



ZIVILCOURAGE UND ANTI-RASSISMUS-ARBEIT

## **NATIONAL ACTIVITY REPORT AUSTRIA ANTI-DISCRIMINATION AND DIVERSITY TRAINING**

**ZARA – Zivilcourage und Anti-Rassismus-Arbeit**

**May 2008**



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This project and publication has been commissioned by the European Commission under the framework of the European Community Action Programme to combat discrimination (2001-2006). This programme was established to support the effective implementation of new EU anti-discrimination legislation. The six-year Programme targets all stakeholders who can help shape the development of appropriate and effective anti-discrimination legislation and policies, across the EU-25, EFTA and EU candidate countries.

The training manuals used in the anti-discrimination seminars and the diversity management seminar can be downloaded from the European Commission website:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#train](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#train)

The Anti-discrimination and Diversity training project was managed by Human European Consultancy ([humanconsultancy.com](http://humanconsultancy.com)) in consortium with the Migration Policy Group ([www.migpolgroup.com](http://www.migpolgroup.com)) and the International Society for Diversity Management – idm ([www.idm-diversity.org](http://www.idm-diversity.org)).

The national activities were carried out by ZARA – Zivilcourage und Anti-Rassismus-Arbeit ([www.zara.or.at](http://www.zara.or.at)).

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## II. Introduction

ZARA – Zivilcourage und Anti-Rassismus-Arbeit was acting as the Austrian partner organisation and assigned with the tasks to propose the trainers for the national Anti-Discrimination seminars as well as for the Diversity management seminar, to conduct the seminars and to organize the Train-the Trainer for Germany, Austria and Italy. Furthermore Katrin Wladasch, board member of ZARA, was tasked as national expert, responsible for the national chapters on Austria, which were included in the Training Manual.

In Austria five seminars were held in total, including four anti-discrimination seminars and one diversity management seminar.

### *Anti-discrimination seminars, Vienna, 11 - 12 October 2007*

The first two anti-discrimination seminars took place in the “Don Bosco Haus” in Vienna and ran concurrently on 11 – 12 October 2007. 19 participants were registered for the seminar led by Susi Bali and Volker Frey, of whom 13 attended; 20 were registered for the seminar led by Katrin Wladasch and Dieter Gremel, of whom 15 attended. Altogether 28 persons attended the seminar.

### *Anti-discrimination seminar, Innsbruck, 28 - 29 February 2008*

The venue of the third seminar on 28 – 29 February 2008 was the “AK-Bildungshaus Seehof” in Innsbruck, Tyrol. Of 15 registered participants, 14 attended. The seminar was led by Susi Bali and Constanze Pritz-Blazek.

### *Anti-discrimination seminar, Keutschach, 6 - 7 March 2008*

The fourth and final seminar was held on 6 – 7 March 2008 in the “Seehotel Hafnersee”, in Keutschach, Carinthia. 14 participants registered, of whom 12 attended. The seminar was led by Katrin Wladasch und Verena Krausneker.

In total, 54 participants attended an anti-discrimination seminar in Austria.

### *Diversity Management Seminar, Vienna, 21. February 2008*

The diversity management seminar was organised in the “Haus der Industrie”, Vienna, on 21 February 2008, and led by Jasmine Böhm and Hans Jablonski. 63 applications were received. 45 participants were selected, 33 of whom were present on the day.

The total number of participants attending an anti-discrimination or diversity management seminar in Austria as part of this project was 87.

What became evident in the preparation of the trainings as well as in doing research for the Austrian Chapter of the Manual was the fact that trade unions are neither very active in the field of anti-discrimination nor are they keen on participating in training on this topic. There do exist some successful projects on anti-discrimination and diversity management by and within trade unions, the overall interest is very limited however. Another important outcome of the project was the finding that participants in the anti-discrimination training sessions would have been very interested to take part in the diversity management training as well, and they would have preferred to be part of a joint training for all target groups. This feed back can only be underlined by the national trainers, who would like to stress the importance of the profit that can be gained by the diversity of all stake holders in one single training session. Success in anti-discrimination as well as in diversity management strategies in Austria will very much rely on common approaches and the readiness to cooperate and to develop common strategies by all stake holders – be it government, public authorities, enterprises, NGOs or trade unions.

## **II. Anti-discrimination seminars**

### **a) National activities anti-discrimination seminars**

#### **Design of the training**

The organising NGO was the anti-racism organisation “Zivilcourage und Anti-Rassismus-Arbeit” (ZARA). The names of the trainers provided for the seminars were Susi Bali, Volker Frey, Katrin Wladasch and Dieter Gremel in Vienna; Susi Bali and Constanze Pritz-Blazek in Innsbruck; and Verena Krausneker und Katrin Wladasch in Keutschach.

The target groups for these seminars were:

- NGOs representing groups with a high risk of discrimination;
- NGOs providing counselling to members of groups with a high risk of discrimination;
- NGOs working in the fields of awareness-raising, monitoring and influencing developments in policy and law; shop stewards;
- and trade unions and other labour interest organisations, particularly those providing counselling on the topic of anti-discrimination.

However, these target groups were widened to increase attendance, as described under the subheading “Preparation of the seminar” below.

The design of the training was elaborated by the national trainers. The basic principles were agreed on in the Train-the-Trainer seminar in May 2007, also organised by ZARA, and were then developed and extended by the team of trainers onto a rough national training design, in which aims, content and methods were determined. The international trainers prepared the field for the exchange and elaboration at the Train-the-Trainer session in very a helpful way and the national training design was agreed on with the international trainer responsible for Austria, Dieter Schindlauer.

The final agenda for the four individual trainings was completed and confirmed by the correspondent training couples according to the specific target groups and training settings. This was especially significant for the training in Keutschach, where two of the registered participants were deaf. This made additional organisational adaptations necessary, but also introduced the opportunity for new experiences within the topic of discrimination among all of the participants.

The training agenda was publicised under the name “Auf dem Weg zu mehr Chancengleichheit” (On the way to equal opportunities). The training objectives were described as the development and encouragement of the capacity of civil society to deal with anti-discrimination and establish equal opportunities, addressing the following topics: awareness-raising (what is anti-discrimination?); key concepts of discrimination as included in EU anti-discrimination directives; the legal framework in Austria; the “way to one’s rights”; the role and capability of NGOs and trade unions; and “from principle to practice”.

The training manual “Combating Discrimination” supplied by the European Commission to be provided to participants was extended with the addition of four new chapters, written by the national expert for the training project, Katrin Wladasch, relating to the topic of anti-discrimination specifically in Austria, which were covered during the seminars.

“The General Legal Framework in Austria” provided a thorough introduction to the status and processes of anti-discrimination in the Austrian system.

“NGOs and Trade Unions in the Field of Anti-Discrimination in Austria” summarised the profiles, actions and responsibilities of the relevant organisations.

“The Role of Trade Unions in Austria” focused specifically on the capacities of trade unions in combating discrimination.

“Overview of National and European Funding Opportunities for Anti-Discrimination NGOs and Trade Unions on a National and EU Level” detailed the various sources of funding for organisations working against discrimination.

The manual was furthermore completed by the basic legal acts of Austrian anti-discrimination legislation. “The National Law on Equal Treatment” and “The National Law on the Equal Treatment Commission and Equal Treatment Advocacy”.

Participants also received a copy of the then most recent “Rassismus Report” (Racism Report), a thorough document published annually by ZARA. This, the only publication of its kind in Austria, compiles in detail cases of racist discrimination, incidents and assaults reported in the country (here between 1 January and 31 December 2006) and as such provides insight into the spectrum, characteristics and trends of racism in Austria at present, as well as into the possible routes and results of action subsequently taken.

## **Preparation of the seminar**

### *Train the trainers seminar*

The national trainers were prepared to carry out the training at the Train-the-Trainer seminar in Vienna in May 2007, also organized by ZARA. The seminar helped to agree the basic principles and aims for the training design and to develop a common understanding of these. Furthermore, exchange with national trainers from Germany and Italy was made possible and fully appreciated by the Austrian trainers, as it broadened the perspective on the topic as well as on the potential role for NGOs and trade unions, on a national and international basis.

The individual agendas for each of the seminars were further prepared and finalised as described above under the sub-heading “Design of the training”.

### *Announcement of the seminar:*

The seminars were announced via ZARA’s homepage and newsletter, and in e-mails sent to those who had previously registered an interest with ZARA in anti-discrimination training opportunities. The target groups are detailed above.

The text of the original announcement of the seminars is provided below, translated into English:

### *On the way to equal opportunities*

### *Chances and capabilities of the Austrian Equal Treatment Act*

organized by ZARA – Zivilcourage und Anti-Rassismus-Arbeit

ZARA – Zivilcourage und Anti-Rassismus-Arbeit is organising a two-day seminar on the role and possibilities of NGOs and trade unions in Austria in combating discrimination because of Race or Ethnic Origin, Age, Gender, Disability, Religion or Belief and Sexual Orientation as well as on establishing equal opportunities.

The seminar is European Commission funded and aims at developing respectively encouraging the capacity of civil society dealing with anti-discrimination and furthermore pointing out its possibilities.

*Targets:*

- Establishing a common understanding of the different dimensions of discrimination
- Providing security in the context of legislation and policies
- Options for action for NGOs and trade unions

*Content:*

- Key concepts of discrimination
- Legal Framework in Austria
- The „way to ones rights”
- Role and possibilities of NGOs and trade unions
- From Principle to Practise

*Target groups:*

Representatives from NGOs, Representatives of trade unions, labour interest organisations, shop stewards.

*Dates of the Seminar:*

Vienna:	11.10.-12.10.07	closing date: 20.08.2007
Innsbruck:	28.02.-29.02.08	closing date: 28.12.2007
Keutschach:	06.03.-07.03.08	closing date: 07.01.2008

*Costs:*

There will be no costs for the attendance at the seminar. For Persons who have to stay overnight, the local travel and accommodation will be paid.

*Attracting and selecting participants:*

Following the receipt of applications, participants were selected, taking into account the broadest possible diversity according to the issues represented (race and ethnic origin, age, disability, religion or belief and sexual orientation), type of involvement (awareness raising, individual victim support, litigation and monitoring and influencing policy and law), interdisciplinarity and regional distribution.

As experience had shown that it could be difficult to attract enough participants, the seminars were also open to applicants representing teachers and labour market service, who could act as multipliers, spreading newly acquired information and skills for use with groups at risk of discrimination.

*Logistical arrangements:*

Venues for the trainings were chosen to include seminar facilities, equipment, appropriate accommodation and board for the participants.



The venues selected were:

**Vienna, 11.10.07 – 12.10.07:**

Haus Don Bosco  
St. Veit Gasse 25  
A-11130 Wien  
+43 (0)1 878 39  
[www.donboscohaus.at](http://www.donboscohaus.at)

**Innsbruck, 28.02.08 – 29.02.08:**

AK-Bildungshaus Seehof  
Gramartstraße 10  
Hungerburg  
A-6020 Innsbruck  
+43 (0) 512 29 23 21  
[www.ak-tirol.com](http://www.ak-tirol.com)

**Keutschach, 06.03.08 – 07.03.08:**

Seehotel Hafnersee  
Plescherken 5  
A-9074 Keutschach  
+43 (0) 4273 2375  
[www.hafnersee.at](http://www.hafnersee.at)

Other logistical arrangements included the copying of seminar materials and their transportation to the seminar venues, as well as publicity, selection of and communication with participants, public relations, certificates of participation, and evaluation of questionnaires. Furthermore, as two participants of the Keutschach training were deaf, sign language interpreters had to be organised and paid for.

**Carrying out the seminars**

*Ration of participants (NGOs/trade unions):*

In applying for the seminars in Vienna, 21 applicants registered themselves as representatives of an NGO, and 5 as representatives of a trade union.

In Innsbruck, 7 registered as representatives of an NGO, and 0 as representatives of a trade union.

In Keutschach, 11 registered as representatives of an NGO, and 0 as representatives of a trade union.

Seminar trainers all expressed regret that fewer representatives of trade unions were able to apply and attend. However, they agreed that it was successful and useful that each of the “grounds for discrimination” and “type of involvement” categories were represented by at least one participant, as this enhanced the exchange of experience, the and level and range of discussion.

*Process during the day – observations (on trainers, participants, content):*

Extract of observations by trainers in Vienna:

“The strength of the training lay in the variety of organisations that were represented by the participants. The participants were very interested and showed a high grade of participation and willingness to share their experiences. A weakness was that hardly any trade unionists participated – and those participating were not involved in legal protection of victims of discrimination.

“The participants were eager to learn from each other and the variety of professional backgrounds triggered fruitful discussions.

“Participants learnt from the training as from each other, the training strengthened participants’ capacity to deal with the topic of anti-discrimination and will hopefully lead to more activities with their organisations. The networking effect of the trainings seemed to be a good one. Participants planned to meet on a regular basis.”

Extract of observations by trainers in Innsbruck:

“We consider the training as success. The group had an ideal size of around 15 people, who were all extremely motivated and who enjoyed interacting with others. Judging by the reactions of the participants, they felt more empowered to become active and use legal instruments to fight discrimination. Furthermore the exercises helped them to question themselves in regard to their own prejudice, and be inspired to reflect on mechanisms of structural discrimination as well as on the different terms applied in the discourse of discrimination and equal opportunities.

“The diversity of the candidates in terms of their professional and regional backgrounds was an asset in regard to networking an exchange of experiences; on the other hand it made it difficult to offer a seminar that satisfied the needs and interests of all the participants.

“Informal exchange worked very well, and group work within the training itself also fostered exchange.”

Extract from observations by trainers in Keutschach:

“The training was excellently organised and consisted of an exceptionally interesting and eager group. Participants were all active, engaged and eager to exchange information, experiences, and ideas. The level of discussions was extremely elevated.

“The setting was pleasant and catered to all needs so that participants and trainers could focus on the task.

“The participants were very interested and showed a high level of participation and willingness to share their experiences. The participation of two Deaf participants improved the quality of the seminar very much, as the experience of interaction and of talking about discrimination and equity from very different perspectives was considered as very fruitful by all participants. Unfortunately, not a single participant came from a trade union.

“NOTE: The English language evaluation form posed a problem for both hearing and Deaf participants. Deaf participants received a translation into Austrian Sign Language by one trainer (and could not fill in all questions because this was time consuming). In general we would like to point out that it could be expected that evaluation forms are provided to all language groups and that expecting everybody to know English in this level is not a positive sign for diversity/language diversity.

“The participants were eager to learn from each other and discussions were very interesting for all of them. The presence of a Sign Language interpreter and the bilingual setting (one trainer signs ÖGS fluently) made the interaction and communication 'unusual' for most participants.

“Participants learnt from the training as well as from each other. The training strengthened participants’ capacity to deal with the topic of anti-discrimination and will hopefully lead to more activities with their organisations”

## Evaluation of the seminar

In summary, the seminars were considered successful by both the trainers and the participants. The trainers observed that participants interacted very well, due to the size of the groups and their motivation and willingness to be active and exchange experiences and ideas.

Feedback from participants on evaluation forms was extremely positive, averaging at 4.5 on the scale of 5 provided. Particularly highly valued were the trainers' skills in delivering the material. Many agreed that the training they received was useful and could be applied in their work, though some found the legal perspective very detailed. Several participants suggested that an extra day or follow-up events would allow more time for this to be explained, and for more ideas on practical implementation.

*Antidiskriminierungsseminar, Vienna, 11-12 Oktober 2007*





## **b) Mapping exercise: NGOs/Trade Unions working to combat discrimination**

### **I. Profile of NGOs/trade unions working to combat discrimination**

#### **1. What types of NGOs/trade unions working on anti-discrimination exist on the national level?**

Counselling Organisations  
Political lobby organisations  
Organisations representing minorities  
Organisations providing social assistance  
Organisations offering education and job-coaching  
Litigation Associations  
Umbrella Organisations

Trade Unions Divisions representing minorities  
Trade Unions (Legal) Counselling Services

#### **2. What ground (s) of discrimination, scope or sector are they concerned with (if they are concerned with a specific ground or a specific sector such as for example education)?**

There are organisations providing counselling and/or political lobbying, education, training, litigation etc. for all grounds, like the “Litigation Association of NGOs against Discrimination” [www.klagsverband.at](http://www.klagsverband.at) . Most NGOs representing minorities are focussing on their group but do cooperate with the others when it comes to political lobbying. There are organisations limiting their work to the labour market or to education and others who offer counselling and litigation or political lobbying. And there are others, which do care about any scope and offer services in any sector. There do exist special NGOs representing and/or working for all of the grounds in Austria, but there are NGOs specialized on anti-discrimination only for the grounds of racism, ethnic origin, religion, gender, disability and sexual orientation. There do exist NGOs representing older workers (like the association “Zum alten Eisen” <http://www.zum-alten-eisen.org/>) having been unemployed for a long time and who as part of their work try to fight discrimination.

Trade Unions do offer legal counselling for people discriminated against at the labour market, there are special divisions within the trade unions for members with disabilities, migrant background and for retired. Training on the legal framework regarding anti-discrimination is part of shop stewards’ basic training.

#### **3. Is anti-discrimination their main area of work or only a small part of what they do? Do they work on anti-discrimination?**

There do exist NGOs specialized on anti-discrimination for all grounds except age. like ZARA, [www.zara.or.at](http://www.zara.or.at) for the grounds of race and religion, HOSI, [www.hosiwien.at](http://www.hosiwien.at), for the grounds of sexual orientation, BIZEPS, <http://www.bizeps.or.at/bizeps/> for the grounds of disability, several religious associations like the Islamische Glaubensgemeinschaft, <http://www.derislam.at/> and the Forum gegen Anti-Semitismus, <http://www.fga-wien.at/> .And there are NGOs working on human rights issues, education etc., who handle anti-discrimination topics as part of their work.

There are trade unions divisions for some of the grounds, anti-discrimination is part of the work of labour counselling services and training within trade unions.

**4. Are these NGOs/trade unions registered on the national level? Is it easy or problematic to register as an NGO/trade union?**

NGOs actively working in Austria have to be registered. It is easy to register as an NGO by founding a (non-profit) association, which can be done by anyone according to the rules of association legislation.

Trade unions can be founded as associations as well. To be accepted as partners of the institutionalized social dialogue between social partners in Austria they have to be part of the biggest Austrian trade union, the ÖGB.

**5. Generally how large are these NGOs/trade unions? (Please mention the size of membership for the main trade unions)**

NGOs size vary from founding members' size (approximately 4) with no funding and no employees up to large organisations as the ÖAR - Austrian national Council of Disabled Persons –, which works as an umbrella organisation for 77 Austrian disability organisation.

Austrians biggest trade union, the ÖGB, which works as an umbrella organisation for its sub-groups, has 1.335.421 members.

**6. Are they part of larger national networks? Or are they working on their own?**

Most NGOs work on their own and join their efforts for political lobbying, most of them are members of Austrian and/or European networks according to the grounds or the sectors. There are two umbrella organisations specialized on anti-discrimination, both already mentioned, the Litigation Association of NGOs against discrimination and the ÖAR.

Trade Unions are working on their own as well, they have large divisions according to industrial sectors and they do cooperate when acting as social partners and are part of national and European networks as well.

There is one recently founded network of NGOs and trade unions, which cares about anti-discrimination as part of its targets, the “Network on Social Responsibility”, NESOVE. NESOVE aims at strengthening Corporate Social Responsibility in companies, which for its members means transparent, social and ecologically sustainable management free of discrimination by building an alliance of stakeholders with expertise in the various fields needed for a comprehensive approach of responsible corporate governance. (There is no website launched until now)

**7. Are they mainly based in the Capital or spread out in the country?**

There is a high concentration of NGOs and of trade unions in the Capital.

There are local NGOs as well, but most of them work on anti-discrimination issues only as part of their work. Disability NGOs are spread out in the country much more than organisations working on the other grounds.

Trade Union services are provided in the federal states but most of the projects concerning anti-discrimination are concentrated in Vienna.

**8. Are NGOs/trade unions from the capital and the rest of the country doing the same type of work?**

Work of NGOs differs a lot regarding targets and target groups, scopes, grounds etc. according to the needs, the funding possibilities, networking possibilities etc.

In Vienna there are more NGOs specialized on more specific topics and/or target groups than in the rest for the country, where there are merely any NGOs limiting their work on anti-discrimination issues.

Trade Unions are offering most of their services on the regional level as well, but the programmatic work and project work is very much concentrated to the Capital.

**9. What is the political or societal weight of these NGOs/trade unions on the national level? (Towards, the general public, the civil society, the companies/employers, the government)**

Political weight of NGOs working in the field of anti-discrimination has been rising for the last 10/15 years. Interest of the media and of civil society is increasing, and the acceptance of the relevance of NGOs and the acknowledgement of NGO expertise by the government is augmenting as well. Companies/employers still tend to be sceptical towards NGOs, considering them as enemies sometimes, but even there change can be noticed.

Trade Unions are part of the social dialogue, they are involved in legislation and within the senates of the Equal Treatment Commission there have to be two delegates of trade unions.

**10. Are NGOs/trade unions working in the field cooperating together: (NGOs with other NGOs, trade unions with other trade unions and also NGOs together with trade unions)**

There are networks of NGOs and of NGOs and trade unions, like the ÖAR, <http://www.oeaar.or.at/>, unifying organisation working on the grounds of disability, the Litigation Association of NGOs against Discrimination, [www.klagsverband.at](http://www.klagsverband.at), acting as an umbrella organisation for NGOs combating discrimination, the Austrian network against Racism, ENARA, which tries to unite organisations representing ethnic minorities and organisations fighting racism, and NESOVE, which aims at joining the efforts of NGOs and trade unions to encourage the CSR approach in companies. And there are loose co-operations for specific projects of initiatives.

**a. For what purpose(s) (e.g. exchange of expertise, collaboration on case work or campaigns, organising events jointly)**

Exchange of expertise  
Collaboration on case work  
Joining efforts in lobbying  
Strategic Litigation

**b. Is there greater collaboration in relation to certain grounds of discrimination? If so, which?**

There is quite close cooperation between disability organisation as their umbrella organisation, the ÖAR, does have political/legal weight and there is varying cooperation between Viennese anti-racist/migrant organisations towards the city of Vienna, where integration and anti-discrimination is part of the government programme and dialogue is part of this programme.

**11. How are these NGOs funded?**

Funding differs a lot. Most NGOs receive a mixture of state funding, member fees, private sponsoring, European projects.

**a. Do they receive state funding?**

Most NGOs receive state fundings (meaning any public funding) as part of their income.

**b. *What are the conditions in order to receive public funding?***

Different according to ministry, public authority, ground, scope, target group,... formally applying as an association with an aim within the public interest.

**c. *Do they also receive/apply for private funding?***

Private funding is very seldom in form of “big” sponsoring, but many NGOs receive public funding in form of single donations, membership fees, sponsoring etc.

**d. *Do private funders impose any restrictions or conditions?***

The author is not aware about any restrictions or conditions by private funders, but most private foundations or sponsorships are bound to a certain aim/project etc. when applying for it.

**12. *How are these trade unions funded?***

Trade unions are funded by membership fees and by their own capital. Trade unions are big players in the real estate market, they are (part-)owners of insurance companies, banks, companies etc.

**a. *Do they receive state funding? (Generally speaking do trade unions receive state funding?)***

Trade unions can receive state funding for projects they apply for only.

**b. *Are they funded by a political party? If so, do they have to adhere and respect the party's line?***

There is no funding by political parties, but there is political sectors according to the political parties within the trade unions and trade unions' decisions and policies are very much depending on the parties' strengths.

**c. *Do they function only/also with their members' fees?***

Trade Unions function mostly with their members' fees. They live on their capital income as well and they apply for and do receive funding by ministries (partly co-financing European Union projects) for specific projects and/or tasks.

**d. *Are they able to receive private funding and/or participate in project funded by European/international institutions?***

Trade Unions are entitled to receive private fundings, they can apply for fundings with Austrian/European/international institutions like any other association in Austria.

**13. *Is the lack of funding a significant factor in the size of NGOs/trade unions or in restricting the scope or scale of their activities?***

The lack of funding is a very significant factor in the size as well as regarding scope and/or scale of activities as a lack of funding results in very small staffs, limiting the resources for all the activities and moreover lack of funding, especially of core funding hinders sustainability.

**14. *Do they work (or are in contact) with similar NGOs/trade unions in other countries?***

**a. *Neighbouring countries?***

Contact and collaboration with similar NGOs/trade unions with neighbouring countries is done, very much on a (European-)project based level.



**b. Others?**

There is contact and/or collaboration with other countries as well, depending on the scope of the organisation.

**15. Do they work on the international level (campaigning, case work, other)**

Some NGOs and trade unions divisions do work on the international level, as partners in European or international projects, reporting to European and/or international institutions, lobbying etc.

**16. Can they work in English?**

Most of the NGOs as well as the trade unions can work in English.

**17. For countries where this is the case, where trade unions are linked to political parties, does the involvement or non-involvement of the political party has an impact on the trade union's ability to work on anti-discrimination?**

Political sections within the ÖGB do influence trade unions policies, so it's a matter of party politics and party strengths within the ÖGB, how much they want to focus on anti-discrimination matters.

**18. Can specific regional branches of a trade union work on anti-discrimination even if headquarters does not?**

Specific regional branches of a trade union can and do work on anti-discrimination without a headquarters strategy.

**II. Expertise of NGOs/trade unions working to combat discrimination**

**19. What kind of work do they do?**

Counselling victims and witnesses of discrimination

Raising awareness on discrimination

Strategic Litigation

Counselling companies, institutions and other trade unions/NGOs in implementing equal opportunities

Development and conduct of trainings and lectures

Publishing statements on political developments in Austria

Lobbying for anti-discrimination legislation and policy

Networking with other NGOs/trade unions with different scopes/grounds

**20. Do they take up complaints of discrimination?**

Very different, depending on the organisation, there are counselling services provided by trade unions as well as by NGOs for specific grounds and/or specific scopes.

e.g. Trade Unions concentrating on labour market issues, anti-racist organisations on the grounds of ethnic origin, nationality, religion etc.

**21. Do they focus on their own community?**

Most NGOs focus on their own community in counselling, but there is broad networking within the NGOs, especially via the Litigation Association of NGOs against discrimination, cooperating in single cases as well as in strategic litigation initiatives and in lobbying for political and legal changes.

**22. Do they work with victims directly?**

Counselling organisations and trade unions do work with victims directly, mere political lobby organisations do less.

**23. Within the company, can trade unions represent only their members or any worker?**

Shop stewards within the companies are representing all employees, but they not necessarily need to be members of trade unions. Trade unions are representing all workers when contracting collective agreements as part of the social dialogue, counselling services etc. are offered only to members.

**24. Do they do ‘case work’?**

Counselling organisations, NGOs as well as trade unions, do “case work” according to their resources by giving legal advice, accompanying victims to public authorities, courts etc., representing them in administrative procedures, taking remedies etc.

**25. Are they able to access state funding for casework?**

There is not explicit state funding for casework, but there are organisations receiving state funding for casework as part of their work. Experience shows that state funding for casework is the most difficult to receive.

**26. Does this include legal representation?**

Legal representation in administrative procedures can be provided by some counselling organisations, legal representation in penal procedures has to be done by a barrister. There are individual subsidy possibilities for parties, who cannot afford to pay a barrister themselves, but there is no specific funding for victims of discrimination or any “pot” provided to NGOs for financing legal representation of victims.

**27. Is it possible for NGOs/trade unions to engage on behalf or in support of victims of discrimination in judicial or administrative procedures?**

NGOs as well as trade unions can represent victims of discrimination in administrative procedures, there is no possibility for representation in penal procedures or in civil law suites, where attorneys are obligatory, with the exception of labour court procedures, where trade unions are entitled to represent employees. Procedures in front of the Equal Treatment commission are administrative procedures.

**28. Are NGOs/trade unions able to pursue class actions if the latter is allowed on the national level?**

NGOs or trade unions are generally not able to pursue class actions in the field of anti-discrimination. There is only one single possibility foreseen: in cases of discrimination on the ground of disability the ÖAR is entitled to pursue class action. The class action is restricted to the question wheater a certain conduct is discriminatory and which can be filed only with agreement of the Federal Board for Disabled People, installed with the ministry of social affairs..This has so far never happened in practice

**29. Do they do other practical work? ( e.g. assistance to victims or potential victims, social assistance, etc)**

Again depending on the organisation, there are organisations as well as departments of trade unions providing social assistance in form of housing, counselling on working opportunities and assisting “on the job”(for persons with disabilities), offering language or empowerment training, counselling companies, offering mediation and conflict resolution services and/or trainings and seminars on awareness raising for discrimination, diversity management etc.

**30. Do they advocate changes in legislation and policies?**

There are various NGOs and trade unions departments advocating changes in legislation and policies, strengthening their efforts by networking on a case to case basis and the readiness to hear NGOs expertise by political decision makers is rising.

**31. What are their relations with the central government?**

Depending very much on the organisations as well as on the grounds. There is a common agreement between all political parties, the government and NGOs/trade unions to combat discrimination on the ground of disability. NGOs working on the grounds of disability are involved in legislation processes and closely cooperating with the ministry for social affairs. Relations of organisations caring about the other grounds with the central government are slightly improving.

**32. With regional governments or municipalities?**

There is readiness to support NGO and trade union aims and to funding on regional and/or municipality level according to grounds, scopes and sometimes depending on organisations’ readiness to “fulfil” certain duties or not.

**33. For the trade unions, with the employers organisations?**

Relation between trade unions and employers organisations has always been one of constructive confrontation and this is kept up, even if concerning the topic combating discrimination the roles are not always that clear.

**34. Do they have relations with the specialised bodies/ombudsman?**

There is close cooperation between the Klagsverband, the Litigation Association of Organisations against discrimination, and ZARA with the Austrian Equal Treatment Authorities and between the ÖAR and the attorney for disabled people. Trade Unions are delegating two members to the senates of the Equal Treatment Commission. The senates, made up by delegates of ministries, employers organisations, the chamber of labour and trade unions members, are deciding on complaints on the breach of the principle of non-discrimination and they are delivering expert opinions on the questions if a certain conduct is discriminatory or not.

**35. What are the qualifications of the staff?**

Depending on the scope: lawyers, political scientist, psychologists, social workers, trainers, mediators, social anthropologists, ...

**36. What training has the staff had in relation to anti-discrimination work?**

Learning on the job, awareness raising on what discrimination means, anti-discrimination legislation, there was a broad range of trainings and conferences provided by NGOs within the framework of the European Programmes (EQUAL and action programme to combat discrimination), where there were many participants working for NGOs and trade unions. Anti-Discrimination legislation is part of the basic education provided by trade unions education programme for shop stewards.

**37. Are they trained in writing funding proposals and reporting?**

Training in writing funding proposals and reporting is offered by some organisations like the “World of NGOs” or the NPO Institute. Most NGOs nevertheless can’t afford the high participation fees of these trainings.

**38. How do they evaluate their “success” and the quality of their anti-discrimination work?**

This cannot be answered generally. Evaluation is kept “behind the walls” of most organisations. What most organisations running counselling services do offer for their employees is supervision. Most organisations are publishing yearly reports, where their work, their “successes” are described.

**III. Needs and problems of NGOs/trade unions working to combat discrimination**

**39. What is the main problem faced by NGOs/trade unions involved in anti-discrimination work?**

Lack of awareness with public authorities, what discrimination really means, that to combat discrimination more has to be done than just legislation, lack of awareness of the structural dimension of discrimination, lack of funding.

Lack of acknowledgement of the need of NGO expertise to cope with discrimination and of the need to honour this expertise not only on a non-monetary basis, but to treat it like any other expertise/consultancy service.

**40. Is the lack of staff/funding/expertise one of the main problems faced by NGOs/trade unions involved in anti-discrimination work?**

Lack of funding is one of the main problems, which can lead to lack of staff and lack of specialized expertise, as staff members have to care about very many topics at once, organisationally as well as concerning the scope.

**41. Is the fact that staff lack necessary knowledge and/or skills one of the main problems faced by NGOs involved in anti-discrimination work?**

No, but there are problems especially in the federal provinces that there are no organisations at all dealing with the topic of anti-discrimination. And people working eg. in NGOs counselling migrants on foreigners law lack expertise on anti-discrimination issues and cannot fill this gap. And – even if training is offered to them they lack resources to attend the trainings and to provide counselling for this topic as well – because of lack of staff.

**42. What training is needed by the NGOs/trade unions in order to perform their work the way they would wish to?**

Training on fund raising, on public relations, strategic litigation.

Training on awareness raising on what discrimination really means **for** employees of public authorities, ministries, Equal Treatment authorities etc., who are responsible for deciding on discrimination cases and on funding for anti-discrimination projects.

**43. Is their staff sufficiently trained in relation to national anti-discrimination legislation?**

In organisations specialized on anti-discrimination issues staff is sufficiently trained. Training on national anti-discrimination legislation would be advisable for organisations representing minorities and/or working in similar fields, but they usually lack time resources for the training as such and for implementing things learnt in their daily work.

**44. Is their staff sufficiently trained in relation to European anti-discrimination legislation?**

In organisations specialized on anti-discrimination issues staff is sufficiently trained. Training on national anti-discrimination legislation would be advisable for organisations representing minorities and/or working in similar fields, but they usually lack time resources for the training as such and for implementing things learnt in their daily work.

**45. Is their staff trained in relation to advising government: formulating policy proposals? Legislative proposals?**

I never heard about any specific trainings for this field. NGOs formulating policy or legislative proposals or statements to government drafts just do it. Training for this field of action could make sense though.

**46. Do they need to do more to promote their anti-discrimination role?**

More acknowledgment of expertise would help. A clear legal role of NGOs as experts in procedures in front of the Equal Treatment Commission or even at court and the possibility of class action for all grounds would strengthen their role and their possibilities a lot.

**47. Do they need to “do more” with victims, clients or potential clients, members or potential members?**

Interaction between NGOs and their clients is generally quite good, lack of resources and lack of time can be obstacles to caring about the clients’ cases and to doing preventive work – so it’s again a question of money and of staff, how to optimize the situation.

**48. Do they need to “do more” with government – to increase their credibility and status?**

Closer interaction with government raises credibility and status in most cases, but the unawareness for the funding deficits and for discrimination as such with state officials is still there.

**49. For the trade unions, do they need to “do more” with the companies/employers organisations?**

There are projects run by NGOs as well as by trade unions with and for companies with the aim to combat discrimination and to reach equal opportunities at the labour market. There still remains lack of awareness and scepticism by company owners, but by employees and shop stewards and trade union members as well. So there is still quite a lot to be done.

**50. Would they need to “do more” with public opinion and awareness raising?**

NGOs have been doing a lot regarding public opinion and awareness raising and there is still a lot that has to be done. Most important is awareness raising on the societal/structural dimension of discrimination, on what discrimination really means, on how to combat discrimination in everyday life – and not limiting it on legislation.

**51. What would they need to develop?**

“Money, money, money!”.

Acknowledgement of the need of implementing measures to combat discrimination, of the need to do this in a strategic manner

Acknowledgement of the fact that reaching the aim of equal opportunities is an ongoing process and cannot be coped with by single initiatives

Acknowledgement of the need of NGO expertise to reach these aims and of the value of this expertise  
Training for political decision makers like ministers, parliament members, public authorities,...

Strengthening the legal status of NGOs/trade unions in anti-discrimination procedures.

## c) National legislation in the field of anti-discrimination

### 1. The transposition of the Directives into national law

Austrian legislation regarding the violation of the principle of non-discrimination was for a long time characterized by a complete fragmentation of the topic. The few provisions, prohibiting discrimination in an explicit manner, were scattered throughout various laws, and most of them had severe deficiencies in terms of obtaining the rights.

This is still valid basically, but some has changed since July 2004, when new regulations on equal treatment were implemented by ways of an amendment to the Austrian Equal Treatment Legislation. This first legislative initiative in order to fulfill the duty to implement the race and the framework directive was continued by legislative amendments in the Austrian regions and by amendments to the Austrian legislation on Equality of people with disabilities in January 2006.

The first part of the transposition was preceded by draft legislation by the Boltzmann Institute of Human Rights, expert opinions on how the directives should be implemented by anti-discrimination NGOs and the establishment of a parliamentary enquete. Media reporting and public discussion at the time of transposition was moderate. The amendments to the legislation on Equality for people with disabilities were accompanied by interaction between the civil servants responsible in the ministry for social affairs and the Austrian national Council of Disabled Persons (ÖAR) and first experience with the Equal Treatment Act was planned to be integrated, but the process ended up in a very similar legislative approach.

The current legal framework according to non-discrimination and promotion of equal opportunities, which aims at transposing directive 2000/43 (Race Directive) and 2000/78 (Framework Directive) as well as directive 2002/73 (Equal Treatment Directive) basically consists of:

1. **Equal Treatment Act** (Gleichbehandlungsgesetz)
2. **Act on the Equal Treatment Commission and the Ombud for Equal Treatment** (Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, BGBl. I Nr. 66/2004), both Federal Law Gazette I Nr. 66/2004
3. **Federal-Equal Treatment Act** (Bundes-Gleichbehandlungsgesetz, BGBl. I Nr. 65/2004), Federal Law Gazette I Nr. 65/2004
4. **Act on the Employment of People with Disabilities** (Behinderteneinstellungsgesetz), BGBl. Nr. 22/1970, last amended by Federal Law Gazette I Nr. 82/2005
5. **Disability Equality Act**, (Behindertengleichstellungsgesetz), BGBl I Nr. 82/2005, Federal Law Gazette I Nr 82/2005
6. **Federal Disability Act**, (Bundes-Behindertengesetz), BGBl Nr. 283/1990, last amended by Federal Law Gazette I Nr. 82/2005
7. **Provincial Equal Treatment Acts and/or Provincial Anti-Discrimination Acts**

*What is new?*

The transposition of the directives by the new Equal Treatment legislation was a great step concerning the protection against discrimination in Austria. Protection against discrimination until July 2004 was limited to very few possibilities, which lay only in the field of administrative criminal procedures and penal law provisions. The concepts of the shift of the burden of proof and the possibility to claim for non-pecuniary damages are not very common in Austrian legislative system, which led to a weak transposition, see below.

## *Specialized Bodies*

### The National Equality Body (Gleichbehandlungsganwaltschaft)

Since January 2005 the authority of the Ombud for Equal Employment Opportunities of men and women was extended to acting against discrimination and promoting equal opportunities on grounds of age, sexual orientation, ethnic origin, religion and belief in the work environment and on grounds of ethnic origin beyond the work environment, which now forms the National Equality Body. The three ombudspersons are appointed by the ministry for women and can be discharged again under certain circumstances, which despairs their independence definitively.

The National Equality Body (NEP) is responsible for providing individual support and legal representation before the Equal Treatment Commission (ETC) to victims of discrimination. The NEP can pass on cases to the ETC, when it concludes that unlawful discrimination has taken place, it can investigate to obtain evidence in form of relevant information and/or response to an accusation from a employer/head of institution and/or shop steward, it is entitled to undertake independent research on discrimination issues and has to report to the national assembly once a year. The role of the National Equality body with the power to represent persons discriminated against and being part of the procedures to obtain evidence is somehow ambivalent and not without problems concerning a constitutional (division of powers) point of view.

### The Equal Treatment Commission (Gleichbehandlungskommission)

The Equal Treatment Commission, which consists of three senates, composed by members named by ministries and social partners, was established at the ministry for health and women in 2005. Duties of the three senates are divided according to the directives and parallel to the National Equality bodies' structure. Senate I is dealing with equal treatment of women and men in the workplace, senate II is responsible for equal treatment in employment and occupation covering the grounds of ethnic origin, religion or belief, age and sexual orientation and senate III cares about the non-employment sector covered by the Racial Equality Directive limited to discrimination on ground of ethnic origin.

The senates are responsible to care about any questions concerning discrimination within their scope. They have to give expert opinion on general questions concerning discrimination as well as in individual cases upon application of an individual alleged victim, the NEP or of interest organisations, where they have to give expert opinion on the question whether discrimination occurred or not.

### Ombud for Disabled Persons (Behindertenanwalt)

As late as in January 2006 an Ombud for Disabled Persons has been appointed by the Minister of Social Affairs, Generations and Consumer Protection, responsible for advice and support of people with disabilities. The Ombud is entitled to conduct surveys on the situation of people with disabilities and publish statements and expert opinions on this topic. For disability there is no equivalent like the Equal Treatment Commission, but an attempt to settle individual cases in a joint dispute resolution process in front of the Federal Social Service (Bundessozialamt) was made compulsory.

The Federal-Equal Treatment Commission is modelled similar to the described Equal Treatment Commission.

### *What is missing?*

Austrian Equal Treatment legislation leaves some very important gaps in transforming the directives. What follows is valid for the feral level, the provincial legislation provides different - and sometimes easier to follow – ways to ones rights.

- **Burden of proof:** The Equal Treatment Act lowers the burden of proof for the plaintiff but in a way that is different from the way stated in the directives. The burden of proof does not completely switch over to the respondent, when the plaintiff established facts from which it may be presumed that there has been direct or indirect discrimination.



The law states that the respondent has to prove that “it is more likely that a different motive – documented by facts established by the respondent - was the crucial factor in the case or that there has been a legal ground of justification”. So the respondent is obliged to prove the likelihood of established facts”. This does not constitute a clear shift of the burden of proof the way the directive demands, - even though the burden of proof is lowered. It still continues to be a strange legal construction. Practice and case law will have to show if the application of this provision meets the requirements of the Directives.

- **Penalties:** In cases of discriminatory job-advertisements a maximum administrative fine of as low as EUR 360, and exclusion of punishment for employers as first time offenders (admonition only) is foreseen, which makes this sanction is not effective, dissuasive and proportionate, according to the Directives.
- **Compensation:** If the employer proves that the victim would not have been recruited or not promoted anyway, compensation is limited to a maximum amount of EUR 500,-. In case of termination there is no compensation, if the victim does not return to the (discriminatory) employer.
- **Victimization:** The ETA just states a general prohibition of victimization but there is no explicit duty to compensate for material or immaterial damages.
- **Harassment:** The legislation is falling short in implementing the Directives as the prohibition of harassment is restricted to the (successful) violation of dignity and the creation of a certain environment and unsuccessful conduct with (only) the purpose of violating dignity and creating the specific environment is not covered.
- **Independent bodies:** The “independent bodies” are not fully independent. For independent structures without a minister’s responsibility a norm at constitutional rank is needed under Austrian law. The attempt to provide for a constitutional safeguard of independence for the Equality bodies was blocked in Parliament by the opposition parties. Nevertheless practice will show if there is full de facto independence. The recent “coalition agreement” of the new government contains the plan to safeguard the independence through a constitutional provision.
- **Limited NGO legal standing:** Third party intervention within the regime of the Equal Treatment Act is only allowed for one specific NGO, the Litigation Association of NGOs Against Discrimination (Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern) in the courts. This association is open for all specialized NGOs to join in but all NGOs not joining the Litigation Association are excluded from any special procedural rights.

A similar construction was chosen under the amended Act on the Employment of People with Disabilities (Behinderteneinstellungsgesetz), here the Austrian National Council of Disabled Persons (Österreichische Arbeitsgemeinschaft für Rehabilitation) is the NGO entitled to intervene in court cases. In addition there is a limited competence for this NGO to initiate a class action.

*What is still valid?*

Having created new legislation on anti-discrimination matters does not mean of course that the “old” ones became obsolete. So in the following the legal framework on anti-discrimination, which is still valid, is described.

#### Constitutional Level

The general principle of equality is enshrined in Art. 2 of the Basic Law of the State 1867 (*‘Staatsgrundgesetz’, StGG*) and in Art. 7 of the Federal Constitutional Act 1929 (*‘Bundes-Verfassungsgesetz’, B-VG*). Art. 2 *Staatsgrundgesetz* stipulates: ‘All citizens are equal before the law’; Art. 7 *B-VG* also provides that all citizens are equal before the law and adds that privileges according to birth, sex, social standing, class and religion are excluded and that no one may be disadvantaged on the basis of his/her disability. The list in the latter sentence is merely a demonstrative one, as the first sentence provides for a full equal treatment obligation.

The state is bound by the constitution and the fundamental rights enshrined therein in all its activities, also when it acts as an employer (for both categories of its employees: civil servants and employees with contracts of employment).

According to the Constitutional Act *BGBI* (Federal Law Gazette) 1964/59, the **European Convention of Human Rights** (ECHR) and its protocols are forming part of the Austrian constitution. *Art. 14 ECHR* therefore is not only binding international law but also Austrian domestic constitutional law. Besides these general equality-clauses Austrian constitutional law makes some *special provisions* banning discrimination on the basis of race, language or religion (*Art. 66 & 67 Treaty of St. Germain 1919*) and race, colour, descent or national or ethnic origin (*Art. I Federal Constitutional Act for the Implementation of the Convention on the Elimination of all Forms of Racial Discrimination 1973*). The constitution also includes the commitment of the Republic of Austria to guarantee equal treatment of disabled and non-disabled persons in all areas of daily life (*Art. 7 par. 1 B-VG*) and to real equalization of men and woman (*Art. 7 par. 2 B-VG*).

In addition to those provisions of the federal constitution, some of the constitutions of the nine Austrian states (*'Bundesländer'*) contain fundamental rights, among them equality rights.

#### Penal Criminal Law provisions

##### **Insult (Ehrenbeleidigung)**

*Who publicly or in the presence of several (at least two other) people insults, derides, maltreats or threatens to maltreat another person is liable to imprisonment of up to three months. (§115 Criminal Code/Strafgesetzbuch)*

##### **Entitlement to bring charges (Ermächtigungsdelikt)**

The offender according to § 115, which usually is prosecuted only on private initiative (Privatanklagedelikt), is prosecuted *ex officio* if the offence was directed against a person on one of the grounds listed in § 283 (1) (see below) and constitutes an ill treatment or threat of ill treatment or an insult or derision violating human dignity. The victim may join the public prosecutor's proceedings. If the public prosecutor does not pursue the case, the victim may bring charges him/herself and pursue the prosecution.

(§ 117 (3) and (4) Criminal Code)

##### **Incitement to hostile action (Verhetzung)**

Threatened with imprisonment for up to two years is whoever

1. Publicly induces or incites - in a manner likely to endanger public order - the commission of a hostile act against a church or religious community existing in the State or against a group determined by appurtenance to such a church or religious community, race, nation, ethnic group or state.
2. Publicly agitates against such a group or insulting or disparaging it in a manner violating human dignity. (§ 283 Penal Code)

Application of § 283 requires that a whole group of persons be affected by the offence not just an individual person. It either has to be carried out in a manner that is likely to be a threat to public order (par. 1) or in a public manner (par. 2).

If just an individual person is affected by the offence §115 in accordance with §117 Penal Code (StGB) is applicable.

##### **Aggravating circumstances**

Any crime committed motivated by racist, xenophobic or anti-Semitic reasons is to be considered as committed under aggravating circumstances. (§33/5 Penal Code) Aggravating factors have to be listed in the statement of reasons within the sentence. Experience of NGOs observing trials on cases with racist background at court has shown that this provision is not applied very often.

### Administrative Criminal Law Provisions

According to **Art. IX (1) no. 3 Introductory Provisions to the Code of Administrative Procedure (EGVG)**<sup>1</sup>, which was introduced in 1977 in order to implement the ICERD, treating persons in a discriminatory manner without justification on the SOLE ground of their race, color, national or ethnic origin, religion, creed or disability or preventing them from entering places or making use of services which are intended for general public use is an administrative offence, which can be fined with up to EUR 1090,-. The problems with the provision are twofold: On the one hand the offender must have caused disadvantage to a person solely on account of his/her ethnic origin etc. which is a most difficult point to prove. The restriction is in conflict with the ICERD's definition of racial discrimination and reduces the provision's potential effectiveness considerably. On the other hand the person concerned can only prefer charges. He/she is not summoned to the proceedings, is not even informed of the outcome of the case and thus does not enjoy legal redress before a higher court.

Another specific administrative provision to fight discrimination among private parties was introduced in 1997 into the **Trade License Act (Gewerbeordnung)**<sup>2</sup>

**§ 87 Para.1 no.3 of the Trade License Act** provides for the withdrawal of a trade license if the entrepreneur commits a serious offence contrary to the legal regulations and the protected interests of the trade concerned, in particular offences contrary to the maintenance of professional reputation, and thus no longer displaying the reliability essential to the exercise of the trade. In 1997 the concept of the interests protected was expanded to include the prevention of discrimination on racial and religious grounds in the sense of Art IX par. 1 no. 3 EGVG (see above)<sup>3</sup>. This legal provision could be an effective means of deterring entrepreneurs from practicing racial discrimination. The threat of having one's license withdrawn is undoubtedly a major one. In comparison to the penalties stipulated in EGVG it clearly provides a more forceful basis.

If not mentioned explicitly the provisions tackled in the following are federal ones.

## **2. Procedures – administrative and legal channels appropriate for challenging violations of anti-discrimination legislation**

There are different possibilities for individuals discriminated against on their way to obtain their rights. They can file their act directly to the competent court – or they can raise a complaint to the Equal Treatment Commission. They can seek assistance for complaining to the Equal Treatment Commission by the Equal Treatment authority or by one of the interest groups represented in the responsible senate.

The responsible senate of the Commission has to give an expert opinion on whether a violation of the obligation of equal treatment has occurred, this expert opinion has to be made public, whereas the sessions of the senates are confidential and not open to public. During the procedure the responsible Ombud of the Equal Treatment Authority can be party as well as the concerned person itself, who can be represented by a person he/she trusts in, by an advocate or by an NGO. If the senate comes to the conclusion that a violation of the principle of equal treatment has occurred, it has to issue a written proposal to the employee or to the person responsible for the non-employment-related discrimination on how the obligation under the act can rightly be fulfilled. The senate has to call upon the person responsible to end the discrimination. In case the addressee does not follow the instructions of the commission, the institutions represented in the senate or the National Equality Body can file a civil action for a declaratory judgment concerning the violation of the obligation to equal treatment. The commission has the right to demand from the person, who is alleged of discrimination a written report concerning the assumed discrimination. The Commission can also order expert opinions on any company concerned.

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<sup>1</sup> Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, BGBl. Nr. 50/1991, as last amended by BGBl. I Nr. 137/2001.

<sup>2</sup> BGBl. 194/1994 last amended by BGBl. I Nr. 111/2002.

<sup>3</sup> The reform was made public with BGBl. 63/1997.

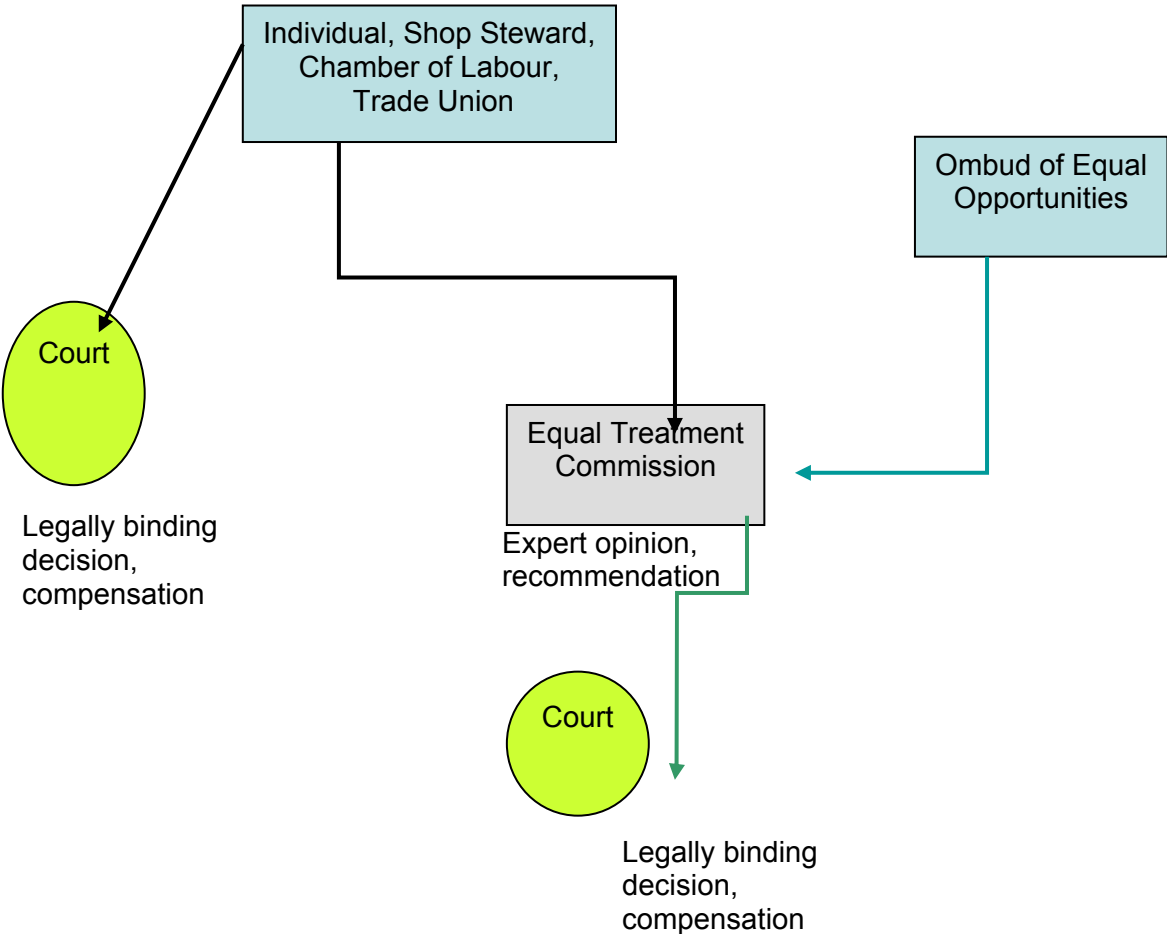
The Commissions expert opinion is legally not binding and there is no way to claim compensation for damages. There is no cost risk however and there is the opportunity to reach an amicable agreement. For compensation for damages a claim has to be prosecuted at the competent court.

In court procedures representation by NGOs or by the Ombud of the Equal Treatment Authority is not possible, in labour court cases the Chamber of Labour is entitled to represent employees. The Litigation Association of NGOs against discrimination (Klagsverband) is legitimised to third party intervention, if the plaintiff wants it.

In disability cases a claim can be filed to the Federal Social Service (Bundessozialamt), whose competent regional offices are obliged to try the possibility to settle the case in a joint dispute resolution process. For easing this process mediators can be engaged with the costs to be heard by the Federal Social Service. For obtaining any kind of decision the claimant has to proceed to court, which is only possible if the conciliation process has failed or after a period of three months

Claims on the non-obedience of the prohibition of discriminatory job-advertisements can be filed to the local administrative authority (Bezirksverwaltungsbehörden). The local administrative authorities have to act ex officio and are supposed to impose sanctions to perpetrators of discriminations, the claimant has no status as a party within this procedure, but is limited to a witness role, what means that he/she has no right to gain information on the decision.

Law enforcement



## 2.A Employment and occupation related - all grounds

### a) Remedies

Remedies against discrimination on the grounds of ethnic origin, religion and or belief, disability, age or sexual orientation in the field of employment, whereas “employment” does not only include formal labour contract based relationships, but beforehand actions as well as so-called “free lance service contracts”.

Victims of discriminations in the field of employment can raise a claim to the Equal Treatment Commission, they can file their case to the Equal Treatment Authority to have the authority put the case in front of the Commission, and they can seek for assistance by NGOs, trade unions and social partners. The commission decides on if discrimination occurred or not and can order the employer to stop discrimination and to obey the law. Furthermore the commission can propose to implement mechanisms that might hinder discriminations in the future. A different way of fighting against discrimination would be to file the case directly to the labour courts, where compensation can be claimed as well. Informal solutions can be obtained in front of the commission, for disability cases an attempt to settle individual cases in a joint dispute resolution process before the Federal Social Service (Bundessozialamt) is compulsory. Claims on the non-obedience of the prohibition of discriminatory job-advertisements can be filed to the local administrative authorities (Bezirksverwaltungsbehörden). There are no other “formalized” remedies.

For the area of public employment there exists a different treatment of civil servants (Beamte) and contracted public workers (Vertragsbedienstete). While the latter have to bring their claims to the courts, civil servants have to claim their rights before the public office in charge of these issues – so they have to start an administrative procedure against their employer. Claims against (individual) harassers are always to be brought before a court

If public bodies are accused of discrimination the procedures work according to the Federal-Equal Treatment Act, which means that there is special Federal-Equal Treatment Commissions for the public sector and special (and various) Equal Treatment Authorities for public authorities in the provinces according to the provincial legislation, there is special procedures for members of universities etc. In case of discrimination by employees of the public sector a claim can be made in form of a disciplinary complaint as well.

### b) Protection against discrimination – Applicability

In case of **harassment** on the workplace or related to the work the victim is entitled to gain compensation including compensation for non-pecuniary damages with a minimum of EUR 400,-. The claim can be raised towards the perpetrator, be it the employer, any other employee or anyone else, as long as the harassment occurred when working. Additionally the claim can be raised against the employer, if he/she did not work on stopping the harassment in an appropriate way. And incitement to harassment is unlawful as well.

**Advertising of posts** has to be made free from discrimination. If a certain attribute is not a genuine and determining occupational requirement, job advertisements may not contain any preferences or exclusions for specific groups. If not, a fine of up to EUR 360,- is to be set by the local administrative authority (Bezirksverwaltungsbehörde).

In discrimination cases in **recruitment procedures** and during the selection process – so before a concrete work contract is made – the person discriminated against can claim compensation of pecuniary as well as non-pecuniary damages. Compensation starts with a minimum of one monthly salary, if the person applying would have obtained the job in a recruitment procedure free of discrimination and is limited to EUR 500,- if the potential employer can proof that he/she “just” refused to consider the application. There is no remedy, which aims at reinstalling in the job.

In this case the matter of evidence is very important, as it is very hard to prove for the person applying that he/she would have been the best as it is for the potential employer that he/she did not refuse to consider the application because of a certain attribute. So in this case the shift of the burden of proof could play a crucial role, which is not eased by the fact that the Austrian version is quite complex and difficult to handle.

**Terms and conditions** of the concrete treaty and **pay**, which differ not according to the quality of the work or according to justified rules like years of working experience etc. but according to unjustified discrimination, the employee can be charged to pay the difference and to compensate for damages as well.

Discriminatory regulations and/or treatment regarding **voluntary social benefits, vocational training, working hours and anything else relating to working conditions** is unlawful and entitles to granting the very same benefits, vocational training conditions, general working conditions etc and to compensation of damages.

Furthermore equal treatment is obligatory regarding **career advancements**, especially regarding promotions. Being able to prove that with selection free of discrimination would have meant promotion of the person concerned, entitles to gain the difference in terms of pay and compensation for damages, with a minimum of three months salary. Like with recruitment procedures the compensation is limited to 500,-, if the employee can prove that the damage was “just” caused, because he/she refused to consider the persons application for the job.

**Termination of a contract and dismissals** with a discriminatory motivation can be appealed against at the competent labour court.

**Victimisation**, meaning unequal treatment or dismissal of a person as reaction to a complaint or claim in order to enforce the non-discrimination imperative, is covered by the principle of non-discrimination as well. This is valid for complainant as well as for third parties like witnesses. There is no sanction foreseen for this proscription, however.

The scope of the ban on discrimination goes **beyond labour relations**, which means

1. Access to vocational training, occupational counselling and vocational retraining off-the-job, provided by the service centre for unemployed or by occupational training centres, e.g.
2. Membership to trade unions, organisations for employees, guilds etc., including not only membership but also access to services provided by these organisations as well.
3. Requirements to take up a business on a self-employed basis, including subsidies provided by employers' organisations.

## **2.B Non-employment or occupation related - race and ethnic origin**

Discriminations, which do not fall into the area of labour relations, but are set in “other areas”, are covered by the Austrian Equal Treatment Legislation only regarding discriminations on grounds of ethnic origin. Discrimination on grounds of any of the other groups have to be coped with the legislation, which was installed before, which means especially Art.IX/1/3 EGVG, see above.

Procedural ways to law enforcement are the very same as described above with the difference that it is not the labour courts, which are competent, but the ones responsible according to the code of civil procedure.

Protection against discrimination is guaranteed for the areas of

1. **Social protection, including social security and health care** (like insurance contracts, hospitals, etc.)
2. **Social advantages** (like cost-free or reduced price for public transport, price reductions for admission tickets for cultural events etc)

3. The **education field** (access to universities, schools etc., vocational training and apprenticeships are within the scope of the labour relations regulations)
4. **Access to and supply with goods and services** provided to the public, including access to restaurants, shops etc.
5. **Housing**

Violating the principle of non-discrimination entitles the person discriminated against to claim compensation of damages with a minimum of 400,-.

In the case of racist motivated **harassment** the person concerned is entitled to claim damages as well. **Victimisation** is covered by the principle of non-discrimination.

## **2.C What avenue for an employment or non-employment complaint**

In Austria it is not the point of raising a complaint either in the employment or in the non-employment sector. There are remedies against discrimination on grounds of sexual orientation, ethnic origin, religion or belief, disability and age available by the Equal Treatment legislation in the field of labour relations and there is remedies against discrimination available for all the other fields only on the grounds of ethnic origin, which was overtaken by the directives and which creates a hierarchy of grounds contradicting the principle of non-discrimination.

What has to be weighed, when deciding, which remedy to take, is if it makes sense to raise a complaint to the Equal Treatment Commission, with or without supply by the Ombud on Equal Opportunities or by an NGO, or to go directly to court. The Equal Treatment Commission is not passing a sentence and is not entitled to assign compensation. It has to give an expert opinion on whether a violation of the principle of equal treatment has occurred or not, which has to be made public. This decision is not legally binding, but any judge, who might be in task on deciding upon the case, afterwards has to bring arguments, if he/she does not stick to the findings. The Equal Treatment Commission furthermore tries to reach a settlement to end the discrimination. Taking into account that filing a suit to court, which would be the alternative, brings the cost risk, which is not the point with the procedures in front of the Equal Treatment authority it definitely makes sense to appeal there first.

In disability cases, where a settlement is obligatory and where there is no chance to obtain an expert opinion, the way to court is the only one to create case law. So if thinking strategically court cases are necessary to work on development of legislation. Experience until now shows that in most cases settlements could be reached, but there is no public information on the outcomes.

## **2.D Technical procedural requirements of each available remedy**

### *Time limits*

All claims are subject to strict time limits. The normal time limit for bringing civil-law claims is three years, whereas dismissals have to be challenged in court within two weeks.

### *Formal requirements*

There are no specific formal requirements for raising a complaint to the Equal Treatment Commission, except that the claim has to be presented in writing. Bringing cases to court means that in most cases representation by an advocate is obligatory and supply by NGO lawyers and/or the ombud on equal opportunities comes to an end. There is no specific requirement for documents or statements either. Any documents, which are presented are considered as part of the procedure for taking evidence and are valued according to their authenticity.

## *Guidance*

Guidance to assist when filing the complaints and which remedy to choose is not offered by the Equal Treatment Commission or by the courts in an organized manner. Any public authority and any court have the duty to assist in enforcing one's rights according to procedural legislation.

Special assistance for discrimination cases is provided by

### **National Equality Body**

Gleichbehandlungsanwaltschaft

1010 Wien, Judenplatz 6

Tel. 0800-20 61 19 (local rate from whole Austria)

[gaw@bka.gv.at](mailto:gaw@bka.gv.at)

<http://www.frauen.bka.gv.at/site/5514/default.aspx>

### **Specialized NGOs Members of the Litigation Association of NGOs against discrimination**

Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern

Luftbadgasse 14-16 □ 1060 Wien □

Tel. 01 / 961 05 85-24 □ Fax: 01 / 961 05 85-99

[info@klagsverband.at](mailto:info@klagsverband.at)

[www.klagsverband.at](http://www.klagsverband.at)

### **Austrian National Council of Disabled Persons**

Österreichische Arbeitsgemeinschaft Rehabilitation

Stubenring 1010 Wien

Tel. 01 5131533-0

[dachverband@oear.or.at](mailto:dachverband@oear.or.at)

<http://www.oear.or.at/>

### **Federal Social Service – Regional Offices**

Bundessozialamt

Tel. 059988

<http://www.bundessozialamt.gv.at/>

### **Chamber of Labour**

Kammer für Arbeiter und Angestellte

1040 Wien, Prinz Eugenstraße 20 – 22

Tel.: 01-50 16 50

<http://www.arbeiterkammer.at/>

### **Austrian Trade Union**

**ÖGB-Beratungszentrum**

Laurenzerberg 2, 1010 Wien

Tel. 01/534 44-580, Fax 01/534 44-611

[beratungszentrum@oegb.at](mailto:beratungszentrum@oegb.at)

[www.oegb.at](http://www.oegb.at)

## **2.E Existing support and obstacles at national level**

NGOs for all the grounds do exist in Austria and some of them are joining their strengths with the Litigation Association of NGOs against discrimination. And legal aid by NGOs is one of the most important sources of support for people, who want to enforce their rights. The legal situation regarding discrimination is quite complex and is not widely known – not even by all the competent courts and definitively not by the local administrative authorities, which are in charge of some of the provisions.



In court proceedings representation by an advocate is compulsory depending on the amount in dispute, in which cases pro bono legal assistance can be obtained in cases of financial restrictions. NGOs possibilities to assist in court proceedings are limited to an observer status and to the possibility of the Litigation Association intervene in the proceedings with a third-party status. The Chamber of Labour can represent member employees in labour court procedures, which takes the cost risk and as such eases the path to obtain their right.

In proceedings before the Equal Treatment Commission no pro bono legal assistance is available as there is no obligation to be represented by an advocate. The possibility of NGOs to represent and the powers of the National Equality Body, who are both specialized on discrimination cases, are an advantage in these proceedings, however. And there is no cost risk, which has to be taken into account. What would help to overcome the fact that there is merely any case law, which could help in terms of guiding, how much compensation should be claimed, which cases would be likely to be recognized as discrimination or not, in terms of clarifying gaps and uncertainties in legislation, would be the development of guidelines or codes of practice for employers and suppliers of goods and services.

## **2.F Referrals to the European Court of Justice**

Where there is a disputed issue of EU law and the judge is uncertain how to interpret a provision at EU law, a referral can be made by a national court to the European Court of Justice in Luxembourg under Article 234 of the Treaty. The parties to the proceedings can ask the national judge to grant a request for such a referral, or the judge can decide spontaneously to refer the case. Any court may make a referral, but only the national court of last instance is obliged to do so.

This may be a highly effective procedure because:

- Requesting a referral can concentrate the mind of the presiding judge and ensure that s/he gives proper consideration to the complaint, especially to the fact that it raises issues of European rights.
- National bodies, particularly public bodies, are impressed by its high profile and may take steps to avoid the exposure of discrimination at national level to pan-European scrutiny.
- The European Court is the only body that can give a **definitive** interpretation of the terms used in the Directives.

However this is a specialised procedure and expert EU lawyers familiar with its use need to be retained. In addition, it is important to note that the national case is "stayed" (put aside) until the ECJ has decided the issue before it, and this delay of sometimes two years can have serious consequences for the complainant.

## **2.G Petitions to the European Parliament**

The Committee on Petitions of the European Parliament can receive petitions from Citizens of the Union who wish the Committee to investigate their complaint/s that their rights under European Union law are not being properly respected.

## **2.H Alerting the European Commission to discriminatory administrative practices**

It is also possible to write directly to the Commission, which may often be a quicker process than that outlined above under 3.2.G. This could be done with a view to encouraging the Commission to initiate infringement proceedings against the offending State.

The Commission and the Parliament would be bound by the EU Charter of Fundamental Rights' provision on the right to good administration (Article 41) if adopted:

- Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
- This right includes
  - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - the right of every person to have access to his or her file, while respecting the legitimate interest of confidentiality and of professional and business secrecy;
  - the obligation of the administration to give reasons for its decisions.
- Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
- Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

## **2.I Complaints to the European Court of Human Rights**

In addition, when all effective national legal remedies have been exhausted, a person may, if the case concerns issues covered by the European Convention on Human Rights, apply to the European Court of Human Rights in Strasbourg (see Key Concepts section).

This can be done under Article 14 of the Convention provided another Article is also engaged or, if the country has ratified it, under Protocol 12 to the Convention. (Austria has signed but not ratified Protocol 12.)

Collective complaints can also be made under the Council of Europe's European Social Charter.

## **2.J Other international remedies**

Where the state is a party to the 1<sup>st</sup> Optional Protocol to the International Covenant on Civil and Political Rights, or has accepted the right of individual petition under the Convention on the Elimination of all forms of Racial Discrimination or the Convention on the Elimination of Discrimination Against Women, complaints can be brought to those Committees.

NGOs/trade unions should also ensure that they alert the Committees which examine the State's periodic reports under the ICCPR, CERD, CEDAW and the Convention on the Rights of the Child to instances of discrimination.

## **2.K Professionalism**

If an NGO or trade unions decides to provide legal assistance to victims of discrimination and to take up cases of an individual or of groups of individuals it must be aware of the need to observe high standards of professionalism. There is a wide range of very important standards to be followed, like, e.g.

Confidentiality

Develop and implement counseling standards

Documentation of cases

Inform Clients on all possible remedies and

Counsel on relevant risks and chances

Focus on which outcome would be important to the client

Support clients in deciding but leave decision to them  
Be open to different forms of conflict resolution  
Keep in mind strategic litigation possibilities,  
But do not forget the client  
Dare to say no, if the case does not lie within your competence  
Dare to admit that the own NGO/counseling service is not the best one, but that there is other ones more specialized  
Supply with information about other counseling institutions specialized for the relevant topic

### 3. Societal issues

Austrian public discussion regarding non-discrimination and promoting equal opportunities is very much concentrated on the topics of integration and/or assimilation, with the two very different approaches mixed up on a regularly basis by politicians as well as by the media.

Education is one focus of debate, trying to find ways for how to integrate children with migrant background and little knowledge of the German language into ordinary school system. There are very many different approaches, the most successful the installing of special teachers, assisting with the integration process and enable all children to learn together and from each other. This possibility was made more difficult within the last years – lessening the number of these special teachers, which caused problems and with these problems protests of parents of kids with Austrian origin, who were afraid about their kids to be limited in studying possibilities. Besides this there is a certain tendency to segregation of children according to their ethnic and mother tongue background, leaving most of the Turkish kids in a educational structure for less qualified children.

Another very emotional discussion is going on concerning Muslim women wearing headscarves, which limits their possibilities of obtaining a job meeting their qualifications and augments the risk of being harassed in their everyday life. The debate is mixed with the topic of gender discrimination, with the headscarf considered as a symbol for being discriminated against within the Muslim religion generally, which should not be tolerated in a democratic Austrian society, committed to the establishment of equal opportunities of men and women. In this respect the role of NGOs is a very important one in providing information to the general public, raising awareness on what discrimination really means – and where freedom of religion ends and starts, in identifying common goals and in clarifying that working together on the elimination of discrimination and the promotion of equal opportunities is the only way to be successful.

There are certain conflicting interests between vulnerable groups and specialized NGOs, which were still of some relevance at the time the directives were transposed and some disability rights groups were afraid of being levelled down and insisted on a special legislation. The recent developments, especially the foundation of the Litigation Association of NGOs against discrimination (Klagsverband), however, show the path to a more joint approach, which is quite successful.

#### *Materials*

Directive 78/2000

Directive 43/2000

**Equal Treatment Act** (Gleichbehandlungsgesetz)

**Act on the Equal Treatment Commission and the Equal Treatment Office** (Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, BGBl. I Nr. 66/2004), both Federal Law Gazette I Nr. 66/2004

ZARA, Racism Report 2006

#### **d) Funding opportunities in the field of anti-discrimination**

##### **1. EU FUNDING AT THE EUROPEAN LEVEL FOR NGOs/TRADE UNIONS OPERATING AT THE EU LEVEL**

##### **1. EU funding for NGOs/Trade Unions operating at the EU level**

###### **a) *European-level NGOs***

European-level NGOs are in a central position to influence and contribute to European employment, social and equal opportunity policies at different levels – both in its formulation and implementation – through the information and expertise supplied by their national members. This is vital in order to ensure that EU policies meet the actual needs of EU citizens, and that citizens are informed about them.

Between 2001 and 2006, the Community Action Programme to combat discrimination provided funding for a number of European umbrella NGO networks representing and defending the rights of people exposed to discrimination:

AGE (The European Older People's Platform); ILGA Europe (International Lesbian and Gay Association – Europe); ENAR (European Network Against Racism); and EDF (European Disability Forum) have been granted a total of 3 000 000 € per year towards their running costs up to the end of April 2007. A number of smaller organisations – the European Blind Union, The European Union of the Deaf, Inclusion Europe, Autisme-Europe – also received support under the Action Programme.

Until the end of 2006, the European Women's Lobby received running cost support through the Gender Equality Programme with an annual amount of around 800.000 €.

A number of NGOs working to tackle social exclusion (European Anti-Poverty Network, European Federation of National Organisations Working with the Homeless, European Transregional Network for Social Inclusion, Eurochild, European Social Network, Caritas-Europe) received funding from the Community Programme to Combat Social Exclusion with a total of 3.600.000 € between 2005 and 2007.

For the new 2007-2013 programming period, the European Commission decided to create a new integrated programme known as **PROGRESS** (Programme for Employment and Social Solidarity). The programme was approved by the European Parliament and Council in November 2006: [http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)

PROGRESS combines the four former Community Action Programmes, including that relating to non-discrimination: Section 4 of PROGRESS, entitled "Anti-discrimination and diversity", thus aims to support the effective implementation of the principle of non-discrimination and to promote its mainstreaming in all EU policies.

Calls for proposals and tenders under PROGRESS are published on the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities on: [http://ec.europa.eu/employment\\_social/emplweb/tenders/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm)

A first PROGRESS call for the award of a financial contribution towards the operating costs in 2007 of European-level networks active in the field of combating discrimination, promoting gender equality and promoting the integration of disabled people in society was launched in November 2006. Grant agreements for the successful EU-level networks will run until December 2007.

## ***b) European Trade unions***

The European Trade Union Confederation (ETUC) represents workers across the industries at European level. Set up in 1973, the ETUC includes 81 national organisations from 36 European countries (among them all the EU countries) and 11 European industry federations, with some 60 million members.

The ETUC is one of the four main European social partner organisations. Numerous European social partners' projects are supported every year by the European Commission's social dialogue budget lines (04.03.03.01, 04.03.03.02 and 04.03.03.03). For more information:

[http://ec.europa.eu/employment\\_social/social\\_dialogue/grants\\_en.htm](http://ec.europa.eu/employment_social/social_dialogue/grants_en.htm)

### **2. EU funding for national NGOs/Trade Unions**

While the EU does not provide for core-funding of national NGOs or national trade unions under PROGRESS, organisations may be able to receive funding for projects through their participation in specific initiatives such as national awareness raising activities or trans-national projects. National organisations are therefore advised to regularly check the Calls for Tender/Calls for Proposals website of DG Employment, Social Affairs and Equal Opportunities and consult the guidelines published there to check whether projects from national NGOs/trade unions are eligible for funding:

[http://ec.europa.eu/employment\\_social/emplweb/tenders/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/tenders/index_en.cfm)

The EU-level NGOs such as AGE, ILGA-Europe, EDF or ENAR are also a good source of information. It is therefore recommended to also check the information that is provided on their web page.

In addition to PROGRESS, the European Social Fund (ESF) can be a source of project financing for national organisations. The ESF will between 2007 and 2013 focus on four key areas for action, including reinforcing social inclusion by combating discrimination and facilitating access to the labour market for disadvantaged people. More information can be obtained from:

[http://ec.europa.eu/employment\\_social/esf2000/2007-2013\\_en.html](http://ec.europa.eu/employment_social/esf2000/2007-2013_en.html)

The European Commission does not directly fund ESF projects. Member States are responsible for identifying their priorities for funding and for selecting individual projects. For further information, you should contact the relevant national/regional authority whose contacts are available on:

[http://ec.europa.eu/employment\\_social/emplweb/esf/esf\\_matrix\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/esf/esf_matrix_en.cfm)

## **II. FUNDING OPPORTUNITIES FOR NGOs/TRADE UNIONS WORKING ON ANTI-DISCRIMINATION AT NATIONAL LEVEL IN AUSTRIA**

### **1. Does the European Commission delegation in your country provide for specific funding for NGOs/trade unions working on non-discrimination at national level? What form does that funding take? (project subsidy, provision of meeting room, etc). Is it easy to access such funding? What are the conditions to receive such funding?**

The European delegation in Austria does not provide for specific funding for NGOs/trade unions working on non-discrimination.

### **2. Does the central government provide for specific funding for NGOs/trade unions working on anti-discrimination?**

The central government does provide funding in form of co-financing projects, which have been conducted within the European Community Action programme as well as within the EQUAL Programme.

The Federal Ministry for Economy and Labour Affairs

<http://www.bmwa.gv.at/BMWA/Ministerium/Chancengleichheit/default.htm> is acting as National coordinator for these projects. For the year of Equal Opportunities the ministry is planning activities to raise awareness on the importance of Equal Opportunities. NGOs and trade union members were invited to be part of a national working group to provide the ministry with the expertise needed. A tender was launched for planning and conducting an information campaign, which was won by an advertising agency, which again was advised by the ministry to obtain necessary expertise on the content of the campaign from NGOs – without budgeting this expertise.

There is a broad range of funding possibilities provided by other ministries, such as the Ministry of Social Affairs <http://www.bmsk.gv.at/> or the Ministry of Education <http://www.bmukk.gv.at/> and <http://www.lebenslanges-lernen.at/> „, which do provide subsidies for projects, where anti-discrimination and/or integration/equal opportunities are a topic, but they merely do offer subsidies declared as funding for anti-discrimination initiatives or organisations.

Since 2006 the Klagsverband – Litigation Association of NGOs against discrimination - (founded in 2004) has been provided funding by the Ministry for women and the Ministry for economy and labour. The ÖAR – Austrian national Council of Disabled Persons – is the only organisation provided funding for litigation in the field of anti-discrimination in Austria.

Austrian trade unions are financed by membership fees, which are partly obligatory. They are entitled to apply for project funding by ministries and some of them are running projects with a focus on anti-discrimination co-financed by ministries of the central government.

**3. What form does this funding take? (core funding, project funding, facilities) Are such funding possibilities part of specific governmental programmes? (which ones and from which ministries?)**

There is very little core funding for initiatives/organisations working on anti-discrimination available. There are various project funding possibilities available from various ministries, but there is no specific governmental strategy or programme to combat discrimination aside of the initiatives the Ministry for Economy and Labour Affairs is conducting itself and by specific project funding within the framework of the community action programme to combat discrimination and the EQUAL programme.

The Ministry of Social Affairs is providing funding for integrating people with disabilities in the labour market, this in ways of core funding as well as in ways of project funding.

The Ministry for education is funding organisations as well as specific projects with a focus on intercultural learning and integrating children with non Austrian mother-tongue by providing assistant teachers etc.

**4. Is it easy to access such funding? What are the conditions?**

It is very difficult for organisations working on anti-discrimination issues to access funding, especially to access core funding and to stabilise structures. Most funding possibilities for anti-discrimination organisations are project based and as such leave all the overhead costs besides.

Funding possibilities are scattered throughout the different ministries and the different topics and very hard to concretize. Besides, most core funding possibilities are reserved for big organisations, who might tackle the topic of anti-discrimination but are not specialised.

**5. In case of federal countries, are there funding possibilities at the federated level?**

There are funding possibilities on federal level, which vary depending of the federal states' policies and funding structures. Most anti-discrimination organisations are co-financed on the federal level. Legislation as well as promoting equal opportunities for people with disabilities lies within the responsibility of the federal states, which leads to very different - not only - funding possibilities throughout Austria.

**6. Are there other governmental funding possibilities at regional level? At municipality level?**

Project funding for anti-discrimination initiatives can be provided by Bezirkshauptmannschaften (regional level) as well as at municipality level. Funding is very much depending on individual initiative, individual contact and personal commitment of the person deciding on the funding. The city of Vienna, being municipality and federal state at the same time is one of the most important provider of subsidies to organisations working in the field of anti-discrimination and these fundings are part of a governmental programme as well.

Many initiatives and projects are co-financed at central, federal, regional and/or municipality level.

**7. Are there any private funding possibilities? (private foundations, private companies, headquarters of trade unions, etc.) What are they? Is it easy to access these sources of funding?**

Private funding is very difficult to access in Austria as there is not tradition in donations, private foundations etc. Private donors in form of membership fees are main backbone of some organisations and slowly augmenting within the last few years.

Sponsoring by companies is developing step by step with most success if a concrete "product", like workshops for schools, sponsorships, advertisements, branded T-Shirts etc. can be "sold".

**8. Are there any other source of funding?**

Benefit auctions, concerts, parties, balls, clubbings etc. are attracting more and more people and do strengthen anti-discrimination NGOs financially as well as concerning brand awareness, which can lead to obtaining more members etc.

## **IV. Diversity Management seminar**

### **Context Diversity Management in Austria**

In Austria Diversity Management is mostly seen as a management strategy through which differences can be valued and integrated into companies or organisations.

In Austria different levels of companies deal with the topic of diversity:

1. Multinational companies, who somehow have to deal with the topic, because their head office wants them to. Mostly they are free to choose the topic, as long as they do something on it. So it strongly depends on the specific situation in the company and also on the counsellor's focus, if they have one.
2. Companies in the IT- and technical sector have a strong need to attract women and to keep their women in the company after having a baby, so many of them deal with gender issues, work-life-balance initiatives and topics of reconciliation of work-life and family-life under the header of diversity management.
3. Public departments and offices, such as universities and the employment agencies have gender mainstreaming units and now also start considering diversity management a necessity in the public sector.
4. Local companies only start little by little dealing with the topic.

### **Design of the training**

The organising NGO was the anti-racism organisation "Zivilcourage und Anti-Rassismus-Arbeit" (ZARA). The name of the national trainer provided for the seminar was Jasmine Böhm.

Cooperation between the organising NGO and national trainer went very well, though on both sides we had to spend far more time in preparation for the one day workshop, than could be covered by the project budget.

The training was designed to meet the needs of people from businesses wishing to know more about diversity management and/or begin to implement measures of diversity management in their companies. Therefore one main focus in the workshop was to increase participants' awareness of the requirements and opportunities for diversity management in a company. The programme was based on awareness-raising activities, presentations of successful factors in diversity management, and group discussions on finding measures for their own needs. Not all of this was included in the manual, but this was necessary for this particular setting.

A main feature was the presentation of examples from other companies with existing diversity management policies and activities. The details of these "good practice" demonstrations can be found below under the subheading "Business Cases".

As the cooperation between national and international trainer went quite well, we decided to co-conduct the training, which was very enriching for the target group.

### **Preparation of the seminar**

#### *Training seminar in Köln:*

This was a good opportunity to network, particularly on an international level. However, as a suggestion for further activities, this meeting could have been even more effective by having all the organisational information on the programme and the activities before the meeting, and using the allotted time during the seminar for activities and creating groups.



### *Announcement of the seminar:*

The seminar was announced via ZARA's website and newsletter, and sent to contacts ZARA had already recorded as having an interest in diversity management or other anti-discrimination issues. Furthermore ZARA sent the seminar announcement to more than 200 companies in Austria.

The main body of the text used to publicise the seminar is translated into English below:

“More and more businesses are turning to diversity management, increasing their attraction to potential employees and new customers.

“Diversity management is a long-term essential for all companies aiming for development on a national and international basis.

“In Europe and Austria there are several businesses that are already able to look back on a successful implementation of diversity management measures and to report the many positive effects.

“In a one-day workshop, you too will have the opportunity to address this topic personally.

“We will give you an overview of the concept of diversity management, with the help of successful examples implemented by companies in Europe and Austria. It will be possible to interact with representatives of other businesses to start to develop or build on diversity management practices in your own company.”

Also successful was the opportunity to cooperate with part of the Chamber of Industries in Austria, which deals with the topics of CSR.

### *Attracting and selecting participants*

More than 60 participants originally applied for the workshop, though many of them were consultants, who were not the target group. It was deemed a success that 60 people did apply, as it has to be taken into consideration that Austria is a small country where many are not yet familiar with diversity management.

However, as we did not want the workshop to be focused on the consultants, and as it was very important for us to maintain a space for the participation of companies, in which they were not disturbed by acquisition activities of other participants, we decided to invite only a few consultants, along with all the applicants from businesses. Thus the number of participants was reduced to 45.

The decision to prioritise applicants from businesses proved successful, because the resultant group of participants was appropriate for the design of the seminar, and because the representatives of the companies present had the opportunity to interact and share experiences as intended.

### *Logistical arrangements:*

Venues for the trainings were chosen to include appropriate seminar facilities and equipment for the participants.

The Diversity Management Seminar was held at:  
Industriehaus Wien,  
Schwarzenbergplatz 4  
A-1031 Wien

Other logistical arrangements included the copying of seminar materials and their transportation to the seminar venues, as well as publicity, selection of and communication with participants, public relations, certificates of participation and evaluation of questionnaires.

### **Carrying out the seminars**

#### *Business cases (by whom):*

The contributions of companies already showing good practice in the area of diversity management in Austria were much valued by trainers and participants alike. These companies included Shell Austria, IBM and TNT, all of whose presentations were considered very useful and enriching, with demonstrations of measures designed for local needs.

Different topics and approaches to diversity management were represented. TNT is very action-based on all grounds of discrimination; Shell Austria works on the basis of a self-designed Code of Conduct. IBM focuses on three main areas: gender (reconciliation of work-life and family-life), sexual orientation, and elderly employees.

#### *Ration of participants (business/government/employers org./consultants/others):*

On application, 28 participants registered themselves as representatives of a company; 8 as representatives of a public service provider; and 8 as representatives of a training or consultant company. The trainers expressed regret that the number of participants had to be reduced after so many consultants applied and had to be turned down so that a good representation of companies could also be achieved, but were nonetheless pleased that a balance of interests could thus be maintained.

#### *Process during the day – observations:*

Extract from observations by trainers:

“The workshop went extremely well and brought a lot of positive feedback from the participants. Highly appreciated were the inputs from good practice companies and the opportunity to exchange experience among the participants and to start networking with others interested in the topic. We had very interesting input from good practice companies like Shell, IBM and TNT.

“The participants ranged from companies that already have DM programmes in their companies, to those that had hardly any previous experience with the topic.

“We tried to foster interaction between participants from the beginning. This was also the reason for which we did not wish to have too many competing consultants in the workshop. Interaction between the participants was extremely good and a lot of networking was started with the day.

“At the end of the day we had an action-planning activity, in which the participants were asked to find possible measures and strategies for their own businesses. That was very interesting for them and also for us. They worked in subgroups on measures for educational institutions, businesses and for consultants to attract companies for the topic. Measures ranged from awareness-raising activities, to involvement of management, and implementing codes of conduct regarding general approaches to diversity.”

## **Evaluation of the seminar**

Further observations by trainers:

“The general seminar design with 60 participants does not seem adequate for a one-day event. It does not offer the possibility to do most of the awareness-raising activities, which are needed for participants starting with minimum experience of the topic.

“Especially in a country like Austria, in which businesses are only starting to address the topic, it is necessary to have a very attractive eye-catcher in the programme to attract people for the topic. So we designed the day as something in between training, conference and large group workshop, which worked out quite well and brought extremely good feedback from the participants.

“The participants were satisfied with the content and the format of the seminar. Most of them can use what they learned in their work as multipliers, passing on the knowledge and methods gained. Especially valued were the trainers’ own competences, the examples on “best practice” within well-known businesses, and the opportunity for exchange and networking. As a follow-up in one year a seminar with the same participants was suggested, whereby they could exchange their experiences since this seminar.”

Overall the seminar was clearly judged positively by both trainers and participants, particularly with regard to the examples demonstrated by companies already addressing diversity management in Austria.

The trainers did feel strongly that conferences or workshops with a smaller number of participants should be organised, or that plenary sessions be held within a large number of participants, to give more opportunity to interact and reach meaningful results. A third possibility would be a large group workshop for more than one day, allowing more time.

*Diversity Management Tag, Vienna, 21. February 2008*



## Annexes

### The role of trade unions combating discrimination

#### Intended learning outcome:

- For the participants to have explored the roles trade unions can and should play in combating discrimination.

#### **1. What is a trade union?**

A trade union is an organised association of workers, whose aims are to protect, and further workers' rights and interests and represent them at a variety of levels (workplace, sector, national). Originally, unions organised workers along the lines of specific 'trades' and professions (such as hairdressers, teachers, construction workers) but increasingly common are unions with a wider remit (like: workers in commercial services or 'the public sector'). Trade unions can be organised at company level (which is quite common in several countries) or by sector (education, transport, etc.). Unions can also be organised as federations and can also be part of European or international networks.

In several countries, trade unions may have historical links with certain political groupings, ideologies or denominations (socialist, communist, liberal, Christian), and a few have close links with a political party.

However, a common and essential feature to all trade unions is that they are democratic and independent organisations. Democratic because they are membership based and representative organisations, in which every member has a vote and is part of the decision-making process. Independent, because they have to be independent from employers and public authorities to be able to play their role of representatives of workers properly, in which negotiations and compromises but also conflicts (such as strikes) are part of the game.

Trade unions are normally funded by members' subscriptions.

#### **2. What is the role of a trade union in combating discrimination?**

When considering what role trade unions can have in combating discrimination, they should take full advantage of the special roles that have been given to them under Articles 7 and 11 of Council Directive 2000/43/EC, and Articles 9 and 13 of Council Directive 2000/78/EC.

Trade unions are clearly important to the development of peaceful, democratic, well-managed, healthy and prosperous workplaces that engage with and promote equal opportunities, and through the workplace also contribute to these same goals in society at large.

Trade unions as instruments of social dialogue can combat discrimination in the following ways:

- Negotiating with employers to ensure that discrimination in the workplace is eliminated and that equal opportunities are promoted.
- Providing a means for expressing and addressing the needs of workers who are discriminated against in the workplace.
- Supporting victims of discrimination in securing a settlement with the employer (alternative dispute resolution).
- Supporting victims of discrimination in their search for access to justice.
- Promoting equality and diversity in the workplace and in the sector.
- Establishing mechanisms to influence decision-making by employers and Government.

- Mainstreaming non-discrimination and equal treatment in policies and practices.
- Challenging employers, organisations and authorities to combat discrimination.
- Monitoring, documenting and denouncing discrimination.
- Ensuring that equality is prominent on the political agenda and encouraging campaigns and action to eliminate discrimination and promote equality.

A trade union can

- Work in partnership with other trade unions to achieve shared aims.
- Work in partnership with NGOs in order to achieve shared aims.
- Cooperate with national equality bodies, for example in building up networks of equality representatives, or in organising training and expertise for workers' representatives.
- Empower groups to engage in campaigns, to be self-advocates and to assert and enforce their rights.
- Work, where appropriate, in partnership with Governments/employers to achieve common aims and objectives.
- Challenge, where appropriate, Governments/employers when they are promoting policies which are contrary to the trade union's objectives.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities within the framework of Government policies and adopt and promote strategies of Trade unions and strategies negotiated between Trade unions and Government.
- Where appropriate deliver services to members efficiently and effectively where those services promote equal opportunities outside the framework of Government policies and adopt and promote trade unions' objectives and, strategies even if those are contrary to Government policies.
- Ensure the co-ordination of its own services and to engage Government/employers in discussions on the co-ordination of services between the Government and trade unions, where those services relate to equal opportunities.
- Provide properly professionally researched advice to Governments/employers on issues of concern.
- Advocate and campaign for change as a response to need.
- Guide and contribute significantly to legislative and policy making processes, by providing properly researched advice and briefings to politicians in Government and to employers and other persons of influence.
- Be vigilant "watchdogs" - pointing out where Governments/employers are actively discriminating, or failing in their obligations to combat discrimination or where they need to improve their performance, and enforcing the operation of the checks and balances that characterise democratic society. In this role trade unions must target Government and the business community by advocacy, lobbying and negotiating functions when required.
- Challenge, by appropriately selected mechanisms, acts, omissions, administrative practices or policies which are contrary to the trade unions' and the workers' objectives.
- Keep track of and ensure that advantage is taken of all new developments in combating discrimination, e.g. new legislation (national, EU and international), new policies (national, EU and international), new sources of funding, and landmark judicial decisions (at both national, EU and international level).
- Be open, transparent and accountable to members and to the public.
- Increase the strength of trade unions' participation in social dialogue by forming networks and coalitions, and promoting original initiatives and solutions. This can help to reduce prejudice within society, thus promoting equality.
- Work openly and in a spirit of collaboration with other trade unions and NGOs operating in related fields and prevent conflicts and disputes occurring between trade unions or NGOs.

- Put pressure on a state to ratify international instruments which allow for the international spotlight to be shone on Government practices relating to equal opportunities.
- Supply national and international bodies with essential and reliable information on which they can draw when examining a country's record on discrimination.

In summary, the role of trade unions should be to check, monitor and challenge the actions of employers and Governments and other organisations, in order to combat discrimination and to assist workers and groups of workers in asserting their rights.

### **3. What activities can a trade union do to combat discrimination?**

The following is a suggested list of activities and services that a trade union can carry out or provide in order to help combat discrimination on all grounds:

- Negotiating.
- Awareness-raising.
- Monitoring/Influencing the development of policy & law.
- Providing support to individual victims of discrimination, and to individuals as part of a collective complaint.
- Litigation.
- Alternative Dispute Resolution including mediation.
- Campaigning and organising.
- Advocating changes in practice (as distinct from policy or law).
  - Promoting the establishment of focal groups around a specific ground of discrimination (disability, race-ethnicity, etc.) to offer workers a place where they can share common experiences and discuss which policies to develop in their workplace and their union, and how to join forces to put their interests on the general trade union agenda
  - Adapt their recruitment campaigns to an increasingly diverse workforce, and making the diversity of the trade union movement more visible in internal and external publicity
  - Promote female members and members from a minority background in positions of decision-making and leadership.

### **4. What does a trade union need to fulfil its role?**

- Human Resources.
- Skills.
- Knowledge.
- Expertise.
- Openness.
- Transparency.
- Accountability to their members.
- Non discriminatory attitudes within its own organisation.
- Appropriate national legislation in place regarding its establishment and functioning.
- Funding. Although clearly the core functions and activities must be funded independently by members' contributions, many unions make use of project subsidies by governments and private funds for specific aims. Especially in the area of non-discrimination, a variety of possibilities for funding are available.

**5. Why are trade unions better placed than other organisations to work towards combating discrimination in the employment field?**

- Because trade unions are active in the workplace, they are often best placed to detect patterns of discrimination at work, and to take action to combat disadvantage.
- Trade unions can represent workers collectively, for instance in works councils and collective bargaining, which can often be the most effective way of achieving change and eliminating discrimination in the workplace.
- Trade unions play a crucial role in engaging with workers and employers at the local, regional, national and international level.

**6. What are the obstacles for trade unions and how might these be overcome?**

- Lack of standing in order to participate in relevant political debates. Trade unions will need to be sure that they brief an individual or organisation that does have standing.
- Lack of standing in order to bring complaints, either individually or collectively. Trade unions can support and assist those who do have standing, or seek to reform the rules.
- Perception of affiliation to Government or a political party or other group so undermining their reputation as impartial advocates of equality issues. A trade union needs to ensure to act in a way that does not conflict with members' fundamental rights to equality, and ensure that any connections with political parties or other organisations or causes do not conflict with members' rights.
- Passivity from some of their members/employees or even their leadership regarding action to be taken against discrimination.
- Conflicts between the interests of the majority of members, and the rights of minority members.
- Own prejudices.
- Lack of effective 'partnership' between Government/employers and trade unions. Lack of effective cooperation with NGOs.
- Lack of membership among the discriminated groups of workers, and therefore a lack of interest among the members and the leadership to deal with these issues. This may be a vicious circle, as clearly a trade union that does not show an interest in representing the interests of for instance women or migrant workers will not easily convince those workers that they should join a union.
- Inability to reach some parts of the workforce or senior management due to ineffective structures, poor organisation, externally imposed priorities, or cultural or language barriers. Trade unions should ensure that *their own organisations* have a diverse workforce with personnel who have received equal opportunities training and who are aware, of relevant social and political history, including the history of exclusion and discrimination of certain groups within the community and, where relevant, a range of language skills.