



KLAGSVERBAND ZUR DURCHSETZUNG DER RECHTE VON DISKRIMINIERUNGSOPFERN
Schönbrunner Straße 119/13, 1050 Wien
Eingang: Am Hundsturm 7
W: www.klagsverband.at
M: info@klagsverband.at
T: +43-1-961 05 85

Universal Periodic Review – Austria

23rd Session, November 2-13, 2015

Klagsverband zur Durchsetzung der Rechte von
Diskriminierungsopfern
Schoenbrunner Strasse 119/13
A-1050 Vienna
Email: info@klagsverband.at
Web: www.klagsverband.at

March 2015

Key words: anti-discrimination, equality, legal remedies



About Klagsverband

The *Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern* (brief: Klagsverband; Litigation Association of NGOs against discrimination) is an umbrella organisation of 41 anti-discrimination organisations based in Vienna. Only non-profit-minded NGOs can be ordinary members.

It was founded in 2004 to coordinate civil society activities and strategic litigation in the field of anti-discrimination on the grounds of gender, ethnic origin, religion and belief, age, sexual orientation and disability.

The main work of *Klagsverband* focuses on

- strategic litigation
- documentation of the anti-discrimination legislation on international, EU, federal and provincial level
- documentation of and commentary on decisions
- commentary on draft legislation
- counseling for member organizations and
- training on anti-discrimination law

1. Development since the previous review

1.1 Reservations to the CRC have been removed¹ and there are plans to remove the reservations to CEDAW. Still, the reservations to ICERD are maintained.

1.2 **No progress** has been made with regard to a **systematic collection of data on racially motivated crimes and racist misconduct of police officers**. The provision of § 33 Criminal Code that makes racist motivation of crimes an aggravating factors is still – as it seems – not applied by courts.

1.3 There are plans to develop a National Human Rights Action Plan.

1.4 Due to judgements of national and international courts, discriminatory provisions for same sex couples are under review and have partly been nullified.

1.5 There have been attempts to amend the national anti-discrimination law in order to provide a general standard of protection for all grounds of discrimination. Ultimately, no progress has been made. Recently, there have media reports that there are government plans – after a lesbian couple was denied service in a café for kissing in public – to provide equal protection from discrimination on federal level.

¹ http://www.bka.gv.at/site/cob__58791/3424/default.aspx (11.03.2015)



1.6 According to an amendment of the Equal Treatment Act (Gleichbehandlungsgesetz) in 2011, job ads need to provide the minimum wage foreseen for a job, and enterprises with more than 150 employees are legally obliged to submit wage reports every other year. Still, the gender pay gap has not decreased².

1.7 Accessibility standards for buildings are still restricted by minimum size and/or capacity and even new legal amendments uphold this practice.

1.8 Still, not all Austrian provinces have published staged plans to remove barriers. The existing staged plans do not include all public buildings and still have very long timelines (e.g. Vienna until 2042³).

1.9 Austrian parliament has adopted an amendment of the Islam Act⁴. Among a number of necessary adoptions, it contains discriminatory provisions (especially compared to the Protestant Act and the Israelite Act). It emphasizes that state law stands above religious law (which is already part of the Austrian Constitution since 1867 and therefore not mentioned in the legal provisions for other religions) and prohibits contributions from abroad.

2. Promotion and protection of human rights

2.1 The Austrian Ombudsman Board (Volksanwaltschaft) is a national human rights institution acting inter alia as the national preventive mechanism under OPCAT. Still, it does not fully comply with the Paris Principles.

2.2 Anti-discrimination law

There is still a high fragmentation and hierarchy in Austrian **anti-discrimination law**. There are almost 60 laws on federal and provincial level and several equality ombudspersons and discrimination contact points.

On **the federal level**, there is protection from discrimination at work on ground of age, disability, ethnic origin, gender, religion and belief, and sexual orientation. With regard to access to and supply with goods and services there is no protection on the grounds of age, religion and belief, and sexual orientation.

² http://www.statistik.at/web_de/static/bruttojahreseinkommen_von_unselbstaendig_erwerbstaetigen_frauen_und_maenne_062503.pdf (17.03.2015)

³ https://www.bizeps.or.at/downloads/etappenplan_wien.pdf (17.03.2015)

⁴ http://www.parlament.gv.at/PAKT/PR/JAHR_2015/PK0152/ (17.03.2015)



Moreover, **sanctions are not effective**. The Austrian antidiscrimination law does not enshrine to have discrimination stopped and barriers removed, but only to receive monetary compensation in cases of discrimination.

This has particularly negative consequences with regard to barriers. The Disability Equality Act (Bundes-Behindertengleichstellungsgesetz) is therefore not in line with the CRPD.

Moreover, the **sanctions** in cases of discrimination **are very low**. The minimum sanctions for harassment vary between 720 and 1.000 Euro. Apart from access to employment, there is no minimum sanction for other forms of discrimination. Actually, there are judgements that award victims of discrimination only 250 Euro⁵ or 750 Euro⁶. Generally, courts tend to award the minimum compensation and therefore the sums rarely exceed 1.000 Euro.

Access to justice is available by law but not very effective. Due to the high number of acts, many potential plaintiffs do not identify the right act that would be the basis for legal action. And many clients do not sue because the legal costs of law enforcement are very high compared to the compensation.

2.3 Still, there is no effective protection from police violence. This is generally true⁷ and applies especially to migrants, as many cases prove, in which police and prosecutors only start investigation after media involvement.

2.4 Moreover, there is no clear statement that the Austrian police refrains from ethnic profiling and this practice seems to occur on a regular basis⁸.

2.3 Education

Generally, the Austrian education system is very selective. Especially upper secondary school (AHS) is highly socially selective: According to the National Education Report 2012 (p. 11) nearly two-thirds of 17-year-olds whose parents have completed some form of tertiary education attend an AHS. But only 8 % of children whose parents have completed compulsory schooling strive for a university entrance certificate in the AHS.⁹ 29 % of the difference in reading performance of 15 to 16-year-olds can be explained by family background.

Austria still has no inclusive school system. Special schools (Sonderschulen) are still in place. Especially children with disabilities and a minority/migrant background (e.g. Roma) have a huge risk of being educated in these schools.

⁵ http://www.klagsverband.at/dev/wp-content/uploads/2008/06/HG-Wien_60R101_01y_anonym.pdf (17.03.2015)

⁶ http://www.klagsverband.at/dev/wp-content/uploads/2008/06/LG-St.-P%C3%B6lten-21R16_13f.pdf (17.03.2015)

⁷ <http://www.falter.at/falter/2015/03/10/wie-die-polizei-eine-frau-verletzte-und-dann-falsch-beschuldigte/> (17.03.2015)

⁸ <http://www.antidiskriminierungsstelle.steiermark.at/cms/beitrag/12053050/110807209> (17.03.2015)

⁹ https://www.bifie.at/system/files/dl/NBB_en_Band_3_web.pdf (17.03.2015)



3. Recommendations

Therefore we ask the Republic of Austria

- 3.1 to remove still existing reservations to international human rights conventions,
- 3.2 to provide full independence in line with the Paris Principles for the Austrian Ombudsman Board and the monitoring mechanisms under the CRPD established on federal and provincial level,
- 3.3 to put more effort into the implementation of CEDAW, CERD, CRC and CRPD,
- 3.4 to establish a consistent protection from discrimination for all grounds of discrimination,
- 3.5 to establish an even and dissuasive minimum compensation for all forms of discrimination,
- 3.6 to take more effective measure to decrease the gender pay gap,
- 3.7 to amend the disability equality acts in line with the CRPD, especially to provide a right to have discriminatory barriers removed,
- 3.8 to introduce staged plans to remove existing barriers in all provinces and to decrease long timetables,
- 3.9 to amend criminal law and teach police and court staff to counteract in cases of hate crimes effectively,
- 3.10 to introduce an effective and independent complaint mechanism in cases of (particularly racially motivated) police misconduct,
- 3.11 to clearly outlaw racial profiling, to refrain from ethnic profiling and to take all necessary measures to prevent racial profiling, and
- 3.12 to move towards an inclusive education system.