



KLAGSVERBAND ZUR DURCHSETZUNG DER RECHTE VON DISKRIMINIERUNGSOPIERN  
Schoenbrunner Straße 119/7 (Entrance: Am Hundsturm 7), A-1050 Vienna  
W: [www.klagsverband.at](http://www.klagsverband.at)  
M: [info@klagsverband.at](mailto:info@klagsverband.at)  
T: +43-1-961 05 85-24

## **Shadow Report**

to the Committee on the Elimination of Racial Discrimination -  
Follow-up Procedure 2012

by Klagsverband zur Durchsetzung der Rechte von  
Diskriminierungsopfern

Schoenbrunner Straße 119/13  
(Entrance: Am Hundsturm 7)  
A-1060 Vienna  
Austria

Email: [info@klagsverband.at](mailto:info@klagsverband.at)

Web: [www.klagsverband.at](http://www.klagsverband.at)

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## About the Klagsverband

The *Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern* (brief: Klagsverband; Litigation Association of NGOs against discrimination) is an umbrella organisation based in Vienna. It consists of 28 Non-Governmental Organisations (NGOs) working in Austria on issues such as anti-racism, equality, and human rights.

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 *Klagsverband* focuses on

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

### 1. List of suggested questions

- Are there any intentions to set up a National Human Rights Institution in line with the Paris Principles?
- Why has Austria decided not to adopt a NAP against Racism but to make it part of the NAP for Integration?
- What measures to combat racism are included in the NAP on Integration?
- Is there an evaluation on the outcomes of the NAP on Integration concerning measures against racism?
- Why are the regional offices of the Equal Treatment Ombud not competent to deal with cases of discrimination on the grounds of ethnic origin and religion?
- Are there any intentions to include “collective claims” into the Equal Treatment Act in order to enable organisations with a legitimate interest in contributing to the fight against discrimination?
- Why is there still a hierarchy within the Equal Treatment Act?
- What measures has the Austrian government taken to make sure that provisions in place to counteract discrimination are applied?
- How does the Austrian government try to grant children with non-German mother tongue or with a migrant background equality in education?
- Are there any intentions to set up a common school for all children between the age between 6 and 15 to grant equality in education?



- Why are the criminal law provisions on incitement to hate (Sect. 283 Criminal Code) applied only rarely?
- Why are the provisions on racism as an aggravating factor (Sect. 33 Criminal Code) never applied in criminal law? Are there any intentions to make this provision more effective?

## 2. Introduction

2.1 Generally, the Austrian legal system does not allow individuals to enforce CERD through Austrian courts. Especially economic, social and cultural rights are not justiciable.

2.2 Still there are reservations to CERD. The Committee should **consider if the reservations are still justified** forty years after Austria has ratified the Convention.

2.3 Austria has committed itself to establishing a **National Action Plan (NAP) against Racism** at the World Conference Against Racism 2001. The drafting of the NAP was hardly discussed with NGOs. The NAP against Racism never entered into force because it was incorporated into the NAP on Integration.

2.4 Integration issues (and therefore anti-racism) is in the competence of the Ministry of the Interior. In April 2011, a State Secretary on Integration was appointed. The Klagsverband appreciates the implementation of the State Secretariat on Integration. Still, it remains within the competence of the Ministry of the Interior and integration issues are therefore primarily considered a matter of internal security.

### ***Klagsverband therefore asks the Austrian government***

- to withdraw the reservations to CERD and
- to establish the Secretariat on Integration in the Federal Chancellery in order to make a clear distinction to security issues and
- to adopt a NAP against Racism.

## 3. Article One

3.1 The Austrian Ombudsman Board<sup>1</sup> (Volksanwaltschaft), founded in 1977, consists of three members who have the right to monitor the public administration of the federal state and seven provinces<sup>2</sup> (all but Tyrol and Vorarlberg).

Although the mandate has become broader recently there are no comprehensive provisions

<sup>1</sup> <http://volksanwaltschaft.gv.at/en> (25.07.2012)

<sup>2</sup> The relevant Chapter 8 of the Austrian Federal Constitution :

<http://volksanwaltschaft.gv.at/downloads/60o20/Chapter%20eight%20of%20the%20Austrian%20Federal%20Constitution.pdf> (25.07.2012)



to protect and promote human rights in Austria. Furthermore, the cooperation with civil society relies on the individual commitment of the three ombudspersons and the selection criteria should be revised to ensure pluralism and independence. At the moment, the Austrian Ombudsman Board has been accredited **B-Status** and therefore does not fully comply with the Paris Principles.

3.2 Austria has committed itself to establishing a **NAP against Racism** at the World Conference Against Racism 2001. The drafting of the NAP against Racism was given up when the Ministry of the Interior decided to publish a NAP on Integration<sup>3</sup>. The Austrian government claims that measures to combat racism are included in the NAP on Integration. There are only few general statements but no specific measures. Especially the indicators that should measure integration<sup>4</sup> do not mention protection from racism and discrimination at all.

3.3 The **Equal Treatment Ombud** (ETO; Gleichbehandlungsanwaltschaft<sup>5</sup>) is a public body set up to provide advice, support and information on equality issues. The headquarters in Vienna provide support in discrimination cases concerning employment and access to goods and services on the grounds of age, ethnic origin, gender, religion and belief and sexual orientation. The regional offices based in Graz, Klagenfurt, Linz and Innsbruck only provide support in gender issues. Support in cases of discrimination based on ethnic origin and religion is given only in Vienna – apart from advice via telephone and ad-hoc consultation days in the regional offices. Also the Gleichbehandlungskommission<sup>6</sup> (Equal Treatment Commission) – a public body that publishes non binding opinions in cases of alleged discrimination - is based in Vienna only. This means that it is more difficult to obtain help in cases of ethnic discrimination for persons outside of Vienna.

### ***Klagsverband therefore asks the Austrian government***

- to enhance the legal basis of the Austrian Ombudsman Board in line with the Paris Principles
- to issue a NAP on integration in close cooperation with civil society and
- to provide the regional offices of the ETO with the necessary competences and resources to offer consultation in discrimination cases on the grounds of ethnic origin and religion.

## **4. Article Two**

4.1 Legal remedies against discrimination on the grounds of racial or ethnic origin and religion are laid down in the Gleichbehandlungsgesetz<sup>7</sup> (Equal Treatment Act – ETA). Due to

<sup>3</sup> [http://www.bmi.gv.at/cms/BMI\\_Asylwesen/integration/start.aspx](http://www.bmi.gv.at/cms/BMI_Asylwesen/integration/start.aspx) (25.07.2012)

<sup>4</sup> [http://www.integration.at/fileadmin/Staatssekretariat/4-Download/NAP\\_\\_indikatoren.pdf](http://www.integration.at/fileadmin/Staatssekretariat/4-Download/NAP__indikatoren.pdf) (25.07.2012)

<sup>5</sup> <http://www.gleichbehandlungsanwaltschaft.at> (25.07.2012)

<sup>6</sup> <http://www.frauen.bka.gv.at/site/5467/default.aspx> (25.07.2012)

<sup>7</sup> BGBl. I 2005/82 last amended by BGBl. I 2011/7



the federal structure of Austria there are numerous other laws on provincial level<sup>8</sup>. These actsLegal remedies against discrimination are not sufficient. There are three mayor shortcomings of the ETA.

4.2 There still exists a **hierarchy of grounds** within the ETA. While there is protection from discrimination on the ground of ethnic origin and religion with regard to employment, only ethnic origin is covered regarding the access to and supply of goods and services.

4.3 **Compensation** in cases of discrimination is very low and can in no way be considered effective, proportionate and dissuasive. A minimum amount of compensation only exists in cases if harassment. In cases of direct or indirect discrimination and discrimination by association the ETA foresses no minimum amount of compensation.

4.4 Remedies against discrimination - if the gernerall public is adressed - only exist with regard to advertisements concerning jobs and housing. In other cases – e.g. general terms and conditions, public bulletins or tables of prices – there is no sanction.

4.5 There are a number of further provisions against discrimination on the ground of ethnic origin. Sect. 87 para. 1 Industrial Code (Gewerbeordnung<sup>9</sup>) legitimates the authorities to withdraw the business licence (Gewerbeberechtigung) in case the holder of the licence severely violates the prohibition of discrimination on the grounds of ethnic origin, religion or disability. This provision has never been applied.

#### ***Klagsverband therefore aks the Austrian government to amend the ETA***

- in order to have equal protection from discrimination for all grounds of discrimination,
- to ensure that compensation is effective, proportionate and dissuasive,
- to include “collective” claims to enable organisations with a legitimate interest in contributing to the fight against discrimination on grounds of ethnic origin and religion to take action in cases where discrimination effects many persons or is directed to the public, and
- to raise the awareness of the authorities and their employees with regard to racism and discrimination on the grounds of ethnic origin and religion.

#### ***Klagsverband asks all Austrian authorities***

- to harmonise the scope and the prohibited grounds of discrimination in the 50 equality acts on federal and provincial level and
- to take action to make the equality legislation and the consultative bodies better known to the public.

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<sup>8</sup> <http://www.klagsverband.at/gesetze> (25.07.2012)

<sup>9</sup> BGBl. 1994/194 last amended by BGBl. I 2011/99



## 5. Article Three

**Segregation of migrants** – as well as of persons with a disability or with a lower social status – is **common in the Austrian education system** because it reproduces social and educational inequalities. The few publicly available data like “Monitoring.Integration.Diversitaet.Wien”<sup>10</sup> and a recent report by OECD<sup>11</sup> show that migrants and children with German as a foreign language tend to attend lower schools (page 48).

Special schools (Sonderschulen) are attended to a high percentage by migrants, ethnic minorities like Roma and children with a disability. Moreover, children have to decide at the age of ten if they attend a gymnasium (that ends with a “Matura”. This is the Austrian version of the German 'Abitur' or the French 'baccalaureat', i.e. the examination you have to pass at the end of secondary school to obtain the right to study at university.) or a “Hauptschule” (secondary modern school).

### **Klagsverband therefore asks the Austrian government**

- to collect data to overcome the severe lack in the systematic collection of data that will facilitate inclusive and anti-discriminatory educational policy decisions,
- to provide for teacher training that enables the educators to cope with a high level of linguistic and cultural diversity in the classrooms and encourages them to embrace the issue of diversity,
- to embed the didactic principle of intercultural learning in a more sustainable way and in accordance with the principle of non-discrimination in all subjects of instruction, and
- to install a common school system for all children between the age of 6 and 15.

## 6. Article Four

**6.1 Incitement to hate** (Verhetzung) is prohibited under **Sect. 283 of the Criminal Code**<sup>12</sup>. Courts have applied this provision only rarely because there are high qualifications concerning the deliberate intention. Recently, Sect 283 has been amended<sup>13</sup> in order to include new grounds of discrimination like age, disability, gender and sexual orientation. In the course of the parliamentary process incitement to hate was amended that in such a way, that calls, leaflets, public announcements,... must not only be available to a “public” (10 persons) as in the past but to a “broad public.”

This means that calling persons names because of their ethnic origin or religion is not punishable if it happens before rather small audiences, in front of invited audiences,..

<sup>10</sup> <http://www.wien.gv.at/menschen/integration/pdf/monitoring-integration-diversitaet.pdf> (25.07.2012)

<sup>11</sup> <http://www.oecd.org/dataoecd/8/26/42485003.pdf> (25.07.2012)

<sup>12</sup> BGBl. 1974/60 last amended by BGBl. I 2012/12

<sup>13</sup> BGBl. I 2011/103



Although there are no judgements based on the amendede Sect 283 yet it is unlikely that this provision will be applied efficiently.

6.2 **Sect. 33 of the Criminal Code** provides that **racist “or other specifically condemnable intentions”** should be considered aggravating factors when someone commits a crime. Prosecutors and judges do not apply this provisions at all – even in cases in which racist intentions are obvious<sup>14</sup>.

***Klagsverband therefore aks the Austrian government***

- to amend the provision against incitement to hate in order to criminalize and
- to take measures to ensure that racist intentions are applied as aggravating factors in criminal proceedings.

Volker Frey  
General Secretary

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<sup>14</sup> OGH 11Os87/10v