschweren. Als nicht nur vorübergehend gilt ein Zeitraum von mehr als voraussichtlich sechs Monaten." English Translation T.D.*
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[9] *§ 4 Diskriminierungsverbot*

1. *Auf Grund einer Behinderung darf niemand unmittelbar oder mittelbar diskriminiert werden.*
2. *Das Diskriminierungsverbot des Abs. 1 ist auch auf jeden Elternteil anzuwenden, der auf Grund der Behinderung eines Kindes (Stief-, Wahl-, Pflegekindes) diskriminiert wird, dessen behinderungsbedingt erforderliche Betreuung er wahrnimmt.*
3. *Das Diskriminierungsverbot des Abs. 1 ist weiter auf Angehörige anzuwenden, die auf Grund der Behinderung einer Person diskriminiert werden, deren behinderungsbedingt erforderliche Betreuung sie überwiegend wahrnehmen. Als Angehörige gelten Verwandte in gerader Linie mit Ausnahme der Eltern (Abs. 2), Geschwister sowie Ehe- und Lebenspartner. Das Diskriminierungsverbot des Abs. 1 ist im Falle der Belästigung gemäß § 5 Abs. 3 auf Verwandte in gerader Linie, Geschwister sowie Ehe- und Lebenspartner von Menschen mit Behinderungen anzuwenden*

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