

**LITIGATION  
ASSOCIATION  
OF NGOs AGAINST  
DISCRIMINATION**

ANNUAL REPORT 2009



## **PREFACE**

Ladies and Gentlemen, dear Friends and all those Interested in,



Dieter Schindlauer

In the past year the Litigation Association celebrated its fifth anniversary – although it is not fully grown yet – it has at least become a young adult. The planned fifth anniversary celebration was rather simple, as it was quite obvious that 2009 would turn out to be a momentous year for the Litigation Association. It would not have been possible to keep going for a longer period of time and accept the difficult working conditions and the constant worry about the continued existence of our association. But last summer an essential decision initiated by the Federal Ministry of Labour, Social Affairs and Consumer Protection was taken, namely: the Litigation Association must continue its activities. At the end of this decisive year we can be confident to continue our work with elated zest. For the first time since its existence the Litigation Association has got, at least for a limited period, a solid financial basis, which we partly understand as an acknowledgment of the work done. The acceptance of the Litigation Association and its financial support are definitely no reaction to an alleged subservient conduct or a proved lack of efficiency, but is based on the fact that NGOs play an important role to improve the legal situation of people who have been discriminated against and that the Litigation Association is a pioneer in doing indispensably necessary basic ground work. An umbrella association of NGOs based on the principles of equal treatment and protection against discrimination – which has always thorned the indolent and the unwilling – is both an uncomfortable opponent for some and an important partner for others. During its first five years of existence, the Litigation Association has fortunately proved to fulfil its tasks both competently and fair – although never unprejudiced to factual issues.

A total of six new member associations have joined the Litigation Association this year and the international awareness of this institution in Europe helps to strengthen the confidence in our association: The Litigation Association has done an excellent job, especially because of the great persistence and competence of our team and the managing committee's positive and engaged attitude.

The present situation, namely to enforce the Equal Treatment Act prevents us from reducing our efforts, from leaning back and from tapping each other's shoulders ( but once a year I feel free to do so). The truth is that even after five years we have just started. We have still got a lot to achieve and we will need all the support available. Keep us in mind!

Sincerely,

Dieter Schindlauer, President

## **1. MEMBERS AND TEAM OF THE LITIGATION ASSOCIATION**

### **1.1 MEMBERS**

All NGOs that concentrate on fighting discrimination are entitled to become full members. At the end of 2009 the Litigation Association consists of 17 member associations, six of them have joined us this year:

- BIZEPS – Independent Living Center Vienna
- Helping Hands Graz
- Homosexual Initiative Vienna
- ISOP – Innovative Social Projects (new)
- LEFÖ – Counseling and Education Centre for Migrant Women (new)
- Ludwig Boltzmann Institute of Human Rights – Research Association
- maiz – organisation for and by migrant women (new)
- Austrian National Association of the Deaf
- Rechtskomitee Lambda – Austria's LGBT-rights-organisation (new)
- Reiz – Independent Living (new)
- Independent Living Innsbruck
- Independent Living Upper Austria (new)
- SOMM – Self-organisation of Female Migrants and Muslims
- SOPHIE – Place of education for Sex Workers
- TRANS X – the Austrian Transgender Association
- Association of Austrian Female Lawyers
- ZARA – Civil Courage and Anti-Racism Work

The Austrian wide presentations in the context of the fifth anniversary of the Litigation Association have contributed a lot to inform new associations of our activities and to encourage them to join us.

### **1.2 TEAM**

At present the Litigation Association employs two part-time legal experts. In addition to that there is a lot of voluntary work supporting the efforts of the Litigation Association.

In 2009 the volunteering included:

- The regular work of the members of the board plus the members of the litigation committee, which decides on the support in legal procedures.
- The drafting of articles and answers to frequently asked questions for our website
- Keeping our website up to date
- Legal research and
- The contribution to public relations work (workshops, meetings, ...).

## **2. ACTIVITIES**

This documentation of activities of the Litigation Association is structured along the following criteria:

- counselling and legal representation,
- information
- trainings
- documentation of and commenting on (case) law
- public relations and networking as well as
- further legal education.

### **2.1 COUNSELLING AND LEGAL REPRESENTATION**

#### **2.1.1 Main Focus of Counselling**

The Litigation Association counsels its members in all questions regarding the applicability of equality and anti-discrimination law. During the year of 2009 the Litigation Association has offered advice to a total of 56 people<sup>1</sup>, who wanted their rights enforced<sup>2</sup>. Above that a growing number of telephone calls and e-mail questions of individuals, associations and companies are answered.

In 2009 the counselling focused on the following issues:

- The most frequent questions were whether discrimination violating relevant legislation could be established in a specific case and concerned the chances to fight for one's rights.
- Counselling especially in cases when people still had a valid work contract, the questions focused on possibilities of legal proceedings, the chances of winning a case, and especially on extra-judicial possibilities open to the involved parties.
- Regarding the various grounds of discrimination ethnic belonging, religion, disability and gender are the most frequent ones the Litigation Association is concerned with. The number of cases in employment and occupation and the area going beyond the field of work is balanced. Discrimination on the ground of disability most frequently concerns indirect discrimination related to architectural and communicative barriers. The most frequently asked questions in this context refer to whether it is reasonable to eliminate these barriers and to the legally specified transitional periods.
- Whether it is advisable to take a case to the Equal Treatment Commission becomes an issue in connection with the risk of too high costs in case of a lawsuit or the impossibility of enforcing the law because relevant time limits have expired.

<sup>1</sup> Among them 14 women and 33 men, nine concerned both women and men.

<sup>2</sup> It has turned out to be more meaningful and more informative to distinguish between counselling and information, which was introduced in 2007. Counselling aims at concrete enforcement of rights, whereas information regards abstract legal questions, contact persons, etc..

- Several counsellings concerned the transgender issue in 2009. The basis for these counsellings was the decision of the Administrative Court (VwGH 27.02.2009, ZI 2008/17/0054) which eliminated the mandatory surgery as a precondition for a change of one's civil status.
- In October 2008 the UN Convention on the Rights of Persons with Disabilities came into force as well as the facultative protocol. This new situation elicited the corresponding question, which consequences for Austria are connected with this convention and whether individual rights and claims may be derived from it.
- A further focus in addition to the equal treatment and anti-discrimination legislation, are questions dealing with the directives of the European Union. Frequent questions are whether national laws are compatible with the provisions of the anti-discrimination and equal treatment directives.

### 2.1.2 Legal Representation

In four cases the Litigation Association initiated legal proceedings for clients, respectively continued with last year's proceedings. In two cases the Litigation Association involved itself as a third party intervener on behalf of plaintiffs.

- The Litigation Association represents a female Muslim, who was refused a post as doctor – in spite of her accepted qualification – because of her religious motivation of wearing a head-scarf<sup>3</sup>. The doctor asked for a compensation payment amounting to two months' salary for the immaterial damages suffered due to direct discrimination on the ground of religion. During the legal proceedings the whole compensation asked for was paid to her. Although no judgment establishing direct discrimination on the ground of religion was issued in this case, the compensation payment does not leave any doubt that the employer is quite aware of his/her discriminatory practice.
- In another case a man with a disability feels discriminated against because a public transportation company offers free rides to heavily disabled ex-soldiers and their escorts, but people otherwise disabled are denied this advantage<sup>4</sup>. The man, represented by the Litigation Association, asks for both a compensation for his financial loss and for an immaterial compensation for the personal damage. The first instance dismissed the complaint arguing that the Federal Act on Equal Treatment of the Disabled cannot be applied within the group of people with disabilities. The decision of the court of appeal is still expected.

<sup>3</sup> <http://www.klagsverband.at/archives/1640>

<sup>4</sup> <http://www.klagsverband.at/archives/1150>

- Because of the dark colour of his skin a man is prevented from entering certain premises. Although the Equal Treatment Commission has established discrimination on the ground of ethnic belonging and the facts of the cases have been established during an extra-judicial settlement, the owners of the premises are not willing to accept that their practice has been discriminatory. With the help of the Litigation Association the man takes his case to court and asks for compensation for the personally suffered damage and the payment of an immaterial compensation. The judgment is still expected.
- One more case represented by the Litigation Association deals with the refusal of entering a disco because of the man's "alien appearance". An extra judicial solution is attempted. The owners of the disco strictly deny that any direct discrimination on the ground of ethnic belonging has been suffered by the man. The lawsuit is still in process.
- The Litigation Association is also involved in a lawsuit as a third party intervener on behalf of the plaintiff, who has experienced direct discrimination on the ground of ethnic belonging. Again this person was refused entrance because of his "alien appearance". The first hearing is scheduled for the beginning of 2010.
- A man with a hearing disability sued the Austrian Broadcasting Corporation. Although the Federal Act on Equal Treatment of the Disabled does not provide for third party intervention by the Litigation Association, the Litigation Association achieved a third party intervention on behalf of the plaintiff. Because of imperfect captions on online videos, the man achieved an arbitration agreement with the Broadcasting Corporation, which the Corporation did not keep however. The man with a hearing disability took his case to court to prosecute the promised claim, the proceedings resulted in an extra-judicial settlement.

## 2.2 INFORMATION

Besides individual counsellings aiming at the immediate enforcement of the law, people turn to the Litigation Association with various questions – on an average there were two questions a day throughout the year. Most questions referred to alleged disadvantages on the ground of disability followed by racist incidents. More and more questions concerned discrimination not related to the Equal Treatment Act or the Federal Act on Equal Treatment of the Disabled. Most of these questions concern alleged direct discriminations by various laws.

The following examples show the broad range of alleged violations of the principle of equal treatment.

**Questions of Individuals Involved:** A growing number of public institutions refer people to the Litigation Association although their cases do not relate to the issue of discrimination. Especially following radio and newspaper reports many people who want to fight for their rights turn to us. If possible the Litigation Association refers these people to the appropriate member organisations for initial information. The gaps in the system of public and private consultative facilities become apparent – there is a gap in the regional coverage and the available institutions are under-staffed. Outside the provincial capitals there are hardly any institutions that offer individual advice concerning issues of discrimination. There are only a few institutions in Austria that will offer any help in case of discrimination when trying to gain access to goods and services available to the public.

**Questions by the Mass Media:** Newspapers are mostly interested in interviews with individuals who have been discriminated against and have been able to successfully enforce their rights. In many cases the Litigation Association asks its clients to refrain from such interviews, because it is often very difficult for the person involved to cope with the enormous public interest (to be recognised and addressed both in public but also by friends and acquaintances, the media do not focus on protecting the private sphere of an individual). There are hardly any substantial questions asked that go beyond the individual cases.

**Questions of Scientists and Questions Aiming at Education and Training:** A lot of questions refer to research studies. The Litigation Association is asked for information on its own counselling and representation work and is seen as a contact point for an initial orientation about the various federal and provincial institutions and NGOs active on discrimination issues. Besides, there is a rising amount of questions by students who are writing a thesis, a doctoral dissertation or various other papers on discrimination. Schools are interested in the Litigation Association's experience because of current incidents or special project weeks.

**Questions of other Counselling Centres:** Various public Equal Treatment and Anti-Discrimination Contact Points ask for information on judicial decisions and about the experience of the Litigation Association with different laws – especially following the issuance and publication of judgments. They often look for relevant institutions when they do not feel competent enough to answer special questions.

**Questions of Lawyers and Legal Experts:** A growing number of lawyers and legal experts that are dealing with anti-discrimination and equal treatment legislation ask for information on the applicability of the laws.

### 2.3 TRAININGS

One of the crucial aims since the establishment of the Litigation Association has been the training and further education of the staff of our member associations. In 2008 the Litigation Association has established a well working cooperation with the amnesty academy<sup>5</sup>, which was continued in 2009. This cooperation enables the Litigation Association to address a larger audience and give them initial information on the Anti-Discrimination Act. In 2009 a total of 13 trainings with 136 participants was held. The large target group included lawyers, legal experts, youth workers and counsellors of organisations dealing with special problems as well as socio-politically interested people who wanted to get an overview of the legal situation. Most participants are women.

Most trainings were concerned with different grounds of discrimination – special schoolings were offered, mostly concerned with the following topics – women's rights, rights of people with disabilities and racism.

### 2.4 DOCUMENTATION OF AND COMMENTING ON (CASE) LAW

On its website the Litigation Association offers the download of international agreements, EU directives and the laws of the federal state and the provinces<sup>6</sup>. Besides the most important decisions of the courts and the Equal Treatment Commission are published and commented on, in case The Litigation Association has been involved in the proceedings<sup>7</sup>. Besides all the results of arbitrations in which the Litigation Association has been involved and on which it has sufficient information as well as the consent of the party concerned may be downloaded from the website<sup>8</sup>.

The Austrian judgments or decisions can be searched according to the following criteria: area (employment or access to goods and services), legislation (Equal Treatment Act, Federal Act on Equal Treatment of the Disabled, Act of Employment of the Disabled) and kinds of decisions (decisions by the Equal Treatment Commission, arbitration and judgments). The decisions of the European Court of Justice are also collected<sup>9</sup>. The collection of specific laws is often consulted. There is also a growing interest in the various commented cases.

### 2.5 PUBLIC RELATIONS AND NETWORKING

The website of the Litigation Association offers all its information tailored to the needs of different target groups. The articles and the information section are meant to appeal to everybody interested. The collection of laws and decisions/judgments especially aims at counsellors, legal experts and lawyers. Articles on lectures, the participation in conferences, as well as interviews, contributions to professional journals and popular magazines and reports on press conferences aim at specific target groups. There were a lot of informative radio reports about the Litigation Association's work and its successes in fighting discrimination.

<sup>5</sup> <http://www.amnesty.co.at/academy>

<sup>6</sup> <http://www.klagsverband.at/gesetze>

<sup>7</sup> <http://www.klagsverband.at/faelle>

<sup>8</sup> <http://www.klagsverband.at/faelle/schlichtungen>

<sup>9</sup> <http://www.klagsverband.at/faelle/gerichte/eugh>

Networking with public institutions, social partner organisations and NGOs operates on a national scale. The Litigation Association is extremely interested in international contacts – preferably to similar NGOs. In the meantime umbrella organisations were founded in different EU Member States aiming at the promotion of networking among the member organisations. A regular exchange between some of these organisations located in Germany and Italy has been established by the Litigation Association.

### 2.5.1 Public Relations

The public relations work of the Litigation Association includes – besides the reports on the work of the Litigation Association itself (see 2.1, 2.5 and 2.6) – the documentation of and the comments on the Austrian law and case law (see 2.4) as well as the reports on anti-discrimination policies and the development of the law on national, EU and international level. Special hints to events and reviews are disseminated. The most important media is the website of the Litigation Association ([www.klagsverband.at](http://www.klagsverband.at)). The Litigation Association is a BIZEPS media partner<sup>10</sup> and offers its articles to various other member organisations, the best way for the news to get widely spread.

In the context of the Litigation Association's fifth anniversary seven presentations were delivered all over Austria. At present six new member organisations support the work of the Litigation Association. In the future, the Litigation Association plans to motivate organisations in Burgenland, Carinthia, Lower Austria and Salzburg to join the umbrella organisation in order to promote equal treatment in all Austrian provinces. The most imminent topic will be the task of addressing organisations concerned with discrimination against (old) age.

In the course of the current project “Diversity and Equal Opportunities in Enterprises“ the Litigation Association cooperates with the Ludwig Boltzmann Institute of Human Rights, the Union of Salaried Private Sector Employees, Graphical Workers & Journalists (GPA-djp), respAct and ZARA and will be offering workshops dealing with discrimination free job application procedures, prevention of mobbing and harassment until November 2010. The Litigation Association will also draft legal contributions to a manual on how to establish anti-discriminatory and equal treatment policies within enterprises.

### 2.5.2 Networking

Besides the cooperation and activities together with the member organisations the Litigation Association is proud of an intensive cooperation with different associations and networks concerned with fighting discrimination. By cooperating with NGOs and the Office of the Ombud for Equal Treatment there are more and more contacts with social partners and anti-discrimination institutions in the federal provinces.

Since this year the Litigation Association has supported the establishment of an Italian umbrella organisation by way of two anti-discrimination workshops.

<sup>10</sup> <http://www.bizeps.or.at/media/partner.php>

## 2.6 LEGAL DEVELOPMENT

Anti-discrimination comprises a large variety of laws constantly changing. The dynamic development is based upon the active European Commission, the case law of the European Court of Justice and the Austrian legislative framework which shows a lot of potential for improvement. An important step is the coming into force of the Charter of Fundamental Rights of the EU on 01.12.2009. Its impact is still hard to assess. Although a lot of new legal questions will occur in connection with the Charter, it clearly shows the importance of equal treatment throughout the EU. The constant improvement of the Austrian core legal provisions regarding anti-discrimination and equal treatment allows for making better use of the total legal framework.

### 2.6.1 Opinions and Comments<sup>11</sup>

The Litigation Association drafted eight opinions and comments in 2009. Six of them were concerned with draft legislation, two with the preparatory work for the National Action Plan on Integration coordinated by the Federal Ministry of the Interior. The laws concerned reflect the growing range of work covered by the Litigation Association. Besides four provincial acts the Litigation Association has suggested improvements to the Upper Austrian Prostitution Act and has commented on the totally reformulated section of the Penal Code on the Prohibition of Incitement to Hatred. Fair and human working conditions for sex workers, the extension of the prohibition of incitement of hatred to all grounds of discrimination will be important issues for the next year and probably longer than that.

## 3. OUR ACHIEVEMENTS

We are pleased to be able to welcome the following new members: ISOP – Innovative Social Projects<sup>12</sup>, LEFÖ – Counselling- and Education Centre<sup>13</sup>, maiz – organisation for and by migrant women<sup>14</sup>, Rechtskomitee Lambda – Austria's LGBT-rights-organisation<sup>15</sup>, Reiz – Independent Living<sup>16</sup> and Independent Living Upper Austria<sup>17</sup>. Several clients, both male and female, were supported in lawsuits. The Litigation Association sees the compensation payments as well as various arbitration agreements, which surpass the results of previous legal proceedings, as success.

From 2010 on a reliable financial support will enable the Litigation Association to make plans for a longer period ahead. The founding phase of the Litigation Association has come to an end and has resulted in much better framework conditions starting a phase of consolidation.

<sup>11</sup> All points of view of the Litigation Association see: <http://www.klagsverband.at/politik/stellungnahmen-klav>

<sup>12</sup> <http://www.isop.at>

<sup>13</sup> <http://www.lefoe.at>

<sup>14</sup> <http://de.sophie.or.at>

<sup>15</sup> <http://www.rklambda.at>

<sup>16</sup> <http://www.reiz.at>

<sup>17</sup> <http://www.sli-ooe.at>

## **4. CHALLENGES**

In spite of several improvements which have been introduced by the amendment of the Equal Treatment Act in 2008, there still remain large gaps in the legal protection of victims of discrimination. The hierarchy of the legal protection against discrimination only remains to exist in three of the nine federal provinces – namely Vienna, Upper and Lower Austria, and at the federal level. There are four areas showing different levels of protection: (1) gender, (2) ethnic belonging, (3) disability and (4) sexual orientation, age, religion and belief. A uniform level of protection against discrimination for all seven grounds will remain one of the Litigation Association's main request vis-à-vis the Austrian legislator. There is still no possibility for class action against discrimination which concern many people or different groups in legal proceedings. Such a provision, which is a precondition for fulfilling EU requirements as stated in the Feryn-judgment<sup>18</sup> of the European Court of Justice is still missing in the Austrian legislation.

## **5. OUTLOOK ON THE YEAR 2010**

In 2010 the Litigation Association will be able to rely on a solid financial basis for the first time. The organisation of test cases and the networking with potential new member organisations will thus become much easier for the Litigation Association.

The focus of the work of the Litigation Association will be on the area of employment and occupation due to the difficult situation on the job market. Especially the impact of the Registered Partnership Act will be closely watched by the Litigation Association.

The amendment of the Penal Code ("hate mongers", public incitement to hatred) and the draft legislation of the Upper Austrian Prostitution Act are still pending, their entering into force is expected for 2010. Besides, the Litigation Association is expecting a substantial amendment of the Equal Treatment Act and the evaluation of the equal treatment legislation concerning the disabled. At EU level the most important issue pending is the draft horizontal anti-discrimination directive. This bill is not to be expected to enter into force in 2010. On 01.03.2010 a workshop of experts on anti-discrimination and consumer protection will try to analyse the present situation regarding anti-discrimination outside the field of employment and occupation.

<sup>18</sup> EuGH 10.7.2008, Rs C-54/07

## IMPRINT

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