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Country report

Non-discrimination

Austria

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including summary



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*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Austria

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Reporting period 1 January 2025 – 1 January 2026

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EXECUTIVE SUMMARY

1. Introduction

Austria is a wealthy modern welfare state with a population of about nine million people. The majority of the population are white and German speaking. Autochthonous and recognised minorities include Croats, Slovenes, Hungarians, Czechs, Slovaks and Roma.

The public discourse on immigration and integration has been dominated by the populist FPÖ since the 1990s, which has explicitly communicated ideas of 'natural' dominance by 'true-born' Austrians and expresses open hostility towards immigrants of the Islamic faith. This tendency has been severely increased by the so-called 'refugee crisis', which brought a peak influx of refugees in 2015. In the 2024 federal elections, for the first time the FPÖ became the strongest party with almost 29 % of the votes, followed by the conservative ÖVP with about 26 % and the Social Democrats with about 21 %. Recent polls point to further increases for the FPÖ. Most commentators ascribe this success to a constant racist discourse kindling fear and rejection of migrants and asylum seekers.

Regarding the grounds of race and ethnicity (in Austria, these terms are legally subsumed under 'ethnic affiliation'), the courts recognised relatively quickly that discriminatory reference to 'foreignness' is clearly covered by legal protection.¹ Migrants, mainly refugees, are still the main target of right-wing hatred and suffer greatly from discrimination in all fields. Legislation and jurisprudence have shown that the anti-discrimination regulations work in practice and offer wide legal protection for migrants. Although the Government's programme envisaged the development of a national action plan against racism and discrimination,² such a plan does not exist. The size of the Roma population is only roughly estimated and reliable data does not exist, the estimates for the so-called autochthonous Roma population vary between 10 000 and 20 000.

Although Austria is a predominantly Catholic country, other religious communities have been accepted for many years. Only in the past two decades has this general situation of tolerance been shifting, especially with regard to the Muslim community, which is facing an increasingly heightened atmosphere of hostility. After a period of longstanding acceptance and legal standing as a recognised religious community since 1912, the Islamic faith community is now constantly confronted with hostile agitation. In 2021, a criminal provision to specifically target 'religiously motivated extremist organisations' was introduced into the Criminal Code.³ The provision was heavily criticised by some civil society organisations⁴ and researchers⁵ for constituting 'symbolic criminal policy' and putting the Muslim community under general suspicion.

Although public antisemitism remains a taboo, research finds that it still exists to a high degree in the population. The events in Gaza-Israel since October 2023 have triggered a rise in anti-Muslim⁶ as well as antisemitic incidents.⁷ Reports clearly show the enormous

¹ Viennese Civil Regional Court (Landesgericht für Zivilrechtssachen Wien), *Hayet B. v. Ferdinand S.*, Decision Nos. 35R68/07w and 35R104/07i, 30 March 2007; Supreme Court (Oberster Gerichtshof), Decision No. ObA40/13t, 24 July 2013.

² See also UN Human Rights Council (2021), [A/HRC/47/12: Report of the working group on the Universal Periodic Review/Austria](#); para 10.

³ See: Criminal Code, BGBl I Nr 159/2021, in force since 1 September 2021, Article 247b.

⁴ See, for example, Amnesty International Austria (2020) 'Opinion on the legislative amendments', https://www.amnesty.at/media/8087/amnesty_oesterreich_stellungnahme_bundesgesetze_anti-terrorismus-massnahmen_jan-2021.pdf (GER).

⁵ See: Arno Pilgram, opinion shared during public consultation process: https://www.parlament.gv.at/PAKT/VHG/XXVII/SNME/SNME_36452/index.shtml.

⁶ See for example, Dokustelle (2024) 'Antimuslimischer Rassismus Report 2024' (latest available report), and previous reports, <https://dokustelle.at/reports/dokustelle-report-2024>.

⁷ See Antisemitismus Meldestelle (2025) 'Antisemitic cases January – June 2025 in Austria', which shows a slow decrease of reported cases after the massive rise in previous years; https://www.antisemitismus-meldestelle.at/files/ugd/0a9e18_03230340db6b423bbf9d515c036b3b5e.pdf.

impact of the conflicts in Israel-Gaza. Recently, the Parliament passed legislation to prohibit girls under 14 years of age wearing a religious headscarf in school.⁸ New Article 43a of the School Education Act,⁹ entitled 'protection of freedom of development and self-fulfillment appropriate for children', which exclusively targets Muslim girls, gained a high degree of support from across the political spectrum.

There are 14 different faith communities legally recognised by Austria – the latest being the Alevi faith community, which has been legally recognised only since 2010.

The situation of the LGBTIQ* communities in Austria is mixed. On the one hand, during the past two decades, the community has attained a high level of visibility and acceptance. The main public discourse still focuses on homosexuality, although issues questioning the duality of sex/gender (intersex/queerness/questioning) are gaining momentum. Austria remains a very conservative, predominantly Catholic country where homophobic statements by politicians and high-ranking church officials are still quite common. Legally recognised partnerships for same-sex couples as well as marriage is available to both different-sex and same-sex partners. The scope of protection against discrimination has not been extended beyond employment for all grounds at federal level, despite the fact that all nine provinces have provided this extension of protection in their (limited) legal capacity.

Age discrimination in the workplace remains a common experience, while public awareness that this is unlawful is very low.

The legal standard of protection against discrimination on the ground of disability is considerably higher than the minimum requirements of Directive 2000/78/EC. From 2012, provinces and the Federation set up institutions such as monitoring boards in order to implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD). These included federal and provincial monitoring mechanisms for the rights of persons with disabilities (*Monitoringausschuss*) and a National Disability Action Plan 2022-2030, which was approved on 6 July 2022. Given the broad scope of protection against discrimination outside employment, Austria seems to be rather advanced and there have been important cases on the subject. Nevertheless, persons with disabilities still face a much higher unemployment rate, and those with mental disabilities¹⁰ in particular experience a high degree of exclusion. In addition, so far, it is only in the field of disability that *actio popularis* for some stakeholders is possible.¹¹

In 2025, dialogue with NGOs about anti-discrimination issues remained stagnant.

2. Main legislation

The Republic of Austria is a federal state. According to the Austrian Constitution, legal powers are exercised either by the Federation (Bund) or the nine provinces (*Länder*). Legislative powers are divided between the Federal Parliament (the Nationalrat, acting together with the Bundesrat) and the provincial parliaments (*Landtage*). Legislative powers are – in principle – clearly defined by the Constitution: matters to be regulated by the Federation are explicitly listed in the Constitution. Provincial parliaments do not have legislative power in respect of those matters. Matters not explicitly designated by the Constitution as federal matters fall under the jurisdiction of the *Landtage*.

⁸ Note: Article 5 of the Federal Act on the religious education of children stipulates: 'From the age of 14 years onward the child has the right to decide which religious faith it wants to adhere to. Has the child reached 12 years of age it cannot be religiously educated in a new faith (other than so far) against its own will'.

⁹ BGBl I Nr. 117/2025 of 30 December 2025, - to enter into force from 1 September 2026.

¹⁰ This comprises intellectual as well as psychosocial disabilities.

¹¹ Federal Disability Equality Act (*Behindertengleichstellungsgesetz*), 2005, Article 13.

Under the Constitution, neither the Federation nor the provinces have the exclusive power to regulate anti-discrimination. The Federation may introduce a new clause prohibiting discrimination – as it did in 1997 regarding disability – to the constitutional catalogue of human rights. Amending the Federal Constitution is strictly a federal matter. The Federation may also implement the anti-discrimination clause if, and in so far as, implementation is linked to matters that fall within the legislative powers of the Federation (such as important issues like labour law, public transport law and civil law). This complicated division of competences leads to a very fragmented landscape of anti-discrimination laws and provisions.

Civil law is a competence in principle held by the Federation; the provinces can act only in a rather small window of competence opened by Article 15(9) of the Federal Constitutional Law (*Bundes-Verfassungsgesetz*) (B-VG), which states: 'Within the field of their legislation, the provinces are competent to adopt the provisions necessary for the regulation of subjects also in the field of criminal and civil law.'

Labour law legislation falls under the competency of the Federation. Since 2021, the Federal Constitution gives the Federation the competence to legislate on agricultural and forestry workers' rights (which includes protection against discrimination), while the provinces have to implement the legislation. The 2021 Federal Labour Relations Act is based on this competence.

Legislation in respect of employees (civil servants) of the nine provinces and of local authorities rests exclusively with those provinces alone, with the notable exception of teachers at public compulsory schools, teachers at certain agricultural schools and educators at certain hostels for agricultural students. Legislative powers regarding self-employment, education and training and workers/employers/occupational organisations are divided between the provinces and the Federation; the provinces hold legislative power, for instance, in areas such as social benefits; kindergartens and juvenile educational institutions; hospitals; nursing homes; ambulance services; funeral services; fire brigades; and chambers¹² of agricultural workers and employers. Provinces are very important providers of rented housing, including social housing. The Province of Vienna, for example, is by far the biggest landlord in the country.

In principle, international human rights treaties have to be incorporated into national law in order to come into effect. The ECHR forms an integral part of the Austrian Constitution.¹³ In implementing the CRPD, the Federation and the provinces established mechanisms for monitoring the implementation.

The most important pieces of legislation transposing and implementing the EU anti-discrimination directives are at a federal level: the Equal Treatment Act, the Federal-Equal Treatment Act, the Federal Agricultural Labour Act and the Act on the Equal Treatment Commission and the National Equality Body, and for the ground of disability, the Act on the Employment of Persons with Disabilities and the Federal Disability Equality Act. All provinces have enacted relevant legislation within their own competence and all of them have expanded the protection against discrimination beyond the minimum requirements set out in the directives.

3. Main principles and definitions

In general, all major principles of the directives have been incorporated into the Austrian legal framework.

¹² Chambers are public law entities established by statute and involving compulsory membership of all workers/employers in the relevant field.

¹³ By Constitutional Law, BGBl Nr 59/1964, of 6 April 1964.

The definitions of direct and indirect discrimination are literal quotations from the directives. Discrimination on the grounds of an assumed personal characteristic as well as harassment and victimisation are also covered. Instruction to discriminate is deemed discrimination and is outlawed. Discrimination by association is explicitly mentioned in relation to all grounds and all areas of protection in a very wide definition (on the ground of close relationship).

The notions of 'race' and 'race and ethnic origin' are both represented by the term 'ethnic affiliation' (*ethnische Zugehörigkeit*). This does not change the scope but is an expression of sensitivity regarding language.

All grounds mentioned in the directives are covered, but the scope of protection differs between the grounds. The implementation applies to both the public and private sectors. While protection in the field of employment is covered for all grounds, only the grounds of disability and ethnic affiliation are protected beyond employment through federal legislation (which also regulates all contracting between private actors), while all nine provinces went beyond the minimum protection within their legislative powers by protecting all grounds in all fields covered by Directive 2000/43/EC.

The exemption of genuine occupational requirements is also incorporated, and it is made clear that it has to be interpreted in a very narrow way.

The concept of reasonable accommodation for persons with disabilities is covered and, under the terms of the Federal Disability Equality Act, is also applicable to access to goods and services. Employers are obliged to take the appropriate and necessary measures to enable persons with disabilities to enjoy access to employment or occupation and to promotion, and to participate in vocational training as well as in-service training, unless such measures would place a disproportionate burden on the employer. Such a burden will not be deemed disproportionate if it can be sufficiently compensated by public aid funds according to federal or provincial regulations.

Multiple, or intersectional, discrimination is gaining importance. The legislation currently recognises the phenomenon and contains rather general guidelines as to how to deal with it. Basically, courts are obliged to make an overall assessment when taking into account discrimination based on multiple grounds. This means that, while those affected by multiple grounds do not have a separate claim for every ground, the fact that multiple grounds are relevant does affect the assessment of the amount of compensation due.

4. Material scope

The Austrian federal legislature has implemented legislation covering the complete scope of the directives. In the area of employment (public and private), all the grounds are protected. Ethnic affiliation and disability are further protected grounds in the area of access to and supply of goods and services, while the broadest scope of protection (including education, health and social protection/security) is in place for the ground of ethnic affiliation only.

Provincial legislations have, within the limit of their competence, broadened the scope of protection beyond the workplace for all grounds. Therefore, there is protection for all grounds in relation to employment, access to and supply of goods and services, education, health and social protection/security. The provincial powers are especially important with regard to housing, social benefits, health and education. Regarding social benefits, several provinces (Upper Austria, Tyrol and Lower Austria) have initiated a policy of issuing legislation to restrict access to social benefits for migrants and refugees.

5. Enforcing the law

Despite the existence of a fairly comprehensive legal framework, the enforcement of legislation is still deficient. There are a couple of reasons for this finding: first, there is still an enormous lack of awareness in the overall population, even in relation to the mere existence of the legislation. Another reason is the very complex and scattered legal framework; more than 40 legal acts could be relevant to anti-discrimination. Furthermore, the equality bodies are unable to co-ordinate their efforts: there are more than nine provincial offices, separate structures for the public service and a completely separate system for disability, instead of a strong single body with strong visibility and powers as can be seen in some other Member States. The resources for the federal equality bodies are limited.

NGOs are not sufficiently integrated into the system and many do not receive sufficient funding for tasks related to the enforcement of the anti-discrimination legislation.

Neither the National Equality Body nor the Equal Treatment Commission are responsible for disability cases, but there is a compulsory conciliation process before the Federal Social Minister's Service, which is a useful tool to mediate cases and come to agreements that it would not be possible to enforce before a court (e.g. apologies, or actual removal of barriers) given that, in court proceedings, essentially only financial compensation can be claimed.

In 2024 legal amendments were made to the Federal Disability Act by BGBl. I 98/2024. These strengthen and clarify the position of the Ombud for Persons with Disabilities by increasing its mandate. The amended § 13b FDA clarifies the authorities' rights to investigate and duty to inform in relation to the Ombud in discrimination cases, as well as the right to initiate reconciliation processes and lawsuits. The amended law aligns the roles of this separate Ombuds institution more with the role of the national equality body (for all grounds other than disability).

Another significant problem with implementation is the persistent lack of relevant case law (there are very few cases). Victims of discrimination cannot be sure of the outcome of their proceedings. If they bring a lawsuit, they have to bear the full risk and cost of the proceedings. Although NGOs try to support victims in this respect, limited resources and victims' fear of suffering another setback during court proceedings make them shy away from judicial redress. The standing of NGOs in court is limited to the possibility of intervention, and this is explicitly granted only to an umbrella organisation, Litigation Association of NGOs Against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*), for all grounds, while the possibilities for *actio popularis* are limited to the disability ground.

One factor in favour of victims of discrimination is the provision on the shift in the burden of proof, which allows them to gain some confidence to pursue their cases.

In principle, the sanctions against discrimination on all five grounds comprise compensation for material and immaterial damages. Injunctions are therefore not available. It is very difficult for the courts to decide on the immaterial damages in a way that is effective and dissuasive but still proportionate, given the lack of legal tradition in this respect. In order for compensation to function as a dissuasive sanction, the existing practice of awarding only very low amounts of compensation for immaterial damage will have to be adjusted by the courts. With regard to harassment, the law has fixed a minimum level of compensation (EUR 1 000). It is interesting to note that the legislature has seen a need to continuously raise the minimum amount of compensation, from EUR 400 to EUR 720 and then to EUR 1 000. Obviously, the practice of courts in sticking strictly to the minimum has created the need for such increases in order to avoid ridiculously low outcomes in proceedings with regard to compensation for immaterial damages. An

important decision by the Supreme Court¹⁴ has given rise to expectations that there will be guidance for the courts directing them to assess the amount of compensation in discrimination cases in a way that is more in line with the directives. However, courts are still very cautious in awarding compensation beyond the minimum amount.

The sanction for discriminatory job advertisements is not at all dissuasive, effective and proportionate, with a maximum administrative fine of only EUR 360 and the exclusion of punishment for first-time offenders (who are only given a warning).

Looking at the case law so far, it is doubtful whether the sanctions applied can be regarded as being proportionate, effective and dissuasive, and there is no experience with regard to how the courts handle evidence in respect of statistical data and the results of situation testing as claimants have so far not used such data (apart from rare cases involving gender). In principle, the legislation allows the use of such evidence, but so far this has not been put into practice.

Many people who face discrimination initiate free-of-charge proceedings before the Equal Treatment Commission before or instead of addressing the courts. However, the Equal Treatment Commission cannot impose any sanctions.

6. Equality bodies

Equal Treatment Commission (*Gleichbehandlungskommission*)

The Equal Treatment Commission, which is a quasi-judicial body that issues non-binding 'opinions' and is based at the Federal Chancellery (*Bundeskanzleramt*), is divided into three senates, dealing with:

1. equal treatment of men and women in the workplace;
2. equal treatment within the scope of Directive 2000/78/EC (i.e. ethnic affiliation, religion, faith, age and sexual orientation in employment) excluding disability;
3. equal treatment within the scope of Directive 2000/43/EC for race and ethnic origin outside employment, and Directive 2004/113/EC.

The functions of the chairpersons, who are part of the respective senates, are undertaken by federal civil servants. The other members of the Commission perform their functions on an unsalaried basis. The current structures started to operate in May 2005. At the request of the National Equality Body or one of the interest groups represented in the given senates, or on its own initiative, the responsible senate of the Commission has to give an expert opinion on questions related to the breach of the principle of equal treatment. These expert opinions on whether a violation of the obligation of equal treatment has occurred have to be made public. The sessions of the senates are confidential and not open to the public.

The Equal Treatment Commission has to act in individual cases upon the request of an employer or an employee; a member of a works council; a representative of those social partners represented in the relevant senate; or the National Equality Body. Victims of discrimination can be represented before the Commission. 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 employer or to the person responsible for the non-employment related discrimination on how the obligation under the act can be fulfilled. The senate has to call on the person responsible to end the discrimination. In the event that 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 of equal treatment. The Commission has the right

¹⁴ Supreme Court, Decision No. 90BA49/16w, 29 September 2016.

to demand from the alleged discriminator a written report concerning the alleged discrimination. It can also order expert opinions on any company concerned. The Commission does not provide assistance to victims and does not conduct surveys, but it publishes its findings and recommendations in an anonymised form in a searchable database.¹⁵

For employment in the public sector, an analogous structure called the Federal-Equal Treatment Commission (*Bundes-Gleichbehandlungskommission*) has been set up.

National Equality Body (*Anwaltschaft für Gleichbehandlungsfragen, Gleichbehandlungsanwaltschaft*)

The National Equality Body, which has been set up at the Federal Chancellery, is structured in three separate parts with three separate Ombuds under one umbrella, in a similar way to the Equal Treatment Commission's senates. Among those three elements, the Office of the Ombud for Equal Employment Opportunities, which already existed before the 2000 directives came into force, remains responsible for ensuring the equal treatment of women and men in the workplace. The two other Ombuds for Equal Treatment have been created to implement the 2000 anti-discrimination directives and are responsible for dealing with discrimination on the basis of race, ethnic origin, religion, age and sexual orientation in relation to employment, and discrimination based on ethnic affiliation outside the working environment respectively. The National Equality Body is responsible for advising and supporting victims of discrimination. To fulfil these functions, the Ombuds can hold consultation hours and consultation days in the whole federal territory. Most importantly, they can conduct independent inquiries and surveys and publish independent reports and recommendations concerning all questions related to discrimination. The body has (almost) no role before the courts, and practice shows that it quite often manages to arbitrate between the conflicting parties so that they reach an agreement. This function is not explicitly mentioned in the legislation, but it is often used successfully. As it is still understaffed, the body has so far not made full use of its powers to conduct independent inquiries and surveys and publish independent reports; only very few of these exist so far.

In combination, the Equal Treatment Commission and the National Equality Body comply with the requirements set out in Article 13 of Directive 2000/43/EG.

For the ground of disability, a separate structure has been set up. The Ombud for Persons with Disabilities (*Behindertenanwalt*) is responsible for the provision of advice and support to persons with disabilities. The Ombud can conduct surveys on the situation of persons with disabilities and give and publish statements and opinions on this issue and can initiate an *actio popularis* in its own name, but there is no quasi-judicial body established for the ground of disability. The role of the Ombud for Persons with Disabilities has been strengthened in 2024 through legal amendments to the Federal Disability Act in BGBl. I 98/2024. Its new § 13b clarifies investigation rights and the right to initiate reconciliation processes and lawsuits - mainly modelled along the norms regulating the powers of the national equality body.

7. Key issues

As for the legal situation, effective and satisfactory enforcement remains the biggest challenge. It is still the case that not many victims of discrimination dare to come forward with their complaints and lawsuits, as the legislation is complicated, and the outcome of legal action very often does not satisfy their actual needs. In addition, courts still seem to be uncomfortable with the task of awarding dissuasive amounts of compensation for non-pecuniary damages. This is surely one of the main reasons that very few cases are brought

¹⁵ See: Rechtsinformationssystem des Bundes, Gleichbehandlungskommission ab 2014: <https://www.ris.bka.gv.at/Gbk/>.

to court. The possibilities for civil society organisations, and even the equality bodies, to bring cases to court in their own names are extremely limited.

However, obligatory attempts to settle individual disability discrimination cases through facilitated reconciliation processes (*Schlichtungsverfahren*) continue to be a success story. The reconciliation process is used quite frequently, sometimes including a formal mediation process, and the agreements reached often reflect a learning experience and therefore a deeper understanding of discrimination among the parties involved.

During 2025, the national equality body (Ombud for Equal Treatment) has continued to improve its visibility (website, case of the month, public events, etc.), and it has used its mandate to publish expert opinions on draft legal bills and expanded the information about different forms, grounds and legal handling of discrimination on its website.¹⁶

Regarding the use of artificial intelligence, a leading case against the Labour Market Service was decided by the Administrative High Court in 2023.¹⁷

¹⁶ See: <https://www.gleichbehandlungsanwaltschaft.gv.at/> (Ger).

¹⁷ Administrative High Court, Dec. Nr. Ro 2021/04/0010-11, Data Protection Agency against Labour Market Service, of 21 December 2023.

INTRODUCTION

The national legal system

The Republic of Austria is a federal state. According to the Austrian Constitution, legal powers are exercised either by the Federation (*Bund*) or the provinces (*Länder*): namely, Burgenland, Kärnten, Oberösterreich, Niederösterreich, Salzburg, Steiermark, Tirol, Vorarlberg and Wien. Legislative powers are divided between the Federal Parliament (the *Nationalrat*, acting together with the *Bundesrat*) and the provincial parliaments (*Landtage*). Legislative powers are – in principle – clearly defined by the Constitution: matters to be regulated by the Federation are explicitly listed in the Constitution. Matters not explicitly designated by the Constitution as federal matters fall under the jurisdiction of the *Landtage*. Under the Constitution, neither the Federation nor the provinces have the exclusive power to regulate anti-discrimination. The Federation may introduce a new clause prohibiting discrimination – as it did in 1997 regarding disability – to the constitutional catalogue of human rights. Amending the Federal Constitution is strictly a federal matter. The Federation may also implement the anti-discrimination clause if, and in so far as, implementation is linked to matters that fall within the legislative powers of the Federation (such as important issues like labour law, public transport law and civil law). This complicated division of powers leads to a very fragmented landscape of anti-discrimination laws and provisions. Civil law is a competence in principle held by the Federation; the provinces can act only in a rather small window of competence opened by Article 15(9) of the Federal Constitutional Law, which states: 'Within the field of their legislation, the provinces are competent to adopt the provisions necessary for the regulation of subjects also in the field of criminal and civil law.'

Labour law legislation falls under the competence of the Federation (Article 10(1)(11) of the Federal Constitutional Law). In the area of labour law on agricultural workers, the legislative powers are divided between the Federation and the provinces: legislation of principles by the Federation and implementing legislation by the provinces (Article 12 of the B-VG). There has been a change in the competence as a result of BGBl. I No. 14/2019,¹⁸ which took effect in 2021: figure 9 of Article 11 of the Federal Constitution gives the Federation the power to legislate on agricultural and forestry workers' rights (which includes protection against discrimination), while the provinces have to implement the legislation. The 2021 Federal Labour Relations Act is based on this power.

Legislation in respect of employees (civil servants) of the nine provinces and of local authorities rests exclusively with those provinces alone,¹⁹ with the notable exception of teachers at public compulsory schools, and teachers at certain agricultural schools and educators at certain hostels for agricultural students. Legislative powers regarding self-employment, education and training and workers/employers/occupational organisations are divided between the provinces and the Federation; the provinces hold legislative power, for instance, in areas such as social benefits; kindergartens and juvenile educational institutions; hospitals; nursing homes; ambulance services; funeral services; fire brigades; and chambers²⁰ of agricultural workers and employers. Provinces are very important providers of rented housing, including social housing. The Province of Vienna, for example, is by far the biggest landlord in the country.

In principle, international human rights treaties have to be incorporated into national law in order to come into effect. The ECHR forms an integral part of the Austrian Constitution.²¹ In implementing the UNCPRD, the Federation and the provinces established mechanisms for monitoring the implementation.

¹⁸ Amendment to the Federal-Constitutional Law, BGBl. I No. 14/2019 of 15 January 2019.

¹⁹ See Federal-Constitutional Law, Article 21.

²⁰ Chambers are public law entities established by statute and involving compulsory membership of all workers/employers in the respective field.

²¹ By Constitutional Law, BGBl No. 59/1964 of 6 April 1964.

List of main legislation transposing and implementing the directives

Official title of the law: Equal Treatment Act²² Abbreviation: ETA/ GIBG Date of adoption: 26 June 2004 Entry into force: 1 July 2004 Latest amendment: BGBl I No. 115/2023 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395 Grounds covered: gender, ethnic affiliation, religion, belief, age, and sexual orientation Civil/administrative/criminal law: Mainly civil law with a few administrative penal provisions Material scope: Most important law, private employment, access to goods or services, education, principal legislation for provinces Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Federal-Equal Treatment Act²³ Abbreviation: F-ETA/ B-GIBG Date of adoption: 23 June 2004 Entry into force: 1 July 2004 Latest amendment: BGBl I No. 100/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008858 Grounds covered: gender, ethnic affiliation, religion, belief, age, and sexual orientation Civil/administrative law Material scope: Public (Federal) employment Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Federal Agricultural Labour Act²⁴ Abbreviation: FALA/ LAG Date of adoption: 25 March 2021 Entry into force: 1 July 2021 Latest amendment: BGBl I No. 111/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011524 Grounds covered: gender, ethnic affiliation, religion, belief, age, and sexual orientation Civil/administrative law Material scope: employment of agricultural and forestry workers, provincial equal treatment offices Principal content: prohibition of direct and indirect discrimination, harassment, victimisation, abrogation of provincial agricultural labour relations acts
Official title of the law: Act on the Equal Treatment Commission and the National Equality Body²⁵ Abbreviation: GBK/GAW-G Date of adoption: 23 June 2004 Entry into force: 1 July 2004

²² Bundesgesetz über die Gleichbehandlung, BGBl I No. 66/2004.

²³ Bundesgesetz über die Gleichbehandlung im Bereich des Bundes, BGBl I No. 66/2004.

²⁴ Bundesgesetz über das Arbeitsrecht in der Land- und Forstwirtschaft, BGBl I No. 78/2021.

²⁵ Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, BGBl I No. 66/2004.

Latest amendment: BGBl I No. 107/2013 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466 Grounds covered: gender, ethnic affiliation, religion, belief, age, and sexual orientation Administrative law Material scope: creation of specialised bodies Principal content: creation of specialised bodies
Official title of the law: Act on the Employment of Persons with Disabilities²⁶ Abbreviation: BEinstG Date of adoption: 10 August 2005 Entry into force: 11 August 2005 Latest relevant amendment: BGBl I No. 50/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008253 Grounds covered: disability Civil law Material scope: Employment, public/private Principal content: Prohibition of discrimination in the workplace, special protection
Official title of the law: Federal Disability Equality Act²⁷ Abbreviation: BGStG Date of adoption: 10 August 2005 Entry into force: 11 August 2005 Latest relevant amendment: BGBl I No. 32/2018 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004228 Grounds covered: disability Civil law Material scope: goods and services Principal content: accessibility, protection against discrimination beyond employment
Official title of the law: Federal Disability Act²⁸ Abbreviation: BBG Date of adoption: 10 August 2005 Entry into force: 1 January 2006 Latest relevant amendment: BGBl I No. 50/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008713 Grounds covered: disability Administrative law Material scope: Establishing Ombud for Persons with Disabilities and Monitoring Board Disability and providing specific aid to persons with disability Principal content: Specialised bodies

²⁶ Behinderteneinstellungsgesetz, BGBl I No. 82/2005.

²⁷ Bundesgesetz über die Gleichstellung von Menschen mit Behinderungen, BGBl I No. 82/2005.

²⁸ Bundesgesetz über die Beratung, Betreuung und besondere Hilfe für behinderte Menschen, BGBl I No. 82/2005.

Official title of the law: Styrian Equal Treatment Act²⁹ Abbreviation: Stmk-GIBG Date of adoption: 31 May 2023 Entry into force: 1 June 2023 Latest amendment: LGBl No. 68/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20001756 Grounds covered: gender, ethnic affiliation, religion and belief, disability, age, and sexual orientation Civil/administrative law Material scope: Public (provincial) employment, discrimination within the remit of provincial law Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Styrian Disability Act³⁰ Abbreviation: StBHG Date of adoption: 28 October 2004 Entry into force: 1 November 2004 Latest amendment: LGBl No. 68/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000434 Grounds covered: disability Administrative law Material scope: specialised institution Principal content: Instalment of provincial 'Ombud for persons with disabilities' – general task to work on complaints. Discrimination not expressly mentioned
Official title of the law: Viennese Anti-Discrimination Act³¹ Abbreviation: Wr-ADG Date of adoption: 8 September 2004 Entry into force: 9 September 2004 Latest amendment: LGBl No. 39/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000171 Grounds covered: Grounds covered: ethnic affiliation, religion, belief, disability, age, sexual orientation, sexual identity, gender, pregnancy, parenthood Civil and administrative Law Material scope: anti-discrimination beyond employment Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Viennese Public Officers Act³² Abbreviation: Wr-BedG Date of adoption: 11 December 2017 Entry into force: 1 January 2018 Latest amendment: LGBl No. 74/2025

²⁹ (Stmk) Recodification 2023: *Gesetz über die Gleichbehandlung, Gleichstellung und das Verbot der Diskriminierung*, LGBl No. 46/2023.

³⁰ (Stmk) *Gesetz über Hilfeleistungen für Menschen mit Behinderung*, LGBl No. 26/2004.

³¹ (W) *Gesetz zur Bekämpfung von Diskriminierung*, LGBl No. 35/2004.

³² (W) *Wiener Bedienstetengesetz*, LGBl No. 33/2017.

Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000547 Grounds covered: race, ethnic origin, religion, belief, disability, age, sexual orientation, sexual identity, gender, civil status, parenthood Civil and administrative Law Material scope: Public (provincial) employment Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Lower Austrian Equal Treatment Act³³ Abbreviation: NÖ-GBG Date of adoption: 17 April 2004 Entry into force: 18 September 2004 Latest amendment: LGBl No. 38/2023 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000466 Grounds covered: gender, ethnic affiliation, religion, belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public (provincial) employment Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Lower Austrian Anti-Discrimination Act³⁴ Abbreviation: NÖADG Date of adoption: 13 March 2017 Entry into force: 14 March 2017 Latest amendment: LGBl No. 63/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001157 Grounds covered: gender, ethnic affiliation, religion, belief, disability, age, sexual orientation Civil and administrative Law Material scope: anti-discrimination beyond employment Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Carinthian Equal Treatment Act³⁵ Abbreviation: K-GIBG Date of adoption: 23 September 2021 Entry into force: 1 January 22 Latest amendment: LGBl No. 47/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=20000387 Grounds covered: gender, racial or ethnic origin, religion or belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public (provincial) employment, goods & services, education, social matters (Soziales), health

³³ (NÖ) NÖ Gleichbehandlungsgesetz, LGBl No. 65/2004.

³⁴ (NÖ) NÖ Antidiskriminierungsgesetz 2017, LGBl No. 24/2017.

³⁵ (K) Gesetz über die Gleichbehandlung von Frauen und Männern und das Verbot der Diskriminierung, LGBl No. 70/2021.

Principal content: prohibition of direct and indirect discrimination, harassment, victimisation; provincial specialised office
Official title of the law: Upper Austrian Anti-Discrimination Act³⁶ Abbreviation: OÖ-ADG Date of adoption: 6 May 2005 Entry into force: 1 June 2005 Latest amendment: LGBl No. 64/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001157 Grounds covered: Grounds covered: gender, ethnic affiliation, religion, belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public (provincial) employment, goods & services, education, social matters (Soziales), health Principal content: prohibition of direct and indirect discrimination, harassment, victimisation; provincial specialised office
Official title of the law: Salzburg Equal Treatment Act³⁷ Abbreviation: S-GIBG Date of adoption: 31 March 2006 Entry into force: 1 May 2006 Latest amendment: LGBl No. 76/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000441 Grounds covered: Grounds covered: gender, ethnic affiliation, religion, belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public (provincial) employment, goods & services, education, social matters (Soziales), health Principal content: prohibition of direct and indirect discrimination, harassment, victimisation; provincial specialised office
Official title of the law: Tyrolian Equal Treatment Act³⁸ Abbreviation: T-GIBG Date of adoption: 11 January 2005 Entry into force: 12 January 2005 Latest amendment: LGBl No. 35/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000244 Grounds covered: Grounds covered: gender, ethnic affiliation, religion, belief, disability, age, sexual orientation Civil and administrative Law Grounds covered: gender, ethnic affiliation, religion or belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public (provincial) employment

³⁶ (Oö) Landesgesetz über das Verbot der Diskriminierung auf Grund der ethnischen Zugehörigkeit, der Religion, der Weltanschauung, einer Behinderung, des Alters, des Geschlechts oder der sexuellen Orientierung, LGBl No. 50/2005.

³⁷ (Slb) Gesetz über die Gleichbehandlung im Bereich des Landes, der Gemeinden und Gemeindeverbände, LGBl No. 31/2006.

³⁸ (T) Gesetz über die Gleichbehandlung im Landesdienst, LGBl No. 1/2005.

Principal content: prohibition of direct and indirect discrimination, harassment, victimisation
Official title of the law: Tyrolian Anti-Discrimination Act³⁹ Abbreviation: T-ADG Date of adoption: 31 March 2005 Entry into force: 1 April 2005 Latest amendment: LGBl No. 35/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000317 Grounds covered: gender, ethnic affiliation, religion or belief, disability, age, sexual orientation Civil and administrative Law Material scope: goods & services, education, social matters, health reasonable accommodation for persons with disabilities Principal content: prohibition of direct and indirect discrimination, harassment, provincial specialised office
Official title of the law: Tyrolian Equal Treatment Act for Municipalities⁴⁰ Abbreviation: T-GGIBG Date of adoption: 11 January 2005 Entry into force: 12 January 2005 Latest relevant amendment: LGBl No. 144/2018 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000001 Grounds covered: gender, ethnic affiliation, religion or belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public employment in municipalities Principal content: prohibition of direct and indirect discrimination, harassment, victimisation, (same as T Equal Treatment Act)
Official title of the law: Vorarlbergian Anti-Discrimination Act⁴¹ Abbreviation: V-ADG Date of adoption: 19 May 2005 Entry into force: 1 June 2005 Latest amendment: LGBl No. 44/2025 Web link: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000085 Grounds covered: gender, ethnic affiliation, religion or belief, disability, age, sexual orientation Civil and administrative Law Material scope: Public (provincial) employment, goods & services, education, social protection, health Principal content: prohibition of direct and indirect discrimination, harassment, victimisation; provincial specialised institution
Official title of the law: Burgenlandian Anti-Discrimination Act⁴²

³⁹ (T) Gesetz über das Verbot von Diskriminierungen, LGBl No. 25/2005.

⁴⁰ (T) Gesetz über die Gleichbehandlung im Dienst der Gemeinden und der Gemeindeverbände, LGBl No. 2/2005.

⁴¹ (V) Gesetz über das Verbot der Diskriminierung, LGBl No. 17/2005.

⁴² (B) Gesetz über das Verbot der Diskriminierung auf Grund der ethnischen Zugehörigkeit, der Religion, der Weltanschauung, einer Behinderung, des Alters oder der sexuellen Orientierung, LGBl No. 84/2005.

Abbreviation: B-ADG

Date of adoption: 5 October 2005

Entry into force: 6 October 2005

Latest amendment: LGBl No. 58/2025

Web link:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBglD&Gesetzesnummer=20000359>

Grounds covered: gender, ethnic affiliation, religion or belief, disability, age, sexual orientation

Civil and administrative Law

Material scope: Public (provincial) employment, goods & services, education, social protection, health

Principal content: prohibition of direct and indirect discrimination, harassment, victimisation; provincial specialised institution

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Austria includes the following articles dealing with non-discrimination:

General clauses establishing equality before the law:

- Article 2 of the Basic Law of the State 1867 (*Staatsgrundgesetz*) (StGG)
- Article 7 of the Federal Constitutional Act 1929 (*Bundes-Verfassungsgesetz*) (B-VG)
- Article 14 of the ECHR, as a part of the constitution under BGBl 1964/59

Grounds explicitly covered in Article 7 of the Federal Constitutional Act 1929: birth, sex, social status, class, religion and disability.

This list is merely demonstrative, as the general clause in Article 7 of the B-VG stipulates a full equal treatment obligation and has been interpreted as such by the Constitutional Court. All other forms and grounds of discrimination are in principle covered if they are a legally accepted or essential part of EU law (such as discrimination on the basis of sexual orientation for example, which has led to decisions by the Constitutional Court to lift the bans on adoption⁴³ and IVF for same-sex couples).⁴⁴

The state is bound by the Constitution and the fundamental rights enshrined therein in all its activities, and in addition when it acts as an employer. In the author's opinion, a legal distinction between immigrants and their descendants from non-Western countries and people from other groups, as was recently referred to in the Danish 'ghetto case' before the CJEU would definitely be considered as being a difference made on the basis of 'ethnic affiliation' in Austria. Therefore, all less favourable treatment as a result of this distinction would be deemed discrimination. If vaguely similar issues are discussed in Austria, they tend to refer to a distinction in citizenship (from third countries) but not to distinctions between foreigners.

Specific constitutional provisions:

Austrian constitutional law contains some special provisions banning discrimination on the basis of race, language or religion (Articles 66 and 67 of the Treaty of St. Germain, 1919) and race, colour, descent or national or ethnic origin (Article I of the Federal Constitutional Act for the Implementation of the Convention on the Elimination of all Forms of Racial Discrimination, 1973).

These provisions do not apply to all areas covered by the directives as not all grounds are covered.

The provisions are directly applicable. The equal protection clause of the Constitution is legally binding on legislative powers as well as law enforcement agencies. Affected individuals can file a complaint with the Constitutional Court against discriminatory legal provisions, while decisions of law enforcement and administrative structures can be appealed against by invoking the constitutional equality clause.

These provisions cannot be enforced against private actors, although they can be enforced against the state.

⁴³ See Constitutional Court, Decision No. G119/2014, 11 December 2014, quoting intensively the relevant case law of the ECtHR.

⁴⁴ See Constitutional Court, Decision No. G16/2013, 10 December 2013, quoting especially the ECtHR case *S.H. and Others vs Austria* (GC) No. 57813/00 of 3 November 2011.

2 THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

Racial origin

The notion of 'race' was removed from the text in the federal legislation and 'race and ethnic origin' are now both represented by the term 'ethnic affiliation' (*ethnische Zugehörigkeit*). This was strongly supported by many NGOs, as the German term *Rasse* was one of the most misused expressions under the Nazi regime. This does not change the scope but is an expression of sensitivity regarding language. Nevertheless, a legal definition of these terms does not exist in national law.

Ethnic origin

Ethnic origin is also not directly translated into the legislation but merged into 'ethnic affiliation'. It seems that courts have no problem with addressing a broad range of racist/xenophobic/anti-immigrant incidents under this ground, in the sense of the Court of Justice of the European Union (CJEU) judgment in *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia* (C-83/14, paragraph 46.)

In an early case, the Viennese Independent Administrative Senate decided⁴⁵ that a placement company (*Arbeitsvermittler*) was guilty of placing a discriminatory job advertisement looking for an unskilled kitchen assistant while demanding that candidates have 'excellent proficiency in German' and EU citizenship. The Senate found that both requirements were racially discriminatory (not stating whether directly or indirectly) and imposed an administrative fine of EUR 100.

Another landmark case was ruled on by the Viennese Civil Regional Court.⁴⁶ In this case, the court, acting as a court of appeal, ruled in the case of a woman of Tunisian origin who had been physically kicked out of a fashion store in Vienna with the words 'we do not sell to foreigners'. The court held that this constituted discrimination and harassment on the ground of ethnic affiliation and awarded EUR 800 (as opposed to EUR 400 in the first instance) in compensation for immaterial damages. It stated that it was irrelevant whether the claimant was in fact a foreigner or an Austrian citizen of Tunisian origin.

The Supreme Court,⁴⁷ in its decision of July 2013, reasoned that referring to an employee's 'foreignness' in a harassing way constitutes harassment on the basis of ethnic affiliation. It stated that the requirement for harassing activity to be linked to a 'protected characteristic' may not be interpreted too narrowly. It also stated that the connection to a characteristic of 'ethnic affiliation' does not depend on the existence of any real differences; the attribution by the harasser is enough. Therefore, discrimination against a person because he or she is perceived as a 'migrant' is, in principle, covered by the definition of 'ethnic affiliation'. Another Viennese case⁴⁸ dealt with discrimination on the grounds of 'visible migration background' (*erkennbarer Migrationshintergrund*), and the court clearly stated that this was covered by 'ethnic affiliation'.

⁴⁵ Viennese Independent Administrative Senate (UVS Wien), Decision No. 06/42/318/2008, 11 March 2008.

⁴⁶ Viennese Civil Regional Court, *Hayet B. v. Ferdinand S*, Decision Nos. 35R68/07w and 35R104/07i, 30 March 2007.

⁴⁷ Supreme Court, Decision No. 9ObA40/13t, 24 July 2013.

⁴⁸ Viennese Civil Regional Court, Decision No. 36 R 292/15f, 10 December 2015.

The CJEU's decision C-94/20 of 10 June 2021⁴⁹ clarified, however, that Directive 2000/43/EC does not protect against a difference in treatment that is based on nationality/third country citizenship and the requirement of specific (official) language skills in the provision of financial housing assistance through a province.

In summary, it can be stated that the case law provides for a broad protection against discrimination on this ground. Even elements such as first language, appearance and national origin as well as 'migrant background' are clearly covered by 'ethnic affiliation'. It seems that a qualification as a non-Western immigrant as used in the Danish 'ghetto case' before the CJEU (C-417/23, judgment of 18 December 2025) would be regarded as creating a group that is based on 'ethnic affiliation' in Austria.

Recently, the quest for a definition of 'ethnic affiliation' led to a decision of inadmissibility (CJEU, C-65/24 of 10 September 2024). This was, in the opinion of the author, a rather peculiar case of a dispute regarding the different prices for public transport semester tickets set by the province-owned Viennese Local Transportation Company (*Wiener Linien*) for students registered as living in the province of Vienna versus those living in the neighbouring province of Lower Austria. The request for a preliminary judgement was brought by the Viennese Regional Civil Court as the appeals court in a case decided by the Vienna Inner City District Court, which had found indirect discrimination on the ground of ethnic affiliation. The main argument of the claimants was that there is a higher likelihood that students registered as living in Vienna are from Vienna compared with those registered as living in Lower Austria. The CJEU saw no reason why the case had any correlation with ethnicity, as neither the persons registered as living in Vienna nor those registered in Lower Austria constitute an ethnic group.

National minorities

Protection of recognised national minorities (*Volksgruppen*: Croats, Slovenes, Hungarians, Czechs, Slovaks and Roma)⁵⁰ is provided for according to the state treaties of 1919 and 1955; their legal status and rights are guaranteed by various constitutional provisions and partly implemented by the Federal National Minorities Act of 1976 (*Volksgruppengesetz*).⁵¹

A national minority is defined by the National Minorities Act as a group that comprises Austrian citizens with a non-German mother tongue and a common autonomous cultural heritage who have their residence and home in a part of the Austrian federal territory. Everyone is free to declare his or her affiliation with a *Volksgruppe*. The law explicitly states that no one belonging to a *Volksgruppe* must be put at a disadvantage as a result of the assertion or non-assertion of their rights as members of that *Volksgruppe*. Moreover, nobody can be forced to provide evidence of his or her affiliation with a *Volksgruppe*.

The National Minorities Act, in § 8(f), provides for specific measures to ensure the continuing existence of the *Volksgruppe* and their characteristics and rights by means of financial contribution, education and assistance.

The National Minorities Act also provides for the establishment of National Minority Advisory Councils (*Volksgruppenbeiräte*) to be located at the Federal Chancellery, which must be heard prior to the adoption of legal rules and general assistance policies affecting the interests of their groups; may submit proposals for the improvement of the situation of their group; and must submit a plan on requested aid measures, including a list of expected costs for the following calendar year, to the Federal Chancellery.

⁴⁹ CJEU, judgment of 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=242564&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13526953>.

⁵⁰ In December 1993, Austrian Roma and Sinti were recognised as an ethnic minority (autochthonous Roma), but there is an undefined number of immigrant Roma, mostly from the former Yugoslavia.

⁵¹ Federal National Minorities Act (*Bundesgesetz über die Rechtsstellung von Volksgruppen in Österreich*), 5 August 1976.

b) Religion or belief

The Austrian legal framework does not contain a legal definition of religion or belief. The explanatory notes of the amended Equal Treatment Act state:⁵²

‘Also the terms “religion or belief” are not defined by European law. Regarding the aims of the “framework-directive” they must be interpreted in a broad manner. Especially “religion” is not restricted to churches and officially recognised religious communities. Nevertheless, it has to be noted that for a religion there are minimum requirements concerning a statement of belief, some rules for the way of life and a cult. Religion is any religious, confessional belief, the membership of a church or religious community. Brockhaus⁵³ defines Religion formally as a system to address in its dogma, practice and social manifestations the last questions of human society and individual life and to find answers to these. According to the respective basic philosophy of salvation and in relation to the respective “experience of mischief” every religion has got its own goal of salvation and its way to salvation. This exists in close relation to the “unavailability” which is perceived as a personal (god, gods) and impersonal (rules, cognition, knowledge) transcendence. Also the wearing of religious symbols and clothes is covered by the scope of protection, as the membership to a specific religion can be assumed by these or these are perceived as an expression of a certain religion. It constitutes an infringement of the prohibition of discrimination, if the employer acknowledges the wishes of a specific group while not acknowledging those of another group.⁵⁴ The term “belief” is tightly connected with the term “religion”. It is a classification for all religious, ideological, political and other leading perceptions of life and of the world as a construction of sense, as well as for an orientation of the personal and societal position for the individual understanding of life.’

The Supreme Court⁵⁵ has clarified that different treatment based on religious clothing (the headscarf) can constitute direct discrimination on the ground of religion. The Court stated that the discrimination in that case was direct, as distinct religious clothing is not a neutral criterion with regard to religion. In a 2023 decision, the Viennese Provincial Court for Civil Matters⁵⁶ as a court of second instance, clearly stated that it constitutes discrimination (based on religion) when, during a job interview, the candidate is repeatedly asked to remove her headscarf and whether she would remove it during work. The application of the definition, therefore, clearly takes into account both *forum internum* as well as *forum externum* in the sense of the CJEU’s judgment in *Achbita* (C-157/15).

Regarding belief, the explanatory notes of the amended Equal Treatment Act state:

‘In the context of this law, “belief” means non-religious belief as the religious part is fully covered by the term “religion”. Belief is a system of interpretation consisting of personal convictions concerning the basic structure, modality and functions of the world; it is not a scientific system. As far as beliefs claim completeness, they include perceptions of humanity, views of life, and morals. In regard to recruitment conditions it must not be regarded as important whether a (potential) employee is, for example, atheist, as long as there is no justification for this stated by law.’

⁵² Parliamentary materials, No. 307 of appendices XXII GP, 26 November 2003, available at: https://www.parlament.gv.at/PAKT/VHG/XXII/I/I_00307/fname_010536.pdf.

⁵³ Brockhaus (1996-1999), *Die Enzyklopädie, Zwanzigste (20), überarbeitete und aktualisierte Auflage*, Leipzig/Mannheim (The Encyclopedia, 20th edition).

⁵⁴ This in no way relates to any duty for reasonable accommodation but clarifies that no faith might be treated more favourably than another.

⁵⁵ Supreme Court, Decision No. 9ObA117/15v, 25 May 2016.

⁵⁶ Viennese Civil Regional Court (Landesgericht für Zivilrechtssachen, Wien), Dec. Nr. 34 R 19/23f, 21 February 2023.

In its Decision No. 9ObA122/07t of 29 February 2009, the Supreme Court developed the following definition of belief in connection with the equal treatment principle:

'(...) the term "belief" is on the one hand closely connected with the term "religion" but also a general term for other leading perceptions of life and of the world as a meaningful whole as well as for the interpretation of the personal and societal position for the individual understanding of life. Beliefs are not scientific systems but interpretations in the form of personal convictions about the basic structure, modality and functioning of the world as such.'

The Federal Equal Treatment Commission, which is responsible for cases concerning federal public employment, frequently deliberates on cases in which political affiliation (i.e. membership of a political party) is considered to be protected by the prohibition of discrimination on the ground of belief. In 2022, the Supreme Court clarified in a judgment⁵⁷ that membership of a political party as such is not enough to be regarded as 'belief'.

c) Disability

The Act on the Employment of Persons with Disabilities (*Behinderteneinstellungsgesetz*) uses the following definition in § 3:

'Disability is the result of a deficiency of functions that is not just temporary and based on a physiological, mental, or psychological condition or an impairment of sensual functions which constitutes a possible complication for the participation in the labour market. Such a condition is not deemed temporary if it is likely to last for more than 6 months.'

§ 3 of the Federal Disability Equality Act (*Behindertengleichstellungsgesetz*) uses the following definition:

'For the purposes of this Act, disability is the result of a deficiency of functions that is not just temporary and based on a physiological, mental, or psychological condition or an impairment of sensory functions which constitutes a possible complication for the participation in society. Such a condition is not deemed temporary if it is likely to last for more than 6 months.'

At the provincial level, disability is dealt with in the implementing legislation. For example, the Styrian Provincial Equal Treatment Act (*Steirisches Landes-Gleichbehandlungsgesetz*), contains the following definition of disability:

'§ 3(5) Persons with disabilities are persons whose corporal or sensorial functions, mental ability or psychological condition are impaired for a non-temporary time in a way participation in the life in society is hampered. Non-temporary is deemed to last longer than six months.'

While these definitions (given the specific context of the respective areas of application) are considerably broader than the European Court of Justice (ECJ) judgment in *Chacón Navas* (C-13/05),⁵⁸ they do not directly reflect the CJEU's decision in *Ring and Skouboe Werge*.⁵⁹ The regulations still place a focus on the 'impairment' itself and deduce 'disability' from that, while the CJEU's judgment in *Ring and Skouboe Werge*, following the spirit of the UNCRPD, puts more emphasis on barriers. Nevertheless, the author of this report presumes that the courts could easily apply the existing definitions completely in line with CJEU case law as those definitions do not in any way block this possibility. However, so

⁵⁷ Supreme Court, Decision No. 9ObA59/22z, 25 October 2022; see details in section 12.2 below.

⁵⁸ CJEU, 11 July 2006, *Sonia Chacón Navas v. Eures Colectividades SA*, C-13/05, ECLI:EU:C:2006:456.

⁵⁹ CJEU, 11 April 2013, *Jette Ring and Lone Skouboe Werge v. Dansk Arbejdsgiverforening*, joined cases C-335/11 and C-337/11, ECLI:EU:C:2013:222.

far, no case law explicitly confirms this assumption. In a 2023 case⁶⁰ the Court held that refusing the treatment of a HIV positive person (incommunicable) constituted discrimination on the ground of disability, as the stigmatisation of HIV positive persons leads to a restriction in the full participation of societal life.

d) Age

Although there is no legal definition of age, case law has shown that this definition is not complicated – it is understood as referring to the lifetime spent.⁶¹ Age is a protected ground if people are discriminated against on the basis of the fact that they are perceived as too young or too old in certain circumstances without justification.

e) Sexual orientation

Sexual orientation is commonly understood (by courts as well as claimants) as referring to heterosexuality, homosexuality and bisexuality.⁶² Case law does not raise questions of definition in this regard.

Transsexual (transgender) identity is seen as being covered by gender or more explicitly by the term 'sexual identity' or gender 'identity' in some provinces and since 2024 in the Federal-Equal Treatment Act.⁶³ This report does not cover the sex/gender ground.

2.2 Multiple and intersectional discrimination

In Austria, multiple discrimination is not explicitly prohibited by law.

In Austria, multiple discrimination is taken into account when deciding on discrimination cases (e.g. when imposing a sanction).

In Austria intersectional discrimination is not explicitly prohibited by law.

In Austria intersectional discrimination is taken into account when deciding on discrimination cases (e.g. when imposing a sanction).

Austrian legislation does not contain a provision explicitly prohibiting multiple discrimination and does not mention intersectional discrimination – nonetheless, both are clearly prohibited by applying the *argumentum a minori ad maius* principle, implying by way of illustration that if discrimination on the ground of sex is prohibited and discrimination on the ground of age is prohibited, discrimination on the grounds of sex and age is prohibited as well.

The law does provide some specific rules on how to deal with cases of multiple discrimination. § 19a of the Federal-Equal Treatment Act; §§ 12(13), 26(13), and 51(10) of the Equal Treatment Act; and 142(10) of the Federal Agricultural Labour Act state:

'In a case of multiple discrimination this fact has to be considered when assessing the amount of the immaterial damages.'

⁶⁰ Viennese Civil Regional Court, Decision No. 64R42/23h from 29 June 2023.

⁶¹ See, for example: Supreme Court, Decision 9ObA106/15a, 18 August 2016, in which the Court found discrimination on the ground of age in the termination of contract at the point where an employee had reached the pensionable age.

⁶² See, for example, Constitutional Court, Decision No. G16/2013 ua, 10 December 2013, in which the ban on access to IVF for homosexual couples was found to be unconstitutional/discriminatory on the basis of sex and sexual orientation.

⁶³ See: Viennese Anti-Discrimination Act, § 2/1 where the protected grounds listed include the terms 'gender identity and sex' (*Geschlechtsidentität und Geschlecht*); the Styrian Equal Treatment Act, listing '... sexual orientation and sexual identity' in its § 3/1; and the Federal Equal Treatment Act § 2/6 which states: 'Sex in this act comprises sexual characteristics, gender identity, gender expression and gender role'.

The explanatory notes state that these regulations clarify that cases of discrimination based on multiple grounds need to be assessed taking an overall view, and that the claims cannot be separated or aggregated by grounds. This means that the assessment does not just add the grounds in a strictly arithmetic manner (e.g. discrimination based on two grounds doubles the amount due) but treats every act of discrimination individually when assessing the impact of multiple discrimination while giving the courts wide powers of discretion in regard to how to take it into account.

§ 9(4) of the Federal Disability Equality Act and § 7o of the Act on the Employment of Persons with Disabilities also give a hint in stating:

'In assessing the amount of the immaterial damages, the duration of the discrimination, the gravity of guiltiness, the relevancy of the adverse effect and multiple discrimination have to be taken into account.'

There is not a lot of case law in Austria that deals explicitly with multiple discrimination, and no case law on intersectional discrimination. In its Decision No. 80bA63/09m of 22 September 2010, the Supreme Court explicitly points to multiple discrimination (in this case, based on gender and ethnicity) but does not give many hints on how courts should deal with that phenomenon. Although the Court raises the question whether, in cases of multiple discrimination, the court has to scrutinise every incident and every ground of discrimination to assess the amount of compensation for immaterial damages, it does not answer it for formal procedural reasons. In a 2023 case⁶⁴ brought by a rejected applicant wearing a headscarf, the courts found discrimination based on religion 'connected with sex or gender' but did not refer to the concepts of multiple or intersectional discrimination. Similarly, in a very detailed first instance decision from 2025⁶⁵ in a case on wearing a burqini in a public pool, although there are several references to discrimination based on ethnic affiliation and gender, multiple or intersectional discrimination is not mentioned as a legal concept.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Austria, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law.

Although assumed discrimination is not explicitly included in the legislation, the explanatory notes to the Equal Treatment Act are very clear in stating:

'The principle of equal treatment is applicable irrespective of the fact whether the reasons for the discrimination (e.g. race or ethnic origin) are factually given or only assumed.'

As a result, the prohibition of direct discrimination (most importantly in §§ 17(1), 18, 31(1) and 36 of the Equal Treatment Act) is deemed to include the concept of discrimination by assumption, as it explores the perception of the discriminator rather than the characteristics of the discriminated.

This is also reflected in case law such as (most importantly) Supreme Court Decision No. 9ObA40/13t of 24 July 2013. In its decision, the Court reasoned that referring to an employee's 'foreignness' in a harassing way constitutes harassment on the basis of ethnic affiliation. It stated that the requirement for harassing activity to be linked to a 'protected characteristic' may not be interpreted too narrowly and that the characteristic of 'ethnic

⁶⁴ Viennese Civil Regional Court, Decision Nr. 34R19/23f of 21 February 2023.

⁶⁵ District Court Purkersdorf, Dec. No. 6 C 177/24s-40 of 9 March 2025 (see more details in Section 12 of this report).

affiliation’ does not depend on the existence of real differences – the attribution (assumption) by the harasser is enough. In a judgment⁶⁶ on the disability ground, the Supreme Court further stated clearly:

‘The protection against discrimination is also applicable when the employer is wrong about the actual existence of the protected characteristic. Mistakes cannot justify the infringement of the principle of equal treatment. The protection against discrimination is in fact to be granted, irrespective of whether the characteristic on which the discrimination is based on, actually applies or is just assumed.’

b) Discrimination by association

In Austria, discrimination based on association with persons with particular characteristics is prohibited in national law.

Discrimination by association is explicitly covered in:

- Equal Treatment Act (§§ 5(4), 6(4), 19(4), 21(4), 32(4), 35(3), 44(4), 46(4), 47(4));
- Federal-Equal Treatment Act (§§ 4a(5) and 13a(4));
- Act on the Employment of Persons with Disabilities (§ 7b(5));
- Federal Disability Equality Act (§ 4(2));
- Federal Agricultural Labour Act (§ 135(4)).

In all those paragraphs, the norm reads:

‘It is also to be deemed discrimination if a person is discriminated against on the ground of a close relation (or association) [*Naheverhältnis*] with a person on the ground of his/her (according to the respective context of the law: sex, ethnic affiliation, disability, religion or belief, age, sexual orientation).’

Provincial legislatures are required to amend their laws according to §§ 44(4) and 47(4) of the Equal Treatment Act.

With these amendments, the federal legal situation is clearly in line with the requirements of the judgment in *Coleman v. Attridge Law and Steve Law* (C-303/06) and *Bervidi* (C-38/24) as well as presumably with the *CHEZ* judgment (C-83/14), although no case regarding an association in the sense of the latter decision has ever been brought to court in Austria.

In the Viennese Anti-Discrimination Act (§§ 2(3), 2(4)), protection remains restricted to relatives only. As ‘relatives’ the law defines: the spouse; all relatives in the direct line; collateral second-degree relatives, even if the relation is illegitimate; brothers-in-law and sisters-in-law; adoptive parents and adopted children as well as common-law spouses and their children; and registered or non-registered same-sex partnerships.

In the first court case involving discrimination by association,⁶⁷ regarding access to a club in the company of ‘migrants’, the courts of two instances had no problem whatsoever with detecting this form of discrimination and applied the law accordingly. In 2025, two cases have been reported in which the concept of discrimination by association was applied by the courts. In one case,⁶⁸ a wheelchair user was forced to cancel the reservation for a table in a fine-dining restaurant for him and his wife when he learned that the restaurant’s toilet was not wheelchair accessible (there were three stairs). The restaurant owner later (after the incident), relatively effortlessly installed an on-demand ramp to make the toilet accessible. As the dinner was planned as a dinner for the couple, the court ruled that the

⁶⁶ Supreme Court, Decision 9ObA107/15y, 26 November 2015.

⁶⁷ Viennese Civil Regional Court, Decision No. 36 R 292/15f, 10 December 2015.

⁶⁸ Viennese Civil Regional Court (as second instance), Dec. No. 36R227/24k of 24 March 2025.

wife of the claimant with disabilities has been discriminated against by association. In the second case,⁶⁹ a Muslim mother and her two daughters set out to use a public swimming pool from which the mother and one daughter were excluded with reference to their burqinis. The court ruled that the second daughter who wore no burqini but wanted to enjoy the pool with her mother and sister had been discriminated against through association. The court found discrimination on the grounds of ethnic affiliation and gender.

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Austria, direct discrimination is prohibited in national law. It is defined.

The (federal) definitions, which are generally in line with the directives (apart from § 36 of the Equal Treatment Act – see section 2.5 below on Article 2(2)(b)) can be found in:

- §§ 17(1), 18, 31(1), 36 of the Equal Treatment Act;
- § 13a/1 of the Federal-Equal Treatment Act;
- § 7b(1) of the Act on the Employment of Persons with Disabilities;
- § 4(1) of the Federal Disability Equality Act;
- §§ 134, 135(1) of the Federal Agricultural Labour Act.

b) Justification for direct discrimination

In general, direct discrimination cannot be justified apart from for the exceptions provided by the directives⁷⁰ (genuine and determining occupational requirement, positive measures, exceptions regarding age). See:

- §§ 20, 22, 34 of the Equal Treatment Act;
- §§ 1(2), 13b of the Federal-Equal Treatment Act;
- §§ 7c(3), 7c(9) of the Act on the Employment of Persons with Disabilities;
- § 7 of the Federal Disability Equality Act (positive measures);
- § 136 of the Federal Agricultural Labour Act.

However, the regulation on ‘discrimination-free advertising of housing’ in § 36 of the Equal Treatment Act allows for a justification of differentiation regarding ethnicity and gender if this is ‘justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Especially, it is not deemed discrimination if the provision of housing constitutes an especially close or intimate relationship of the parties or their relatives’. While this might be in line with Directive 2004/113/EC (Recital 16 and Article 4, figure 5) in respect of the gender ground, and may have some legitimate aspects with regard to Article 8 of the ECHR, it constitutes a breach of Directive 2000/43/EC concerning ethnic affiliation as it introduces an additional justification even for direct discrimination on that ground.

§ 4(6) of the Vorarlbergian Anti-Discrimination Act and § 2(7) of the Viennese Anti-Discrimination Act allow for the justification of indirect as well as direct discrimination regarding access to and provision of goods and services and all the fields outside employment for all grounds. The formula for this was taken from the justification of indirect discrimination (‘...if justified by a legitimate aim and the means of achieving that aim is appropriate and necessary’). As a result, even direct discrimination (including ethnic affiliation) can be justified that way in Vorarlberg and Vienna. This constitutes a breach of Directive 2000/43/EC.

⁶⁹ District Court Purkersdorf, Dec. No. 6 C 177/24s-40 of 9 March 2025.

⁷⁰ See for example: High Provincial Court Linz (OLG Linz), Decision No. 12Ra63/16w, 21 September 2016; ECLI:AT:OLG0459:2016:RL0000175.

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Austria, indirect discrimination is prohibited in national law. It is defined in:

- §§ 19(2), 32(2) of the Equal Treatment Act;
- § 13a/2 of the Federal-Equal Treatment Act;
- § 7c(2) of the Act on the Employment of Persons with Disabilities;
- § 5(2) of the Federal Disability Equality Act;
- § 135(2) of the Federal Agricultural Labour Act.

For example, the Equal Treatment Act defines in § 19(2):

‘Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of an ethnic origin or persons with a particular religion or belief, a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.’

All definitions in other provisions are modelled in the same way.

The laws dealing with disability also state that inaccessibility (barriers) can constitute indirect discrimination (e.g. § 7c(2) of the Act on the Employment of Persons with Disabilities and § 5(2) of the Federal Disability Equality Act).

b) Justification test for indirect discrimination

The justification test for indirect discrimination is directly quoted from the directives and is therefore compatible with them and their application by the CJEU. Case law is scarce on indirect discrimination (it is mostly gender related) but so far, the application does not seem to be problematic.⁷¹

2.5.1 Statistical evidence

a) Legal framework

The Austrian Act on Data Protection⁷² (*Datenschutzgesetz*) underwent massive changes in 2018 due to the entry into force of the General Data Protection Regulation (GDPR). In particular, Article 9 of the GDPR has overruled the previous definitions of ‘sensitive data’.

The ‘special categories of personal data’ can be collected only under very protected circumstances and only if necessary. It is not yet evident how this will actually affect the collection and use of data by employers or others. It seems most likely that the possibilities for using statistical data in court will not benefit from this relatively new legal situation.

In Austria, statistical evidence may be admitted under national law in order to establish indirect discrimination (as for all other kinds of claims).

b) Practice

In Austria, in general, statistical evidence is not used in practice in order to establish indirect discrimination in cases on the grounds of ethnic affiliation, age, religion or belief, sexual orientation or disability.

⁷¹ See exemplar on the disability ground: Viennese Civil Regional Court, Decision No. 36 R 75/22d, 15 June 2022.

⁷² Act on Data Protection (*Datenschutzgesetz*), BGBl I 165/1999, last amended by BGBl I 24/2018.

There is a general lack of awareness in the judicial professions about indirect discrimination and the possibility or necessity of using statistical data as evidence. Apart from gender-related cases, the author is not familiar with any court cases where statistics have been successfully used as evidence.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Austria, harassment is prohibited in national law. It is defined.

In Austria, harassment explicitly constitutes a form of discrimination. Harassment is dealt with in the workplace and beyond – for the whole material scope of Directive 2000/43/EC (ethnic affiliation and disability).

Harassment is prohibited in the following norms:

- §§ 17(1), 18, 31(1) of the Equal Treatment Act;
- § 13 of the Federal-Equal Treatment Act;
- § 7b(1) of the Act on the Employment of Persons with Disabilities;
- § 4(1) of the Federal Disability Equality Act;
- §§ 134(2), 138(1) of the Federal Agricultural Labour Act.

Harassment is defined in the following norms:

- §§ 21(1), 21(2), 35(1) of the Equal Treatment Act;
- § 16 of the Federal-Equal Treatment Act;
- § 7d of the Act on the Employment of Persons with Disabilities;
- § 5(4) of the Federal Disability Equality Act;
- § 138(2) of the Federal Agricultural Labour Act.

Protection against harassment is provided for when a person at the workplace is harassed by the employer himself/herself or if the employer is guilty of not using the appropriate means given by legal act, collective agreements or the employment contract to take remedial action when the employee is harassed by any third person, even beyond a workplace relationship.

§ 21(2) of the Equal Treatment Act states:

‘Harassment is unwanted conduct related to one of the grounds listed in § 17 with the purpose or effect of infringing a person’s dignity, is unacceptable, undesirable or offensive (indecent) to the person affected and with the purpose or effect of creating an intimidating, hostile or humiliating environment for the person affected.’

Harassment is seen as always targeting individuals, or groups of individuals who are actually targeted and/or affected by the harassing activity.

The provisions protecting against harassment on the ground of disability as well as the relevant provincial provisions use the same wording.

A judgment by the High Provincial Court of Innsbruck⁷³ clarified that a single incident can have the effect of creating an intimidating, hostile or humiliating environment for the

⁷³ High Provincial Court of Innsbruck (Oberlandesgericht Innsbruck), Decision No. 15Ra 13/17z, 1 March 2017, available (in German) at: <https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=985bd865-35cc-495e-a857-c6acc81dd239&Position=1&Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&Aend>

person affected, in a case involving a waiter who had been harassed by his direct supervisor with the words 'I am going to throw the scrambled eggs on your head, you ugly N. [insulting expression withheld]!'. The Court thereby overruled the court of first instance that had found the single incident not conducive to the creation of a hostile environment according to the meaning of the law.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee in Austria, the employer and the employee are liable.

Generally, employers or service providers can be held liable for the actions of employees according to the general norms in civil law in cases where a contractual relationship already exists between the service provider and the client. For cases of an employment relationship, § 21 of the Equal Treatment Act states in subparagraph (1), figure 2 that it is deemed a form of discrimination if the employer culpably neglects to produce relief in cases of harassment through third persons (including co-workers and clients). The individual harasser or discriminator can be held liable in any case. The employer is always liable for discriminatory decisions by superiors that affect their subordinates. The claimant can choose which one to sue. Usually, the employer is sued and then has the possibility to claim damages from the direct harasser in a separate claim. There is no rule or general practice for sharing liability. In a decision dating from 2020,⁷⁴ the Supreme Court advanced its clear view that the exact formal position of the harasser is not important for the liability of the employer. It is enough that the harasser actually fulfils certain functions for the employer and has the mandate and consent of the employer to do so. While harassment by third persons is prohibited within an employment relationship, this is not the case when it is about access to or the supply of goods and services, education, social protection (including healthcare) or social advantages. In such cases only harassment by the service provider is covered (§ 35 Equal Treatment Act).

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Austria, instructions to discriminate are prohibited in national law. Instructions are not defined. The prohibition can be found in the following norms:

- §§ 17(1), 18, 31(1) of the Equal Treatment Act;
- § 13 of the Federal-Equal Treatment Act;
- § 7b(1) of the Act on the Employment of Persons with Disabilities;
- § 4(1) of the Federal Disability Equality Act;
- §§ 134, 135(3) of the Federal Agricultural Labour Act.

Instruction to discriminate is deemed to be discrimination, just as the directives demand. Instruction to harass is also seen as discrimination in the federal laws as well as in the relevant provincial laws. The definitions can be found here:

- §§ 21(3), 32(3) of the Equal Treatment Act;
- § 13a(3) of the Federal-Equal Treatment Act;
- § 7c(8) of the Act on the Employment of Persons with Disabilities;
- § 5(5)(1) of the Federal Disability Equality Act;
- § 135(3) of the Federal Agricultural Labour Act.

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⁷⁴ Supreme Court, Decision No. 90bA66/20a, 29 September 2020.

Although case law is still rare on the matter, and judicial clarification is needed, it seems likely that explicit instructions and/or preferences or suggestions with a discriminatory impact and/or encouragement or pressure can all be deemed instruction to discriminate.

In one case⁷⁵ from 2010, a young man of Egyptian origin had been refused entrance to a disco twice. Although there were no proven instructions to discriminate, the failure by the owner of the disco to instruct the doormen of the security company he used to abide by the anti-discrimination norms was deemed to be discrimination.

In Austria, instructions explicitly constitute a form of discrimination.

In Austria, instructions to discriminate require a hierarchical relationship between the instructor and instructed person.

b) Scope of liability for instructions to discriminate

In Austria, the instructor and the discriminator are liable.

In general, employers or service providers can be held liable for the actions of employees according to the general norms in civil law in cases where a contractual relationship already exists between the service provider and the client. For cases of an employment relationship, § 21 of the Equal Treatment Act states in subparagraph (1), figure 2 that it is deemed a form of discrimination if the employer culpably neglects to produce relief in cases of harassment through third persons (including co-workers and clients). The individual direct harasser or discriminator (employee or third person) can be held liable in any case. The employer is always liable for discriminatory decisions by superiors that affect their subordinates. Instruction to discriminate is a separate act of discrimination (§ 19/3 of the Equal Treatment Act) and is not dependent on the actual act of discrimination following this instruction.

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Austria, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law and is defined.

The duty defined in the directive – referring to employment – is implemented by:

§ 6(1a) of the Act on the Employment of Persons with Disabilities, which states:

‘Employers are obliged to take the appropriate and according to individual cases the necessary measures to enable persons with disabilities to enjoy access to employment or occupation, to promotion and to participate in vocational training as well as in in-service training, unless such measures would pose a disproportionate burden on the employer. Such a burden shall not be deemed disproportionate if it can sufficiently be compensated by public aid funds according to federal or provincial regulations.’

The Act on the Employment of Persons with Disabilities explicitly demands that support available under § 6(2) of the Act (through grants and loans) is to be taken into account

⁷⁵ District Court of St. Pölten, Dec. No. 4C 480/09x-12 of 29 January 2010.

when the employers' and the employees' interests are to be balanced. The Act (in § 8) also provides that an employer cannot reasonably be expected to continue the employment if

- the work formerly allotted under contract becomes redundant and assigning a new position involves a heavy burden (*erheblicher Schaden*);
- the person with disabilities is no longer able to fulfil the contract and assigning a new position involves a heavy burden;
- the person with disabilities persistently breaches the terms of the contract and continuing employment undermines work discipline.

These principles apply to both - public and private employment relations.

b) Case law

Allowances and grants under the Act of the Employment of Persons with Disabilities are to be taken into account in determining whether making a measure would result in a disproportionate burden⁷⁶. This was already the case before the directives were transposed into national law, which is why the term 'heavy burden' is used instead of the latterly introduced concept of 'disproportionate burden'.

The duty of reasonable accommodation does not contain an (absolute) obligation to reassign the employee to another job or change the main duties or job description. The main case law is: Supreme Court Decision No. 9ObA165/13z of 29 April 2014, in which the Court dealt with the dismissal of a care worker (in a public enterprise) who had lost her mobility. The claimant argued that she would still be able to do different jobs (secretariat or administrative tasks) within the employer's enterprise. The Court quoted the relevant CJEU case law and recitals 16 and 17 of Directive 2000/78/EC, and clearly concluded that the main point of consideration is the actual job – the one for which the person has been contracted. This is the nucleus of any efforts regarding reasonable accommodation, and the ability to do that particular job determines the question of the right to termination of the employment without breaching the equal treatment obligations. The Court found that there is no obligation to redeploy the person to another post or to create a new post just to maintain the person with a disability in employment. This position might require adaptation following the CJEU judgment in C-485/20, *XX v. HR Rail SA*, of 10 February 2022, in which the CJEU found that there was an obligation for redeployment to a suitable job unless this would impose a disproportionate burden on the employer. It must be noted that even before the directives came into effect, there was already a general legal duty⁷⁷ on employers to find new job positions for persons with disabilities ('privileged persons with disabilities') and not to dismiss them if that did not constitute a heavy burden on the employer, even if the dismissal was not on grounds of disability.

In addition, if dismissal seems necessary to prevent the company's bankruptcy or other grave disturbances, the employee's interests are usually outweighed by the interests of the employer.⁷⁸

c) Definition of disability and non-discrimination protection

The definition of a disability for the purposes of claiming reasonable accommodation is the same as for claiming protection from non-discrimination in general and applies to the public as well as to the private sector.

⁷⁶ Administrative High Court, Decision No. 99/11/0246, 14 December 1999. NB: this judgment preceded the relevant EU directives coming into force.

⁷⁷ See Act on the Employment of Persons with Disabilities, § 8.

⁷⁸ E.g. Administrative High Court, Decision No. 89/09/0147, 22 February 1990, Decision No. 2000/11/0096, 11 June 2000, and Decision No. 97/08/0469, 4 October 2001.

d) Failure to meet the duty of reasonable accommodation for persons with disabilities

In Austria, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is recognised as a form of discrimination in both the private and the general public sectors.

A failure to meet the obligation to make reasonable accommodation is deemed to be indirect discrimination unless the removal of the conditions would constitute a disadvantage or a barrier that would be illegal or would pose a disproportionate burden on the employer.

Courts cannot order actual measures regarding reasonable accommodation – only financial compensation can be requested for the failure to meet this duty. This corresponds to the general decision of Austrian lawmakers in respect of all discrimination claims outside an existing work relationship⁷⁹ to allow only financial compensation but no restitution *in natura* and no further sanctions to be imposed. The idea behind that is to not force someone to conclude a contract with anyone by law (apart from existing duties to contract, such as for monopolists, etc.). The only exception to this general rule is by the possibility of a group action against big companies (defined by law) under § 13 of the Federal Disability Equality Act, where the removal of barriers can be claimed.

The shift of the burden of proof is applied to reasonable accommodation as it is to indirect discrimination (§ 7p of the Act on the Employment of Persons with Disabilities and § 12 of the Federal Disability Equality Act).

§ 7c of the Act on the Employment of Persons with Disabilities states:

‘(4) It shall not be deemed indirect discrimination if the removal of conditions which constitute the disadvantage, especially of barriers⁸⁰ would be illegal or would pose a disproportionate burden on the employer.

(5) When testing whether a burden is disproportionate, the following has to be taken into account in particular:

- the necessary effort to eliminate the conditions constituting the disadvantage;
- the economic capacity of the employer;
- public financial assistance available for the necessary improvements;
- the time span between the coming into force of this Act and the alleged discrimination (this aspect meaning that by time passing since the enactment it is becoming less likely to qualify an act as a disproportionate burden).

(6) In case the removal of conditions which constitute the disadvantage turns out to be a disproportionate burden in this sense it shall still be deemed discrimination if the employer failed to improve the situation of the affected person at least in a considerable way in order to reach the best possible approximation to equal treatment.

(7) When assessing whether certain circumstances constitute indirect discrimination it has to be taken into account whether relevant legislation exists in regard to accessibility and to what extent it has been complied with. Premises or other facilities, means of transport, technical equipment, information systems or other dedicated

⁷⁹ The only exception to this rule is that in a case of discriminatory termination of employment, the claimant can choose whether to maintain the employment relationship or opt for compensation. However, concrete measures regarding reasonable accommodation cannot be ordered by the court.

⁸⁰ The term ‘barriers’ is not defined or specified in law; it nevertheless seems that the legislature wants it to be interpreted in a broad sense, to include physical and technological barriers and procedures that may act as a deterrent.

spheres of life shall be deemed accessible [*barrierefrei*] if they can be accessed and used by persons with disabilities in a customary way, unassisted and without extra difficulty.'

- e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

In Austria, there is a legal duty to provide reasonable accommodation for persons with disabilities outside the area of employment.

The Federal Disability Equality Act provides for protection against direct and indirect discrimination in the following fields:

- The whole administration of the Federation including the exertion of fiscal rights of the Federation (the Federation as bearer of private rights). (§ 2(1) of the Federal Disability Equality Act).
- The access to and supply of goods and services which are available to the public as far as the matter is covered by Federal competence covering all legal relationships including their initiation and conclusion as well as the claiming or assertion of benefits outside a legal relationship. (§ 2(2) of the Federal Disability Equality Act).

Indirect discrimination is defined in the Federal Disability Equality Act as follows:

'Indirect discrimination shall be taken to occur where apparently neutral provisions, criteria or practices or characteristics of constructed areas [*Merkmale gestalteter Lebensbereiche*]⁸¹ would put persons with disabilities at a particular disadvantage compared with other persons, unless that provisions, criteria or practices or characteristics of constructed areas is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.' (§ 5(2) of the Federal Disability Equality Act).

In general, therefore, the right to reasonable accommodation is combined with the requirement not to discriminate indirectly, as we see specified in § 6 of the Federal Disability Equality Act, which states:

'(1) It shall not be deemed indirect discrimination if the removal of conditions which constitute the disadvantage, especially of barriers⁸² would be illegal or would pose a disproportionate burden on the provider of goods or services. When testing whether a burden is disproportionate, the following has to be taken into account in particular:

- the necessary effort to eliminate the conditions constituting the disadvantage;
- the economic capacity of the person denying the discrimination;
- public financial assistance available for the necessary improvements;
- the time span between the coming into force of this Act and the alleged discrimination;
- the effect of the disadvantage in regard to the general interests of the persons protected by this act;
- concerning access to housing: the need of the person for the particular accommodation. This need has to be demonstrated by the person claiming access.

⁸¹ This rather obscure wording obviously tries to be as broad as possible, including physical barriers and technical equipment.

⁸² The term 'barriers' is not defined or specified in law; it nevertheless seems that the legislature wants it to be interpreted in a broad sense, to include physical and technological barriers and procedures that may act as a deterrent.

- (2) In case the removal of conditions which constitute the disadvantage turns out to be a disproportionate burden in this sense it shall still be deemed discrimination if the provider failed to improve the situation of the affected person at least in a considerable way in order to reach the best possible approximation to equal treatment.
- (3) When assessing whether certain circumstances constitute indirect discrimination it has to be taken into account whether relevant legislation exists in regard to accessibility and to what extent it has been complied with.
- (4) Premises or other facilities, means of transport, technical equipment, information systems or other dedicated spheres of life shall be deemed accessible [*barrierefrei*] if they can be accessed and used by persons with disabilities in a customary way, unassisted and without extra difficulty.'

In general, therefore, the protection is broad as it covers the whole direct competence of the Federation in respect of the services the Federation provides. It seems quite clear that this includes the areas of social security and healthcare, education, access to and supply of goods and services that are available to the public, housing, public spaces and infrastructures within Federal competence.

When assessing the practical interpretation of the scope of protection, the outcome of some confidentially concluded dispute resolution processes seem to show that the Federation accepts this wide scope of protection, while one case⁸³ shows the practical limitations of it. In this case, the Court basically stated that moving a newly introduced public office (here, 'service for citizens') into a historic building that was not accessible to a wheelchair user did not constitute discrimination and did not trigger the duty to provide reasonable accommodation, to the extent that accessibility was safeguarded as 'the law only applies to newly built barriers.'

There have been few important cases on the subject so far. In one significant case,⁸⁴ the Ministry of Education and Science was found to have discriminated by granting personal assistance in schools only to students with physical impairments and excluding pupils with other disabilities (mental, psychological) from this form of reasonable accommodation. In a recent case,⁸⁵ a wheelchair user was forced to cancel his reservation in a fine-dining restaurant for him and his wife when he learned that the restaurant's toilet was not wheelchair accessible (there were three stairs). Later, the restaurant owner (after the incident), relatively effortlessly acquired a ramp to make the toilet accessible on demand. According to § 5/2 of the Disability Equality Act, the steps in front of the toilet constituted barriers and as no reasonable accommodation had been in place – which would not have constituted an undue burden – the court found indirect discrimination against the potential customer on the ground of disability.

Other cases concerned: the refusal of dentist services due to HIV status;⁸⁶ only more expensive options in a hotel being accessible to a wheelchair user;⁸⁷ a bakery in Vienna, where a newly built stair at the entrance was found to constitute discrimination;⁸⁸ and the production of a DVD by the Austrian Broadcasting Corporation (ORF) without subtitles.⁸⁹

⁸³ Viennese Civil Regional Court, *M.L. v. The Republic of Austria*, Decision No. 36 R96/12b, 5 December 2012.

⁸⁴ Viennese Commercial Court (Handelsgericht Wien), *Klagsverband v. Republik Österreich*, Decision No. 19 Cg 73/21p, 31 March 2023.

⁸⁵ Viennese Civil Regional Court; Dec. No. 36 R 227/24k of 24 March 2025.

⁸⁶ Viennese Civil Regional Court; Dec. No. 64 R 42/23h of 29 June 2023.

⁸⁷ Viennese Commercial Court, Dec. No.1R 50/22g of 25 May 2022.

⁸⁸ Josefstadt District Court, Decision No. 4C 707/11 z-14, 14 November 2011.

⁸⁹ Viennese Commercial Court (Handelsgericht Wien), *L.H. v. ORF*, Decision No. 60R93/10x, 8 September 2011.

Here, the Court found that there was discrimination against deaf customers. All cases were brought to court by individual claimants.

f) Duties to provide reasonable accommodation in respect of other grounds

In Austria, there is no legal duty to provide reasonable accommodation in respect of other grounds in the public sector and/or the private sector.

Only the Viennese Anti-Discrimination Act includes the concept of 'disproportionate burden' for all grounds (§ 3a), as the law implicitly introduces the duty to provide reasonable accommodation for all grounds. In § 3a(3), the Act states:

'Indirect discrimination shall be deemed to occur when the complete removal of conditions which led to the disadvantage qualifies as disproportionate burden as stated in sub para 2 but there is a failure to implement reasonable measures in order to achieve at least significant improvement of the situation of the respective person in the sense of a maximally possible approximation to equal treatment.'

There is no case law on this provision so far. Apart from this, reasonable accommodation does not explicitly exist as a concept for grounds other than disability within the Austrian legal framework.

However, a judgment of 2021 by the Supreme Court⁹⁰ might indicate at least some level of protection against unreasonable redeployment that creates a conflict with religious needs. The Court stated that an employer's duty to care for employees included a duty to consider whether it was possible and appropriate to deploy the employee in a position where, without additional organisational burden or disadvantages for other employees, working without conflict with specific religious needs was possible. (The case was brought by a religious Hindu, who claimed that his religion does not allow working with residue that contains meat, fish or eggs; the employer was a big public hospital which had opportunities to redeploy him to another post).

⁹⁰ Supreme Court, Case 8ObA59/20i of 14 September 2021.

3 PERSONAL AND MATERIAL SCOPE

There has been no case law of discrimination stemming from the use of artificial intelligence and/or automated systems.

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Austria, there are no residence⁹¹ or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

Persons with irregular residential status are entitled to the protection of the directives.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Austria, the personal scope of anti-discrimination law covers natural persons for the purpose of protection against discrimination. Whether legal persons are covered on federal level is to be decided by judicial review as the legislation is silent on the matter.

The main provisions can be found in:

- §§ 17, 18, 31 of the Equal Treatment Act, (for gender, ethnic affiliation, religion, belief, age and sexual orientation);
- § 4 of the Federal Disability Equality Act (for disability);
- § 134 of the Federal Agricultural Labour Act.

Two provincial laws explicitly protect legal persons,⁹² if the discrimination is directed against its members, partners or organs on one of the protected grounds in connection with their activities for the legal person. It is unclear whether a general formula⁹³ used in all other provincial pieces of legislation only clarifies the liability of legal persons for discriminatory acts or also extends to their protection.

b) Liability for discrimination

In Austria, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

The main provisions on liability can be found in:

- §§ 17, 18, 31 of the Equal Treatment Act, (for gender, ethnic affiliation, religion, belief, age, and sexual orientation);
- § 4 of the Federal Disability Equality Act (for disability)
- § 142 of the Federal Agricultural Labour Act.

Both natural and legal persons can be held liable for offences in all involved laws.

⁹¹ Immigration laws and alien employment laws still bar immigrants without the respective permissions from employment. Legal permission to work in Austria will therefore regularly be a genuine and determining occupational requirement.

⁹² Burgenlandian Anti-Discrimination Act (LGBI 84/2005, last amended by LGBI 82/2016), § 24(3); Upper Austrian Anti-Discrimination Act (LGBI 50/2005, last amended by LGBI 51/2017), § 1(2).

⁹³ 'This prohibition of discrimination applies to other natural or legal persons in as far as their activities are regulated by provincial legislation.' E.g. Salzburgian Equal Treatment Act (LGBI 31/2006, last amended by LGBI 54/2017), § 28(1).

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Austria, the personal scope of national law covers the private and public sector, including public bodies, for the purpose of protection against discrimination. The main provisions comply with the directives and can be found here:

- §§ 16-18, 21, 23(1), 25, 27, 30, 31, 35, 36, 39 of the Equal Treatment Act (private sector);
- §§ 13, 16 of the Federal-Equal Treatment Act (public sector);
- §§ 7a(1), 7b, 7d of the Act on the Employment of Persons with Disabilities (private sector)
- §§ 7a(2), 7b, 7d of the Act on the Employment of Persons with Disabilities (public sector);
- §§ 2(1), 4, 8 of the Federal Disability Equality Act (public sector);
- §§ 2(2), 4 of the Federal Disability Equality Act (private sector);
- Section 15 (§§ 133-150) of the Federal Agricultural Labour Act.

b) Liability for discrimination

In Austria, the personal scope of anti-discrimination law covers private and public sector, including public bodies, for the purpose of liability for discrimination. The main provisions regarding liability comply with the directives and can be found here:

- §§ 24, 26, 37, 38 of the Equal Treatment Act (private sector);
- §§ 2, 13, 16a, 17 - 19 of the Federal-Equal Treatment Act (public sector);
- §§ 7e -7i of the Act on the Employment of Persons with Disabilities;
- § 9 of the Federal Disability Equality Act;
- § 142 of the Federal Agricultural Labour Act.

3.2 Material scope

There have been no legal developments regarding AI related to discrimination and no new case law.

3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Austria, national legislation prohibits discrimination in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds and in both private and public sectors, as described in the directives. Since October 2024, gender identity, gender expression and sex characteristics are mentioned in the Federal-Equal Treatment Act, where a new §2/6 defines sex as comprising sexual characteristics, gender identity, gender expression and gender role.⁹⁴ None of the other relevant federal laws include this definition explicitly.

For the private sector, this is covered by the Equal Treatment Act. For the public sector, access to employment is covered by the Federal-Equal Treatment Act and by the relevant provincial acts for public employment in provinces and municipalities.

⁹⁴ As amended by BGBl I Nr. 143/2024 of 9 October 2024.

The national anti-discrimination legislation very clearly and explicitly covers these areas. The protection regarding self-employment was even broadened and adapted to the requirement set out in Directive 2010/41/EU (regarding equal treatment between men and women in regard to self-employment) for all grounds covered. Migrants are equally covered by all legal acts prohibiting discrimination in all areas protected by the directives.

The main provisions can be found here:

- §§ 16, 17 of the Equal Treatment Act (private sector);
- § 13 of the Federal-Equal Treatment Act (public sector);
- § 7b of the Act on the Employment of Persons with Disabilities;
- § 134(2) of the Federal Agricultural Labour Act.

All these provisions state that in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employment, discrimination is prohibited. This is not further interpreted or defined.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Austria, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment. Gender identity, gender expression and sex characteristics are not mentioned in the Equal Treatment Act, while the Federal-Equal Treatment Act defines gender in its § 2(6) as including sex characteristics, gender identity, gender expression and gender role.

For the private sector, this is covered by the Equal Treatment Act (§ 17(1)(6)). For the public sector employment, it is covered by the Federal-Equal Treatment Act (§ 13(1)(6)); for agricultural workers by § 134(2) of the Federal Agricultural Labour Act; and by respective provincial acts for public employment in provinces and municipalities. For the ground of disability, both sectors are covered by the Act on the Employment of Persons with Disabilities (§ 7b(1)).

3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Austria, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities. The protection covers the grounds stated in the directive. Although gender identity, gender expression and sex characteristics are not mentioned in the Equal Treatment Act, the Federal-Equal Treatment Act defines gender in its § 2(6) as including sex characteristics, gender identity, gender expression and gender role.

In Austria, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, and adult lifelong learning courses. With regard to these areas, implementation in Austria clearly meets the requirements set out in the directives.

However, for students at universities, protection by § 42 of the Federal-Equal Treatment Act remains unclear. This provision states that all forms of discrimination (including harassment) against students at university are prohibited, but the form of legal redress remains uncertain, although §42(1) states that compensation can be claimed. This needs judicial interpretation. The Federal-Equal Treatment Act explicitly protects access to university (§ 42(1)) without clarifying whether this is defined as vocational training, education or access to a service. No case law has been published on that matter.

The Equal Treatment Act provides for protection against discrimination in relation to: measures for vocational training, advanced vocational training and retraining (§ 17), and access to vocational guidance, vocational training, advanced vocational training and retraining beyond a working relationship (§ 18). The Federal Agricultural Labour Act refers to this scope in § 134(2)/4.

The Act on Employment of Persons with Disabilities (§ 7b) also deals with the whole scope of protection.

3.2.4 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Austria, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment. Gender identity, gender expression and sex characteristics are not mentioned in the legislation.

The relevant protection clause was literally copied from the directive and incorporated into the Equal Treatment Act in § 18(2), and in § 7a(1)(3) of the Act on Employment of Persons with Disabilities. This provides for protection on all grounds covered by Directive 2000/78/EC as all relevant organisations are governed under civil law.

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Austria, national legislation prohibits discrimination in the following areas: social protection, including social security and healthcare as formulated in the Racial Equality Directive.

At the federal level, § 31(3) of the Equal Treatment Act restricts the protection to discrimination on the ground of ethnic affiliation. Attempts to broaden the personal scope have found no majority in Parliament so far. Gender identity, gender expression and sex characteristics are not mentioned in the legislation.

§ 31(3)(1) quotes the directive literally without giving a clear interpretation of the terms used and without clearly defining the addressees of the regulations. The protection on the ground of disability in the Federal Disability Equality Act (§§ 2 and 4) is formulated so broadly that it seems clear that social protection is included, although judicial interpretation is needed to be absolutely sure. Migrants are equally protected by the anti-discrimination legislation. There are on-going discussions on cutting social benefits for migrants and refugees, but they are more concentrated in the field of social advantages (see below).

At provincial level, all relevant pieces of provincial legislation explicitly cite the directive and fully forbid discrimination in all these fields on the grounds of ethnic affiliation, religion or belief, disability, age, sexual orientation and gender. This goes beyond the minimum requirements of the directives.

a) Article 3(3) exception (Directive 2000/78)

In Austria, the possible exceptions in Article 3(3) of the Employment Equality Directive in relation to religion or belief, age, disability and sexual orientation have not been transposed into national law.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Austria, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive.

At the federal level, § 31(3)(2) of the Equal Treatment Act restricts the protection to discrimination on the ground of ethnic affiliation. The protection on the ground of disability in the Federal Disability Equality Act (§§ 2 and 4) is formulated so broadly that it seems clear that social advantages are included, although they are not explicitly listed (judicial interpretation is needed to be absolutely sure).

At the provincial level, most provinces explicitly cite the directive and fully forbid discrimination in all these fields on the grounds of ethnic affiliation, religion or belief, disability, age, sexual orientation and gender. This goes beyond the minimum requirements of the directives. Gender identity is included in the legislation in Vienna and Styria, while gender expression and sex characteristics are not mentioned.

In Austria, the lack of definition of social advantages initially did not raise problems. Initial problems with the interpretation seemed to have been solved since a judgment⁹⁵ on 'commuters' aid' in Lower Austria dealt intensively with the interpretation and stated clearly that the protection has to be interpreted in a broad sense – no matter how the advantage is officially named or whether there is an enforceable entitlement to it. The court found that there was discrimination on the basis of ethnic affiliation because the nationality of the claimant⁹⁶ was the only reason for rejection.⁹⁷

Some further restrictions have been implemented since: in particular, the province of Upper Austria has repeatedly enforced legislation that makes access to certain social contributions (especially 'housing assistance') dependent on residency status and German language skills.⁹⁸

The CJEU's decision C-94/20 of 10 June 2021⁹⁹ has changed the approach to this matter, reiterating that indirect discrimination requires 'that it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure at issue'.¹⁰⁰ While the judgment leaves open some possible protection for long-term residents according to Directive 2003/109/EC, it clearly limits the protection by Directive 2000/43/EC against indirect discrimination when the different treatment applies to all non-(EU) citizens.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Austria, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

Education is covered by § 31(3)(3) of the Equal Treatment Act in respect of the wide federal competences. The provision succinctly states only that nobody must be directly or indirectly discriminated against on the grounds of gender and ethnic affiliation in regard to education. Gender identity, gender expression and sex characteristics, as well as religion or belief, disability, age and sexual orientation, are not mentioned in the Equal Treatment Act. The protection against discrimination in education for students is broader and is regulated in the Federal-Equal Treatment Act (see below).

⁹⁵ Provincial Court St. Pölten (Landesgericht St. Pölten), Decision No. 21 R 16/13f-13, 31 January 2013.

⁹⁶ The claimant qualified as a long-term resident under Directive 2003/109/EC.

⁹⁷ There have been further judgments along these lines, especially concerning Tyrol – see District Court Innsbruck, Decision No. 26C263/13y-11, 7 January 2014.

⁹⁸ See Upper Austria, Provincial Court Linz, Decision No. 14R201/18d, 9 November 2018.

⁹⁹ CJEU, 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=242564&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13526953>.

¹⁰⁰ CJEU, 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477, para 55.

This provision binds the state and private actors equally. The term 'education' comprises all forms of education, including higher and further education. The protection covers both state-run and private educational institutions. It is clear that, regarding education, migrants must not be treated differently from nationals when anti-discrimination legislation is applied. Exceptions are possible only when citizenship is a criterion for differentiation (such as the payment of tuition fees by non-(EU) nationals).

The protection of teachers and university students against discrimination is regulated in §§ 40-42 of the Federal-Equal Treatment Act. Here all the grounds included in Directive 2000/78 except disability are covered and sex explicitly includes sex characteristics, sexual identity, gender expression and gender roles.¹⁰¹ The protection of students at universities prohibits discrimination against students, including harassment, which gives rise to the question of whether and how sanctions could be applied (apart from in cases of harassment, where sanctions are explicit in the law). This needs judicial clarification as it could be a *lex imperfecta*.

At provincial level, the legal acts state that organs (civil servants and public contracted workers) under their legislation must refrain from any form of discrimination in regard to education. These general norms seem to be broad enough to cover the protection that the directives demand and beyond, as all protected grounds are covered.

The *Initiative für ein diskriminierungsfreies Bildungswesen* (Initiative for a non-discriminatory education system) in its annual report for 2022,¹⁰² reports about 1 190 cases of discrimination in education, 84 % of which were classified as racial discrimination, 36 % with openly racist or anti-Muslim motivation and 1 % as antisemitic discrimination.

A specific issue surfaced in schools in which cooking is part of the compulsory curriculum. The Ministry of Education has prepared an information sheet for parents¹⁰³ explaining that in these schools, there is no way to avoid tasting (*abschmecken*) food including pork and alcoholic beverages. The pupils are allowed to spit out the items after tasting, but they cannot refuse to taste. Parents have to sign a form to express their consent if they want their children to be accepted into these schools. The issue is so far legally unresolved, with regard to whether this absolute requirement is justifiable in respect of the principle of non-discrimination on the basis of religion¹⁰⁴ (as these are public, state-run schools). There have been no judicial proceedings on this matter yet and the concept of reasonable accommodation has not been discussed in this respect.

A recent judgment¹⁰⁵ clarified that the protection in the area of access to goods and services granted by the Federal Disability Equality Act (§ 2) also comprises education in federal educational institutions in respect of the ground of disability. As education is regarded as a service available to the public, disability is also covered by its protection in relation to federal competences.

There is no general protection against textbooks or teaching materials that reproduce stereotypes or use discriminatory language. Only individuals could claim that the use of such materials amounts to discrimination or harassment. Such materials have not yet been

¹⁰¹ According to the definition in § 2/6 Federal Equal Treatment Act.

¹⁰² Initiative für ein diskriminierungsfreies Bildungswesen (2023) *Annual Report 2022* (latest available report), https://diskriminierungsfrei.at/wp-content/uploads/2023/07/IDB_Jahresbericht-2022.pdf.

¹⁰³ Bundesministerium für Bildung, Wissenschaft und Forschung (2012), Formular 'Besondere Aufnahmeinformationen für Schulen für wirtschaftliche Berufe und Tourismusschulen' (Special admission information form for schools for business and tourism); https://rundschriften.bmbwf.gv.at/media/2012_01_21800.pdf.

¹⁰⁴ Please note that even though religion is not a protected ground regarding education in the equal treatment legislation, the state, when running an educational institution, is still bound by the principle of equal treatment enshrined in the Federal Constitution (Art. 7 Federal Constitution) which includes the ground of religion.

¹⁰⁵ Viennese Commercial Court (Handelsgericht Wien), *Klagsverband v. Republik Österreich*, Decision No. 19 Cg 73/21p, 31 March 2023.

challenged in court, though research¹⁰⁶ shows that many schoolbooks actually reinforce stereotypes and present a heteronormative, exoticist and racist picture of the world.

In addition, the general approach to education for pupils with disabilities gives rise to concern. The concluding observations of the CRPD, which were issued in September 2023,¹⁰⁷ expressed inter alia grave concern about 'the regression in inclusive education, partly owing to the termination of inclusive school policies [and] the prioritisation of segregated schools over inclusive schools'. Although by law the parents are the ones who make the decision on whether their child attends a special school or an integrated school, in practice the opinions of experts are very often decisive, and they often recommend special schooling.

The National Action Plan regarding disability 2022-2030¹⁰⁸ was enacted by the Council of Ministers on 6 July 2022. The plan includes a long chapter related to education.

a) Trends and patterns regarding Roma pupils

In Austria, there are few specific patterns existing in education regarding Roma pupils, such as segregation.

Segregation in schools is not a topic touched on intensively in public or academic discourse in Austria. The European Commission against Racism and Intolerance (ECRI) found in its 2015 report¹⁰⁹ on Austria that the disadvantaged position of the Roma, for the most part non-autochthonous Roma, in education at all levels plays a central role in excluding them from most other areas of public life. The most recent 2020 ECRI report¹¹⁰ notes some progress regarding the educational inclusion of Roma children through measures like job coaching, free after-school support and Romani language classes.

ECRI criticised the finding that funds available for local initiatives to improve the access of Roma youth to education are reportedly extremely limited.

One problem with regard to the Roma is that it is legally (and as a result of the historical burdens inflicted by Nazi killings of the Roma in concentration camps) not possible to obtain reliable quantitative data on the Roma population.

Research from 2006 indicated that '50 % of the Roma pupils in Oberwart, where Austria's Roma born between 1975 and 1985 are concentrated, faced severe problems with school education during their first year in primary school. However, around 40 % of (then) younger Roma children (born after 1985) were doing well pursuing upper secondary education, with one (born in 1980) even pursuing higher education.'¹¹¹ Most adult Roma suffer from serious education deficits. Education policy towards the Roma concentrates on youth, whereas there are very few attempts to remedy the education deficits of adult Roma.

¹⁰⁶ See, for example, Markom, C., Weinhäupl, H. (2007), *Die Anderen im Schulbuch. Rassismen, Exotismen, Sexismen und Antisemitismus in österreichischen Schulbüchern*, (The others in the textbook. Racism, exoticism, sexism and antisemitism in Austrian school textbooks), Vienna.

¹⁰⁷ Committee on the Rights of Persons with Disabilities (CRPD) (2023), *Concluding observations on the combined second and third reports of Austria*, para. 55 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD%2FCO%2FAUT%2FCO%2F2-3&Lang=en.

¹⁰⁸ Ministry of Social Affairs (2012), National Action Plan on Disability 2022-2030, available at: <https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen/Nationaler-Aktionsplan-Behinderung.html>.

¹⁰⁹ European Commission against Racism and Intolerance (ECRI) (2015), *ECRI report on Austria*, p. 29, available at: <https://rm.coe.int/fifth-report-on-austria/16808b5563>.

¹¹⁰ European Commission against Racism and Intolerance (2020), *ECRI Report on Austria*, para. 92, <https://rm.coe.int/report-on-austria-6th-monitoring-cycle-/16809e826f>.

¹¹¹ See, for this section, European Monitoring Centre on Racism and Xenophobia (EUMC) (2006), *Roma and Travellers in Public Education*, pp. 37-38, available at: https://fra.europa.eu/sites/default/files/fra_uploads/179-roma_report.pdf.

Later research¹¹² has shown a positive trend for younger Roma to be involved in higher education and successful educational careers, although the overall level of education is still below average.

Since the late 1990s, some projects and initiatives have tried to improve the situation of the Roma in Oberwart. There are projects to bring Roma people back into employment or self-employment and to provide extracurricular private tutoring for Roma pupils.

Segregation is also discussed in relation to primary schools in areas – especially in Vienna – where there are concentrations of pupils who are not German native speakers. As most Roma in Austria are non-nationals or are perceived as foreigners rather than as Roma specifically, this also affects them as they are more likely to be accepted into schools with a higher attendance of foreigners.

The main political discourse on this issue is xenophobic. Right-wing parties demand upper limits on the numbers of migrant children in schools and comprehensive (German) language tests for migrant children before they are admitted to school. Only a few schools try to address this situation with innovative and affirmative methods.

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Austria, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive.

At the federal level, access to and supply of goods and services is included in the protection against discrimination on the ground of ethnic affiliation (§ 30 of the Equal Treatment Act).

Gender identity, gender expression or sex characteristics are not mentioned in the Equal Treatment Act.

With regard to disability, the protection can be found in § 2(2), in connection with § 4 of the Disability Equality Act. The private as well as the public sector are bound by these norms. This includes accessibility to goods and services in a rather broad sense, as shown by case law in which it has been found that a new stair at the entrance of a bakery¹¹³ as well as missing subtitles from a DVD¹¹⁴ can constitute discrimination on the ground of disability. Both cases were brought to court by affected individuals, claiming their rights to access to goods and services and the duty to provide reasonable accommodation. As education is regarded as a service available to the public, disability is also covered by its protection in relation to federal competence (schools, universities, etc). This has been clarified by a recent judgement.¹¹⁵

The implementation of the Disability Equality Act requires individuals to claim their rights and does not safeguard general accessibility.

The protection provided by all provinces is implemented and even provided for the other grounds beyond ethnic affiliation of Directive 2000/78/EC.

¹¹² Luciak, M. (2014), *ROMBAS Studienbericht Zur Bildungssituation von Roma und Sinti in Österreich*, Initiative Minderheiten, available at: <https://docplayer.org/28641502-Studienbericht-rombas.html>.

¹¹³ Josefstadt District Court, Decision No. 4C 707/11 z-14, 14 November 2011.

¹¹⁴ Viennese Commercial Court, *L. CLAIMANT. v. ORF*, Decision No. 60R93/10x, 8 September 2011.

¹¹⁵ Viennese Commercial Court (Handelsgericht Wien), *Klagsverband v. Republik Österreich*, Decision No. 19 Cg 73/21p, 31 March 2023.

a) Distinction between goods and services available publicly or privately

In Austria, national law distinguishes between goods and services available to the public (e.g. in shops, restaurants, and banks) and those only available privately (e.g. those restricted to members of a private association).

Case law has clarified the meaning of 'available to the public'.¹¹⁶

The court established:

'The term 'available to the public' indicates some restriction of the goods and services covered but, according to the judgments of the ECJ, exceptions are always to be interpreted narrowly. Goods and services are available to the public whenever an offer is directed to an undefined group of potential customers. Only such offers are excluded from the principle of equal treatment which are directed towards a close circle of family and friends.'

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Austria, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive.

§ 30(1) of the Equal Treatment Act clearly states that access to and supply of housing is covered by the protection regarding goods and services. However, the protection at federal level only extends to ethnic affiliation and gender. Gender identity, gender expression and sex characteristics are not mentioned¹¹⁷ in the legislation.

The regulation on 'discrimination-free advertising of housing' (§ 36 of the Equal Treatment Act), however, allows for a justification of differentiation regarding ethnicity and gender if it is

'justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Especially, it is not deemed discrimination if the provision of housing constitutes a specially close or intimate relationship of the parties or their relatives.'¹¹⁸

While this might be in line with Directive 2004/113/EC (Recital 16 and Article 4(5)) in respect of the gender ground, it constitutes a breach of Directive 2000/43/with regard to ethnic affiliation as it introduces an additional justification even for direct discrimination on that ground.

The protection of the Federal Disability Equality Act (§§ 2–5) also extends to housing. This protection is valid for 'all legal relationships including their initiation and conclusion as well as the claiming or assertion of benefits outside a legal relationship.'

This constitutes a very broad scope for the protection of housing on the (important) federal level.

The provincial laws use the quote from the directive, but the scope of protection is extended to all grounds covered by the respective legislation. This is a very important regulation on the provincial level as the provinces are very important landlords. For example, the Vienna

¹¹⁶ Viennese Commercial Court, Decision No. 1R 129/10g, 19 January 2011.

¹¹⁷ This is the case for the Equal Treatment Act, which regulates housing, while the Federal-Equal Treatment Act, regulating public employment, does include gender identity, gender expression and sex characteristics as well as gender roles.

¹¹⁸ This is a regulation on the prohibition of discriminatory advertisements, where the offer is available to the public.

Province is Austria's largest owner of housing stock and by far the largest landlord in the country.

Migrants are not treated differently under anti-discrimination legislation and benefit equally from anti-discrimination law enforcement as nationals. There have been some political approaches seeking to restrict access to municipal social housing to persons who speak German at an advanced level.¹¹⁹

To give a few examples, the city of Wels tried to tie access to public housing to the requirement for a certain degree of mastery of the German language. These ideas (by FPÖ mayors) have been found to be illegal and were not put into practice until December 2017, when Upper Austria introduced severe restrictions on provincial subsidies for housing¹²⁰ (*Wohnbauförderung, Wohnbeihilfe*). The law requires migrants to have been residing legally for more than five years in Austria; to have been employed for at least 54 months within the past five years; and to show proof of their ability to speak German in order to qualify as a beneficiary of these subsidies. NGOs have brought several cases to court in support of people affected by this rule and have described the practice as racist and discriminatory. The second-instance court has found in favour of the claimant in one decision.¹²¹ It remains unclear whether, technically, this matter falls under housing or under social benefits, as it links both aspects.

The CJEU's decision C-94/20 of 10 June 2021,¹²² on the above-mentioned matter of the Upper Austrian housing benefit, clarified that Directive 2000/43/EC was not applicable in this case. The CJEU reiterated that indirect discrimination requires 'that it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure at issue'.¹²³ While the judgment leaves open some possible protection for long-term residents according to Directive 2003/109/EC, it limits the protection by Directive 2000/43/EC against indirect discrimination when the different treatment applies to all non-(EU)citizens.

Provinces and municipalities have the competence to govern zoning and building regulations. Therefore, in some parts of the country almost all new buildings (public and private) have to be (disability) accessible and there are special subsidies and grants for (disability) accessible constructions and reconstructions.

a) Trends and patterns regarding housing segregation for Roma

In Austria, there are no traceable trends or patterns of housing segregation and discrimination against the Roma.

In Austria, there is discrimination against the Roma in many ways, including in access to housing, but there is no traceable segregation issue. Roma settlements do exist in Austria, especially in Burgenland, although they might not be legitimately referred to as 'segregated' as there is no tangible legal or state pressure with regard to segregated housing.

To trace discrimination against the Roma is especially complicated, as most Roma living in Austria are primarily perceived by others as 'foreigners' and not as Roma in the first

¹¹⁹ Website of FPÖ provincial functionary Haimuchner (2015), 'German as Key for Housing', available at: <https://www.fpoe-ooe.at>.

¹²⁰ See Upper Austrian Act on Housing Support Subsidies (*OÖ Wohnbauförderungsgesetz*), (LGBl 6/1993, last amended by LGBl 98/2017), § 6(9).

¹²¹ See Upper Austria, Provincial Court Linz, Decision No. 14R201/18d, 9 November 2018.

¹²² CJEU, 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=242564&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13526953>.

¹²³ CJEU, 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=242564&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13526953>, para 55.

instance. Only in regions with a longstanding tradition of Roma settlements (in the Burgenland province) is a more specific anti-Roma tension observable among the population.

There is no specific legislation regarding housing segregation. Generally, housing segregation is not publicly discussed under this topic heading but is instead described as a concentration of 'foreigners' (meaning migrants regardless of citizenship) in certain areas of larger towns and cities. For example, a certain part of the 16th district in Vienna is called 'Little Istanbul', and there are other districts with a larger migrant population.

The equal treatment legislation applies to the access to and supply of housing without any legal restrictions or exceptions. It will, nevertheless, be up to the courts to decide whether and how far these provisions also protect people from harassment by neighbours. There is no case law on the matter.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

In Austria, national legislation provides for an exception for genuine and determining occupational requirements.

For example, § 20(1) of the Equal Treatment Act reads:

‘Different treatment in relation to the grounds mentioned in § 17 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.’

§ 7c(3) of the Act on the Employment of Persons with Disabilities; § 13b(1) of the Federal Equal Treatment Act; and § 136(1) Federal Agricultural Labour Act all use the same wording.

In its Decision No. 9ObA117/15v of 25 May 2016, the Supreme Court ruled that the dismissal of an employee because of her decision to wear a niqab in the office of a public notary was covered by the exception for genuine and determining occupational requirements, while the discrimination she suffered before wearing the niqab, based on wearing a headscarf and abaya, were not justified by this exception. The Court stated that a face-covering veil obstructed ‘interpersonal interaction and communication’ between the claimant and her clients and colleagues, so the order not to wear it was justifiable under the exception for genuine and determining occupational requirements. The headscarf and abaya clearly did not qualify for that exception.

In its decision 8ObA22/20y of 28 September 2020, the Supreme Court also clarified that in employment relations even disability-related requirements can be justified and not constitute discrimination, as the exception of genuine and determining occupational requirement is applicable also in special social enterprises.

The national law in Austria is in compliance with CJEU case law regarding genuine and determining occupational requirements.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Austria, national law provides for an exception for employers with an ethos based on religion or belief.

This exception is transposed mainly by § 20(2) of the Equal Treatment Act and § 136/2 of the Federal Agricultural Labour Act, which state:

‘In the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos.’

The law does not explicitly mention that this exception should not justify discrimination on another ground. Still, the provision could be interpreted as such in line with the directive

as using this exception to justify discrimination on any other ground would clearly breach Directive EC 2000/78.

The second part of Article 4.2 of the Directive is not reflected in Austrian law.

The provincial acts do not use this exemption as they regulate only public employment or duties where there is no room for ethos based on religion or belief.

So far, there has been no court decision on cases involving an ethos-based institution. All cases brought so far (concerning mainly the Catholic Church) have been settled out of court, very quietly.

The Catholic Church is a very influential employer in rural areas in particular and an important provider of hospitals and educational institutions.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 Directive 2000/78)

In Austria, national legislation does not provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Austria, national law includes exceptions relating to difference of treatment based on nationality.

After an important amendment in 2008, the Equal Treatment Act abandoned a general exception of nationality, and it states in §§ 17(2) and 31(2) that the principle of equal treatment 'does neither affect the regulations and conditions on immigration of citizens of third countries or stateless persons or their residence nor the treatment which arises from the legal status of the third-country nationals or stateless persons'.

In Austria, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

The issue of protection against discrimination on the basis of nationality or citizenship is crucial for the Austrian situation, as most of the racist discourse is not labelled with terms like 'race' or 'ethnic origin'; instead, scapegoating and the concept of 'enemies' is to a very large extent concerned with 'foreigners', 'asylum seekers' and 'asylum frauds'. In particular, discriminatory small ads for jobs or housing regularly demand that applicants be 'Austrians' or 'genuine Austrians', or state 'no foreigners'. The 2008 amendment is therefore a very useful and constructive way of dealing with the Austrian situation and discourse, as it exempts from protection only those areas in which the difference in treatment is based on an objective legal condition (in the sense of directly demanded, e.g. by alien law status or employment permits) and it explicitly reduces the exceptions for third country nationals and stateless persons, hence excluding EU citizens from its scope.

Moreover, even before the 2008 amendment, the case law¹²⁴ was clear in stating that the assertion that 'we do not sell to foreigners' constituted direct discrimination on the ground of race, and is thus not covered by the nationality exception.

¹²⁴ Viennese Civil Regional Court, *Hayet B. v. Ferdinand S.*, Decision Nos. 35R68/07w and 35R104/07i, 30 March 2007.

b) Relationship between nationality and 'racial or ethnic origin'

Given the formulation of the nationality exception (after the 2008 amendment), every distinction on grounds of citizenship that is not founded on a legal basis will in principle be seen as discrimination on the ground of ethnic affiliation.

Discrimination on the basis of being or looking like 'a migrant' is also clearly prohibited.¹²⁵ In its judgment¹²⁶ on the discriminatory general exclusion of non-nationals from 'commuters' aid' in Lower Austria, the court had no problem in applying the prohibition of discrimination on ethnic grounds to that case.

It seems to the author of this report that Austrian courts generally use an interpretation of ethnic discrimination that does not scrutinise the 'particular ethnic origin' of the person affected, as the CJEU did in its *Jyske Finans* judgment¹²⁷ and reinforced in 2021 in its judgment in *Oberösterreich v. KV*,¹²⁸ but instead take a broader view of the term 'on grounds of ethnic affiliation'. This case law might, in the light of the CJEU rulings, develop into a stricter differentiation between different treatment with a legal basis (like housing benefits regulated by provincial legislation) and those without (like the requirement for Austrian citizenship for a job without a legal basis).

In general, the focus of the Austrian decisions so far lies more on the perception of the discriminators: if the actions are driven by the view that a person is to be treated differently based on a perceived 'otherness' that contains ethnic elements, courts find that there has been ethnic discrimination. It remains uncertain, however, how a case in which there was reference solely to a person's place of birth would be judged.

4.5 Health and safety at work (Article 7(2) Directive 2000/78)

In Austria, there are no exceptions in relation to disability and health and safety at work, as allowed for by Article 7(2) of the Employment Equality Directive.

However § 7c(3) of the Act on the Employment of Persons with Disabilities contains a general clause on 'genuine occupational requirements'. The test for such 'genuine occupational requirements' can comprise questions of health and safety, as clarified by the explanatory notes to the Equal Treatment Act:¹²⁹

'The exception also comprises the areas of health and safety. This comprises especially those protective provisions regulating a duty to wear uniforms or helmets for reasons of safety.' This exception is therefore not restricted to the ground of disability as permitted by the directive but is valid for all the grounds dealt with by the Equal Treatment Act, although it always has to withstand the test of being a 'genuine occupational requirement'.

¹²⁵ Viennese Civil Regional Court, Decision No. 36 R 292/15f, 10 December 2015.

¹²⁶ Lower Austria, Provincial Court St. Pölten, Decision No. 21 R 16/13f-13, 31 January 2013.

¹²⁷ CJEU, 6 April 2017, *Jyske Finans v Ligebehandlingsnævnet*, C-668/15, ECLI:EU:C:2017:278.

¹²⁸ CJEU, 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=242564&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13526953>.

¹²⁹ Parliamentary materials, No. 307 of appendices XXII GP, 26 November 2003, p. 16.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Justification of direct discrimination on grounds of age

In Austria, the law provides specific justifications for direct discrimination on the ground of age.

These justifications can be found in §§ 13b(3)-(5) of the Federal-Equal Treatment Act and in §§ 20(3)-(5) of the Equal Treatment Act.

‘(3) A different treatment does not constitute discrimination if

1. it is objective and appropriate;
2. it is justified by a legitimate aim especially from the fields of employment policy, labour market and vocational training;
3. the means of achieving that aim are appropriate and necessary.

(4) Such differences of treatment may include, among others:

- the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

(5) The fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.’

As the text contains a lot of rather ambiguous terms (e.g. ‘special conditions ... including...’) and leaves a broad scope open for interpretation, the case law will show us the factual scope and limits of these exceptions.

As we can see from the case law so far,¹³⁰ courts tend to be very strict in sticking to a narrow interpretation of these exceptions. There is still a significant lack of case law regarding discrimination on the ground of age.

b) Permitted differences of treatment based on age

In Austria, national law does not permit differences of treatment based on age for activities within the material scope of Directive 2000/78, but there are exceptions as referred to in Section 4.6.1.a of this report.

¹³⁰ See, for example, Supreme Court, Decision No. 60b246/10k, 18 July 2011. The decision clarified that it constitutes unlawful discrimination on the ground of age if a medical doctor is not eligible for a specific kind of contract with the Health Service because he is already 55 years old.

The general exceptions in regard to age can be found in §§ 13b(3)-(5) of the Federal-Equal Treatment Act and in §§ 20(3)-(5) of the Equal Treatment Act.

c) Fixing of ages for admission to occupational pension schemes

In Austria, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

The respective exception can be found in § 20(5) of the Equal Treatment Act:

- ‘(5) The fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.’

4.6.2 Special conditions for younger or older workers

In Austria, there are no special conditions set by law for older and/or younger workers in order to promote their vocational integration.

There are positive action measures to support younger or older people in respect of their opportunities in the labour market. There is a fairly wide range of different governmental policies in this respect. There are tax advantages and special programmes to promote the employment of younger or older workers. Such regulations and programmes have to stand the test stipulated in § 13b(3)-(5) of the Federal-Equal Treatment Act and § 20(3)-(5) of the Equal Treatment Act, as quoted above.

4.6.3 Minimum and maximum age requirements

In Austria, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training.

§ 13b(3)-(4) of the Federal-Equal Treatment Act and § 20(3)-(4) of the Equal Treatment Act state this clearly and by quoting verbatim Article 6 of Directive 2000/78/EC.

This serves as a basis for some collective agreements that introduce, or rather maintain, maximum ages in respect of access to employment in some fields – for example, for pilots. All of those might nevertheless be challenged in court as the restrictions have to be interpreted narrowly.

4.6.4 Retirement

a) State pension age

In Austria, there is no state pension age at which individuals must begin to collect their state pensions.

An individual can collect a pension and still work.

The general retirement (pensionable) age (i.e. the age at which individuals may begin to collect their pension) is currently 65 years for male workers and 60 years for female workers in the private sector; for civil servants it is set at 61.5 years for both sexes. These

periods are being harmonised gradually from 2024 to 2033 when the general pensionable age will be 65 years.¹³¹

In general, individuals who have attained the necessary number of months of paying into the pension scheme¹³² can collect a pension and still work.

b) Occupational pension schemes

In Austria, there is no standard age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work for longer, payments from such occupational pension schemes can be deferred.

An individual can collect a pension and still work.

c) State-imposed mandatory retirement ages

In Austria, there are state-imposed mandatory retirement ages with discretion to extend in the public sector.

In Austria, there is no state-imposed mandatory retirement age in the private sector. In the case of older people who are unemployed, special regulations force them to switch to the pension system. A worker aged 62 (as a minimum) who has lost or is losing his or her job can stay unemployed for one more year. After that, if he or she has not found a new job, he or she is obliged to switch to the pension system.

For public employment, though, an automatic shift into the pension stage is anticipated.¹³³ Civil servants are automatically transferred into the pension when they reach the age of 65 years – employment can be extended only for one year, renewable up to a maximum of five years, if there is 'an important operational reason' for such a measure. These decisions are subject to judicial review within the regular administrative procedure. Automatic retirement also extends to judges and prosecutors, for example.

d) Retirement ages imposed by employers

In Austria, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract or collective bargaining or unilaterally.

The termination of an employment contract is always possible, but age is not a permitted ground for it. Collective agreements can contain specifications about (younger) pensionable age, but age cannot be the sole reason for the termination of a contract.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

¹³¹ Law Accompanying the Budget (*Budgetbegleitgesetz*) (BGBl I 71/2003), Federal Law Gazette, 71/2003, 20 August 2003.

¹³² The rules for taking into account periods of apprenticeship, work or studies before the age of 18 for grading and pension scheme have been subject to a series of preliminary judgments by the CJEU: judgment of 18 June 2009, *Hütter*, C-88/08, ECLI:EU:C:2009:381; judgment of 16 January 2014, *Pohl*, C-429/12, ECLI:EU:C:2014:12; judgment of 21 January 2015, *Felber*, C-529/13, ECLI:EU:C:2015:20; judgment of 28 January 2015, *ÖBB Personenverkehr*, C-417/13, ECLI:EU:C:2015:38.

¹³³ Civil Servants Duty Act (*Beamten Dienstrechtsgesetz*) BGBl No. 333/1979 as amended by BGBl I No. 71/2003, § 13/1.

f) Compliance of national law with CJEU case law

In Austria, national legislation is in line with the CJEU case law on age regarding mandatory retirement.

In its Decision No. 9ObA13/16a of 26 January 2017, the Supreme Court clarified that the fact that an employee has reached the pensionable age and is entitled to a pension does, nevertheless, have an impact on the assessment of whether a dismissal is 'socially unfair'. It stated: 'Reaching the pensionable age and entitlement to pension does not preclude the protection against unfair dismissal in general, while the fact that the lawmaker tolerates reductions of income that are regularly the effect of retirement as well as the foreseeability of the time of pension demand a strict scrutiny in weighing the affected interests.'

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Austria, national law permits age or seniority to be taken into account in selecting workers for redundancy.

Seniority as such is not a protected element in the Austrian labour law. Generally, in Austria, age might be taken into account when applying a special provision declaring 'socially unfair' (*sozialwidrig*) dismissals illegitimate. This provision is to be found in § 105(3), figure 2 of the Labour Constitution Law (*Arbeitsverfassungsgesetz*),¹³⁴ which states:

'The dismissal can be challenged in court if the dismissal is socially unfair and if the dismissed worker is already employed at the company for at least six months. A dismissal is socially unfair in case substantial interests of the worker are impaired by it, unless the employer can provide evidence that the dismissal was based on

- circumstances lying in the person of the worker which negatively affected the companies' interests; or
- operational requirements of the company which are opposed to a further employment.

(...) in case the works council [*Betriebsrat*] entered an objection against a dismissal according to heading b), the dismissal is deemed socially unfair when a comparison of social aspects shows a bigger social hardship for the affected worker than for other workers of the same company and the same field of occupation, whose work to do is possible and desired by the dismissed worker. In cases of older workers, the test of social unfairness and the comparison of social aspects must take into consideration facts of longstanding staff-membership (seniority) and the complications on the basis of higher age he or she has to face in trying to reintegrate into the labour process. (...)

Circumstances under heading a) based on the higher age of a worker who has been employed in the company for many years can only be used to justify the dismissal in case a further employment of the dismissed would massively negatively affect the companies' interests.'

b) Age taken into account for redundancy compensation

In Austria, national law provides compensation for redundancy. Such compensation is not affected by the age of the worker.

¹³⁴ Labour Constitution Law (*Arbeitsverfassungsgesetz*), 15 January 1974 (BGBl 22/1974, last amended by BGBl I 71/2013).

All forms of compensation refer to seniority but not to age. The Equal Treatment Act clarifies that age as such must also not be a criterion for different treatment in this respect.

4.7 Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)

In Austria, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Only the regulation on 'discrimination-free advertising of housing' (§ 36 of the Equal Treatment Act), allows for a justification of differentiation regarding ethnicity and gender if it is

'justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Especially, it is not deemed discrimination if the provision of housing constitutes a specially close or intimate relationship of the parties or their relatives.'¹³⁵

This might be seen as an exception based on the protection of the right to private life. However, it only applies to the advertisement - the underlying contract for housing does not allow for an equivalent exception.

4.8 Any other exceptions

In Austria, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

¹³⁵ This is a regulation on the prohibition of discriminatory advertisements, where the offer is available to the public.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Austria, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

All the laws that implement the directives, except the Federal-Equal Treatment Act (which is silent on the matter), state only that positive action (positive measures) is generally permissible and does not constitute discrimination. There is neither important case law nor discussion (apart from in the academic sphere) on this topic.

The main legislation is:

- Equal Treatment Act, §§ 22, 34;
- Federal Agricultural Labour Act, § 139
- Disability Equality Act, § 7;
- Act on the Employment of Persons with Disabilities, §§ 1(1), 6.

a) Quotas in employment for persons with disabilities

In Austria, national law provides for a quota for the employment of persons with disabilities.

Under § 1(1) of the Act on the Employment of Persons with Disabilities, all employers who employ 25 employees or more are obliged to employ at least one person with disabilities for each group of 25 employees (the ratio of this quota, therefore, being 1:25).¹³⁶ For certain economic sectors, the Minister for Social Affairs may, by regulation, increase the relevant ratio from 1:25 to up to 1:40; (§ 1(2) of the Act on the Employment of Persons with Disabilities). The Minister has so far not made use of this possibility.

This obligation is widely not complied with¹³⁷, but the law itself provides the option of a lump-sum compensation payment¹³⁸ in the event that an employer does not fulfil the quota. The payment is constructed not as a fine but as a legal way to compensate for non-compliance. The amounts paid in compensation go towards the so-called *Ausgleichstaxfonds*,¹³⁹ which is used for a variety of disability-related measures. This duty is monitored well and the compensation is paid.

¹³⁶ For certain economic sectors, the Minister for Social Affairs may, by regulation, increase the relevant ratio from 1:25 to up to 1:40; § 1(2) of the Act on the Employment of Persons with Disabilities.

¹³⁷ For 2024, the ratio of companies which fulfilled the quota was 23.89 %, according to Sozialministerium (2024), *Geschäftsbericht 2024*, available at: https://www.sozialministeriumservice.gv.at/Ueber_uns/News_und_Veranstaltungen/News/202601_Geschaeftsbericht-2024.pdf.

¹³⁸ Figures for 2025: for companies with 25-99 employees, per month/ special post not filled: EUR 335; for companies with 100 or more employees per month/special post not filled: EUR 472; for companies with 400 or more employees per month/special post not filled: EUR 499.

¹³⁹ The name of the mechanism can be translated as 'compensatory fund'.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Austria, the following procedures exist for enforcing the principle of equal treatment:

The procedures consist of civil law/employment law procedures and a few administrative penal procedures and non-binding procedures before the Equal Treatment Commission, as well as compulsory mediated attempts for settlements in cases concerning disability.

With only a few exceptions, the generally used court procedures will be civil law procedures or employment law procedures. Civil law procedures are restricted to claims of compensation.

Administrative penal law is only a remedy against discriminatory advertisements.

For the area of public employment, there exists a difference in treatment between civil servants (*Beamte*) and contractual employees (*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.

The decisions of the civil and labour courts (as well as administrative decisions in cases brought by civil servants) are legally binding decisions, whereas the procedures at the Equal Treatment Commission only result in a non-binding 'opinion' (*Gutachten, Einzelfallprüfung*). However, the Equal Treatment Act states in § 61 that the courts have to take these opinions into consideration and that they have to give clear reasons in the event that they come to a dissenting decision. This has very little impact in practice, as courts can easily come to a different reasoning and all its reasons have to be clear anyway.

For all claims based on the ground of disability, the legislation demands a compulsory attempt to mediate the conflict. The local outlets of the Federal Social Service are assigned with the task of conducting these conciliation procedures. Professional mediators can be provided on demand.

b) Barriers and other deterrents faced by litigants seeking redress

In general, there is a strong reluctance to take legal action in cases of discrimination, as there is a psychological barrier to accepting that one has become a victim of discrimination. In addition, it is not helpful that there have been no cases against victimisation in the courts so far, as many people fear that standing up against discrimination will negatively affect their future prospects and prosperity.¹⁴⁰

The legal situation regarding discrimination is very complicated and the laws are not intelligible for people without a legal education. Even in cases in which it is not compulsory to be represented by a lawyer, it therefore seems necessary for people to have access to legal aid. The powers of the National Equality Body are restricted to providing help in the procedure before the Equal Treatment Commission, but the body has no legal standing before the courts on behalf of victims of discrimination. One great obstacle is the absence of an established framework of case law – especially regarding the amount of compensation

¹⁴⁰ Regarding the issue of underreporting of discriminatory incidents, see, for example: European Union Agency for Fundamental Rights (2021) *Equality in the EU 20 years on from the initial implementation of the Equality Directives*, FRA Opinion 1/2021, p. 50 onwards.

for non-pecuniary damages. As the costs of civil law procedures are related to the amount in dispute,¹⁴¹ this is a crucial question and it bears a lot of risks.

In addition, NGOs cannot provide for complete relief, as their procedural rights are limited to a supporting intervention in court, and there are very few additional opportunities to check the insurance terms of a contract or the possibility of filing a group litigation – this is limited to disability cases only (§ 13 of the Federal Disability Equality Act) – on behalf of an unidentifiable group of affected persons. Otherwise, their legal standing does not differ from that of any other private person or institution. In labour law cases, the trade unions or the Chamber of Labour can grant their members complete protection so that they do not have to fear any costs – if their cases are supported.

c) Number of discrimination cases brought to justice

In Austria, statistics on the number of court cases related to discrimination brought to justice are not available.

d) Registration of national court decisions on discrimination cases

In Austria, court decisions on discrimination are not registered as such by the national courts.

There are some internal rules for reporting back to the Ministry of Justice on cases concerning certain fields. Discrimination cases are allegedly among them, but no information has been made public.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Austria, trade unions and the Chamber of Labour are in principle entitled to act on behalf of workers in employment-related cases,¹⁴² but there is no special provision on anti-discrimination matters. The general rules of civil procedure apply.

In court cases, associations, organisations or other legal entities may engage on behalf of their clients (and with their consent) within the scope of the directive in proceedings where no representation by a lawyer is compulsory (*Anwaltszwang*).

Representation by a lawyer is compulsory for most civil procedures in court and before the courts of public law, so there is not much opportunity for NGO representation in civil law courts, although there is more opportunity at the lower levels of administrative proceedings. In these cases, associations, organisations etc. can, like any other natural persons, represent parties in so far as these parties have formally mandated them.

The Act on the Equal Treatment Commission and the National Equality Body expressly allow NGOs to represent alleged victims of discrimination in the informal proceedings before the Equal Treatment Commission (§ 12(2) of GBK-GAW-G); this is not a special right, however, as every adult physical person is allowed to represent another. The procedure under the Federal-Equal Treatment Act does not provide for any special third-party intervention.

At provincial level, the Viennese Anti-Discrimination Act (§ 4(2)); the Lower Austrian Anti-Discrimination Act (§ 18(3)); the Upper Austrian Anti-Discrimination Act (§ 8(3)); the

¹⁴¹ The amount in dispute has to be defined by the claimant and serves as a basis for further costs such as court fees and advocates' fees. Another costly procedural item could be a requirement for experts.

¹⁴² See: Act on Labour and Social Courts (*Arbeits- und Sozialgerichtsgesetz*), BGBl No. 104/1985, § 40(1)(2).

Salzburgian Equal Treatment Act (§ 29(4)); and the Styrian Equal Treatment Act (§ 32(1)) state that the claimant can use the help of any legitimate non-profit organisation to be represented in all forms of legal proceedings under these acts, as long as the organisation's aims include the safeguarding of the adherence to the two EU non-discrimination directives.

- b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Austria, associations/organisations/trade unions are entitled to act in support of victims of discrimination.

According to the Equal Treatment Act, third-party intervention is expressly allowed for one specific NGO, the Litigation Association of NGOs Against Discrimination in the courts (§ 62 of the Equal Treatment Act). As this NGO is an umbrella organisation of more than 60 member organisations and is very much open to potential members, there have been no problems with this choice so far. Access to third-party intervention is not monopolised by this NGO, as others (including trade unions) can intervene as well if they can prove their legal interest in a particular case.

The legal basis for the right to intervene is regulated in § 17 of the Civil Procedure Code, which states:

- 'Those who have a legal interest, that in a pending legal dispute one person shall win, can join the action on this party's side;
- Furthermore, all persons whom this right is given by legal regulations are entitled to join the action.'

The basic requirement is therefore a 'legal interest' in one party's victory. In practice, this requirement is not very hard to fulfil for NGOs that are working actively in the field of anti-discrimination.

The Litigation Association of NGOs Against Discrimination has intervened in quite a number of cases concerning disability, which is not part of the explicit mandate given to it by § 62 of the Equal Treatment Act, but its right to intervene has never been contested or even questioned in court.

The form of the intervention is rather limited by law. It allows the Association to intervene in court proceedings only if the claimant wishes. The right to intervention as a third party in support of the claimant is a rather weak construction as it generally does not allow taking over costs and risks from the claimant but needs action by the victim of discrimination first, and the right to independent action or remedies is not included.

In penal administrative proceedings, there is no legal standing for interest groups (indeed, there is no legal standing even for the victim of discrimination themselves) at all. In some cases involving discriminatory advertising, the National Equality Body has a legal standing and can oppose the abatement of the proceedings.¹⁴³

The Carinthian Equal Treatment Act (§ 39); the Burgenlandian Anti-Discrimination Act (§ 32); the Tyrolean Anti-Discrimination Act (§ 12), and the Vorarlbergian Anti-Discrimination Act (§ 7(4)) give the right to intervene (*Nebenintervention*) to associations whose statutes state their interest in adherence to the prohibition of discrimination.

¹⁴³ See Equal Treatment Act (*Gleichbehandlungsgesetz*), 2004, § 24(3), which states: 'In cases which were instigated by the Office for Equal Treatment, the Office has a legal standing in the administrative penal proceeding. The office has the right to appeal against penal decisions'.

c) Submitting observations, e.g. *amicus curiae* briefs/letters

In Austria, associations, organisations and trade unions are not entitled to submit observations to courts or other adjudicating bodies, such as *amicus curiae* briefs, in discrimination cases.

d) *Actio popularis*

In Austria, national law allows associations/organisations to act in the public interest on their own behalf without a specific victim to support or represent (*actio popularis*), although this is a limited tool and applies only to discrimination on the ground of disability.

Since 2013, the possibility of *actio popularis* has been incorporated in § 13(2) of the Federal Disability Equality Act. The regulation gives the Austrian National Council of Persons with Disabilities, the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities the right to file a lawsuit against an insurance company in the event that the company does not comply with the prohibition of discrimination on the ground of disability as set out by § 1d of the Insurance Contracting Act (*Versicherungsvertragsgesetz*) (BGBl 2/1959, last amended by BGBl I 12/2013) in a manner 'affecting the general interest of the group of persons protected by this regulation significantly and in multiple cases'.

In December 2017, a new possibility was created by the so-called 'inclusion package' in amendment BGBl I 155/2017 to file a group litigation under § 13 of the Federal Disability Equality Act. It creates the possibility for three organisations – the Austrian National Council of Persons with Disabilities, the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities – to sue a perpetrator independently on behalf of an unidentifiable group of affected persons. The action is limited to a declaratory judgment in principle, while against big companies the litigants can go for an action for injunction and removal of the discrimination. This is a useful opportunity for those potential litigators, as an 'ordinary' individual victim of discrimination has no legal right to ask for injunction and removal (of barriers, for example).

This possibility has been used by the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities very successfully so far to reach useful settlements in respect of new policies/measures of big companies such as the post office and a big insurance company.

There are frequent demands by NGOs and experts to expand such important legal tools to other grounds of discrimination, but the political will to do so does not seem strong at the moment.

The relevant provision, § 13(1) of the Federal Disability Equality Act reads:

'In case the legal duties and restrictions set out by this law are infringed, and thereby, the general interests of the persons protected by this regulation are significantly and sustainably negatively affected, the Austrian National Council of Persons with Disabilities, the Litigation Association of NGOs Against Discrimination and the Ombud for Persons with Disabilities can bring a lawsuit for a declaratory judgment and – regarding big capital corporations¹⁴⁴ – also for injunction and removal of the discrimination on the ground of disability.'

¹⁴⁴ Those are defined in § 221(3) of the Company Law Code (*Unternehmensgesetzbuch*) (BGBl I 114/1997, last amended by BGBl I 107/2017) as follows. A minimum of two of the following characteristics are true: more than EUR 1.5 million balance sheet total, more than EUR 10 million annual revenue, more than 250 employees.

e) Class action

In Austria, national law does not allow associations/organisations/trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Austria, national law requires a shift of the burden of proof from the complainant to the respondent.

The regulations can be found in:

1. §§ 26(12), 38(3) of the Equal Treatment Act;
2. § 20a of the Federal-Equal Treatment Act;
3. § 7p of the Act on the Employment of Persons with Disabilities;
4. § 12 of the Federal Disability Equality Act;
5. § 142(9) of the Federal Agricultural Labour Act.

The wording of the Equal Treatment Act does lower the burden of proof for the claimant, but in a different way to that stated in the directives; this continues to be a strange legal construction. The wording reads:

‘In case the claimant claims a discrimination case in court, he/she has to establish facts that point to it. It is the respondent’s obligation to prove that, taking into account all circumstances, 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.’

The Act on the Employment of Persons with Disabilities, the Federal Disability Equality Act and the *Federal Agricultural Labour Act* all use the same wording.

For harassment, the provision reads: ‘(...) it is for the respondent to prove that, taking into account all circumstances, it is more likely that the facts established by the respondent are true.’

Nevertheless, in its important Decision No. 9ObA177/07f of 9 July 2008, the Supreme Court ruled that this regulation must be interpreted as being in line with the relevant directive – meaning that: ‘In the case that the establishment of facts allowing the assumption of discriminatory infringement is successful – it is for the respondent to prove that he or she did not discriminate.’¹⁴⁵

The lowering of the burden of proof applies to all forms of discrimination, including instruction to discriminate, victimisation and harassment.

By way of amendment (BGBl I 81/2013 of 27 December 2013), the regulation on the burden of proof has been changed in the Federal-Equal Treatment Act (NB: this is different from the Equal Treatment Act, which is also a federal piece of legislation). Before this amendment, the same construction as quoted above had been used in this Act as well. Now, in order to conform with the directive, it reads:

‘In order to invoke discrimination in court the claimant has to establish facts that allow the assumption of direct or indirect discrimination. The respondent then has to prove that no breach of the principle of equal treatment has occurred.’

¹⁴⁵ Supreme Court, Decision No. 9ObA177/07f, 9 July 2008.

It remains unclear why the legislature chose to change the wording in one act while retaining the older phrasing in the other.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Austria, there are legal measures for protection against victimisation.

Victimisation is prohibited. It is deemed to be any adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment. Victimisation in the workplace sphere (defined as 'dismissal, notice to quit and any other detriment in reaction to a complaint or to the opening of proceedings enforcing the principle of equality') is prohibited in all bills/drafts, and all of them also cover other employees acting as witnesses or supporting the complaint of a victim. This is enshrined in:

- §§ 27, 39 of the Equal Treatment Act;
- § 20b of the Federal-Equal Treatment Act;
- § 7i(2) of the Act on the Employment of Persons with Disabilities;
- § 9(5) of the Federal Disability Equality Act;
- § 144 of the Federal Agricultural Labour Act.

Victimisation is therefore prohibited for all grounds in the employment field and for gender, ethnic affiliation and disability for all fields covered by the Racial Equality Directive.

The same sanctions and remedies as those provided for discrimination are applicable in cases of victimisation.

Provincial acts also provide for protection against victimisation, often stating that victimisation is a form of discrimination so that the same sanctions and remedies are applicable here as well.

There are still no court cases on the matter (apart from gender cases).

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

None of the laws provides for criminal sanctions. The main means of the battle against discrimination is civil law. Nevertheless, the Equal Treatment Act provides for administrative penal proceedings for discriminatory job or housing advertisements; however, the maximum penalty is EUR 360 and punishment for employers is excluded for first-time offenders (there is admonition only). It is doubtful that this meets the directive's requirement for sanctions that are 'effective, proportionate and dissuasive'.

All of the implementing laws provide for civil sanctions (compensation for material and immaterial damages), and – as a principle for discrimination within a continuing employment relationship only – a victim of discrimination can choose between the undoing of the act of discrimination or compensation for pecuniary damage, in both cases with the option to claim for non-pecuniary damage. Therefore, § 26(3) of the Equal Treatment Act states that the worker who was deprived of social benefits can choose either to get the respective benefits or compensation for the damage; both possibilities include the possibility of getting compensation for non-pecuniary damages.

In a case of discriminatory termination of employment, a victim can challenge the termination or take the option to accept the termination and claim pecuniary and non-pecuniary damages.¹⁴⁶

According to the Equal Treatment Act, compensation for non-pecuniary damage in the case of non-recruitment and non-promotion is limited to a maximum of EUR 500 if the employer proves that the victim would not have been recruited or promoted if no discrimination had occurred (so that discrimination did not have the effect of non-promotion or non-recruitment but caused only exclusion from the selection procedure). In the light of CJEU case law,¹⁴⁷ this restriction¹⁴⁸ might be questionable. As Member States have to choose a sanction or remedy that is effective, proportionate and dissuasive, symbolic compensation that certainly does not deter financially powerful employers or undo the personal harm suffered as a result of discrimination is surely problematic if it is the only possible legal remedy for the claimant. A maximum amount of EUR 500 can only be considered purely nominal compensation, while it must be taken into account that general Austrian civil and labour law does not provide for similar non-pecuniary damage claims.

The mere concept of punitive damages is unknown in the Austrian legal tradition, while from a dogmatic point of view the minimum non-pecuniary damages in cases of harassment (EUR 1 000 minimum compensation) can be seen as being of a punitive nature. At the very least, they contain a punitive element as the court does not have to appraise the value of the concrete damage in the event that only the minimum is claimed. Due to the low amount of this minimum, this is a mainly academic or dogmatic issue.

In the event that the discrimination proves decisive in non-employment, the Equal Treatment Act sets out the minimum compensation of two months' salary.¹⁴⁹ In court, the claimant can demand only financial compensation, and not to be employed.

In the case of discrimination against university students, the legislation needs judicial clarification to determine whether any sanctions apply if the discrimination does not comprise harassment.

The Equal Treatment Act establishes a very effective (in principle) sanction for companies that do not observe the prohibition of discrimination: exclusion from public funding granted by the Federation¹⁵⁰ but it does not extend the exclusion to public procurement, which would render the effectiveness of this sanction perfect.¹⁵¹ It is, nevertheless, quite unclear in practice how these provisions are applied and how the sanction is triggered.

The federal regulations in the acts dealing with discrimination on the ground of disability and the provincial pieces of legislation relate to sanctions and remedies modelled on those in the Equal Treatment Act.

The relevant provisions are found in:

§§ 16a, 17-19b of the Federal-Equal Treatment Act, § 7e-j of the Act on the Employment of Persons with Disabilities, § 9 of the Federal Disability Equality Act, and § 142 of the Federal Agricultural Labour Act

¹⁴⁶ Equal Treatment Act, 2004, § 26(7).

¹⁴⁷ Judgment of 22 April 1997, *Nils Draehmpaehl v. Urania Immobilienservice OHG*, C-180/95, ECR I-2195, paras. 25 and 29.

¹⁴⁸ Judgment of 10 April 1984, *Von Colson and Karmann v. Land Nordrhein-Westfalen*, C-14/83, ECR 1891, paras. 23 and 24.

¹⁴⁹ Equal Treatment Act, 2004, § 26(1).

¹⁵⁰ Equal Treatment Act, 2004, §§ 14, 28, 40.

¹⁵¹ See European Commission (2001), *Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement*, COM (2001)0566 final, Brussels, 28 November 2001, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2001:333:TOC>.

Sanctions (compensation) can only be awarded by courts. There is no legal difference in these sanctions for the different forms or grounds of discrimination.

- i) National legislation does not provide for preventive or socio-preventive sanctions, such as injunctions or structural injunctions, apart from the very limited exception for group litigation against very large companies (§ 13 of the Federal Disability Equality Act explained in Section 6.2.c of this report). In discrimination cases regarding dismissals the employee can choose to opt to stay in their job if the dismissal is found to be discriminatory.¹⁵²
 - ii) In national law, there are no specific sanctions for cases of collective redress (*actio popularis* or class actions). The few available forms of collective redress do not provide any sanctions but are designed as decisions on principle (the court finds a practice discriminatory or not).
 - iii) In national law, there are no sanctions in place to deal with cases of mass discrimination, for instance as a result of the use of AI or automated systems.
- b) Pecuniary sanctions - maximum and average amounts

According to the Equal Treatment Act, the Federal-Equal Treatment Act, the Act on the Employment of Persons with Disabilities and the Federal Agricultural Labour Act, compensation for non-pecuniary damage in the case of non-recruitment and non-promotion is limited to a maximum of EUR 500 if the employer proves that the victim would not have been recruited or not promoted even if no discrimination had occurred.

There are no established rules and no firm legal tradition in compensating for non-pecuniary damages, which leads in general to rather low levels of compensation being awarded by the Austrian courts.

In 2016, for the first time, the Supreme Court, while rejecting extraordinary revision in a gender discrimination case in the employment field, came up with a general guideline on how to assess the immaterial damages in discrimination cases.¹⁵³ The language is still quite vague, but it states that the compensation has to go beyond the mere compensation of 'loss of pleasure or amenities of life' in compensation for physical injury or pain and suffering.¹⁵⁴

c) Assessment of the sanctions

From an overall assessment, the effectiveness of the existing sanctions seems to be rather limited. The main issue here is that the only instrument used as a sanction is basically compensation for material and immaterial damages. While in most of the cases brought to courts so far, material damage has not played a major role, the Austrian legal system does not otherwise contain an elaborate legal tradition regarding immaterial damages. Basically, the idea of using compensation for damages in a directive, punitive and thereby dissuasive way is still very unfamiliar, if not bizarre, to judges. The legislature has repeatedly seen the need to raise the minimum amount of compensation for harassment (from the original amount of EUR 400 to EUR 1 000 since 2004) as practice showed that many courts in fact used the figure given in the legislation as a reference point for their decision-making even in cases of discrimination not linked with harassment. In most cases, courts treated the minimum amount as a maximum amount.

The federal legislature as well as some provincial legislatures have clearly shown their discontent with the rulings of courts, as in 2012 they introduced a regulation such as the

¹⁵² See Equal Treatment Act, § 26/7.

¹⁵³ Supreme Court, Decision No. 9ObA49/16w, 29 September 2016.

¹⁵⁴ Supreme Court, Decision No. 9ObA49/16w, 29 September 2016.

following into their legislation: 'The amount awarded for compensating immaterial damages suffered shall be assessed in a way to balance the damages actually and effectively, that the compensation is proportional to the damage suffered and that such discrimination is thereby prevented' (§ 19b of the Federal-Equal Treatment Act).

While the very low numbers of victims who actually bring their cases to court might not be an indicator as to whether the sanctions are effective, proportionate and dissuasive, they indicate that the route to justice seems to be much harder than is justified by the benefit expected from winning a court case.

The case law reflects the uncertainties that the claimants face regarding the amount of compensation. According to the general rules of awarding procedural costs in civil law matters, these uncertainties have a strong impact on the actual outcome of a case. To provide an example from 2022: the claimant in a case¹⁵⁵ on the ground of disability won the case (discrimination established), but she had sued for EUR 1 000 (immaterial damages) and was awarded only EUR 500 by the court. The court of first instance wrongly divided the cost of the procedure (every party to bear their own cost) because the claimant only won 50 % of her claim. When claiming immaterial damages, the legal principle is that when the claimant wins 50 % or more of the amount claimed, the costs have to be borne by the respondent. The claimant appealed the decision, lost on the merits (EUR 500 was found to be appropriate), won on the cost of the first instance procedure (EUR 64) so, in the end, she had to pay EUR 367.08 of costs to the respondent for the appeal procedure and bear her own costs. This example might explain very clearly that with the current system, the sanctions are not at all dissuasive to the discriminators but rather keep those discriminated against from seeking legal redress. It also explains why most of the claimants in cases of harassment sue for only the minimum compensation established by law.

In 2016, the Supreme Court took the opportunity to issue some initial guidelines for courts on how to assess the amount for compensation in discrimination cases:¹⁵⁶ 'In general, when assessing compensation for discrimination suffered, it is especially necessary to take into account the length and the gravity of the disturbance. When determining this compensatory amount it will be necessary to take into account the psycho-physical situation of the victim, his or her emotional world [*Gefühlswelt*], his or her sensitiveness, the limits of variability of his/her psyche [*Schwankungsbreite seiner Psyche*] and to consider that the compensation is not just balancing the loss of the pleasures or amenities of life but shall also remedy the feeling of having been hurt and, thereby, rebuild the disturbed balance of his/her personality.' This guidance clearly goes beyond mere compensation for pain and suffering.

- d) Enforcement and monitoring of the implementation of sanctions
- i) Courts and other adjudicating bodies' mechanisms to monitor or enforce their decisions

As all remedies basically involve the awarding of a specified sum of money in compensation, and anti-discrimination is seen as a predominantly civil matter, enforcement is in the hands of the winning party by using the classical means of execution. The execution is a separate legal procedure, in which the state (through bailiffs) gets the debts paid, by vindicating or seizing assets of the debtor. In practice, and given the rather small amounts awarded to victims of discrimination this is very rarely a problem and most discriminators pay.

¹⁵⁵ Viennese Commercial Court, Decision No. 1R 50/22g, 25 May 2022, case of accessible hotel rooms only available for a higher category of rooms with higher rates; see details of the case in section 12.2.

¹⁵⁶ Supreme Court, Decision No. 9ObA49/16w, 29 September 2016.

- ii) Possibility for courts and other adjudicating bodies to retain jurisdiction after sanctions have been imposed

The judgement is the final step by the courts.

- iii) Further steps/measures that courts or adjudicating bodies can take in case of non-compliance with the sanction

None ex officio. The winning party has to enforce the judgement if necessary.

- iv) The burden of enforcing sanctions

The winning party has to enforce the judgement if necessary. Any costs incurred in the execution of the judgement and an interest rate must be borne by the defaulting debtor. Given the small amounts usually awarded in discrimination cases, such costs can quickly exceed the original amount due, so most losing parties pay within the time limits set by the court.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)¹⁵⁷

7.1 National equality bodies

a) General 'architecture' of equality bodies

In Austria, there is a complex landscape of equality bodies. National law is not yet fully in line with Directive 2024/1499 (transposition deadline ends 19 June 2026) and no legal initiatives have been taken yet to remedy this – see more details in section 11.2, below.

At federal level, the following bodies have been established:

- The National Equality Body (NEB) (private employment, other fields beyond employment; grounds: gender, ethnic affiliation, religion and belief, sexual orientation, age).
- The Equal Treatment Commission (ETC) (quasi-judicial; non-binding decisions; private employment, other fields beyond employment; grounds: gender, ethnic affiliation, religion and belief, sexual orientation, age).
- The Federal Equal Treatment Commission (quasi-judicial; non-binding decisions; public employment, grounds: gender, ethnic affiliation, religion and belief, sexual orientation, age).
- The Disability Ombudsperson (all fields covering disability discrimination), see Section 7 II below.

At a provincial level, all provinces have introduced either equal treatment commissions (Styria, Lower Austria, Salzburg, Tyrol) or specialised anti-discrimination offices (Vienna, Carinthia, Upper Austria, Burgenland) while Vorarlberg has used the existing Provincial Ombudsman (*Landesvolksanwalt*) and the Provincial Ombud for Healthcare (*Patientenanwalt*) to serve as anti-discrimination bodies as well. In Vienna, an Office for the Fight against Discrimination was set up independently by provincial constitutional law. It is mainly an advice service with a vague responsibility for mediating conflict as well as writing reports and studies. These tasks were given to an existing independent body of the Vienna province, the Commissioner for the Safety of Employees (*Bedienstetenschutzbeauftragter*) – a position that had nothing to do with discrimination issues.

The multitude of institutions does not always help access to justice as the person who has been discriminated against needs to be aware of the existence of the specific institutions and have at least a basic grasp of the division of mandates between the Federation and the provinces, which is a very complicated matter.

b) Designated body for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

At the federal level, the Act on the Equal Treatment Commission and the National Equality Body establishes an Equal Treatment Commission¹⁵⁸ and the National Equality Body.¹⁵⁹ In transposing Article 13 of the Racial Equality Directive, Austria extended the functions of

¹⁵⁷ Assessments and views concerning compliance with EU law throughout Section 7, notably for Directive 2024/1499 whose transposition deadline is 19 June 2026 after the cut off date for this report, reflect the author's opinion.

¹⁵⁸ Available at: <https://www.bmfwf.gv.at/frauen-und-gleichstellung/gleichbehandlungskommissionen/gleichbehandlungskommission.html>.

¹⁵⁹ Available at: <https://www.gleichbehandlungsanwaltschaft.gv.at/>.

the existing quasi-judicial Equal Treatment Commission (then for gender issues only) and created a separate Federal Equal Treatment Commission¹⁶⁰ (dealing with cases of federal employees only). The then Ombud for Equal Employment Opportunities (gender) was transformed into the new National Equality Body consisting of three specialised Ombuds dealing with their respective fields (gender and employment, employment other grounds, other grounds outside employment). In short, the two existing institutions previously dealing with gender discrimination in the workplace only were given extended mandates to deal with discrimination on the ground of gender and on all other grounds mentioned in Article 19 of the Treaty on the Functioning of the European Union (TFEU) except disability. Disability is addressed through a completely separate set of laws and institutions – none of which claims to be a fully-fledged equality body.

In 2005, the additional Ombuds necessary for the new version of the National Equality Body were appointed and took office in the Federal Chancellery. In late April 2005, two new senates within the Equal Treatment Commission started operating. The findings of the Commission on general issues and cases are published in an anonymous and condensed form online.¹⁶¹

The NEB is quite visible and well known throughout the national territory and puts substantial efforts into visibility (website, media outreach, participation in public discussion and organisation of events like exhibitions), while the ETC is not very visible, and its efforts in this respect are marginal. Both bodies are accessible on an equal basis for all without costs and provide reasonable accommodation where necessary to persons with disabilities.

At the provincial level, provinces are obliged to set up specialised bodies to promote equal treatment in their own field of competence as some important areas of law and administration are not covered by federal legislation. The provincial bodies are therefore not linked to each other¹⁶² and share no responsibilities with the federal structures. As is apparent from the impressive list of different bodies, it might not always be easy for victims of discrimination to find out where to turn to and some provincial bodies are not very visible in general.

In Vienna, an Office for the Fight against Discrimination (*Stelle zur Bekämpfung von Diskriminierungen*) was set up. The position was set up independently by provincial constitutional law.¹⁶³ The duties are not very broad – it is mainly an advice service with a vague responsibility for mediating conflict as well as writing reports and studies. These tasks were given to an existing independent body of the Vienna Province, the Commissioner for the Safety of Employees (*Bedienstetenschutzbeauftragter*) – a position that had nothing to do with issues of discrimination previously but was responsible for safety issues concerning the employees of the City of Vienna.

Styria has set up a range of bodies for equal treatment, including the Styrian Equal Treatment Commission; the Commissioner for Equal Treatment;¹⁶⁴ and contact persons. The Commission's main task is to give statements in individual cases of alleged discrimination (in connection with employment by the province) and to comment on specific legal drafts. The Commissioner(s) for Equal Treatment are mainly advisory bodies and they are entitled to issue independent reports and initiate disciplinary proceedings. The contact persons are established in all major municipalities and offices of the Styrian Government. Their task is mainly to advise individual civil servants. The commissioners and the contact persons are independent in fulfilling their functions; a provincial

¹⁶⁰ See: <https://www.gleichbehandlungsanwaltschaft.gv.at/unser-angebot/beratung-und-unterstuetzung/gleichbehandlungskommission.html>.

¹⁶¹ Available at: <https://www.bmfwf.gv.at/frauen-und-gleichstellung/gleichbehandlungskommissionen/gleichbehandlungskommission.html>.

¹⁶² Although there are annual meetings of the provincial bodies.

¹⁶³ Viennese Anti-Discrimination Act (*Wiener Antidiskriminierungsgesetz*), 2004, § 7(3).

¹⁶⁴ In addition to a separate commissioner for the City of Graz.

constitutional provision safeguards this.¹⁶⁵ Since May 2012, the Styrian Government and the City of Graz have also funded a general Anti-Discrimination Office, which offers individual advice to everybody and issues statements and expert opinions.

Carinthia has set up an Anti-Discrimination Office¹⁶⁶ (*Antidiskriminierungsstelle*) in the section for civil law within the Office of the Provincial Government. This office is entitled to support (advise) victims of discrimination and to issue recommendations as well as to conduct independent surveys on discrimination. This body is not independent.

Lower Austria has set up a Lower Austrian Commission for Equal Treatment¹⁶⁷ (*Niederösterreichische Gleichbehandlungskommission*) the main tasks of which are to give recommendations in individual cases of alleged discrimination (in connection with employment by the province) and to comment on specific legal drafts. The chairperson of the Commission is also the Lower Austrian Commissioner for Equal Treatment (*Niederösterreichische/r Gleichbehandlungsbeauftragte/r*) and heads the Anti-Discrimination Office. This Commissioner is mainly an advisory body with powers to initiate proceedings. The Office can conduct surveys and issue reports. Lastly, co-ordinators for equal treatment and promotion of women have been established in all major municipalities and offices of the provincial government. Their task is mainly to advise individual civil servants and notify grievances to the Commissioner. The members of the Commission and the Commissioner are independent in fulfilling their functions; this is safeguarded by a provincial constitutional provision.

Upper Austria has set up an Office for Anti-Discrimination (*OÖ Antidiskriminierungsstelle*) within the provincial government. Its main tasks are to give recommendations in individual cases of alleged discrimination (in connection with employment by the province) and to comment on specific legal drafts. It is also responsible for dialogue with NGOs and is entitled to issue independent reports.

Burgenland has set up an Anti-Discrimination Office (*Stelle zur Bekämpfung von Diskriminierungen*). It is mainly an advice service and has been given a rather vaguely described responsibility for mediating conflict as well as writing reports and studies. The independence of the head of this office within the Office of the Provincial Government is safeguarded by a constitutional provision.

Salzburg has set up five commissions for equal treatment, the main tasks of which are to issue expert opinions and give recommendations in individual cases of alleged discrimination (in connection with different areas of employment by the province) and to comment on specific legal drafts. A Commissioner for Equal Treatment is set up mainly as an advice body with powers to initiate proceedings. Additionally, for the City of Salzburg, a Commissioner for Equal Treatment was established within the Municipality with similar duties and powers referring to equality affairs at municipality level. These commissioners can conduct surveys and issue reports. Lastly, co-ordinators for equal treatment and promotion of women have been established in all offices of the provincial government. Their task is mainly to advise individual civil servants and notify grievances to the Commissioner. The members of the commissions and the commissioners as well as the co-ordinators are independent in fulfilling their functions; this is safeguarded by a provincial constitutional provision.

Tyrol has appointed a Commissioner for Equal Treatment. It is set up mainly as an advice body with powers to initiate proceedings and conciliation mechanisms. The Commissioner can also conduct surveys and issue reports. Independence is safeguarded by a provincial constitutional provision.

¹⁶⁵ Styrian Equal Treatment Act (*Steiermärkisches Gleichbehandlungsgesetz*), § 44.

¹⁶⁶ Carinthian Anti-Discrimination Act (*Kärntner Antidiskriminierungsgesetz*), §§ 32, 33.

¹⁶⁷ Lower Austrian Equal Treatment Act (*Niederösterreichisches Gleichbehandlungsgesetz*), §§ 11, 12.

Vorarlberg has used the existing Provincial Ombudsman (*Landesvolksanwalt*) and the Provincial Ombud for Healthcare (*Patientenanwalt*) to serve as anti-discrimination bodies as well. They were already established by provincial constitutional law and have been assigned the tasks of providing legal counsel; investigating cases of alleged discrimination; and issuing independent reports and conducting independent surveys.

7.2 Political, economic and social context of the designated bodies

For both main national bodies, there has been some reluctance by Governments to allocate the necessary resources and pave the way for the bodies to evolve. Nevertheless, over the years, the National Equality Body has grown in terms of staff and independence.

The need to adapt the national system to the requirements set out in Directive 2004/1499 will bring the opportunity to really strengthen the bodies – especially the NEB in its weak areas (e.g. financial independence, enforcement and prevention). Unfortunately, so far, there is no available evidence of any effort in that direction.

There have been no dramatic increases or cutbacks in budget for the equality bodies in recent years. The staff of the National Equality Body has been gradually expanding in recent years to a level that is still not regarded as sufficient by the body itself, but which has been an improvement. In 2024, the body has been quite visible, using its website, social media and public events.

The Equal Treatment Commission focuses solely on its quasi-judicial role and is equipped with the necessary minimum, while the members of the Commission receive their salaries from their delegating institutions, which are ministries and social partners. The commission is rarely involved in public discussions or initiatives.

There is a lot of public debate in Austria that is generally hostile towards many groups – especially immigrants and refugees, but also all other groups that are regularly targeted by discrimination. The discourse regarding (physical and sensory) disability might be a positive exception here. The equality bodies usually do not play a big role in these popular debates. They are generally not widely known or at least are not seen as the driving force behind developments or feared, loved or hated by the general public. So far, they have not been prominent among the targets of populists or the tabloid media. Nevertheless, the visibility of the National Equality Body has clearly been increasing over the past few years, and the institution adopted an internal communication strategy with a focus on active communication and improved media relations.

7.3 Institutional architecture

In Austria, the designated bodies do not form parts of a body with multiple mandates.

The mandates of the NEB are only multiple in the sense that all grounds of discrimination, except disability, are covered. They do not deal with issues beyond discrimination.

The only exception is the structure in Vorarlberg, where the provincial bodies act as general Ombuds for the administration.

7.4 Status of the designated bodies – general independence and resources

a) Status of the bodies

- Separate or other legal status or personality

Both main national bodies are set up by one piece of legislation – the Act on the Equal Treatment Commission and the National Equality Body. The Equal Treatment Commission

has been set up within a ministry of the Federal Chancellery (its name has changed from 'Federal Ministry of Health and Women and Minister of Education and Women' to 'Minister of Women's Affairs and Equal Status', to today's title, 'Minister for Women, Family and Youth') while the NEB has been part of the Federal Chancellery since 2014.

- Selection of governing bodies

The structure of the ETC consists of three specialised senates. The first senate deals with issues related to the equal treatment of women and men in the workplace; the second senate is responsible for discrimination in employment and occupation covering all other grounds mentioned in Article 19 of the TFEU, except disability. The third senate is responsible for the non-employment related scope of the Racial Equality Directive.

The functions of the chairpersons, who head the three senates, are held by federal civil servants appointed by the respective federal minister. The chair of Senate I has a coordinating function among the senates, but the three chairs are in principle equal as the highest officials of the ETC. The members of the Commission perform their functions on an unsalaried voluntary basis; this means that they simply receive the salaries from their delegating institutions, which are ministries and social partners only¹⁶⁸ (ministries: Labour and Social Affairs, Federal Chancellery, Justice, Economics; social partners: Chamber of Commerce, Chamber of Labour, Austrian Industry Association, Trade Union Federation). Although the members can act independently as members of the Commission, the image is that the Commission consists of persons sent by institutions to represent those institutions' attitudes and political opinions rather than give their individual expertise. The law does not contain any requirements regarding their knowledge or expertise regarding discrimination. The only requirements are that they have to be delegated by the listed institutions and that a minimum quota of 50 % members of the Commission are women.

The National Equality Body, which has been set up at the Federal Chancellery, consists of three Ombuds with their respective staff and scope as well as regional Ombuds under their umbrella. All staff, including the Ombuds, are public servants and are included in the salary scheme of the Federal Chancellery. The Ombuds head the NEB and one of them is the overall head of the NEB – traditionally the Ombud for equal treatment of men and women in the workplace.

The act creating the NEB broadened the mandate of the institution that existed in 2004 (and had existed since 1979), the Office of the Ombud for Equal Employment Opportunities (*Gleichbehandlungsanwältin*), which was responsible for equal treatment of women and men in the workplace only. There are four regional offices of the NEB in addition to its headquarters in Vienna.

The Federal Chancellor appoints the heads of the senates of the ETC and the Ombuds of the NEB.

- Sources of funding

The Federal Chancellor has to provide the budget. Although, in an organisational manner, a ministry (usually with responsibility for 'women') within the Federal Chancellery is in charge of both institutions, these ministries are in the special situation of having no separate budget, and budgetary decisions are made by the Federal Chancellor.

- Powers to recruit and manage staff

The power to contract staff for the NEB lies with the Federal Chancellery – the work contract is with the Chancellery, while the selection of candidates and the management of the staff

¹⁶⁸ Act on the Equal Treatment Commission and the National Equality Body (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*), 2004, §§ 2(1)-(4).

lies with the head of the NEB. This position has authority over the employment and basic management issues of the whole NEB and is its highest representative – without authority over the budget and without full independence in organisational matters.

For the ETC, the recruitment of the Commissioners is with the seconding institutions, while the administrative staff is contracted by the Federal Chancellery.

The Federal Chancellor can remove members of the ETC or the Ombuds of the NEB from office if they are no longer deemed fit to serve (regarding their health) or for gross or frequent breach of duty (§ 10(1c) of GBK-GAW-G for the ETC and § 3(7) of GBK-GAW-G for the NEB).

- Accountability (to whom and how it is exercised)

Both main bodies are not directly obliged to issue a report to the Parliament – this is officially done by the Federal Chancellor and the Minister for Social Affairs, who are obliged by § 24 of the GBK-GAW-G to issue a report to the National Council every two years about the implementation of the Equal Treatment Act. In practice, both bodies report to the Federal Chancellor and these are submitted to the Parliament unchanged. In this regard, both bodies are accountable to the Federal Chancellery.

b) Independence of the bodies

Both national bodies have functional independence, fully legally safeguarded since 2008, when a new Article 20(2) of the Federal Constitutional Act¹⁶⁹ allowed the setting up of independent institutions. The independence clauses are enshrined in § 3(3) of the GBK-GAW-G for the NEB and in § 10(1a)-(1b) of the GBK-GAW-G for the ETC.¹⁷⁰ Functional independence means that nobody can interfere with what they do in their positions. In terms of organisation and budget, however, they are fully dependent on the respective governmental bodies.

Although detailed information about the budgets of all specialised bodies is not readily available, the National Equality Body seems to be the body where the discrepancy between resources and tasks is most obvious. Only a few people are employed to fulfil all the duties of the body related to all protected areas and all grounds except disability. In its latest report,¹⁷¹ the NEB asks for more adequate resources, especially for litigation, awareness-raising, data processing and challenges presented by the adoption of Directive 2014/45/EU, and it also refers to the new Directive 1500/2024.

It is not easy to come to a clear judgment on whether this amounts to independence for the Ombuds of the NEB as required in Article 13 of the Racial Equality Directive. On the one hand, it is clear that they are free from direct intervention in their duty to assist victims, conduct surveys and issue reports and recommendations, while on the other hand the extent to which they are able to do all this in practice is fully dependent on a governmental structure.

For the ETC, the optics do not point very much to independence, as the main feature of all the members is that they are emissaries of 'interest groups', as the law calls them, while classic grassroots NGOs or independent experts are not represented. This set-up follows the very specific logic of the Austrian model of social partnership that trusts in a reasonable outcome for negotiations if social partners from both sides (workers/employers) are

¹⁶⁹ Amendment by Federal Law Gazette I 2/2008, 4 January 2008.

¹⁷⁰ The functional independence of the Federal Equal Treatment Commission is regulated in the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz*), 2004, § 24(5).

¹⁷¹ See latest report: National Equality Body (2024), *Gleichbehandlungsbericht für die Privatwirtschaft 2022 und 2023* (Equal treatment report for the private sector 2022 and 2023), available at: [https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:7ff5c26c-8a65-4e0b-b8d5-a16a7f5ccab/240904_GAW-Bericht_22-23_A4_BF%20\(2\).pdf](https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:7ff5c26c-8a65-4e0b-b8d5-a16a7f5ccab/240904_GAW-Bericht_22-23_A4_BF%20(2).pdf), p. 17 onwards.

represented in equal numbers. However, the results of the Commissions, their findings in individual cases brought before them and their published opinions do in fact uphold a picture of functional independence. So far, no trace of outside interference or structural bias can be diagnosed.

c) Resources

- The annual budget of the bodies;

The annual budget of the equality bodies is not publicly available.

- The total number of staff of the bodies;

The ETC consists of 21 members of the senates and four additional administrative directors.

The NEB does not share public information on the number of staff it employs.

- The number of staff dedicated to the equality body mandate (if applicable).

For the ETC, the 21 members of the senates are dedicated to the mandate.

For the NEB, the number is not public.

7.5 Grounds and fields covered by the designated bodies

Both general bodies deal with gender, ethnic affiliation, religion, belief, age, and sexual orientation (although not with disability). They do not set priorities for their work as they respond mainly to complaints by individuals who feel that they have been discriminated against, although the NEB is working on an increasingly strategic approach to its duties.

The fields covered are congruent with the anti-discrimination legislation. This means that both bodies cover employment and all other fields covered by the Equal Treatment Act.

Given the history of both bodies as the original specialist bodies with responsibility for acting against discrimination on the ground of gender in the workplace, there might still be some bias towards putting more effort into the gender ground than other areas. Aside from a visible inclination towards the gender ground, the institutions have built up expertise on all grounds.

Given the current situation, migrants are a major target group for discrimination. Many migrants bring cases to both bodies.

7.6 Competences of the designated bodies – and their independent exercise

a) Independent assistance to victims

The National Equality Body is responsible for advising and supporting victims of discrimination. To fulfil these functions, the Ombuds can hold consultation hours and consultation days in the whole federal territory (§ 5(1) of GBK-GAW-G).

The assistance from the NEB entails legal advice, some degree of investigation and confronting the alleged discriminator with the allegation (§ 5(4)-(5) of GBK-GAW-G). The NEB can directly address the Equal Treatment Commission and ask for an opinion in an individual case or a case of general interest. In the proceedings before the ETC, the Ombuds of the NEB can participate and argue a case.

This function is exercised in an independent manner, although there are serious restrictions regarding adequate funding and resources. The existing resources are concentrated on this part of the mandate, as the numbers of requests and applications to the NEB are high.

The NEB deals effectively with many cases in which its Ombuds are in practice trying to solve individual cases by means of conciliation. In cases in which the perpetrator totally refuses to see reason, the NEB is not effective as the right to bring cases to court is so limited that it is practically impossible to use it. In conjunction with the fact that opinions of the ETC are not binding, many cases cannot be successfully resolved. The rate of cases with a positive outcome for the victim is still relatively high, as negotiation and conciliation skills within the NEB have been improved in recent years. One of the main functions of the NEB is to give a first explanation and advise persons who intend on invoking the Equal Treatment Act, and to guide people through the proceedings before the ETC. The ETC does not have a mandate to provide independent assistance to victims of discrimination.

According to their own assessment, the Ombuds at the NEB do not consider the resources they have adequate for fulfilling their mandate. They feel obliged to invest the vast majority of their resources in this part of the mandate, as otherwise they would have to reject persons seeking advice and support. To date, they have not refused any individual seeking advice.

Assistance to victims is also provided by other parties, such as NGOs, trade unions and the Chamber of Labour.

b) Independent surveys and reports

The National Equality Body has the competence to conduct independent surveys and publish independent reports. It can conduct independent inquiries and surveys and publish independent reports¹⁷² and recommendations concerning all questions related to discrimination. Practice so far has shown that the Ombuds receive quite a respectable number of requests and complaints but do not have enough time (resources) for all other parts of their mandate. Reports are scarce, although some broad information material¹⁷³ has been provided online; in 2025, one new independent and very disapproving statement¹⁷⁴ on legal drafts (in respect of the ban on headscarves in schools) was published by the NEB.

The Equal Treatment Commission sporadically publishes expert opinions on legal interpretation of certain aspects of the equal treatment legislation on its website, and it has to publish on its website details of every case in which a respondent does not comply with the duty to report to the Commission in time (§ 13(4), GBK-GAW-G). The latter is a formal obligation only. The ETC does not have the mandate to conduct surveys.

The report to Parliament¹⁷⁵ about the work of the NEB and ETC is not independent as it is a report of the Federal Chancellor. In practice, it is obvious that the report is in fact written by the NEB and reaches the Parliament unfiltered, as the assessment of shortcomings is usually bold and direct. In their publications on their own website, the Ombuds of the NEB can also address recent developments.

¹⁷² See the NEB's publications at: <https://www.gleichbehandlungsanwaltschaft.gv.at/publikationen-und-links/taetigkeitsberichte.html>.

¹⁷³ See: <https://www.gleichbehandlungsanwaltschaft.gv.at/Themen.html>.

¹⁷⁴ See: https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:46a2e10d-de05-4bcd-bbf6-2abaefba91bb/Stellungnahme_der_GAW_Bundesgesetz%20zur%20St%C3%A4rkung%20der%20Selbstbestimmung%20von%20unm%C3%BCndigen%20M%C3%A4dchen%20an%20Schulen%20mittels%20Einf%C3%BChrung%20eines%20Kopftuchverbots.pdf.

¹⁷⁵ See, for example, the latest report: National Equality Body (2024), *Gleichbehandlungs-bericht für die Privatwirtschaft 2022 und 2023* (Equal treatment report for the private sector 2022-23), available at: https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:20bce861-3e09-48c0-92a5-d467a4c98009/240904_GAW-Bericht_22-23_A4_BF.pdf.

Since 2021, the NEB has been functioning according to its internally defined logic of intervention and impact,¹⁷⁶ which guides the decision making and strategic direction.

c) Recommendations

In Austria, the designated bodies have the competence to issue independent recommendations on discrimination issues. While the NEB has a general mandate to issue recommendations (§ 5(2) of GBK-GAW-G), the ETC issues recommendations in its expert opinions on individual cases or cases of general interest on how to end and remedy specific issues of discrimination. The NEB also publishes expert opinions on issues of particular interest¹⁷⁷ and its own recommendations.¹⁷⁸

The effectiveness of independent recommendations by the NEB comes mainly from a generally used principle of participation. The NEB usually prepares the recommendations in cooperation with members or representatives of the main target group of the recommendation (e.g. owners of restaurants and bars, hairdressers, driving schools). This guarantees dissemination of the information and its acceptance and hence a good level of effectiveness.

The NEB could issue many more good recommendations if more resources were available. For this part of the mandate, the resources are not sufficient, as the recommendations are very useful but producing them is very time-consuming.

The recommendations by the ETC are of varying quality and specificity. Very often, these recommendations are very general and hard or impossible to verify (for example: 'make yourself and your employees familiar with the principle of equal treatment as enshrined in the Equal Treatment Act'). In principle, they could be very effective, as § 12(4) of the GBK-GAW-G gives every interest group represented in the ETC the right to bring a case to court in the event that the recommendation has not been fulfilled in time. In a case brought before the Commission by the NEB, the latter also has the right to bring the case to court for a decision on whether the principle of equality has been breached. The effectiveness of this process is severely hampered by a lack of resources.

d) Prevention, promotion and awareness-raising

While the law is silent on the tasks of prevention, promotion and awareness raising, the NEB gets involved in the assessment process for proposed legislation¹⁷⁹ and in awareness-raising activities through workshops¹⁸⁰ and events. The Ombuds also offer preventive consultations for employers and cooperate on a regular basis with civil society organisations, which generally see the institution as a valuable ally in the fight against discrimination. The ETC is not involved in tasks of prevention, promotion and awareness-raising and has no legal mandate to do so.

e) Other competences

The NEB has a specific role given to it by §§ 24 and 37 of the Equal Treatment Act, as it has an active legitimacy and legal standing to start administrative penal proceedings against perpetrators before local administrative departments regarding the duty to advertise jobs (§ 23 of the ETA) and housing (§ 36 of the ETA) without discrimination. Given the budgetary restrictions, the resources of the NEB are clearly not sufficient to allow

¹⁷⁶ See: National Equality Body (2021) 'Framework approach', https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:93bae1d3-7a61-4ad2-ba53-9c49d6100caa/231030_Grafik_Wirkungslogik_A4_BF.pdf.

¹⁷⁷ See commissioned expert opinions at: <https://www.gleichbehandlungsanwaltschaft.gv.at/Themen.html>.

¹⁷⁸ See: <https://www.gleichbehandlungsanwaltschaft.gv.at/Themen.html>.

¹⁷⁹ See: <https://www.gleichbehandlungsanwaltschaft.gv.at/Gleichstellungspolitik.html>.

¹⁸⁰ See a list of workshops here: <https://www.gleichbehandlungsanwaltschaft.gv.at/unser-angebot/schulungen.html>.

it to monitor and follow up all breaches of these duties. It can only act occasionally in that regard. The ETC has no additional competences.

7.7 Legal standing of the designated bodies

In Austria, the designated bodies do not have legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- bring discrimination complaints ex officio to court;
- intervene in legal cases concerning discrimination, such as *amicus curiae*.

Only in the event that the opinion of the NEB diverges from the result of the proceeding before the ETC (§ 5(5) of GBK-GAW-G) or the alleged discriminator does not comply with the recommendations of the ETC in a case brought to the ETC by the NEB (§ 12(5) of GBK-GAW-G), the NEB can bring a case to court for a ruling on principle. The lawsuit requires the consent of the individual affected. According to § 12(6) of the GBK-GAW-G, any resulting decision of a court has to be published on the website of the relevant senate of the ETC. To date, no such publications can be found. There is, however, one judgment by the Supreme Court (Decision No. 9ObA44/06w of 9 April 2007) in a case that the NEB lost on formalities due to deadlines. Since 2016,¹⁸¹ the NEB's reports have noted that bringing cases to court is practically impossible as the resources are not available and the legal requirements are restrictive (for example, there is no way to go to court if the ETC rightly finds that there has been discrimination in a specific case). The situation has not yet changed.

7.8 Dispute resolution

a) Quasi-judicial functions

In Austria, there is a quasi-judicial body competent to decide on discrimination cases. This body is the Equal Treatment Commission.

According to the GBK-GAW-G, the ETC must deliver expert opinions (§ 11) or issue an opinion in individual cases (§ 12). The ETC, through its three senates, does so in a quasi-judicial manner using the right to summon the persons involved and experts before the senates, which issue their findings in very court-like language. In opinions on individual cases, when finding that discrimination has occurred, they have to include a recommendation on how to apply the principle of equal treatment and demand an end to the discrimination.

In Austria, there is no quasi-judicial body competent to decide on cases of discrimination based on disability.

The Equal Treatment Commission cannot issue binding enforceable decisions. It can issue non-binding opinions.

i) Power to impose sanctions

The opinions of the ETC are not binding, and their German names do not even point towards a decision (*Gutachten* = expert opinion, for general issues, and *Einzelfallprüfung* = scrutiny of an individual case, for individual cases). The ETC cannot impose any sanctions. The only kind of connection with enforceable decisions is the possibility for the

¹⁸¹ National Equality Body (2016), *Gleichbehandlungs-bericht für die Privatwirtschaft 2014 und 2015* (Equal treatment report for the private sector 2014-15), available at: https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:4dc77248-fed3-4c62-86ca-0ae74581c9a2/161125_GAW_Bericht_2015_15.pdf, p. 8.

interest groups represented in the Commission to take a case to court if the perpetrator of the discrimination does not abide by the recommendation of the Commission within two months. There is no suggestion that this possibility has ever been used. In any case, this is not a power of the Commission itself and it does not lead to a directly enforceable court decision either, as it can only lead to a decision on principle, or a declaratory judgment (*Feststellungsklage*), which can then be used in an additional proceeding to claim sanctions and remedies.

ii) Nature and level of sanctions that can be imposed

Not applicable.

iii) Possibility to appeal

The opinions cannot be appealed against. It is unclear how the ETC follows up on its recommendations as the law is silent on the matter.

iv) Enforcement of binding decisions

Not applicable.

v) Implementation of non-binding opinions

It is impossible to reliably assess to what extent the non-binding opinions of the ETC in individual cases are respected.

The non-binding opinions are followed up by the Commission, and the results (implementation) are reported in the biennial reports to the Parliament.¹⁸² Very often, the opinions are used by the parties to reach a settlement.

Apart from this, the undisputed benefit of the opinions lies in the fact that an official body in an official proceeding finds that there has been discrimination and the proceedings are free of charge. For many victims of discrimination, this is an important issue. It seems that in certain cases, the perpetrators really do return from such proceedings having had a learning experience – although all information on this is anonymous and confidential. It is clear, on the other hand, that hardliners or people who just disrespect and ignore the ETC get away without any sanction. The only kind of sanction that the GBK-GAW-G gives the Commission is in § 13, which obliges alleged discriminators to disclose certain information and report to the ETC. If they do not comply with such a request, the Commission has to publish this fact (of non-compliance) on its website.¹⁸³ Not many such announcements can be found there, and it is doubtful that the sanction has a deterrent effect as it is not easy to stumble across these publications by chance due to their non-prominent placement on the website.

b) Amicable settlements

The National Equality Body – the Ombuds for Equal Treatment – stated in its biennial report (2022-2023)¹⁸⁴ that in 88 % of attempts its efforts to support negotiations between the parties involved in discrimination cases were successful, leading to an out-of-court

¹⁸² See for 2022 and 2023, National Equality Body (2022), *Gleichbehandlungs-bericht für die Privatwirtschaft 2022 und 2023* (Equal treatment report for the private sector 2022-23), [https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:7ff5c26c-8a65-4e0b-b8d5-a16a7f5ccab/240904_GAW-Bericht_22-23_A4_BF%20\(2\).pdf](https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:7ff5c26c-8a65-4e0b-b8d5-a16a7f5ccab/240904_GAW-Bericht_22-23_A4_BF%20(2).pdf).

¹⁸³ See, for example, for Senate III: <https://www.bmfwf.gv.at/frauen-und-gleichstellung/gleichbehandlungskommissionen/gleichbehandlungskommission/gbk-senat-iii/weitere-veroeffentlichungen.html>.

¹⁸⁴ See NEB short report: https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:35bdd02b-c47b-4391-a119-ec22c41e4c69/250311_GAW_Kurzbericht_2022-23_Webversion_A4_BF.pdf.

settlement (no absolute figure provided). This seems a comparatively fruitful way to solve cases in a way that is satisfactory to the victims and at least somewhat educational for the discriminators.

7.9 Procedural safeguards

As there are no binding decisions by either of the bodies, no specific procedural safeguards exist in law. The only safeguard when it comes to the investigative powers of the bodies is a general obligation of confidentiality regarding the information collected through investigations. The division of tasks between the two major equality bodies functions as a kind of procedural safeguard. The Equal Treatment Commission fulfils its function in an impartial manner, while the National Equality Body mainly assists victims of discrimination and supports their claims if they are deemed to be justified. Even in cases of negotiating settlements, the NEB is clearly on the side of the victim.

7.10 Data collection by the designated bodies

a) Registration of complaints and decisions

In Austria, the designated bodies register the number of inquiries received, complaints of discrimination made and decisions (by ground, field, type of discrimination, etc). These data are available to the public.

Probably the most important source of information on the work of the Equal Treatment Commission is the inclusion of its decisions in the general official searchable database of the Federal Chancellery at <https://www.ris.bka.gv.at/Gbk/>, where the decisions (since 2014) can be searched by keyword, date, commission, senate, type of decision, ground of discrimination, decision number and article. As this is the most-used online tool for practising lawyers, judges, and researchers, it has greatly improved the visibility of the decisions.

The other comprehensive source of information is the biennial report to the Parliament, which comprises two separate parts: one for the ETC¹⁸⁵ and a second one for the NEB.¹⁸⁶

The latest (by the cut-off date for this report) biennial report to be published covers the years 2022 and 2023. At the NEB, a total of 5 231 requests/inquiries and consultations were registered. A total of 53 % of these concerned the workplace and 19 % were about access to and supply of goods and services. Regarding the grounds, 42 % of the cases were on gender, 24 % on ethnicity, 10 % on age, 5 % on religion, 4 % on sexual orientation and 2 % on belief.

Within the ETC, Senate 1 received 154 complaints, 61 opinions were issued, 86 complaints were withdrawn and in five cases, the senate found the complaints inadmissible. By the end of 2023, 59 cases were pending. Senate 2 received 64 complaints, 30 opinions were issued, 31 complaints were withdrawn and in three cases, the senate found the complaints inadmissible. By the end of 2023, 25 cases were pending. Senate 3 received 48 complaints, 21 opinions were issued, four complaints were withdrawn and in 21 cases the senate found the complaints inadmissible. By the end of 2023, 11 cases were pending.

¹⁸⁵ See: Equal Treatment Commission (2024), *Gleichbehandlungsbericht für die Privatwirtschaft 2022 und 2023* (Equal treatment report for the private sector 2022-23), (this is still the latest report) https://www.parlament.gv.at/dokument/XXVIII/III/80/imfname_1662732.pdf/.

¹⁸⁶ See latest report: NEB (2024), *Tätigkeitsbericht der Gleichbehandlungsanwaltschaft 2022/2023* (Activity report of the National Equality Body 2022/2023), [https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:7ff5c26c-8a65-4e0b-b8d5-a16a7f5ccab/240904_GAW-Bericht_22-23_A4_BF%20\(2\).pdf](https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:7ff5c26c-8a65-4e0b-b8d5-a16a7f5ccab/240904_GAW-Bericht_22-23_A4_BF%20(2).pdf).

b) Equality data collection

In Austria, the designated bodies do not collect general equality data.

The NEB can access and use data from all available sources or decide to have equality data collected for it by other institutions.

7.11 Roma and Travellers

Roma and Travellers are not a priority for either of the equality bodies, mainly due to the fact that they do not set priorities by themselves but mainly react to complaints and enquiries. Not many Roma make complaints to the bodies.

7.II BODIES FOR THE PROMOTION OF EQUAL TREATMENT FOR PERSONS WITH DISABILITIES

7.II.1 Body for the promotion of equal treatment for persons with disabilities

In Austria, there is a separate equality body for the ground of disability: the Disability Ombudsperson (*Behindertenanwaltschaft, Anwalt für Gleichbehandlungsfragen für Menschen mit Behinderungen*) and was introduced by §§ 13a to 13e of the Federal Disability Act (sometimes translated as Federal Law on Persons with Disabilities) (*Bundesbehindertengesetz*) through BGBl I Nr. 82/2005 of 10 August 2005 (publication), in force since 1 January 2006. The body has existed since the beginning of 2006. The Disability Ombudsperson (DO) is appointed by the Minister for Labour, Social Affairs, Health, Care, and Consumer Protection. The DO is appointed for a four-year term with the possibility of renewal for one further term. The DO is functionally independent – their decisions and actions are not controlled by the minister or another authority. The resources and budget are completely covered by the Ministry for Social Security, Generations and Consumer Protection.

In 2024, an amendment of the Federal Disability Act, BGBl.I No. 98/2024, clarified the status of the Ombud for Persons with Disabilities as being able to act in individual cases and in reconciliation processes. This brings its function closer to the role of the NEB. The amended version has been in force since 19 July 2024. The amendment basically created a legal mandate for what the Ombud already did before without an explicit legal basis.

The premises and services of the DO are accessible to persons with disabilities and reasonable accommodation is provided where necessary; the services are free of cost.

Similar to the traditions of appointments to the Austrian Ombudsman Board (*Volksanwaltschaft*), the nomination of the DO frequently brought former ministers, especially former Ministers of Social Affairs, into this position, which is remunerated at the top end of public service salaries (see § 13e/3 Federal Disability Act). More recently, this policy has been replaced by nominating merited experts from the field.

The visibility and outreach of the institution is strongly dependent on the personality of the DO in charge but has constantly improved over the years. In general, the DO is in close communication and cooperation with various civil society organisations, especially self-organisations of persons with disabilities (DPOs). This cooperation ensures a good presence and visibility of the DO with persons with disabilities, while the wider public might not be generally aware of its existence and activities.

7.II.2 Political, economic and social context of the body

In Austria, the issue of discrimination on the ground of disability is addressed in a separate organisational strand at federal level. Legislation, implementation, and institutions are different for this ground than for all other grounds. The reason for this lies in the different starting positions at the beginning of the 21st century when the transposition of the two main European equality directives was to be implemented in Austria. Mainly due to strong and successful lobbying activities from the civil disability movement (in particular, the various self-help and independent living organisations), this separate approach has been continued. There was a certain level of fear that the new regulations for all discrimination grounds tackled in the EU directives might be used to water down the existing standards regarding disability rather than improving them. The Austrian disability organisations are in a comparatively strong position as they have supporters across the political spectrum unlike those dealing with other discrimination grounds, especially ethnicity, sexual orientation or religion.

The Disability Ombudsperson was created as a specialised body dealing exclusively with the disability ground. The remuneration of the DO is much higher than for the heads of the National Equality Body dealing with the other protected grounds.

7.II.3 Institutional architecture

In Austria, the body does not form part of a body with multiple mandates. It deals exclusively with discrimination on the ground of disability.

7.II.4 Status of the body – general independence and resources

a) Status of the body

- Separate or other legal status or personality;

The DO is appointed with functional independence for a term of four years. The legal basis is § 13b of the Federal Disability Act. It is a separate body exclusively dealing with discrimination on the ground of disability. The Ombud for Persons with Disabilities is set up within the Ministry of Labour, Social Affairs, Health, Care and Consumer Protection. The amendment to the Federal Disability Act in 2024 clarified that the Ombud is independent 'in her/his function'.¹⁸⁷

- Selection of governing body

The DO is appointed by the Minister for Social Affairs, Health, Care, and Consumer Protection, following a public call, consultation of the Federal Disability Advisory Council and a public hearing with the short-listed candidates (§ 13d Federal Disability Act).

- Sources of funding

The budget for the Ombud for Persons with Disabilities must be provided by the Ministry of Labour, Social Affairs, Health, Care and Consumer Protection.¹⁸⁸
The DO is not financially independent.

- Powers to recruit and manage staff

In principle, all these powers lie with the Minister for Labour, Social Affairs, Health, Care, and Consumer Protection and are a matter of consultations and negotiations between the DO and the minister.

- Accountability

The DO is in a limited manner accountable to the Minister for Labour, Social Affairs, Health, Care, and Consumer Protection, as the latter can dismiss the DO upon her/his own request or when she/he neglects her/his duty (§ 13d/6 Federal Disability Act). The DO has to report annually about the activities of the institution, the Minister for Labour, Social Affairs, Health, Care, and Consumer Protection has to submit this report to the Parliament and the Federal Disability Advisory Council.

b) Independence of the body

The functional independence of the body is explicitly stipulated in § 13c/1 of the Federal Disability Act, which states that 'the Disability Ombudsperson is autonomous, independent, and not bound by any directives when fulfilling her/his duties.'

¹⁸⁷ Federal Disability Act, as amended by BGBl.I No. 98/2024, § 13b/1.

¹⁸⁸ Federal Disability Act, as amended by BGBl.I No. 98/2024, § 13a/3.

Apart from this functional independence, the body is not independent, as all the resources are provided by the ministry in charge and the legislation even stipulates that the deputy Ombudsperson has to be appointed from the staff of the ministry.

Given these circumstances, the independence observed in practice is far reaching. The DO is regularly critical of the Government and legislature and provides critical opinions to international bodies, such as the CRPD Committee.

c) Resources

- The annual budget of the body

No information on the annual budget is available.

- The share of the annual budget dedicated to the equality body mandate

Not applicable.

- The total number of staff of the body

For the Ombud for Persons with Disabilities the report on its activities 2024¹⁸⁹ lists 18 team members; apart from the central office in Vienna, the institution runs two regional offices in Salzburg and Graz.

- The number of staff dedicated to the equality body mandate

All staff are dedicated to the equality body mandate (18 staff).

7.II.5 Grounds and fields covered by the body

According to § 13c/1 of the Federal Disability Act, the body deals exclusively with the ground of disability in all fields covered by the Federal Disability Equality Act¹⁹⁰ and §§ 7a – 7q of the Act on the Employment of Persons with Disabilities¹⁹¹ (these are the articles prohibiting discrimination on the ground of disability beyond and in employment respectively). Furthermore, the DO is tasked with addressing cases of alleged discrimination in the field of private insurance contracts under § 1d of the Law on Insurance Contracts (*Versicherungsvertragsgesetz*, VersVG).

7.II.6 Competences of the body – and their independent exercise

a) Independent assistance to victims

§ 13c/1 of the Federal Disability Act defines the competence of the DO to advise and support persons who feel discriminated against in the sense of the Federal Disability Equality Act and §§ 7a – 7q of the Act on the Employment of Persons with Disabilities. She/he can offer consultations for this purpose throughout the country. The regional offices

¹⁸⁹ Ombud for Persons with Disabilities (2025), *Tätigkeitsbericht 2024* (Report on Activities 2024), https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Stellungnahmen_ab_1.1.25/Taetigkeitsbericht_2024.pdf.

¹⁹⁰ *Bundesbehindertengleichstellungsgesetz*, BGBl I Nr. 82/2005, as last amended by BGBl I Nr. 32/2018, prohibiting discrimination on the ground of disability in the access to and supply of goods and services, including protection against harassment, discrimination by association and instruction to discriminate as well as the concept of reasonable accommodation. The concept of goods and services is deemed to include education (a service provided by kindergartens, schools and universities).

¹⁹¹ *Behinderteneinstellungsgesetz*, BGBl Nr. 22/1970, as last amended by BGBl I Nr. 185/2022, regulating the prohibition of discrimination on the ground of disability in employment, including protection against harassment, discrimination by association and instruction to discriminate as well as the concept of reasonable accommodation.

of the Federal Social Service (*Sozialministeriumservice*) have to support the DO in these functions.

The DO reports that the institution dealt with 965 cases in 2024,¹⁹² including 821 cases that are disaggregated by field.¹⁹³ The disaggregated data shows that the cases come from across the scope of protection, led by the field of employment with 119 cases, followed by 103 cases regarding 'general equal treatment', and 101 cases related to 'everyday life', followed by 83 claims against the Federal Social Service, and 78 cases from the field of education, 58 about pensions and care, 51 on housing, 29 on 'financial issues' and 24 about transport, including public transport and other areas with a lower concentration of cases with figures between 4 and 20. Further to these formal cases, the DO reports that it provided 744 additional advice sessions over the phone and supported claims in 53 conciliation proceedings (official confirmation of an unsuccessful conciliation attempt is a mandatory prerequisite for bringing court action in disability discrimination cases) of which 40 % ended with a settlement.

It can be stated that the assistance to victims is exercised independently and with dedication. Given the mainly soft powers of the institution, it is most effective in negotiating amicable agreements between the parties. The institution has a good reputation for supporting clients in their many faceted cases – within the limits of its powers.

b) Independent surveys and reports

The annual report¹⁹⁴ about its activities (which, since 2018 has to be submitted to the Parliament by the Minister for Labour, Social Affairs, Health, Care, and Consumer Protection) is clearly the DO's most important publication. It includes information about the activities of the body, examples of cases dealt with, statistical data on cases, and recommendations.

The body also uses its website (<https://www.behindertenanwaltschaft.gv.at/aktuelles>) to comment on developments or highlight specific issues of concern.

The DO's annual reports do not mention surveys. However, the DO is obliged to contribute to the 'report about the situation of persons with disability in Austria' by the Minister for Labour, Social Affairs, Health, Care, and Consumer Protection to the Parliament. The most recent such report dates from 2017,¹⁹⁵ after two earlier reports in 2003 and 2008. § 13a of the Federal Disability Act is not very specific about the reporting periods of these reports, as it just states that they have to be provided periodically.

The DO is engaged in strategic planning – e.g. in the development of the latest national action plan on disability, albeit not in a leading role. The DO does not provide any information about its strategic approach to the public.

While the reports can be considered very useful and are clearly independent in their content, the activities could be upscaled and made more visible.

¹⁹² This is the latest available report.

¹⁹³ The report does not account for the difference between the total number of cases dealt with in 2024 and the number of cases disaggregated by field.

¹⁹⁴ Disability Ombudsperson (2024) *Tätigkeitsbericht 2023 der Behindertenanwaltschaft* (Annual report about the activities of the Disability Ombudsperson 2023), see: https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Behindertenanwaltschaft-Taetigkeitsbericht-2023-barrierefrei.pdf.

¹⁹⁵ See: Austrian Federal Government (2017) *Federal Government report on the situation of disabled persons in Austria 2016*, <https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=428>.

c) Recommendations

The DO regularly issues 'suggestions' (*Anregungen*) in its annual report,¹⁹⁶ which entail policy recommendations in relation to equal status, occupation and employment, education, accessibility, health, social affairs, and traffic. It also follows up on positive developments in these areas.

The DO regularly publishes informational material and, most importantly, consultative 'opinions' of a technical nature¹⁹⁷ on draft legislation to the Parliament. In 2023, the DO issued 14 consultative opinions to the Parliament and in 2024 it published 24 statements on draft legislation,¹⁹⁸ to ensure that disability-related issues are considered in various pieces of legislation covering a wide range of subjects, from dog ownership to social insurance, kindergartens and heating systems. These recommendations are very useful and support the idea of a human rights-based approach in legislation.

The DO is also *ex lege* (§ 9/1/8 Federal Disability Act) a member of the Federal Disability Advisory Council (*Bundesbehindertenbeirat*, which is different from the non-governmental umbrella organisation the Austrian Disability Council), which was set up to advise the relevant minister on all questions concerning disability.

d) Prevention, promotion and awareness-raising

There is no explicit mandate for the DO in § 13c of the Federal Disability Act, which establishes the duties of the DO to engage in prevention, promotion or awareness raising.

Nevertheless, the DO's most recent annual report mentions substantive networking activities,¹⁹⁹ stating that they have been undertaken in order to support more effective policies and lobbying for the interests of persons with disability. In particular, the coordination with different stakeholders from the non-governmental sector is sincere and mutually appreciated.

The DO does not publish any strategies or outlines of its operations and aims.

In terms of awareness raising, the DO actively organises or participates in events and meetings, holds public lectures and makes speeches as well as giving interviews and holding press conferences.

The DO is also actively involved in the training of trainee judges.

e) Other competences

The Ombud for Persons with Disabilities has the right to initiate specific reconciliation processes in disability discrimination cases,²⁰⁰ as already discussed under the heading of 'Independent assistance to victims' of discrimination.

¹⁹⁶ Disability Ombudsperson (2023) *Tätigkeitsbericht 2022 der Behindertenanwaltschaft* (Annual report about the activities of the Disability Ombudsperson 2022), see https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Taetigkeitsbericht_der_Anwaltschaft_2022.pdf.

¹⁹⁷ See for both types of recommendations: <https://www.behindertenanwaltschaft.gv.at/downloads>.

¹⁹⁸ See: <https://www.behindertenanwaltschaft.gv.at/gesetzesmaterien>.

¹⁹⁹ Disability Ombudsperson (2023) *Tätigkeitsbericht 2022 der Behindertenanwaltschaft* (Annual report about the activities of the Disability Ombudsperson 2022), pp.29-35, https://www.behindertenanwaltschaft.gv.at/fileadmin/user_upload/dokumente/Taetigkeitsbericht_der_Anwaltschaft_2022.pdf.

²⁰⁰ Federal Disability Act, § 13b/5.

7.II.7 Legal standing of the body

In Austria the body does not have legal standing to:

- bring discrimination complaints on behalf of identified victims to court;
- bring discrimination complaints on behalf of non-identified victims to court;
- intervene in legal cases concerning discrimination, for example, as an *amicus curiae*.

In Austria the body has legal standing to:

- bring discrimination complaints *ex officio* to court;

§ 13/1 of the Disability Equality Act enshrines the right of the Austrian Disability Council, the Litigation Association of NGOs against Discrimination and the Disability Ombudsperson to bring a case to court where the regulations of the Act are being infringed and thereby the general interests of the persons protected by this law are impaired in a substantial and lasting manner. The claim is restricted to a declaratory judgment in principle. Only against large corporations (where two or more of the following conditions apply: more than EUR 10 million annual revenue, EUR 5 million balance-sheet total, more than 50 employees) can the claim also include injunctive relief and removal of the discrimination.

So far, the DO has only once announced that it would use this option, which resulted in a settlement of the case outside court.

In addition, according to § 13/2 Disability Equality Act, the three above-mentioned institutions, including the DO, are entitled to file a claim for injunctive relief against an insurance company that, in its general conditions, infringes the specific regulations against discrimination of persons with disabilities in § 1d of the Insurance Contract Act (*Versicherungsvertragsgesetz*) and this impairs the interests of persons with disability substantially and in multiple cases.

7.II.8 Dispute resolution

a) Quasi-judicial functions

In Austria, the Disability Ombudsperson is not a quasi-judicial institution.

In Austria, there is no separate quasi-judicial body competent to decide on discrimination cases in disability-related cases. The quasi-judicial body, the Equal Treatment Commission is not competent to issue (non-binding) decisions in cases of discrimination on the ground of disability.

The Disability Ombudsperson cannot issue binding enforceable decisions. It cannot issue non-binding opinions. It cannot impose any sanctions.

b) Amicable settlements

Amicable settlements are not explicitly provided for by law as a duty of the DO. Nevertheless, the body claims that in many cases informal negotiations and formal conciliation proceedings have produced good results for persons with disability who were supported by the DO. In all these cases, the DO clearly acts in support of the alleged victim of discrimination and not as an impartial mediator.

7.II.9 Procedural safeguards

As amicable settlements are not explicitly regulated or even provided for by law, no procedural safeguards exist. The very limited litigation possibilities are not problematic as

there is no obligation for the DO to act or appear impartial, as the main mandate is advising and supporting persons with disabilities.

7.II.10 Data collection by the body

a) Registration of complaints and decisions

In Austria, the body registers the number of complaints of discrimination made (field, type of discrimination, etc). These data are available to the public through annual reports (see the latest data under 7II.6. above).

b) Equality data collection

In Austria, the body does not collect general equality data. There is no official body explicitly collecting equality data regarding disability in Austria. Equality data is to some extent (although not systematically) collected by the Independent Monitoring Committee on the Implementation of the UN Convention on the Rights of Persons with Disabilities²⁰¹ although its mandate (in §§ 13g – 13l of the Federal Disability Act) does not explicitly include the collection of equality data.

²⁰¹ See their website: <https://www.monitoringausschuss.at/en/>.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The communication activities of the National Equality Body and the Disability Ombud have improved in the recent years and a lot of information (in non-legal language) is available on the website of the NEB.²⁰² The impact will be monitored, although it has not yet been evaluated.

In general, basic information about the main functions of the federal anti-discrimination legislation is now readily available on the internet. Information about provincial legislation, bodies and structures is somewhat more complicated to find for some provinces (Burgenland, Vorarlberg) than others (Vienna, Upper Austria, Styria).

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The dialogue with NGOs started informally when the National Equality Body accepted the invitations of specialised NGOs to enter into a frequent informal exchange of thoughts and cooperation in individual cases, which has been going on since 2005.

The ministers in charge continued this policy and hold annual meetings. As these meetings are short single events that are planned to be held once a year, it is perhaps not appropriate to call this a dialogue, but it seems that both sides do not actively strive for a closer relationship.

Apart from this formal 'dialogue', interested NGOs are always invited to comment officially on legal drafts and they do so regularly. The consultations on legal drafts are open to everyone, and the comments received are published on the website of the Parliament.²⁰³ There is some bilateral discussion between the ministries and several NGOs.

Many NGOs dealing with disability are in regular contact with the Minister for Social Affairs.

In all the provincial pieces of legislation, such dialogue is at least mentioned. However, there seems to be rather weak formal dialogue in practice.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

There is regular contact between the social partners and governmental officials, but no procedure has been set up to ensure that there are regular meetings specifically concerning issues of discrimination or equal treatment. Generally, social partners have a strong standing in Austrian politics and are involved in most spheres concerning discrimination. However, they do not represent the diversity of the current population.

- d) Addressing the situation of Roma and Travellers

In general, Roma issues are still quite invisible and are usually not in the spotlight or the subject of public debates. Only in respect of the prohibition of public begging have the

²⁰² See: <https://www.gleichbehandlungsanwaltschaft.gv.at/>.

²⁰³ See: parliamentary consultations on legal initiatives:
<https://www.parlament.gv.at/PAKT/BEST/GESI/index.shtml>.

Roma played an important role in public discourse – as a target for stereotyping and repression.

A national strategy for Roma integration was formulated in 2012 and renewed in 2021.²⁰⁴ One visible outcome was that the Federal Chancellery set up a national contact point for Roma integration in June 2012. This contact point (one person) mainly coordinates governmental activities regarding the Roma strategy and looks after a corresponding 'dialogue platform' which maintains contacts with NGOs and holds a meeting once a year, mainly discussing funding of projects. This platform continued its work in 2025 (2 platform meetings)²⁰⁵ without much visible change. In 2022, an evaluation²⁰⁶ of the national strategy was published, which highlights a lot of potential for improvement, especially regarding the implementation and bureaucratic efforts necessary to implement projects funded by the European Union (ESF). These were deemed to exclude all but one Roma self-organisation from participation, as national coordination and aid was found to be inadequate.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

None of the bills meant to implement the directives contain provisions on ensuring compliance with the 2000 directives. Although the general principles of law, *lex specialis derogat legi generali* and *lex posterior derogat legi priori*, apply to the Austrian legal system, it is still necessary to question and challenge each individual provision before a competent authority or court in order to find out whether it still prevails or is obsolete.²⁰⁷

Only the legislature or the Constitutional Court can abolish discriminatory laws or bylaws. Civil servants can challenge decisions by administrative authorities based on discriminatory legislation in the Constitutional Court. Other employees have to challenge decisions by their employers based on discriminatory legislation in the labour courts, and they can only ask the court (of second or higher instance) to refer the matter to the Constitutional Court.

Discriminatory application of neutrally worded provisions can be challenged before the administrative authority (in the case of civil servants) or in the labour courts (in the case of other employees).

Discriminatory provisions in secondary legislation (decrees implementing primary legislation) can only be abolished by the issuing administrative authority or by the Constitutional Court.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

No general assessment has been made with regard to ensuring that contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations and employers' associations comply with the principle of equal treatment.

²⁰⁴ See: <https://www.bundestkanzleramt.gv.at/themen/volksgruppen/roma-strategie.html>.

²⁰⁵ See: <https://www.bundestkanzleramt.gv.at/themen/volksgruppen/roma-strategie/dialogplattform-roma-strategie.html>.

²⁰⁶ See: Sensiro (2022), *Studie zur Evaluierung der nationalen Strategie zur Inklusion der Roma in Österreich* (Evaluation Study of National Strategy for the Inclusion of Roma in Austria), available at: https://www.bundestkanzleramt.gv.at/dam/jcr:cf8b5f65-fe97-49c0-a580-124ed48c6afb/studie_sensiro.pdf.

²⁰⁷ Primacy of application of European Union law: since the CJEU judgment of 15 July 1964 in *Costa v. ENEL*, Rs 6/64, national law conflicting with European legislation must not be applied; there is also a direct effect between private contractual partners.

All questionable rules will therefore have to be assessed and challenged over time. In those areas in which the directives are directly applicable, non-complying rules or parts of contracts or collective contracts have to be disregarded or applied in the light of the directives, whereas other rules or clauses will have to be formally declared null and void by courts or by the competent administrative authority.

9 COORDINATION AT NATIONAL LEVEL

9.1 Coordination at the governmental level

In principle, it is the task of the Federal Chancellery to coordinate the activities for the implementation of the directives within the ministries and the provinces. The specialised bodies are also coordinated by the Federal Chancellery and the Ministry for Women, Science and Research.

The Equal Treatment Act and the Federal-Equal Treatment Act are both coordinated and implemented by the Ministry of Labour, Social Affairs, Health, Care and Consumer Protection.

The implementation regarding disability is in the hands of the Federal Ministry of Labour, Social Affairs, Health, Care and Consumer Protection.

The provincial regulations are in the hands of the offices of the provincial governments (*Ämter der Landesregierungen*).

9.2 National Strategies and action plans

A National Strategy against Antisemitism²⁰⁸ was developed in 2020, and published in early 2021. The strategy contains 38 measures mainly in the areas of awareness raising, combating hate speech, research and security for Jewish institutions and communities and monitoring of antisemitic incidents. It does not contain an end date to its validity. The Strategy does not adopt an intersectional approach.

On 6 July 2022, the Council of Ministers adopted the National Action Plan for Disability 2022-2030.²⁰⁹ The action plan contains eight chapters dealing with policy, equality and non-discrimination, accessibility, education, employment, independent living, health and rehabilitation, and awareness raising and information. The chapter on non-discrimination sets out the following measures:

- Evaluation of the legal framework for equal treatment regarding disability
- Expansion of possibilities for providing a legal claim for the removal of barriers so that courts can order the removal of barriers that have been found to be discriminatory (instead of a claim restricted to compensation only as in the current legislation)
- Introduction of a legal minimum amount of compensation for discrimination
- Creation of the possibility to bring claims about discrimination before the Supreme Court irrespective of the generally applicable limitations by the amount in question
- Duty for all federal public organs to support the Disability Ombudsman
- Assessment of options for the introduction of *actio popularis* in the Act on the Employment of Persons with Disabilities
- Increased awareness raising for judges and prosecutors regarding multiple and intersectional discrimination
- Development of proposals to strengthen the protection against multiple discrimination
- Publication of important court decisions in simple language²¹⁰
- Training of officers in charge of the mandatory reconciliation processes
- Financial support to institutions mandated to file *actio popularis*

²⁰⁸ See the *Nationale Strategie gegen Antisemitismus (National Strategy against Antisemitism)* document, available at: <https://www.bundestkanzleramt.gv.at/dam/jcr:8bd2975f-0483-4e74-abd9-d66446195d7c/antisemitismusstrategie.pdf>.

²⁰⁹ See National Action Plan for Disability 2022-2030, available at: https://www.bundestkanzleramt.gv.at/dam/jcr:89f8ed09-12e5-4aab-8ad0-d7f82001904d/25_16_bei.pdf.

²¹⁰ A version that is accessible to persons with learning difficulties.

Intersectionality is only mentioned in regard to awareness-raising measures targeting judges and in relation to statistics.

There is no national action plan on anti-racism or discrimination. The previous Government's plan envisages the creation of such a national action plan, but it has not yet been realised.

There are plans for a national action plan on human rights, which might include anti-discrimination issues. However, these plans remain vague and were obviously not a priority for any recent Government.

There is no national strategy or action plan on LGBTIQ* equality in place. An attempt in 2020 by some MPs to assign the task of developing a national action plan to the Ministry of Women and Integration²¹¹ was unsuccessful. It has been adjourned by the Parliament and therefore has not yet produced any results.

In June 2021, only the province of Vorarlberg adopted a provincial LGBTIQ* Action Plan,²¹² which refers to the EU Strategy 2020–2025. The action plan focuses mainly on awareness raising, access to advice and the visibility of the community, and is based on an inquiry that included the LGBTIQ* communities.

The 'Strategy for the Continuation of Roma Inclusion' was re-adopted²¹³ in 2021 and contains the key points of the EU framework 2030. It does not receive any public attention or priority. The re-adoption is valid without a defined end, although from 2023 biennial reports to the EU were planned, but no such report can be found.

²¹¹ See Parliamentary Materials (GER):

https://www.parlament.gv.at/dokument/XXVII/A/1130/fname_854114.pdf.

²¹² See Vorarlberg (2021) *Aktionsplan für LGBTIQ** (LGBTIQ* Action Plan):

<https://vorarlberg.at/documents/302033/472097/Brosch%C3%BCre+LGBTIQ-Aktionsplan+2022.pdf/4ff44591-4298-e198-397a-b155b63ba19d?t=1660816391535>.

²¹³ See: Federal Chancellery (2021) *Vortrag an den Ministerrat; Fortschreibung der österreichischen Strategie zur Fortführung der Inklusion der Roma in Österreich*, Doc Nr. 2021-0.020.654 of 7 April 2021.

10 CURRENT BEST PRACTISES

- Continuous support for the Litigation Association of NGOs Against Discrimination

As a rather unique mechanism, the Litigation Association of NGOs Against Discrimination²¹⁴ is one of the driving forces in the creation of case law and legal development in Austria. It is an umbrella organisation focusing on strategic litigation²¹⁵ and legal knowledge, involving NGOs dealing with all protected grounds, and it is highly effective in its impact. Through long-term agreements on financial support, the Government has in the past acknowledged this importance and safeguarded the organisation's existence. During 2025, support has continued. In 2023, the Litigation Association won an *actio popularis* against the Republic of Austria.²¹⁶ This shows that the governmental funding does not affect the independence of the NGO.

- Compulsory reconciliation attempts in cases concerning discrimination on the ground of disability

In all cases concerning discrimination on the ground of disability, a compulsory reconciliation attempt is prescribed by law before a suit can be filed with the regular courts. This mechanism does not involve any cost for the parties, and quite frequently it helps to close the case through an agreement. It avoids the purely adversarial position necessary in a court case, and the discussions and negotiations involved might be useful in giving perpetrators a better understanding of discrimination than they would gain through the court process. This mechanism appears to be highly useful and well accepted by claimants. As long as it is free of risks of cost and is done in a respectful manner by the competent authorities, this can be regarded as an example of best practice.

- Mediation approach by National Equality Body

The National Equality Body – the Ombuds for Equal Treatment – stated in its latest biennial report²¹⁷ that it had facilitated negotiations in 216 cases, of which 88 % were successful (agreements for the settlement of the dispute were concluded). This seems a comparatively fruitful way to solve cases in a way that is satisfactory to the victims and at least somewhat educational for the discriminators. It is to be said, though, that this practice is not mirrored in the explicit legal duties of the NEB – which needs to be changed in the light of Article 7 of Directive EU 2024/1499.

- There are no best practices in relation to the use of artificial intelligence to improve the effective implementation of the national legislation transposing the directives. Also, there is no practice combating discrimination stemming from the use of AI systems.

²¹⁴ See the website for the Litigation Association of NGOs Against Discrimination (*Klagsverband Mit Recht gegen Diskriminierung*) at: <http://www.klagsverband.at/english>.

²¹⁵ During the reporting period, there was a strategic focus by some provinces on legally challenging restrictive legislation regarding social advantages.

²¹⁶ See: Viennese Commercial Court, Decision Nr. 19Cg73/21p of 31 March 2023; discrimination against students with a non-physical disability in the provision of personal assistance in education.

²¹⁷ See NEB (2023) *Annual report 2022-2023*, p. 43: https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:bdf93218-cef8-4a87-96c7-a27958fec406/221201_GAW_Taetigkeitsbericht_2020-21_A4_BF.pdf.

11 SENSITIVE OR CONTROVERSIAL ISSUES²¹⁸

11.1 Potential breaches of the directives at the national level

Federal level:

- No legal means of redress exists for cases similar to the *Feryn* case (ECJ case C-54/07), in which discriminatory statements without a known individual victim were found to be unlawful in the light of the directive. In Austria, without an individual claiming to have suffered damage from such conduct, no one has the legal right to sue or start a proceeding under the equal treatment legislation. Only limited administrative penal sanctions under Article III(1)(3) of the EGVG (Introductory Act on the Administrative Procedural Laws) can be imposed in such cases. The provision protects only race, colour, national or ethnic origin, religion and disability. People who feel offended can only notify the local authorities and expect them to act on their report. They have no procedural right – and are not even informed about the result (or even initiation) of the proceedings.
- Exception for ethos-based employers. The text of § 20(2) of the Equal Treatment Act does not explicitly state that applying the exception regarding faith or religion may not lead to discrimination on the basis of another ground.
- Penalties: a maximum administrative fine of as low as EUR 360, and exclusion of punishment for employers as first-time offenders (warning only) in cases of discriminatory job advertisements and discriminatory housing advertisements. These sanctions are not effective, dissuasive or proportionate.
- The regulation on 'discrimination-free advertising of housing' (§ 36 of the Equal Treatment Act) allows for a justification of differentiation regarding ethnicity and gender if this is 'justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Especially, it is not deemed discrimination if the provision of housing constitutes an especially close or intimate relationship of the parties or their relatives'. While this might be in line with Directive 2004/113/EC (Recital 16 and Article 4(5)) in respect of the gender ground and have some legitimate aspects in respect of Article 8 of the ECHR, it constitutes a breach of Directive 2000/43/EC concerning ethnic affiliation as it introduces an additional justification even for direct discrimination on that ground.
- Compensation: limitation to a maximum amount (as low as EUR 500) if the employer proves that the victim would not have been recruited or not promoted anyway. This sanction is not effective, dissuasive and proportionate.

Provincial level:

The implementation of Directive 2004/113/EC has been used to introduce a possibility to justify direct as well as indirect discrimination regarding access to and provision of goods and services for all grounds. The formula for this was taken from the justification of indirect discrimination ('if justified by a legitimate aim and the means of achieving that aim is appropriate and necessary'). As a result, even direct discrimination can now be justified in that way. § 4(6) of the Vorarlbergian Anti-Discrimination Act²¹⁹ and § 2(7) of the Viennese Anti-Discrimination Act²²⁰ are in clear breach of Directive 2000/43/EC, as they allow this kind of justification even for acts of direct discrimination on the basis of ethnic affiliation for the fields outside employment.

²¹⁸ The assessments and views expressed in both sections 11.1 and 11.2 reflect the author's opinion.

²¹⁹ Vorarlbergian Anti-Discrimination Act (*Vorarlberger Antidiskriminierungsgesetz*), 2005, § 4(6): 'A difference of treatment on the ground of one of the grounds mentioned in § 3(1) does not constitute discrimination if it is justified by a legitimate aim and the means of achieving that aim are objective, proportionate and necessary.' (The list in § 3(1) includes ethnic affiliation).

²²⁰ Viennese Anti-Discrimination Act, 2004, § 2(7): 'Furthermore, a difference of treatment on ground of one characteristic mentioned in subparagraph 1 does not constitute discrimination if it is objective and proportionate as well as justified by a legitimate aim and the means of achieving that aim are objective, proportionate and necessary.' (The list in § 2(1) includes ethnic affiliation).

Even though the Styrian Equal Treatment Act has been fully recodified in 2023, it still does not provide effective protection against victimisation outside the field of employment as the relevant regulation prohibiting victimisation (§ 33 of the Styrian Equal Treatment Act) is not in any way connected with sanctions or remedies. The law states that victimisation is not allowed but there is no way to enforce this rule. This constitutes a breach of Article 9 of Directive 2000/43/EC.

11.2 Other issues of concern

There is still an enormous lack of case law.

Since 2015, provincial legislatures have started to create new legislation in the field of social protection and social benefits that tries to reduce the rights of migrants and refugees to these provincial allowances. It is apparent that these policies are following the 'promise' made during many election campaigns by the Freedom Party, which read: 'Our money for our people'. The higher courts regularly found such provisions, or their application, discriminatory and unlawful. In the light of the CJEU decision in *Land Oberösterreich v. KV*²²¹ on the Upper-Austrian 'housing benefit', it became clear that Directive 2000/43/EC cannot be used to stop these practices, as the CJEU clarified that Directive 2000/43/EC does not protect against a difference in treatment that is based on nationality/third country citizenship and the requirement of specific (official) language skills to be entitled to receive financial housing assistance through a province.

The discussion about the use of AI by the public Labour Market Service (*Arbeitsmarktservice*) to grade the chances of integration for unemployed persons into the labour market has been criticised publicly for its discriminatory potential. A study by the Austrian Academy of Science²²² from 2020 indicates that the use of the technology as it stands is 1. not very effective; 2. not targeted enough; and 3. has not been examined and developed with regard for stereotypes, bias and structural discrimination, which might increase existing inequalities rather than mitigate them. In 2023, a decision by the Administrative High Court²²³ found the use of the specific AI in breach of the GDPR. Although the term 'discrimination' has not been mentioned in the procedure, the outcome of the legal dispute could have an important influence in this regard. For the time being the use of the AI to grade jobseekers is not allowed.

The repeated attempts to restrict the wearing of religious headscarves in schools, despite earlier clear judgments by the Constitutional Court are equally concerning, as they mainly seem to be symbolic political tools used to target Muslims. See more, including on the link between Muslim clothing and ethnic affiliation in section 12, below.

National law is not yet fully in line with Directive 2024/1499 and so far, no concrete legislative measures to align the mandates and independence issues of the equality bodies can be traced. As the implementation period is not yet over (19 June 2026), this is an area that needs attention in order not to develop into an area of concern or breach of the Directive.

It is clear that the system of equality bodies needs quite substantial reform, especially to address their financial independence, enforcement issues and ideally the fragmentation and separation of the ground of disability in a separate body. Although there may be discussions behind closed doors, so far, there has been no consultation or legal initiative.

²²¹ CJEU, judgment of 10 June 2021, *Land Oberösterreich v. KV*, C-94/20, ECLI:EU:C:2021:477; <https://curia.europa.eu/juris/document/document.jsf?text=&docid=242564&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13526953>.

²²² See: Austrian Academy of Sciences (2020) *The AMS Algorithm: A socio-technical analysis of the labour market opportunities assistance system (AMAS)* <https://www.oeaw.ac.at/ita/projekte/der-ams-algorithmus>.

²²³ Administrative High Court, Dec. Nr. Ro 2021/04/0010-11 of 21 December 2023, *Data Protection Agency v. Labour Market Service*.

12 LATEST DEVELOPMENTS IN 2025

In 2025, legislation to prohibit girls under 14 years of age wearing a religious headscarf in school, entitled 'protection of freedom of development and self-fulfillment appropriate for children' was adopted through a new article (§ 43a) in the School Education Act.²²⁴ During the parliamentary process, many opinions were shared with the Parliament, including many that were very critical of the discriminatory effect of such a provision. The main arguments against the legislation were that it targets only one gender (females) and only one religion (Muslims). The arguments for the new ban on headscarves were to protect girls from being stigmatised and forced to wear a religious symbol, even before the age at which they are legally able to choose their religion independently of their parents or guardians. The legislation argues that forcing the children not to wear a particular piece of clothing will liberate them and help their 'freedom of development' and 'self-fulfillment'. The legislation will come into force on 1 September 2026 and public comment from teachers is that they feel unprepared and are widely reluctant to enforce such legislation or to report their students to the educational authorities. The legislation is likely to be challenged before the Constitutional Court. Given that in 2020, the Constitutional Court had already found a similar norm (similarly, § 34a of the School Education Act), which prohibited girls up to the age of 10 years from wearing the Muslim headscarf in school, clearly discriminatory and unconstitutional²²⁵ (mainly referring to Art 7 of the Austrian Constitution and Art 9 ECHR), it is probable that the new norm will also be declared null and void.

Even if the *prima facie* focus seems to be on religion and gender, given the fact that at least some courts make a connection between Muslim clothing and ethnic affiliation (see case below in Sec. 12 by district Court Purkersdorf) the relevance of the legislation might be seen as within the scope of Directive 2000/43.

12.1 Legislative amendments

2025 was not an active year regarding relevant legislative amendments. No law has been amended concerning protection against discrimination. While most of the relevant legislation, at both federal and provincial levels have been amended, these changes were all regarding the new legal regulations on freedom of information, for the Federation by the Freedom of Information Adaptation Act (*Informationsfreiheits-Anpassungsgesetz*) in BGBl I No. 50/2025 based on Article 22a of the Federal-Constitutional Act (BGBl I No. 5/2024) and do not affect the protection against discrimination.

No initiatives have been taken to address discrimination stemming from the use of artificial intelligence.

12.2 Case law

Relevant discrimination ground(s): disability

Name of the court: Supreme Court

Date of decision: 13 February 2025

Name of the parties: withheld

Reference number: 9ObA24/24f

ECLI reference: ECLI:AT:OGH0002:2025:009OBA00024.24F.0213.000

Link:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_2025_0213_OGH0002_009OBA00024_24F0000_000&Suchworte=RS0124663+

Brief summary:

An employee had been laid off by the employer due to long periods of absence from work. While this is in principle legal, in this case the employee suffered from a work-related accident that caused a disability and the absence from work was mainly due to this fact.

²²⁴ BGBl I No. 117/2025 of 30 December 2025, - to enter into force from 1 September 2026.

²²⁵ Constitutional Court, Dec. No. G4/2020 of 11 December 2020; ECLI:AT:VFGH:2020:G4.2020.

The Court upheld the decision of the court of second instance (revision was found inadmissible) that had established discrimination on the ground of disability (referring also to the CJEU case *Nobel Plastiques Iberica SA*, C-397/18).

Relevant discrimination ground(s): ethnic affiliation (and gender)

Name of the court: District Court Purkersdorf (Bezirksgericht Purkersdorf)

Date of decision: 9 March 2025

Name of the parties: withheld

Reference number: 6 C 177/24s-40

ECLI reference: n/a

Brief summary:

A Muslim mother and her two daughters set out to use a public swimming pool from which the mother and one daughter were excluded with reference to their burqinis. The court pointed out very clearly that this exclusion from using a public pool was solely based on their religious but clearly functional clothes, which indicate the claimants' religion. The court ruled that one of the daughters who did not wear a burqini but a bathing suit and wanted to enjoy the pool with her mother and sister had been discriminated against through association. The court found discrimination in all three cases, and mentioned the relevant intersection between gender and religion, and gender and ethnic affiliation several times but did not evoke the rules on multiple discrimination. Although access to goods and services is not protected by the Equal Treatment Act for the ground of religion, the court found that the three women were discriminated against on the grounds of gender and ethnic affiliation. For the definition of 'ethnic affiliation' the court used a broad interpretation from the explanatory notes to the ETA: 'ethnic groups are imagined groups, which can be formed by self-attribution or attribution by others. It refers to commonalities of persons, which result from their skin colour, origin, religion, language, culture or customs.' This lawsuit has been supported by the Litigation Association of NGOs Against Discrimination (Klagsverband)

Relevant discrimination ground(s): disability

Name of the court: Viennese Civil Regional Court (Landesgericht für Zivilrechtssachen, Wien)

Date of decision: 24 March 2025

Name of the parties: withheld

Reference number: 36 R 227/24k

ECLI reference: n/a

Brief summary:

In this case a wheelchair user was forced to cancel a reservation in a fine-dining restaurant for him and his wife when he learned that the restaurant's toilet was not wheelchair accessible (there were three stairs). Later, after the incident, the restaurant owner relatively effortlessly acquired a ramp to make the toilet accessible on demand. According to § 5/2 of the Disability Equality Act, the steps in front of the toilet constituted barriers and as no reasonable accommodation had been in place – which would not have constituted an undue burden – the court found indirect discrimination against the potential customer on the ground of disability. As the dinner was planned as a dinner for the couple (their anniversary), the court further ruled that the wife of the claimant with disabilities had been discriminated against by association.

ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS

Country: AUSTRIA
Date: 1 January 2026

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals ?
European Convention on Human Rights (ECHR)	13.12.1957	03.09.1958	No	Yes	Yes, it is part of the Federal Constitution
Protocol 12, ECHR	04.11.2000	Not ratified, as of 01.01.2025	N/A	N/A	N/A
Revised European Social Charter	07.05.1999	20.05.2011	N/A	Ratified collective complaints protocol? No	N/A
International Covenant on Civil and Political Rights	10.12.1973	10.09.1978	Exclusion of Habsburg-Lorraine family. Different treatment of Austrian nationals and aliens.	Yes	No
Framework Convention for the Protection of National Minorities	01.02.1995	31.03.1998	Limitation to 'national minorities' as defined by Law on Ethnic Groups	N/A	No
International Covenant on Economic, Social and Cultural Rights	10.12.1973	10.09.1978	No	No	No
Convention on the Elimination of All Forms of Racial Discrimination	22.07.1969	09.05.1972	No	Yes	No

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals ?
ILO Convention No. 111 on Discrimination	10.01.1973	10.01.1973	No	N/A	No
Convention on the Rights of the Child	26.08.1990	06.08.1992	No	N/A	No
Convention on the Rights of Persons with Disabilities	30.03.2007	26.09.2008	No	Yes	No

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