

**LITIGATION
ASSOCIATION
OF NGOs AGAINST
DISCRIMINATION**

ANNUAL REPORT 2010



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PREFACE



Dieter Schindlauer

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

We look back at the past year with a lot of mixed feelings. The Litigation Association has visibly grown and thus become more efficient – there are five more members to support it – the Institute for Age Competences is totally focused on the topic of (old) age. Our former realistic hopes for an improvement of legal protection against discrimination within the federal competences have been severely disappointed. Barrier free public buildings and various services are out of reach, the renewed postponement deadline for the elimination of barriers is a remarkable set back. The discussion on the long-time put off elimination of different safeguard levels of various grounds for discrimination outside employment and occupation is extremely dissatisfying. The parliament refused the necessary modification although the bill had been submitted to the government by October 2010.

Thus a general and adequate protection against discrimination is non existent, a deplorable and disappointing situation.

The arguments against the assimilation of protection standards are widely misinterpreted – even by the media – so that a clearly defined non-discrimination clause is seen as an interference with the freedom of contract. The exact opposite is the case. This special clause achieves this freedom for those to whom access to goods and services has been denied on grounds of irrational prejudices. It is really unbelievable that mere prejudices should ask for more protection than this special non-discrimination clause.

On the other hand quite some success has been achieved in 2010. The extensive and painstaking survey and examination of a complaint by the Litigation Association and ZARA, with the Austrian Ombudsman was vastly rewarding and positive. It did not only point out the evident deficiencies of the current system of fighting discrimination, but approved of the idea of actions in the general interest of a group as extremely advisable. These actions are necessary in case a concerned party is not willing to take his/her case to court, although active discrimination in public is clearly evident. This applies to discriminatory advertisements, signs, headlines and general business conditions.

We still have got to achieve a lot and will need all the support available. Keep us in mind.

Sincerely,

Dieter Schindlauer, President

THE LITIGATION ASSOCIATION

The Litigation Association is a non-political non-denominational organisation to assist victims of discrimination to enforce their rights. It supplies the staff of its member associations with a wide range of trainings and counselling on all issues concerned with the treatment and applicability of equality and anti-discrimination.

The Litigation Association is the only Austrian association that supports victims of various grounds for discrimination to enforce their rights. In order to supply competent assistance with all different terms of discrimination, know-how and the exact knowledge of about 50 different Austrian Anti-Discrimination Laws are an urgent and binding necessity for us.

In 2004 the Litigation Association was founded by BIZEPS (Independent Living Center Vienna), by HOSI Vienna (Homosexual Initiative Vienna), and by ZARA (Civil Courage and Anti-Racism Work). It is a service-center for all members as well as a resource pool experienced in anti-discrimination and equal treatment proceedings. The Litigation Association is the only Austrian association that assists victims of discrimination to enforce their rights at court.

TEAM

At present the Litigation Association employs two part-time legal experts and one part-time PR (public relations) employee. A large part of voluntary work supports this team. In addition to that there are the numerous tasks of the members of the board, like research work, assistance with public events, a lot of administrative work and keeping the website up to date.

The staff of the Litigation Association would like to express it's deepest and sincerest gratitude to all voluntary supporters and helping hands.

MEMBERS

In 2010 five more members have joined the Litigation Association: Platform Human Rights Salzburg, Peregrina, Women's Service Graz, Dabei Austria, Institute for Age Competences. The latter is an important member, an expert on discrimination on grounds of age.

Current members

- BIZEPS – Independent Living Center Vienna
- Dabei Austria
- Women's Service Graz
- Helping Hands Graz
- HOSI Vienna – Homosexual Initiative Vienna
- Institute for Age Competences
- ISOP – Innovative social projects
- LEFOE – Counselling and Education Centre for Migrant Women



Litigation Association:
Board members and staff

- Ludwig Boltzmann Institute of Human Rights – Research Association (BIM-FV)
- Austrian National Association of the Deaf
- Independent Living Innsbruck
- Independent Living Upper Austria
- 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, counselling and therapy centre for immigrant women
- Reiz
- SOMM – Self-organisation of migrant and muslim women
- SOPHIE – Place of education for sex workers
- Trans X – the Austrian Transgender Association
- ZARA – Civil Courage and Anti-Racism Work

Litigation Association Members are offered the following issues

- legal counselling
- support on out-of-court settlements and complaints that are taken to a commission
- legal representation and third party intervention on behalf of plaintiffs at court within the legal frame
- trainings and further education of counsellors
- networking and legal expertise on lobbying
- opinions on draft legislation

Membership is open to every NGO (Non Governmental Organisation) concentrated on fighting discrimination.

For further information on membership see info@klagsverband.at or telephone 01/961 05 85-13.

FUNDING

The Litigation Association is financed by member fees, donations and public subsidies.

In 2010, the Litigation Association was funded by the Federal Ministry of Labour, Social Affairs and Consumer Protection, the Federal Chancellery – Division Women and Gender Equality and the Province of Salzburg.

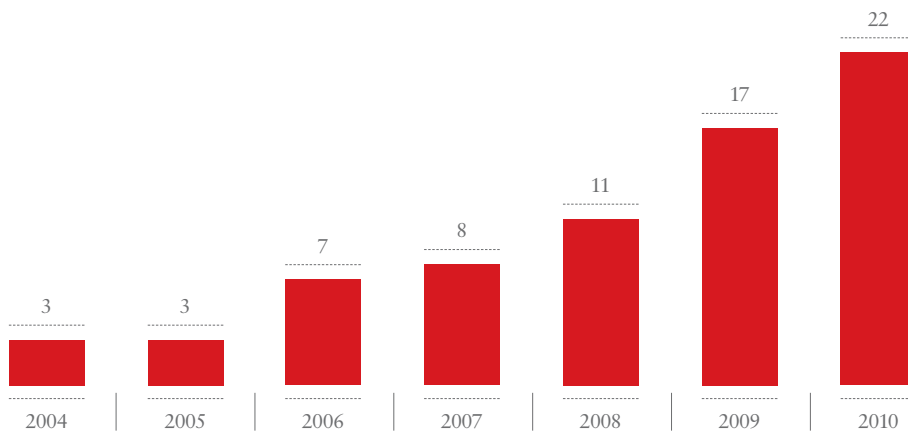
The Litigation Association as such and the amount of work have constantly grown in the past year. Our present funds cannot possibly cover all the various fields of our activities. Only voluntary support enables us to assist all those that apply for our help.

THE LITIGATION ASSOCIATION IN NUMBERS 2004 – 2010

MEMBERS

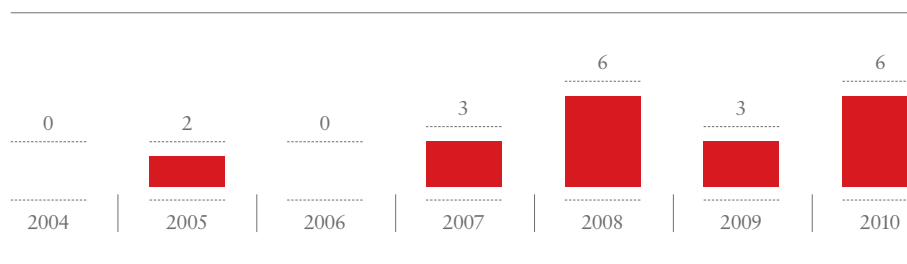
The graph clearly shows: The Litigation Association has continuously grown for the past years. The initiative of three associations has developed into an NGO of 22 member associations. 2010 five new members have joined us.

The member associations concentrate on all seven grounds for discrimination the Litigation Association is concerned with. Several member associations cover various fields simultaneously, like ethnic origin, religion and gender.



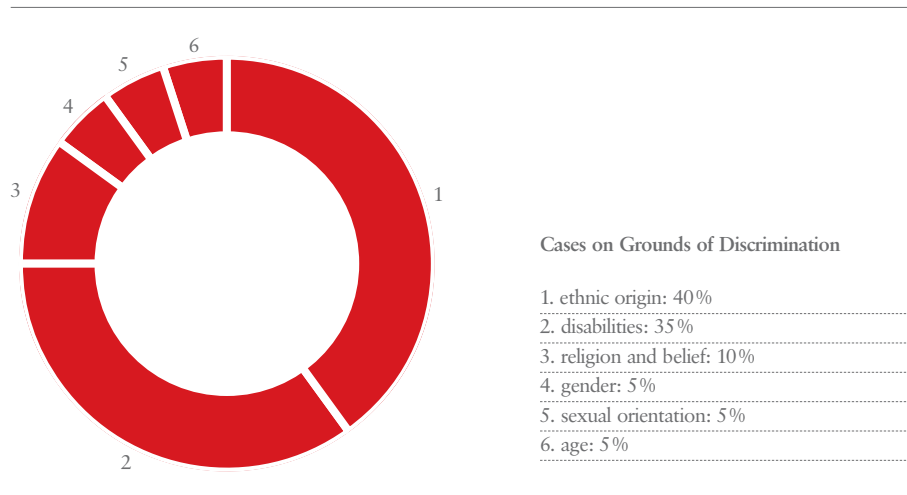
CASES

The Litigation Association assists victims of discrimination to achieve their rights and it is constantly confronted with a growing number of cases which prove that discrimination in Austria is not really a case of trivial offence.



CASES ON GROUNDS OF DISCRIMINATION

The Litigation Association is the only Austrian NGO that supports people on all seven grounds of discrimination (gender, ethnic origin, disabilities, religion and belief, age, sexual orientation and access to goods and jobs). Discrimination and unqualified behaviour and attitudes are largely accepted in many areas. Therefore, no such cases are reported to the Litigation Association.



MAIN FOCUS OF WORK

LEGAL REPRESENTATION

The Litigation Association offers legal help to persons who feel discriminated. First, this person should contact one of the member organizations and ask for counselling.

In 2010, the Litigation Association has taken on legal representation in court in five cases, and in one case a third party intervention. Furthermore, two cases and one third party intervention dating back to previous years have been continued.

Discrimination on Grounds of Ethnic Origin

- In the beginning of 2010 a married couple asks the Litigation Association for help: The husband who is a Turkish citizen was not allowed to enter a club in a southern city of Austria. His Austrian wife had no problems with the bouncer but did not want to spend the evening in the club without her husband. The Litigation Association took on legal representation for both of them because of discrimination on the grounds of ethnic origin. The couple did not accept an out-of-court settlement and decided to go on with the procedure.

Three more lawsuits filed by the Litigation Association are dating back before 2010:

- After a positive investigation by the Equal Treatment Commission a man of African origin applies to the Litigation Association for help. He wanted to enter a pub in Vienna, but was prevented to do so by the bouncer, because of the colour of his skin. The first instance judgement proves discrimination on the ground of ethnic origin. The owner of the bar appeals but the court decision is not final yet.
- A woman is refused access to a bar in Vienna because of her colour of skin. The Litigation Association assists her to take her case to court at the end of 2009. The first instance judgement clearly proves discrimination on the ground of ethnic origin and the plaintiff is granted the compensation demanded. The owner of the premises appeals. The court decision is not final yet, the second instance judgement is still to be expected.
- At the end of 2008 the Litigation Association accepted a third party intervention because of the refused access to a club in Vienna on the ground of racism. Both the first and the second instance judgements granted the compensation demanded.

Discrimination on the Grounds of Religion

A woman applies to the Litigation Association. She has applied for a job as a secretary at a catholic hospital in Vienna. Her excellent qualifications are accepted by the potential employer. In spite of this her application is not taken into consideration as she is not a member of any religious denomination. She is asked to join one to get the job, but she refuses to do so, she does not get the job. The applicant feels discriminated against on the ground of her not belonging to any religious denomination. The Litigation Association accepts her case and takes it to court. The proceeding ends with a settlement.

Discrimination on the Grounds of Disabilities

- At the end of 2010 the final judgement finalises the case of a man who feels discriminated against. A public transport company offers free rides to heavily disabled ex-soldiers, but people otherwise disabled are denied this advantage. The prejudices against people with disabilities are concerned with alleged direct discrimination because of various disabilities. The man, represented by the Litigation Association, asked for both a compensation for his financial loss and for an immaterial compensation for the personal damage. The first instance judgement dismisses the complaint arguing that the Federal Act on Equal Treatment for Persons with Disabilities cannot be applied to people otherwise disabled. The public transport company discriminated against the plaintiff but without any malicious intention to do so, because the tariffs fixed by the Federal Ministry for Transport, Innovation and Technology do not include general disabilities.
- A deaf man, represented by the Litigation Association, took his case against the ORF (Austrian Broadcasting Corporation) to court. The DVD "Soccer Club Sturm Graz", produced in 2009, was useless to the man, he was not able to understand anything because of the missing subtitles. The Litigation Association took this case to court on the ground for discrimination against a person with a hearing disability. The first instance judgement decided in favour of the plaintiff. The ORF appealed and the decision of the second instance judgement is still to be expected.
- In one case of discrimination on the grounds of age the Litigation Association tried a third party intervention. The law court refused this kind of intervention because the Federal Act on Equal Treatment (public employment), contrary to the Act on Equal Treatment (private employment) does not accept a third party intervention.

COUNSELLING AND INFORMATION

The Litigation Association is not a counselling centre in the proper sense of the word. The Litigation Association is not only confronted with cases of direct discrimination but also with people who merely need information how to cope with certain situations. In many cases the Litigation Association helps these people to find appropriate help-organisations. In case member associations are not successful with an extra judicial solution, the Litigation Association takes the cases to court.

In the past years most counselling concentrated on people with disabilities or with racist incidents. The variety of complaints has changed. More people feel discriminated against on the grounds of religion, age and sexual orientation and they apply to the Litigation Association. This development is due to the growing number of member organisations concentrated on various grounds for discrimination.

About two people a day consult the Litigation Association on several grounds for discrimination and prejudices.

Two Examples of Counselling:

- A student, a Turkish citizen, feels discriminated against and applies to the Litigation Association by referring to the Act on Equal Treatment. He is refused the renewal of his term ticket for public transport by the Provincial Government of Lower Austria. The official statement is, only Austrian and EU citizens are granted this advantage.
- Some counselling is very complex and takes quite a long time: A man in a wheelchair has got difficulties in gaining access to a counselling centre at the Federal Chancellery. After an intensive counselling by the Litigation Association this man is supported in an arbitration process in 2009, without any settlement. In spite of this a further talk was held at the Federal Chancellery in 2010. An improvement was promised but nothing of any kind has happened up to now. A further talk with the goal to achieve an out-of-court settlement failed.

The Litigation Association is a resource pool specialised on all questions concentrated on anti-discrimination and equal treatment. Various target groups make use of the know-how and consult the Litigation Association on case law concerned with these different fields of discrimination. These target groups include media representatives, lawyers, researchers, students and counsellors. In 2010 a lot of international interest in these topics was evident. The OECD, the European Union Agency for Fundamental Rights (FRA) and the German Institute of Human Rights showed their interest in our work.

TRAININGS

The Litigation Association offers a large scale of trainings to the staff of its member associations and various target groups. At these trainings the counsellors of the various associations enlarge their advisory skills on the issues of anti-discrimination and equal treatment. All trainings demonstrate how to assist victims of discrimination. Information on legal matters, addresses of special institutions and services are available. In 2010 eleven trainings were held. Most of them concentrated on all grounds for discrimination. A cooperation with amnesty academy has existed since 2008.

PUBLIC RELATIONS

One of the main tasks of the Litigation Association is to communicate with various target groups to raise wider public awareness for the topic of anti-discrimination and for the effects of discriminatory acts on individuals. National legislation is commented on for clearly defined target groups and experts. Public relations, our website and our information events for resource persons are important items of our work.

www.klagsverband.at

Our website is our basic medium because current news and activities concerned with equal treatment and anti-discrimination are forwarded immediately to all different target groups. Current news, information events concerned with equal treatment and anti-discrimination are put online.

The greatest advantage of our website is the comprehensive collection of all valid anti-discrimination laws of the provinces and the federal legal settlements. The website is an online resource of anti-discrimination laws.

Press Relations

Press releases and press conferences are the most important means of PR. The Litigation Association makes use of both of them to supply information on different topics we concentrate on. Press conferences are rarely held because the target groups for topics like anti-discrimination and equal treatment are not this large. So the Litigation Association constantly co-operates with similar NGOs, concentrated on human rights, which is more attracting and interesting to a larger public and more efficient for lobbying to achieve equal treatment and equal opportunities.

Networking

The Litigation Association depends on the efficiency of its member associations, the various contacts to different associations and NGOs, concentrated on the elimination of discrimination. We regularly contact the Office of the Ombud for Equal Treatment Opportunities, the Ombud for Persons with Disabilities, the anti-discrimination institutions of the provinces and the Social Partners.

EVENTS

Anti-Discrimination and Consumer Protection

Anti-discrimination and equal treatment issues have been part of Labour Law for some time. Since the amendment of the Federal Act on Equal Treatment in Employment and Occupation in 2004 and the enforcement of the Act on Equal Treatment of People with Disabilities, regulations outside employment and occupation have existed. The Federal Law forbids discrimination on the grounds of gender, ethnic origin and disabilities. In many provinces the harmonisation of discrimination has been extended to all seven grounds for discrimination. Experiences on out-of-court settlement, various decisions of the Equal Treatment Commission and some verdicts concerned with these issues exist. So that initial trends are obvious.

On March 1st 2010 the Litigation Association organised a workshop to discuss the latest anti-discrimination guidelines. The Federal Act on Equal Treatment and the Federal Act on Equal Treatment of Persons with Disabilities were compared with each other. The main topics focused on cases concerning “buildings and services without barriers”, “different opportunities for women and men” and “access to community housing”.

Out-of-court settlements according to the Anti-Discrimination Act of Vienna

On November 8th 2010 the Litigation Association organised a workshop on out-of-court settlements according to the Anti-Discrimination Act of Vienna. Counsellors of Viennese associations were invited to enlarge their information on and their experience in anti-discrimination law and out-of-court settlements. About 30 people participated. The morning was focused on the theory of legal frame work conditions. In the afternoon smaller teams practised how to deal successfully with extra-judicial solutions. The Litigation Association issued a guide line for out-of-court settlements with all the necessary information. The guide line includes a check-list how to deal and to cope with out-of-court settlements, important addresses and institutions concentrated on this special topic.¹

STATEMENTS²

In 2010 the Litigation Association drafted eight statements on laws on the federal and provincial level. Most disappointing was the refusal of the promised harmonisation of the protection against discrimination based on the Equal Treatment Act. The Litigation Association demands this protection by a statement on the amendment to the Equal Treatment Act.

UPR (Universal Periodic Review) is a unique process in which the EU Human Rights Council supplies information on the development of human rights and suggests amendments. The Litigation Association has participated in a joint report coordinated by the Austrian League for Human Rights and has contributed a report of its own. On January 26th 2011 the Austrian report was considered by the UNO.

The amendment of the Federal Act on Equal Treatment for Persons with Disabilities has caused an uproar in federal politics: various Associations for Persons with Disabilities protested vehemently against the postponement of the deadline for buildings and services without barriers. The Litigation Association agrees with this criticism as the postponement of this deadline is a suspected means of budget saving.

The Litigation Association has stated its opinion on laws on the provincial level in Upper Austria and in Vienna. In Upper Austria the Law on Sex Work has already led to a second statement this year in May. The Litigation Association together with its member association "maiz" demands legal and safe working conditions for sex workers. A further statement focuses on the Upper Austrian Anti-Discrimination Law. In Vienna the Anti-Discrimination Act and the Act on Equal Treatment are harmonised. The term "race" is replaced by the term "ethnic origin". The binding out-of-court settlement was introduced and the protection against discrimination outside employment and occupation was extended to people with disabilities. These various amendments are fully approved of by the Litigation Association.

¹ The guide line for experts is available for download <http://www.klagsverband.at/archives/4506>

² All statements and comments of the Litigation Association are available online <http://www.klagsverband.at/politik/stellungnahmen-KlGv>

In March the Department of Vienna handed out the 11th amendment to the Equal Treatment Act of Vienna for consideration. In spite of several acceptable harmonisations, the Litigation Association's opinion is that there is no justification that institutions and legal proceedings concentrated on grounds of disabilities, sexual orientation, ethnic origin, religion and belief should be dealt with less appropriately and fairness than those on the ground for gender discrimination.

Actions in the general interest of a group

Reacting on the complaints of the Litigation Association and ZARA (Civil Courage and Anti-Racism Work) the Office of Ombud suggests the possibility of actions in the general interest of a group in case of discrimination. This settlement meets with a long term demand of all the NGOs. Many victims of discrimination have got the chance of achieving their rights. There are e.g. problems with housing space advertisements that say "Austrian citizens only".

Actions in the general interest of a group achieve that there is no room for discriminatory regulations. This legal resource comprises more than discrimination against individuals and should be considered within the Law on Consumer Protection. The Litigation Association wants a wider range and pleads for the implementation of out-of-court settlements in addition to the proceedings of the Equal Treatment Commission.

Out-of-court settlements are better suited to meet the needs of victims of discrimination. Thus compensations like apologies or the avoidance of discriminatory acts get a chance and are possible.

DOCUMENTATION AND COMMENTS

The services of the Litigation Association comprise the documentation and the comments on national and international legislation. The website of the Litigation Association www.klagsverband.at offers the download of various documents, like laws on the international and provincial level, decisions of the court and the Equal Treatment Commission and decisions of the European Court of Justice.

Out-of-court solutions on the grounds of discrimination are important for the Litigation Association, therefore commented settlements are published.

PROJECTS

The Litigation Association participated in three PROGRESS – projects, which were either in a state of drafting or an initial phase in 2010.

DIVERSITY AND EQUAL OPPORTUNITIES IN THE FIELD OF EMPLOYMENT AND OCCUPATION (2009/10)

This project supports enterprises on the institution and further development and occupation of diversity in employment and occupation. The Litigation Association cooperates by contributing three articles to a guideline comprising a collection of counselling results and the cases where assistance with legal proceedings was given.³

The project “Diversity and Equal Opportunities in Employment” was funded by the EU within the framework of PROGRESS, by the County Council of Vienna, Department 17 (MA 17) and by the Austrian Chamber of Economy. The Litigation Association also cooperated with the Ludwig Ludwig Boltzmann Institute for Human Rights, with ZARA (Civil Courage and Anti-Racism Work), with respAct – Austrian Business Council for Sustainable Development and the GPA (Union of Private Sector Employees, Graphical Workers and Journalists).

EQUALITY IN HOUSING (2010/11)

The main focus of the EU project is centred on the question of how to harmonise the implementation of equal treatment and anti-discrimination concerning the allocation of housing space. The solution of this problem is supported by the Litigation Association, BAWO (Bundesarbeitsgemeinschaft Wohnungslosenhilfe) and Volkshilfe and should be dealt with during the next 12 months.

The allocation of community housing and other housing space built with subsidies for housing are subject to a large variety of Equal Treatment Regulations. Migrants and minorities and people belonging to different religious denominations are often confronted with a jungle of obstacles and strange regulations.

The project “Equality in Housing” aims at raising awareness for this problem and at encouraging political decision makers to make public housing space better and fairer available according to the regulations of equal treatment. The Litigation Association provides a legal study on the access to public housing. A socio-scientific study is also foreseen with the project.

³ available online <http://bim.lbg.ac.at/files/sites/Chancengleichheit/index.html>

EQUAL OPPORTUNITIES – AWARENESS RAISING AND SUPPORT ON THE SCOPE OF LAWS ON EQUAL TREATMENT (2010/11)

The Litigation Association is a co-partner of ZARA (Civil Courage and Anti-Racism Work), and freiraum Europe of the PROGRESS-Project “Equal Opportunities – Awareness Raising and Support on the Scope of Laws on Equal Treatment”.

The Litigation Association supports the project partners on the programmes for community days concentrated on equal opportunities. These are information activities focused on equal opportunities, anti-discrimination and various services without barriers. The task of the Litigation Association is to provide experts for trainings and workshops in various cities all around Austria.

OUTLOOK ON THE YEAR 2011

OPINIONS ON DRAFT LEGISLATION

In 2011 our work will mainly focus on the following issues: the amendment of the Act on Equal Treatment which was already decided as a government bill at the end of the year, to the satisfaction of the Litigation Association, many Human Rights Organisations and NGOs. In October 2010 the harmonisation of the implementation of legal provisions against discrimination outside employment and occupation was to be extended to all seven grounds for discrimination. At the end of the year this harmonisation seemed out of debate. A media campaign defended this harmonisation of the implementation of legal provisions on the grounds for discrimination.

At the beginning of 2011 the Litigation Association together with ZARA and HOSI Wien held a press conference to inform the media of this development and to encourage a wide public debate.

Unfortunately this implementation of legal provisions was not finalized at the meeting of the Equal Treatment Agency in January 2011. This implementation of legal provisions and actions in the general interest of a group are long term demands of the Litigation Association.

The amendment of the Act on Equal Treatment of Persons with Disabilities, most frustrating for persons with disabilities, opens the opportunity to the Federal Ministries to extend the progressive period to establish institutions without barriers. The consequences of this amendment are not to be foreseen. The Litigation Association will keep this important problem in mind.

OUT-OF-COURT SETTLEMENT

Since 2010 the work of the Litigation Association has focused on out-of-court settlements. The Federal Act on Anti-Discrimination of Vienna considers out-of-court settlements as an extra judicial alternative. In autumn our information event instructed counsellors how to take advantage of these arbitration processes. For 2011 a further workshop on this topic is planned. Legal knowledge and current examples of test cases will show the advantages of such processes. For victims of discrimination out-of-court solutions are more rewarding and satisfying than taking their cases to court. Apologies and non-discriminatory acts are often the results of such processes.

All concerned institutions are in need of more and better experience as they take advantage of these out-of-court settlements, especially as a lot of feedback justifies their acceptance by the people.

AWARENESS RAISING

In 2011 the Litigation Association will concentrate on encouraging institutions all over Austria to supply counselling on discrimination outside employment and occupation. As the Social Partners do not feel responsible for this problem, the NGOs should be more encouraged to improve their counselling by their know-how of the Anti-Discrimination Law. Those interested in are invited to achieve more experience in dealing with the Anti-Discrimination Law, by attending workshops and information events supplied by the Litigation Association. A further step is to become a member of the Litigation Association to achieve better experience on how victims of discrimination are able to successfully enforce their rights.

The Litigation Association is not only experienced but is encouraged by quite a few landmark court decisions not to take discrimination for granted.

IMPRINT

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