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**Comments on  
ECRI (2015) Fifth report on Austria  
Interim Follow-Up Recommendations**

Klagsverband zur Durchsetzung der Rechts von Diskriminierungsoeffern (KlaV)  
(Litigation Association of NGOs Against Discrimination)

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Nr	Recommendations By ECRI	Comments
14	Merge anti-discrimination acts and institutions of Federation and the Länder in order to improve the protection	<p>There has been no reduction in the number of anti-discrimination acts and institutions.<sup>1</sup>            The list provided by KLaV in 2014 is still valid.</p> <p>In Upper Austria, the independence of the Anti-Discrimination Focal (AD-FP) Point (that also acts as the Upper Austrian Monitoring Committee of the CRPD) has been curbed.            According to LGBl. 2017/51</p> <ul style="list-style-type: none"> <li>• the Head of the AD-FP can only be selected from the Upper Austrian civil servants and</li> <li>• the reports to the Upper Austrian Parliament only have to be submitted “if necessary” (bei Bedarf). To date, these reports had to be published at least once in three years.</li> </ul>
22	Provide comprehensive protection from discrimination on all grounds including citizenship	<p><b>Federal level</b></p> <p>The Equal Treatment Act (ETA) has not been amended. There is no protection from discrimination with regard to the access to and provision of goods and services on the grounds of age, religion and belief and sexual orientation (BGBl. I 2004/66 as amended by BGBl. I 2015/34).<sup>2</sup></p> <p>Since July 1, 2017, the four regional offices of the Equal Treatment Ombud (ETO) are mandated to deal with all grounds of discrimination covered by the ETA (BGBl. II 2017/126). Until June 30 2017, the regional offices were only mandated to handle cases of gender discrimination with regard to employment. There are no information available if the necessary additional resources for providing these additional services have been allocated.</p> <p>Art. III (1) 3 of the Introductory Act to the Administrative Procedure acts 2008 (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG, BGBl. I 2008/78 as amended by BGBl. I 2013/33) states that persons who discriminate against anyone on the ground of race, colour, national or ethnic origin, religious denomination or disability or prevent anyone from access to any place or service intended for use by the general public commit an administrative offence</p>

<sup>1</sup> See the list on: <https://www.klagsverband.at/gesetze> (31.07.2017)

<sup>2</sup> See: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395> (31.07.2017)



		<p>punishable by the district administration. The fine is up to 1.090 euro.</p> <p>There are numerous deficiencies in this provision. It still uses the German term “Rasse” which is connected to racist concepts of unchangeable racial differences between human beings much more explicitly than the English term “race”.</p> <p>Moreover, there is no protection from discrimination on the grounds of age, gender, belief and sexual orientation.</p> <p>In May 2017, the Federal Chancellery submitted a draft to the EGVG<sup>3</sup>. Unfortunately, the draft did not include that the protection from discrimination in Art. III (1) 3 to be expanded to age, gender, belief and sexual orientation.</p> <p><b>Level of the States (Länder)</b></p> <p>In Lower Austria, the Anti Discrimination Act was amended (LGBl. Nr.2017/24). It now covers all seven grounds of discrimination.<sup>4</sup></p>
22	Ensure that victims of discrimination have an easily accessible way to enforce their rights	According to the many acts and the numerous organisations that provide legal aid only within a restricted scope it is still difficult for victims of discrimination to enforce their rights.
22	Ensure that victims can obtain adequate compensation	The amounts of compensation victims can obtain remain low and are certainly not “effective, proportionate and dissuasive” as required by the EU anti-discrimination directives.
22	reinforce the rule of the burden of proof	The rules on the reversal of the burden of proof in the ETA are not effective and have not been changed.
26	Give the Ombudspersons for Equal Treatment the power to represent victims in court or	The Ombudspersons for Equal Treatment still only have a very limited/almost no power to represent victims in court and administrative proceedings. These powers have not been changed.

<sup>3</sup> See the draft and comments: [https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME\\_00320/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00320/index.shtml) (29.06.2017)

<sup>4</sup> See: [https://www.ris.bka.gv.at/Dokumente/LgblAuth/LGBLA\\_NI\\_20170313\\_24/LGBLA\\_NI\\_20170313\\_24.html](https://www.ris.bka.gv.at/Dokumente/LgblAuth/LGBLA_NI_20170313_24/LGBLA_NI_20170313_24.html) (31.07.2017)



	administrative proceedings	
28	Remove the restriction that victims of discrimination can only lodge a complaint with the Austrian Ombuds Board if there is no other legal remedy	Still, victims of discrimination can only lodge a complaint with the Austrian Ombuds Board after exhausting legal remedies or if there is no other legal remedy.
32	Set up an IT-based system for recording and monitoring racist, homophobic and transphobic incidents	To our knowledge, there is no IT-based system for recording and monitoring racist, homophobic and transphobic incidents. Police do not regularly ask if there is a racist, homophobic, transphobic or any other bias-motive when an incident is reported. Therefore, there are still no comparable data available on hate crimes or bias incidents (may not rise to the level of a crime).
42	Ratify the Additional Protocol to the Convention on Cybercrime	Austria signed the Additional Protocol on January 31, 2003, but has not ratified it yet (03.07.2017) <sup>5</sup> .
44	Apply criminal and administrative law in a more vigorous way to curtail the activities of organisations promoting racist ideologies	
70	Any differential treatment of Islam should be in line with the ECHR	<p>The Austrian Parliament passed the Act against covering of face in public places (Anti-Gesichtsverhüllungsgesetz, BGBl. I 2017/68) that will enter in force on October 1, 2017. The political discussion in the parliamentary discussion showed that it – primarily if not exclusively - addresses Muslim women wearing head scarfs covering the face. The parliamentary documents stress that the act aims at fostering integration and securing the peaceful coexistence of persons of different origin. Moreover it should enable communication which requires seeing the face of the other person.</p> <p>There has been broad criticism of the Act e.g. by numerous organization ranging from the Austrian Bar Association, the Red</p>

<sup>5</sup> [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p\\_auth=jEgPGwvI](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189/signatures?p_auth=jEgPGwvI) (31.07.2017)



		Cross, the Vienna Regional Government to various NGOs. <sup>6</sup>
84 (1)	Re-examine if there is a justification of differences in the regulation of married and same-sex couples	All grave inequalities have meanwhile been removed. The LGBT movement is divided. While some groups want marriage equality for the sake of "equality", other groups argue that the civil partnership law for same-sex couples is the more modern and better legal institution, so they prefer not to exchange it against marriage unless marriage first undergoes a substantial reform and modernization.
84 (2)	Enaction legislation on gender reassignment Treatment, changing a transgender person's first name and changing the gender marker in documents	Paragraph 3 (1) 7 of the Austrian name-changing-Act (Namensänderungsgesetz, BGBl. 1998/195 as amended by BGBl. I 2017/59) forbids persons to choose a first name which is not in line with their registered gender (NÄG 1988, Par 3.7). Effectively this regulation only discriminates against transgender-persons, who want a first name according to their lived gender in order not to be exposed as a trans-person.

<sup>6</sup> <https://www.klagsverband.at/archives/12429> (31.07.2007)