

**LITIGATION
ASSOCIATION
OF NGOS AGAINST
DISCRIMINATION**

ANNUAL REPORT 2012



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FOREWORD



Dieter Schindlauer

Dear Readers,

The year proved to be a rather “mixed bag”. The greatest disappointment of 2012 has, of course, been going on for years: once again, federal lawmakers failed to bring about the so-called “leveling up” process – the long overdue standardization of protective measures against all forms of discrimination. Thus, we continue to have a situation in which clear cases of discrimination – for example, because of age, sexual orientation, or religion – remain without legal consequences. And yet we were closer than ever before to finally reaching our goals, especially thanks to the tremendous efforts of our partners. That we fell short in the end is not only unfortunate, but simply no longer comprehensible.

We were also not very pleased with the verdicts of several lawsuits concerning the Disability Equality Act. The effectivity of the act has clearly revealed itself to be fundamentally flawed. These flaws have also been verified by the courts. Specific cases thus showed for the first time that limiting a plaintiff’s claims strictly to damages, as this act foresees, is very unsatisfactory. If a person files a suit stating that he/she is barred entrance to a building or a service due to unlawful barriers, he/she is not primarily interested in receiving damages, but rather in gaining entrance and access to those services. Being “bought off” in such a way can itself be very condescending and offending – especially due to the small amounts of compensation, which in no way act as a deterrent.

On a positive note, we would like to mention that membership in the Klagsverband once again grew considerably. No less than five organizations, whose names all happen to begin with the letter “A”, have joined our association.

The perhaps most positive development of the past year didn’t come until the very end. Through an amendment to the Insurance Law Amendment Act in December 2012, the Klagsverband was granted the right to pursue actions in the general interest of a group. That is an important step since for the first time the Klagsverband can file suits in its own name against discriminatory clauses in insurance policies. We see this right of the Klagsverband also as a positive signal for other areas of law in which actions in the general interest of a group still aren’t possible, but will be absolutely effective and helpful in the future – once they are created. Keep the faith!

Best regards,

Dieter Schindlauer, President

THE KLAGSVERBAND

The Klagsverband is a non-partisan, non-religious organization that provides legal support to victims of discrimination and also offers its member organizations a wealth of training seminars and counseling on the subjects of equal opportunity and anti-discrimination. The Klagsverband is the only organization in Austria that helps victims of discrimination attain their rights by means of all of Austria's anti-discrimination laws. In order to be able to provide competent assistance regarding all forms of discrimination, both know-how and a clear understanding of Austria's roughly 50 anti-discrimination laws are necessary.

The Klagsverband was founded in 2004 by BIZEPS, HOSI Vienna, and ZARA. It is a service center for its members, a knowledge pool on the topics of anti-discrimination and equal opportunity, and the only facility in Austria that assists victims of discrimination to attain their rights before a court of law through any of the country's equality laws.

TEAM

The Klagsverband team is made up of two lawyers and a public relations consultant all employed part-time. The managing board volunteers its service and, together with other volunteers, assumes a portion of the Klagsverband's duties. Many thanks to all the volunteers for your ongoing support!

MEMBERS

Five new members joined the Klagsverband in the year 2012. The Klagsverband now has a total of 32 members.

New members in 2012

- Aids Hilfe Wien
- Amnesty International Austria
- Anti-discrimination Agency Salzburg
- Anti-discrimination Office Styria
- atempo

Existing members

- BIZEPS – Independent Living Center Vienna
- dabei
- WOMEN'S SERVICE Graz
- Helping Hands Graz
- HOSI Vienna – Homosexual Initiative Vienna
- ISOP – Innovative social projects
- LEFÖ – Counselling and Education Centre for Migrant Women
- Ludwig Boltzmann Institute for Human Rights – Research Association (BIM-FV)
- Austrian National Association of the Deaf



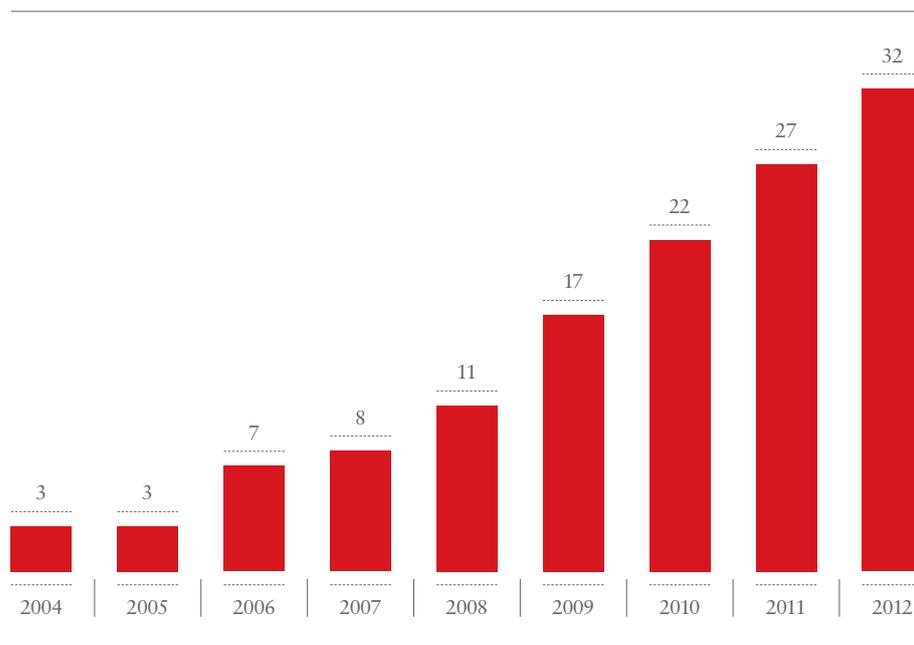
Team

- Independent Living Innsbruck
- Independent Living Upper Austria
- Independent Living Austria
- migrare – Center for migrants Upper Austria
- ÖSB – Austrian Umbrella Organisation for Hard-of-Hearing People
- Platform Human Rights Salzburg
- Rechtskomitee Lambda – Austria’s LGBT-rights-organisation
- Association of Austrian Female Lawyers
- maiz – organisation by and for migrant women
- Peregrina – educational, counseling and therapy centre for immigrant women
- Reiz
- Romano Centro
- SOMM – Self-organisation of migrants and muslim women
- SOPHIE – Place of education for sex workers
- SOS Menschenrechte Österreich
- TransX – the Austrian Transgender Association
- Uniability
- ZARA – Civil Courage and Anti-Racism Work

Supporting member:

- Tyrol Service Center for Equal Treatment and Anti-discrimination

Members 2004–2012



Klagsverband members receive the following services:

- Legal counseling
- Support during arbitration proceedings and in appeals before commissions
- Legal representation and third-party intervention in court, when legally possible
- Counselor training
- Networking and legal expertise for lobbying
- Opinions on legislation

NGO's and nonprofits that work in fighting discrimination may become ordinary members of the Klagsverband.

For more information concerning membership, please contact info@klagsverband.at or by phone: 01/961 0585-13

FINANCING

The Klagsverband is financed by membership dues, projects, donations, and public subsidies.

2012 Sponsors

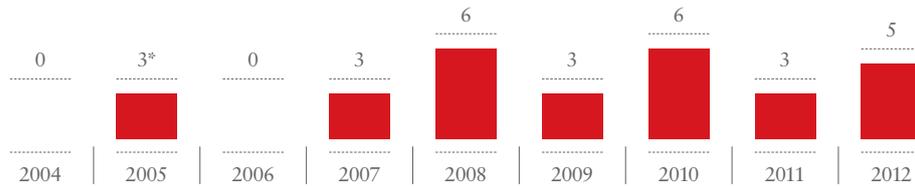
- Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection
- Federal Chancellery of Austria : Ministry of Women's Affairs and Civil Service
- The State of Salzburg Bureau for Equal Opportunity, Anti-discrimination, and the Promotion of Women

JUDICIAL PROCESS

The Klagsverband represents in court people who have been victims of discrimination. The aggrieved parties contact the Klagsverband after they have been counseled by one of Klagsverband's member organizations and have decided to go to court. A solid understanding of discrimination is required in order that member organizations can recognize that the issues their clients have come to them for have to do with discrimination. The Klagsverband provides the requisite knowledge to its members via training seminars and workshops.

The Klagsverband received roughly 70 requests in 2012. People contact the Klagsverband by telephone or email to ask about a various array of issues. The first order of business for the Klagsverband is to determine whether the problem at hand falls within the area of anti-discrimination and equal opportunity law. If this is not the case, the parties will, if possible, be referred to other organizations that may be able to help or supply counseling. The spectrum of issues that are brought before the Klagsverband, yet lie outside its scope, is considerable. These include family and labour law, social services, and tenancy law.

Court Proceedings 2004–2012



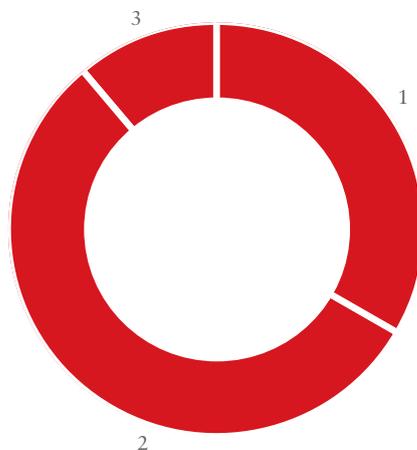
* In the 2010 annual report, two court proceedings were reported for the year 2005. This number has now been amended to three. The following circumstances account for the change: In one of the two lawsuits the Klagsverband filed, two individuals were sued. These two men had harassed a truck driver in Salzburg because of his homosexuality.

A case for the Klagsverband

If, however, the issue does have to do with anti-discrimination, it must first be determined whether the case is suitable for a lawsuit. During a personal consultation, the Klagsverband determines if going to court will help the aggrieved person to reach a sense of closure with his or her experiences. Prior to legal proceedings, a series of questions must be answered: Which type of law is being dealt with? How high are the projected litigation costs? What does the aggrieved party expect from a trial? Above and beyond the particular case, will the verdict also be suitable for raising awareness of the Klagsverband and its member organizations?

Such questions are examined by the Klagsverband lawyer, who then makes a recommendation whether it is worthwhile to go to court. An internal board has the final word.

Court Proceedings 2012



Court Proceedings

 1 legally binding convictions: 3

 2 newly filed lawsuits: 5

 3 pending cases from 2011: 1

COMPLETED PROCEEDINGS

No bread for wheelchair users

The wheelchair user Mr. S.* contacted the Klagsverband in 2011. He is unable to shop at a bakery near his work because the entrance of the store has a step. It was put there following renovation of the bakery, which, until then, had been accessible to wheelchair users. The ramp at the delivery entrance is too steep for wheelchairs. With reference to the Disability Equality Act, Mr. S. files for a settlement, which, unfortunately fails because the owner of the bakery is unwilling to make his establishment barrier-free again. With the support of the Klagsverband, Mr. S. therefore sues the bakery. The court supports the charge disability discrimination and awards Mr. S. damages in the amount of 1,000 euros. Regarding the verdict, Mr. S. states: “This verdict is a victory for human rights. I hope it gives courage to all others to fight against discrimination, too.”

Discrimination
on grounds
of disability

The entitlement to the removal of barriers

Within the framework of the Disability Equality Act, it is not possible to sue for the removal of a barrier. The case of Mr. S. makes it very clear why this is problematic. Mr. S. may have won the case, and he also received compensation; however, the step to the entrance of the bakery does not have to be removed. The court simply determined that the party was a victim of discrimination because of a disability. Yet much more could be attained for plaintiffs if they were entitled to the establishment of discrimination-free services or facilities. Were that the case, the barrier would have to be removed. In Mr. S.’s case, however, the story took a good turn nonetheless. Within a few months following the verdict, the bakery removed the barrier at the entrance during the course of long overdue renovations.

Barred entrance and protection from discrimination by association

The case of Mr. and Mrs. B.* goes back to the year 2010, when Mr. B. was barred entrance to a Graz disco by the bouncer. Mr. B. is a Turkish citizen; his wife is Austrian and was allowed into the establishment without a problem – something she didn’t want to do without her husband. The Klagsverband filed a suit on behalf of Mr. and Mrs. B. on the grounds of ethnic discrimination. A suit was also filed on behalf of Mrs. B. within the framework of protection from discrimination by association. The proceedings went on for almost two years. Mr. and Mrs. B. rejected an out-of-court settlement by the owner of the disco. In the end, the court – as opposed to the Equality Commission – found no proof of discrimination.

Discrimination
on grounds
of ethnicity

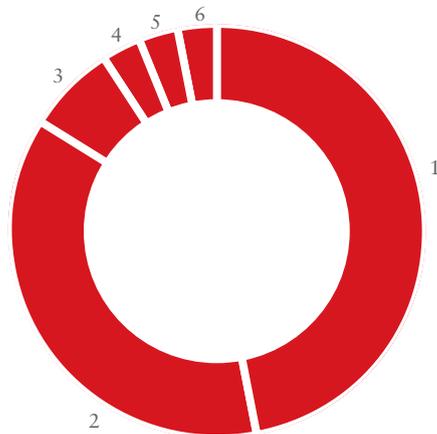
* Individual-related data is made anonymous.

**Discrimination
on grounds
of disability**

Inaccessible service center

With the help of the Klagsverband, Mr. L.* filed a lawsuit due to a lack of accessibility: he had wanted to enter a service center of a federal office in Vienna's first district. Mr. L., who is confined to a wheelchair, discovered, however, that he was unable to enter the building without assistance. He therefore filed for a settlement, as is his right according to the Disability Equality Act. This, however, failed – as many out-of-court settlements do. The court rejected the claim in the first and second instance, and Mr. L. was awarded no damages.

Cases according to Grounds of Discrimination



Cases according to Grounds of Discrimination

1 ethnicity: 47%

2 disability: 37%

3 religion: 7%

4 gender: 3%

5 sexual orientation: 3%

6 age: 3%

NEW LAWSUITS

Two new cases brought to court deal with the question why foreign nationals holding permanent visas are not granted the same rights as Austrian citizens.

**Discrimination
on grounds
of ethnicity**

No commuter tax allowance due to Turkish citizenship

Mr. S.* is a Turkish citizen who has been living in Austria for 40 years. He has been employed continuously since his apprenticeship and commutes every day more than 25 kilometers between his hometown and his work. The state of Lower Austria, however, has refused to grant him a commuter tax allowance solely due to his citizenship. But as someone with permanent residence status, Mr. S. should be treated as an Austrian citizen regarding his access to his work. Represented by the Klagsverband, he filed a lawsuit. He lost the case, but, at the time of this writing, has appealed.

* Individual-related data is made anonymous.

The first day of school, but without assistance

The Tyrolean state government wants to help families on the first day of school each year with a one-time payment. The so-called “First Day of School Assistance” is disbursed for children between 6 and 15, though the parents must first file an application. In order to guarantee the social balance, income limits have been set. Mr. G.* applied for the assistance for his 11-year-old son, a Croatian citizen, but was rejected. Once again this raises the question why, contrary to EU law, persons with a permanent visa are not accorded the same rights as Austrian citizens. The Klagsverband is supporting and financing Mr. G.’s lawsuit.

**Discrimination
on grounds
of ethnicity**

No cellphone contract for Turkish citizen

Mrs. O.* is a Turkish citizen. In a cellphone store she wanted to sign a new, low-cost cellphone contract. Mrs. O. is married to an Austrian and has had a residency permit for “Family member” since 2006. She brought all the necessary documents – such as passport, residency permit, and residence registration card – to the store. After the employee typed in all the data into the computer, he informed the woman that the “credit department” refused to issue the contract because the woman’s visa was to run out in three months and thus would not be valid for a full six months. The store continued to refuse her even though she explained that, as a family member, she would receive another visa and had already been living in Austria for over six years. Represented by the Klagsverband, Mrs. O. has sued for damages based on ethnic discrimination.

**Discrimination
on grounds
of ethnicity**

Those who cannot see want to hear

Mr. F.* uses Linz’s public transportation to get to work. The blind man is dependent upon the voice output so he knows which stop he is at. Although Linz’s public transportation system has equipped several stops with voice output, it does not have them for the new route that Mr. F. takes. Mr. F. sought a settlement, in which he requested the Linz public transportation system to equip the stops with voice output. However, the settlement failed. He has now, with the support of the Klagsverband, filed a lawsuit based on discrimination of disabled persons.

**Discrimination
on grounds
of disability**

* Individual-related data is made anonymous.

**Discrimination
on grounds
of ethnicity**

Entrance barred to a Linz disco

This is a new case where someone was barred entrance to an establishment due to his race. Mr. C.* is an Austrian citizen; his parents were born in Turkey. In December 2011 he wants to go to a disco in Linz together with a large group of friends. Mr. C. gets in line with his friends and makes it into the lobby of the disco. There, the bouncer stops him and asks to see his I.D. He shows his I.D., but the bouncer refuses to let him in, stating that foreigners are not allowed. Mr. C. is the only one of his group not allowed into the disco. Mr. C. filed a suit with the Equal Treatment Commission. The Commission found that Mr. C. was the victim of ethnic discrimination. The Klagsverband has now filed a lawsuit for him.

CURRENT PROCEEDINGS

**Discrimination
on grounds
of disability**

Lack of inclusion in a Vienna kindergarten

The plaintiff received a negative verdict at the trial. Due to a disability, a kindergarten girl in Vienna is automatically assigned to a “special education class”. Her parents, however, want their child to attend an integrative class so that she may grow up with so-called “normal” children. After a settlement failed, the parents have now filed a disability discrimination lawsuit through the Klagsverband. The court ruled against the parents in the first instance. An appeal is currently being prepared.

Lawsuits that were prepared but not filed

The Klagsverband lawyer sometimes prepares lawsuits that are ultimately never filed. There are various reasons for this. Sometimes the aggrieved parties decide not to go to court after all; sometimes the issues are resolved out of court, which is what happened in the following case. A group of girls accompanied by two adult caretakers visit a private park in Graz that is open to the public. As they are taking a walk around the park, they are accosted with racist remarks by the owner and forced to leave. After this incident, the two caretakers file ethnic discrimination petitions with the Equal Treatment Commission. After the two women received a positive verdict, a settlement agreement was worked out. However, the owner of the park did not fully comply with the agreement. Mrs. M.* and Mrs. S.* therefore wanted to file a lawsuit with the help of the Klagsverband. Shortly before the suit reached the courts, the owner paid the amount stipulated in the settlement.

* Individual-related data is made anonymous.

TOPICS OF 2012

AMENDMENT TO THE EQUAL TREATMENT ACT

It is hard to imagine, and yet this really happened. A homosexual couple looks at an apartment in Vienna. The real estate agent asks the two women if they are friends hoping to share an apartment. When they explain that they are a couple, the agent suddenly remembers that the apartment has already been rented and that he doesn't have any other apartments available. Scenarios like this take place regularly in Austria. But men and women are not just discriminated against because of their sexual orientation, but also because of their age, religion, or beliefs.

Whereas all forms of discrimination are forbidden in the workplace, outside of the workplace the law protects persons only because of disability, gender, or ethnicity. Thus, when a Turkish citizen is not allowed into a disco by a bouncer, he can sue the owner of the establishment. If the same man were homosexual and discriminated against, he would have no legal recourse.

The Klagsverband feels that the Equal Treatment Act (GIBG) must provide protection to all groups. Human rights cannot be divided; it is therefore absolutely necessary to expand the discrimination protection to include these groups as well. In the past, however, political parties have successfully blocked this. In 2011 and 2012, it was the ÖVP (the Austrian People's Party) above all that worked against amending the Equal Treatment Act.

Within the framework of the Universal Periodic Review (UPR) that emerged in January 2011 through the U.N. Human Rights Council (HCR) in Geneva, Austria was urged by several countries, including Great Britain and Norway, to standardize its discrimination safeguards. Canada, too, pleaded for "granting the same protection against all forms of discrimination, including that of age, religion, sexual orientation, and sexual identity" (Recommendation 93.44).

And yet the opinion that Austria must grant all persons the same protection against discrimination cannot only be heard abroad; socially minded organizations here at home also agree: failing to treat all forms of discrimination in the same manner is not sensible.

For the Klagsverband, one thing is clear: the next GIBG amendment must include protection against all forms of discrimination. For equal rights experts, differentiating between legal and illegal forms of discrimination is incomprehensible. The issue will thus remain on the Klagsverband's agenda in 2013.

ACTIONS IN THE GENERAL INTEREST OF A GROUP

In December 2012 the Klagsverband was awarded the right to actions in the general interest of a group in the course of the amendment to the Insurance Law Amendment Act. In the future, the Klagsverband will also be able to file suits against discriminatory clauses in insurance policies. Whereas in the past it was only possible to file suits for single persons, discriminatory clauses can now be prosecuted for all affected parties. In its written opinion, the Klagsverband had suggested an expansion of actions in the general interest of a group and is therefore very pleased that it has come to pass.

CITIZENSHIP AS CRITERION FOR STATE SERVICES

In 2011, as part of the PROGRESS project “Equality in housing”, the Klagsverband closely examined the criteria used for the allocation of public housing and housing erected with housing subsidies. It turned out that immigrants often had a much more difficult time acquiring such housing. In a legal study put forth, not only was current international and European law investigated, but also Austrian federal and state law, as well as current regulations regarding access to public housing, housing subsidies, and charitable housing. In sum, it can be stated that EU, EEA, and Swiss citizens are largely considered equal regarding stipulations of access to housing. However, third-country nationals in possession of permanent visas and officially recognized displaced persons are excluded in some municipalities. The issue is ongoing. For example, the Klagsverband was invited to a commission of the Upper Austrian state parliament to discuss the planned introduction of language skills as a prerequisite for receiving housing subsidies. This draft, introduced by the FPÖ (Austrian Freedom Party), was ultimately rejected by the other parties.

ANTI-DISCRIMINATION AGENCY SALZBURG

The city of Salzburg has had its own anti-discrimination bureau since September 2012. Its purpose is to serve as a readily accessible service center for all persons who feel discriminated against and wrongfully treated. The bureau was created by the “Human Rights Roundtable” in Salzburg. The Klagsverband assisted in its creation with its know-how. In addition, it also held a workshop on how to counsel victims of discrimination.

TRAINING

Most members of the Klagsverband are first exposed to the organization's range training seminars through its introduction to anti-discrimination law, in which the principles of anti-discrimination law are discussed and examined by using specific examples the Klagsverband has encountered. This introductory seminar is a good opportunity for member organizations to learn how to recognize forms of discrimination while counseling their clients and which kinds of support there are for such issues. After the introductory seminar it is also usually easier to assess which problems from one's own field of work are suitable for court cases.

Two of the Klagsverband's new member organizations used this free service in 2012 and attended an introductory seminar on anti-discrimination law. Members also have the opportunity to take advantage of other free training sessions as well.

A cooperation with the Amnesty Academy has existed since 2008. In 2012 a workshop on the topic "Islam – Living with prejudices – Strategies to confront them" was offered as part of Amnesty's continuing education series.

Equal rights experts of the Klagsverband are also invited to attend lectures, podium discussions, and symposia.

PUBLIC RELATIONS

The Klagsverband makes use of the cases brought to court on various topics of discrimination to raise awareness for anti-discrimination legislature. There are, after all, over 50 different laws governing equal opportunity and anti-discrimination issues in Austria. It is difficult even for lawyers to keep track of everything. In addition, judicature that judges and counseling facilities can resort to is to be established through the proceedings.

The court proceedings are accompanied by traditional PR work. The names of the plaintiffs always remain anonymous. The opinions and other important information are also communicated via press releases and Klagsverband's own information service, the "Klagsverband-Alert". The Klagsverband's website plays a large role in its PR work. At www.klagsverband.at the Klagsverband publishes up-to-date information as well as important news on anti-discrimination issues from around the world.

The Klagsverband on twitter

The Klagsverband twitters! We have been using twitter since the fall of 2012 to distribute our news. To follow us on twitter, go to *@klagsverband*.

Inquiries

Part of PR includes answering the many inquiries concerning issues of equal rights, anti-discrimination, and diversity. The Klagsverband gladly offers its experience and expertise to students, researchers, employees of public institutions, political parties, and interested citizens. The dissemination of experience in judicial process for national and EU studies is especially important for the sustainability of verdicts and the political debates on improving the legal framework.

Documentation and commentary

The services of the Klagsverband include documenting and commentating on national and international legislature. Numerous documents can be downloaded at the website: *www.klagsverband.at*. These include federal and state laws, courts rulings, decisions handed down by the Equal Treatment Commissions, as well as decisions by the European Court of Human Rights (ECHR) and the Court of Justice of the European Union. Out-of-court settlements in discrimination cases are also of interest to the Klagsverband, which is why results of such settlements are also published and commented upon.

NETWORKING

The Klagsverband lives from the vitality of its member organizations and from contacts to other organizations and NGO's that work towards abolishing discrimination. There is an ongoing exchange with the National Equality Body, the National Disability Body, state anti-discrimination bureaus, federal ministries, and other social partners.

Within a European context, membership in the Fundamental Rights Platform of the European Fundamental Rights Agency (FRA) is of special importance. Since it has a central counseling function regarding human rights and anti-discrimination for the European Commission, experiences of the Klagsverband can be relayed to relevant decision-making bodies.

OPINIONS

In the year 2012, the Klagsverband submitted 16 opinions, which can all be found online at: www.klagsverband.at/politik/stellungnahmen-klav

- Equal Treatment Act: As was the case in 2011, the Klagsverband continues to advocate for equal treatment in cases of discrimination. More on page 13.

Further demands in the Equal Treatment Act:

- actions in the general interest of a group for negligence
- minimum damages of 1,000 euros for all forms of discrimination
- increase the administrative penalty for discriminatory public invitations to tender
- make the regional bureaus of the national Equal Treatment Body responsible for the entire Equal Treatment Act
- alternative to the proceedings before the Equal Treatment Commission on Compensation modeled on the Disability Equality Act

Further demands in the Disability Equality Act:

- actions in the general interest of a group also for the Klagsverband and other qualified organization. This has been enacted by Parliament in the meantime, though limited to insurance policies.

- **Insurance Law Amendment Act:** In the amendment to the 2013 Insurance Law Amendment Act, provision is made for actions in the general interest of a group for negligence. Thus, if actions in the general interest of a group are won because an insurance company refuses to insure persons with a disability or demands higher premiums due to a disability, the insurance company must remove all such stipulations. If an action in the general interest of a group seeks only declaration, then there is no obligation to remove the discriminatory stipulation. Furthermore, with an amendment, the Klagsverband was subsequently granted the right to actions in the general interest of a group. In the future, the Klagsverband can now file suits against discriminatory stipulations in insurance policies. In its opinion, the Klagsverband still deems the right to actions in the general interest of a group in the Insurance Law Amendment Act to be insufficient. There are several reasons for this:
 - The draft to the law covers only insurance benefits. It would be appropriate to establish the right to actions in the general interest of a group in the Equal Treatment Act and in the Disability Equality Act so that all goods and services are covered.
 - The current draft only pertains to discrimination because of disability. Other forms of discrimination are not covered.
 - The draft stipulates that only the Austrian National Council of Disabled Persons and the Federal Disability Commission have the right to actions in the general interest of a group. The Klagsverband sought to expand this right to several other organizations. As already mentioned, this has been enacted.
 - In the draft, recommendations of the National Action Plan (NAP) for Disabled Persons are not sufficiently regarded.
- **Convention on the Elimination of all Forms of Racial Discrimination (CERD):** Austria conditionally ratified the U.N. convention CERD in 1972. CERD calls for periodical reviews by the CERD Commission of the United Nations. During these reviews, member states submit a progress report, and NGO's can submit their views in the form of so-called "shadow reports". Austria was reviewed in August 2012. The Klagsverband sees a need for action in the following areas:

- Austria should annul its provisos towards CERD.
- According to its responsibilities as part of the 2001 anti-racism conference in Durban, Austria should enact its own National Action Plan (NAP) against racism. After initial attempts, it was adopted in the NAP Integration. However, only few concrete explanations can be found as to how Austria hopes to combat racism.
- Austria should also finally establish a national human rights institute that fulfills the demands of the Paris Principles. The Austrian Ombudsman Board only fulfills these in part and thus has only B status.
- The regional bureaus of the National Equality Body should be given powers to provide counseling also in cases of ethnic and religious discrimination. At the moment they are limited to the areas of discrimination involving gender in the workplace.
- Finally, discrimination protection should be standardized within the Equal Treatment Act. The various levels of protection are not objectively understandable.
- In the area of education, sustainable measures for eliminating current practices of segregation should be undertaken. That would entail a systematic collection of data, include a comprehensive anchoring of competencies when dealing with linguistic and cultural diversity, and foresee a common school for all 6 to 15-year-olds.
- Finally, punitive instruments in the fight against racism need to be reviewed to include the areas of law enforcement and legislation. Thus, § 33 Z. 5 of the Criminal Code (StGB), which considers racist or other especially reprehensible motives as aggravating circumstances, is not used by the public prosecutor's office and the courts even in cases in which such motivation is apparent. The incitement paragraph 283 of the Criminal Code – which was recently amended to also make incitement because of age, disability, gender, beliefs, and sexual orientation a crime – was amended in such a way that the demands on the public which must be receptive to such an expression have been greatly raised. § 283 of the Criminal Code was hardly used in the past – it is doubtful that the amendment will be more effective.

The following state anti-discrimination laws were amended: the Tyrol Anti-discrimination Act, the Lower Austrian Monitoring Act, the Vorarlberg Anti-discrimination Act and State Public Prosecutor's Act, as well as the Burgenland Anti-discrimination Act.

In Tyrol and Lower Austria provisions have been made for the establishment of monitoring facilities as defined by the International Convention of the Rights of Persons with Disabilities (ICRPD) – a positive sign. In Vorarlberg and Burgenland the monitoring facilities were not considered in the draft law.

In addition, there were two evaluation procedures for laws in 2012 that should result in regulations for sexual services: the Upper Austrian Sexual Services Act and the Carinthian Prostitution Act.

However, both bills hardly result in any better working conditions for sex workers. In a decisive 2012 decision, the Supreme Court judged sex work to no longer be a violation of morality; however, the expected improvements unfortunately did not come to pass. Repressive access remains intact in the laws. Clear provisions as to when and where sex work may be engaged upon are also still lacking.

Several laws involved purely technical changes, including the Vienna Equal Opportunity Provisions, the Carinthian Anti-discrimination Act, and the Burgenland Equal Treatment Act.

PROJECTS

CHARTA DIALOGUE ON BARRIER-FREE STRUCTURES

The Klagsverband took part in a dialogue on accessibility as part of the Vienna Charta. This dialogue resulted in the “Top 10 Mistakes in Creating Barrier-free Structures”. This list shows the most common mistakes when planning accessible buildings.
www.klagsverband.at/archives/7108

INTERNATIONAL YOUTH EDUCATION PROJECT

The Klagsverband is participating as a partner in an international youth education project led by ZARA – Civil Courage and Anti-Racism Work. In the project “Being different without fear: Democracy need plurality – plurality need democracy” 23 students from Germany and Austria are being trained as disseminators to plan, implement, and evaluate roughly 300 events in both countries, involving approximately 7,000 school children in both academic and non-academic youth education facilities. The Klagsverband is providing its know-how in a series of workshops.

OUTLOOK FOR THE YEAR 2013

The Klagsverband will be focusing on the following issues in 2013:

Barrier-free living

Accessibility is usually brought up with regards to offices and public buildings, yet many questions remain to be answered as it applies to housing. Is the landlord responsible for making an apartment or a house barrier-free? Does accessibility have to be ensured when renovations occur? Do I have the right to adapt my rental apartment so that it is barrier-free? Who bears the costs? These and many other questions must be legally clarified. The Klagsverband will therefore focus on this issue and is drafting a study on it as part of a PROGRESS project. The project will be conducted together with Wien Work and the Austrian National Council for Disabled Persons (ÖAR). In addition to the legal study and studies on subsidized housing and technical questions concerning accessibility, there will be workshops in select states to make the results known.

Unanswered questions regarding equal opportunity

In the next two years the Klagsverband will examine various unanswered questions regarding equal opportunity and attempt to start a debate on these issues. One issue in particular is the question of appropriate provisions. These are defined as the expenditures employers or companies make to enable accessibility and establish equal treatment. What does this mean in concrete terms, and what demands can thereby be made? Another issue related to this is the shift in the burden of proof, which has not been properly implemented in Austria. It is debatable whether there would be any impact if it would be formulated better or differently by law.

Sanctions

EU regulations state that damages in cases of discrimination should act as a deterrent. The question is therefore, what is appropriate and deterring. In the cases the Klagsverband handles, 1,000 euros is generally the most that is sued for; anything above that would have little chance of success in court. However, legal opinion has also argued that damages should be higher in order to really produce a deterring effect. That, in turn, raises the question whether in certain areas administrative penalties would be better than damages.

Shadow report on the International Convention of the Rights of Persons with Disabilities (ICRPD)

As part of the report audit conducted by the ICRPD commission in Geneva, NGO's have the opportunity to draft a so-called shadow report. As opposed to the official state report, it represents the views of the NGO's. The Klagsverband has taken part in this with its own shadow report for the ICRPD.

Universal Periodic Review (UPR) – Mid-term report

As part of the U.N.'s Universal Periodic Review, Austria is obligated to implement the recommendations by the time of the next periodic review. This national follow-up is a central component of the UPR cycle. After two years, nations are called upon to voluntarily submit a written mid-term report. It must be completed by June 2013 and will then be discussed at the United Nation's Human Right's Council in Geneva.

IMPRINT

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