Annex with country-specific information

Article 2 CEDAW – Constitutional framework and implementation of the Convention

Andrea Ludwig – Klagsverband, www.klagsverband.at

The Federal Chancellor's ordinance extending the responsibilities of the regional offices of the Ombud for Equal Treatment came into effect with the first of July 2017. The regional offices' responsibilities now include all grounds of discrimination and all areas of discrimination within the meaning of the Equal Treatment Act. This extension of the regional offices' responsibilities is an important step to offer comprehensive counselling and support to women locally. At the same time, however, it is necessary to also adjust resources to match the higher workload which the regional offices now face.

Because of the very low amount of immaterial compensations in cases of discrimination it can be assumed that cases of multiple discrimination are also not consistently adequately compensated. Since no appropriate way to find judgements drawn from the equal treatment legislation within the legal information system of the federal government (RIS) exists, it is hardly possible to gain a comprehensive overview over the few verdicts and cases of compensations. For this reason, a precondition for a necessary study would be a consequent way to find these specific verdicts within the RIS.

Austria did not use the amendment to the Equal Treatment Act in 2013 to extend the ban on discrimination outside of the workplace to the areas of religion and ideology, sexual orientation and age, or to embody an effective and comprehensive protection against discrimination for women in Austrian law (Levelling-Up)[1].

For every draft of legislation, for example, an impact assessment should be commissioned, as also pointed out in the state report, which should be used to examine the ramifications on the genuine equality of women and men. Furthermore, review periods should be complied with.

Article 2g CEDAW – Criminal Law, Violation of Sexual Self-Determination

Valerie Purth, Johanna Schlintl – die Juristinnen, www.juristinnen.at

Violations of sexual self-determination are discrimination on the grounds of gender. The gender ratio is unambiguous. Victims are nearly exclusively women, perpetrators are nearly exclusively men. The new § 205a of the Criminal Code (StGB), "violation of sexual self-determination", which makes intercourse or "sexual acts equitable to coitus" without consent punishable, presents an important step in the recognition of sexual self-determination, especially of women. However, the protection thereof is still incomplete.

Sexual harassment

The offense of sexual harassment (§ 218 StGB) was supplemented with par. 1a: "…whoever hurts the dignity of a person through an intense touch of a body part which is part of this person's intimate sphere", must be punished according to par. 1. However, another supplement to § 218 would have been necessary to counter a practice of sentencing which has been using this article restrictively by only assigning an objective sexual context when a part of a person's immediate genitals is touched (the

[1] https://www.bmgf.gv.at/home/Frauen_Gleichstellung/Gleichbehandlung/Gleichbehandlungsberichte/Bericht_Evaluierung_der_Instrumente_des_Gleichbehandlungsrechts_samt_Stellungnahmen (5.12.2017)

buttocks are excluded from this definition[2]). Such a supplement should add "physical acts which are comparable to sexual acts in kind and intensity and which are related to the sexual sphere in a wider sense" to this article. Moreover, a phrasing like "approximating or closely associated with such an act" would have been more appropriate, since a strict reading of the paragraph's wording can be expected.[3]

Evaluation of the law governing sexual offenses

It is surprising that the number of convictions for the suspicion of rape has been falling[4], since it could have been expected that the psycho-social and legal assistance in proceedings would potentially lead to more convictions. For this reason, the current evaluation of the reasons for decisions to convict or to acquit in regards to cases of suspicion of rape and sexual assault (§§ 201, 202 StGB)[5] can be seen as a very positive step. However, an evaluation of the procedures of public prosecutors[6], which are often met with incomprehension by those concerned, is necessary. Instead of thinking about increased penalties, the internal evaluation of the offense of violation of sexual self-determination and sexual harassment (§§ 205a, 218 StGB)[7] which has been announced to take place in 2019, should take a look at judicial sentencing and public prosecutorial procedures. This evaluation should also be accompanied by external legal-sociological studies.

Abortion

The provision of § 97 of the Criminal Code (general prohibition on abortion, provision permitting abortions within the first three months of pregnancy) remains unchanged. This represents a criminalisation of women's right of self-determination and clear discrimination on the grounds of gender.

Article 3 CEDAW – Development Policy

Claudia Thallmayer - WIDE, www.wide-netzwerk.at

The Austrian Development Agency (ADA), which is working at the behest of the Federal Ministry for Europe, Integration, and Foreign Affairs (BMeiA), does the most important part of Austria's development assistance. The 2016-18 three year programme of the Austrian Development Cooperation (OEZA) only includes gender equality as a cross-cutting issue. According to the recent Federal Finance Act, 75% of ADA programmes should have contributed to gender equality. In reality, between the years 2011 and 2015 this goal was only met in the year 2012; the results of other years lay far below that (at 41 to 66%). The percentage of funding for projects with the primary objective of the advancement of women amounted to a modest 2.5 to 10%.[8]

In the case of other bilateral donors (the Development Bank of Austria, other ministries apart from the BMeiA, federal provinces and municipalities), there is a lack of concrete equality-oriented objectives and of a consistent use of the OECD's DAC gender equality policy marker. Equality-oriented projects only represented 12 to 45% of the bilateral Austrian Development Cooperation between the years 2011 and 2015.

[2] RIS-Justiz RS0095204.
[3] Statement by von Ass.-Prof.in Mag.a Dr.in Katharina Beclin, 162/SN-98/ME.
[4] Cf. http://derstandard.at/2000041008108/Sexuelle-Uebergriffe-Fast-80-Prozent-der-Taeter-sind-Oesterreicher (6.11.2017)
[5] Cf. https://oravm13.noc-science.at/apex/f?p=115:3:::NO::P3_PROJIDF:31104 (6.11.2017)
[6] Cf. footnote 4
[7] Cf. 728 of the supplements to the stenographic records of the National Council XXV. GP, 12f.
[8] Reference source: see appendix

On the positive side, the OEZA funding allocated to equality programmes has largely flown into the areas of "social infrastructure" and "population and sexual/reproductive health".

However, very little is done for the economic empowerment of women. One part of this is the reduction of the disadvantages women face for performing unpaid labour in subsistence, domestic and care work. The effort to reduce such disadvantages has also been demanded in CEDAW Article 14 and the Agenda 2030 for sustainable development. To find and implement emancipatory approaches to transforming gender relations, cooperating with feminist organisations would be of special importance. However, women's organisations only receive very little direct support: With the exception of 2013, they only received 0.5% of bilateral funding.

In regards to measures to adapt to and combat climate change, Austria also hardly provides any funds for programmes with a gender-focus. However, there are many examples within the context of development of how rural women, a group especially affected by climate change, can profit from a strengthening of their rights (such as access to land), promotion of clean technologies (such as solar energy for households) and training in sustainable technology in the areas of food, health and education.

Moreover, the percentage of bilateral development cooperation with the least developed countries (LDC) has decreased in the last years, and most funding has been relocated to the support of refugees and migration in their countries of transit and origin. It should be seen critically that Austria is using its development policy more and more for its own agendas of economic and migration policy.

Article 6 CEDAW – Trafficking of Women

Isabella Chen, Evelyn Probst – Lefö-IBF, www.lefoe.at/index.php/ibf.html

Human trafficking of women is a complex crime and a serious violation of human rights. From a human rights perspective, structural discrimination benefitting trafficking of women must be taken into account.

The rights of women and girls who are exploited within refugee contexts are threatened by deportations to their country of origin or repatriation according to the Dublin III regulation. Efforts to identify women as victims of human trafficking are countered by restrictive asylum policies, which often cause women to be deported before they can exercise their rights as victims.

Temporary residency for those affected by human trafficking according to §57 of the Austrian asylum law (AsylG)[9] is issued for one year at a time and is connected to a criminal procedure and thus to the victim's willingness to testify. Moreover, it has to be ensured that female EU citizens who are victims of human trafficking receive a registration certificate. To make psychosocial support structures efficient, there needs to be some form of residency or registration certificate. Women who have no residency are dependent on the organisations that are supporting them and don't have access to medical care or the labour market.

The awareness-raising efforts which are also envisaged by the National Action Plan[10] have contributed to a higher number of (potentially) affected women who are transferred by government agencies or NGOs. For this reason, these efforts have to be continued.

Even though compensation are increasingly granted to victims in a criminal context, there are systemic and practical obstacles to the pay-out of these compensations to the victims. The enforcement of

[9] BGBl I 2017/145.
[10] Cf. Task Force Menschenhandel, National Action Plan to combat human trafficking, years 2015-2017

claims for compensation is dependent on the recovery and seizure of assets. In most investigations no consideration is taken of this, which poses a restriction on the rights of the victims.

Article 7 CEDAW – Political participation and representation

Sonja Ablinger, Brigitte Hornyik – Österreichischer Frauenring, www.frauenring.at

In Austria there are no legally binding measures to improve the representation of women in politics. Article 7 subparagraph 2 of the Federal Constitutional Law (B-VG) only contains a national objective and a pledge to create genuine equality between genders.

Voluntary commitments of political parties have only very little impact, as a case from the year 2015 illustrates. After the passing of sitting National Council President Barbara Prammer (Social Democratic Party Austria, SPÖ) in the summer of 2014, controversies within the party arose, when in spite of the bylaws of the SPÖ a man was newly appointed to the National Council instead of a woman. Because of this, the percentage of women in the party dropped to 32.7% and thus was far from the quota laid down in the party's bylaws.

An especially drastic example for the way in which men still dominate Austrian politics was given when the new provincial government of the province of Upper Austria was sworn in in October 2015. During the election on the 25th September of 2015, the Austrian People's Party (ÖVP) and the SPÖ each lost one seat within the provincial government to the Freedom Party of Austria (FPÖ). The only two female members of government (from the ÖVP and the SPÖ) had to leave, all other male members of the provincial government stayed in their positions and on the 23rd October of 2015 a new provincial government, made up of nine men, was sworn in.[11]

Article 12 CEDAW – Women's Health

Felice Gallé – Frauengesundheitszentrum Graz, www.frauengesundheitszentrum.eu

Health has a gender! The meaning of social and biological gender (gender and sex), however, is still not factored in enough. Discrimination and barriers to access in the health care system compromise the health of women and girls in Austria[12]. For this reason, measures on individual and structural levels are necessary.

The cutback in social benefits, the development of the labour market and the situation of refugee women and girls present current challenges. This further proves that the cross-cutting issue of women's health needs coordinated measures in the social, education, health, youth, integration and economic sector.

[11] Cf. http://www.frauenring.at/sites/default/files/artikel/Frauenring_Repraesentation_von_Frauen_StandNov2015.pdf (14.11.17); in 2017, the percentage of women in the National and Federal Council is at 30%, see http://www.parlament.gv.at (14.11.17)

[12] Bundesministerium für Gesundheit (2011): Frauengesundheitsbericht 2010/2011. Wien. Bundesministerium für Gesundheit und Frauen (2017): Aktionsplan Frauengesundheit. 40 Maßnahmen für die Gesundheit von Frauen in Österreich. Wien. Bundesministerium für Gesundheit, Bundesministerium für Bildung und Frauen (2015): Gesundheitliche Situation von Frauen in Österreich. Grundlagen für die Entwicklung des Aktionsplans Frauengesundheit. Wien.

Article 16 CEDAW – Equality in marriage and family issue

Karin Mayer, Barbara Smetschka – FAmOS, www.regenbogenfamilien.at

By December 2018, lesbian women and trans and intersex people with female status still do not have the same right to marriage as heterosexual women: marriage between two people of the same gender is still prohibited in Austria ($ 44 General Civil Code (ABGB)).

For same-sex couples, "registered partnership" exists since 2010 and contains inferior terms in comparison with civil marriage. Some, but not all discriminatory differences between those two kinds of civil law partnerships have been removed since its inception. But just the fundamental difference between two different kinds of partnership on the grounds of sexual orientation stays discriminatory: For example, a person who states that their marital status is "living in a registered partnership" to government agencies or to their employer, etc., is thus forced to out themselves as "homosexual", since it is not be permitted by law to state they are "married".

Opening up marriage for same-sex couple has been attempted through legislative initiatives on the topic in the National Council several times, the last time being June 29th, 2017. In 2017, change happened not because of political efforts, but because of juridical reasons, as the marriage ban for same-sex couples was examined by the Constitutional Court.[13]

This positive development is a nice step on the path to equality. The CEDAW Committee will have to monitor the constitutional implementation of the verdict, which comes into effect on the first of January 2019.

In regards to the legislation regulating family foundation, three essential improvements have been made for lesbian women: the possibility of stepchild adoption for the mother's partner (2013), access to medically assisted reproduction for lesbian women (2015) and the opening of general adoption to same-sex couples (2016).

Following the decision to open marriage to all, it is now important to pay attention to the according equalisation in regards to a) parenthood by default, and b) child-care allowance:

a) For children born into a valid marriage (or within 300 days after the existence thereof), the spouse of the child's mother is legally the child's/the children's father. A female "registered partner" has to request to be made a parent to her partner's biological child through stepchild adoption in court. Parenthood by default in registered partnerships only occurs in the case of medically assisted reproduction. Female migrants face even more disadvantages: parenthood by default can only happen if the child's biological mother is an Austrian national.

b) The option for both parents to receive child-care allowance, which was expanded in 2017, only insufficiently considers the parenthood of lesbian women. If two women who are in a partnership give birth in a short interval, at least one of both has to work again after her maternity leave ends, since only one parent can draw child-care allowance.

In relation to the legal protection of women in co-habitational relationships – especially in regards to division of property and alimony in case of the dissolution of the co-habitation – no improvements have been made.

[13] VerfGH 4.12.2017, G258-259/2017-9.

Appendix: Literature and Sources

Article 3 – Development Policy (Claudia Thallmayer)

Bundesministerium für Europa, Integration und Äußeres: ODA-Berichte 2012, 2013, 2014, 2015 siehe: http://www.entwicklung.at/mediathek/publikationen/berichte/ (9.1.2018)

Federal Ministry for Europe, Integration and International Affairs (2017): Gender Equality and the Empowerment of Women and Girls, Implementing the EU Gender Action Plan II 2016–2020, siehe http://www.entwicklung.at/fileadmin/user_upload/Dokumente/Publikationen/Leitlinien/Englisch/PD_Gender_2017_EN.pdf (9.1.2018)

OECD-DAC (2016, 2017): Aid in Support of Gender Equality and Women's Empowerment (Donor Charts etc.), siehe http://www.oecd.org/dac/gender-development/aidinsupportofgenderequalityandwomensempowerment.htm (9.1.2018)