



Austrian Equal Treatment Law

and the
Role of the Ombud for Equal
Employment Opportunities



Austrian Equal Treatment Law

- Equal Treatment Act (ETA)
- Act on the Equal Treatment Commission and the Ombud for Equal Opportunities
BGBl. Nr.66/2004
- Federal Equal Treatment Act
BGBl. Nr.65/2004
Covering public employment



Structure of ETA

Part I: Equal treatment between women and men in employment and occupation;

Goal: Full equality (principle for interpretation of ETA)

Part II: Equal treatment between persons irrespective of religion or belief, age or sexual orientation or ethnic origin in employment and occupation



Structure of ETA

Part III: Equal treatment between persons irrespective of ethnic origin in social security, access and supply of goods and services

Separate Act: Equal Treatment
irrespective of disability



Scope: Part I and Part II

- Employment relationship (access, rates of pay, promotion, conditions.....)
- Vocational training and education, retraining, practical work experience
- Membership/involvement in workers/employers organisations including benefits
- Access to self employment



Scope: Part III

- Social protection, social security, healthcare
- Social advantages
- Education
- Access to and supply of goods and services
incl. housing



Direct Discrimination:

Where one person is treated less favourably on grounds of sex that another is, has been or would be treated in a comparable situation

RL 2002/73/EC



Indirect Discrimination:

Where an apparently neutral provision, criterion or practice put persons of one sex at a particular disadvantage compared with persons of the other sex unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary

RL 2002/73/EC



Exceptions Part II and III

- Religious institutions
- Age („positive action“)
- Social security/advantages within a company (unless it turns out to be discriminatory for one sex)
- Unequal treatment based on citizenship



Remedies I

■ Employment relationship:

- Establishment: Compensation
1 month salary minimum for the most qualified applicant, 500 € max. for others
- Advancement:
3 month salary difference minimum for the most qualified applicant, 500 € max. for others



Remedies II

- Rates of pay: wage levelling
 - Vocational training/working conditions:
same training/conditions
 - Termination: challenge of decision at court
- (Additional) compensation for personal damage



(Sexual) Harassment:

Conduct that is

- of a (sexual) nature
- violating dignity of a person
- unwanted
- has detrimental effect for harassed person

intimidating, hostile,
degrading environment

e.g. dismissal,
worsening transfer
(sexual harassment)



Remedies in Case of (sexual) Harassment:

- Compensation
 - Claim against harasser
 - Claim against employer not undertaking reasonable steps to prevent (sexual) harassment
- Minimum compensation for violation of dignity:
 - Harassment: 400 €
 - Sexual harassment: 720 €



Regulation for Job Advertisements:

Part I: Jobs may not be announced for men or women unless there are genuine occupational requirements that can only be fulfilled by one sex

Part II: Exceptions (e.g. age, religion)

Remedy:

Administrative penalty (€ 360 max.)



Burden of Proof

- Person feeling discriminated against has to make probable that she/he has been discriminated against
- Employer has to proof that it is more probable that another motive has caused the unequal treatment



How to claim Equal Treatment Law in the Private Sector?

Person feeling discriminated against

- Shop steward
- Ombud for equal opportunities
- Chamber of labour/trade union
- Equal treatment commission
- Labour courts



Time Limits at Court

- Access and advancement: 6 month
- Harassment: 6 month
- Sexual harassment or harassment based on sex: 1 year
- All other provisions (except termination): 3 years



Structure of the Ombud for Equal Opportunities

<p>Ombud for Equal Opportunities for groups and minorities in employment and occupation</p>	<p>Ombud for Equal Opportunities between women and men</p> <p>Regional Offices</p>	<p>Ombud for Equal Opportunities irrespective of ethnic origin in social security, goods and services</p>
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The Ombud for Equal Opportunities between Women and Men is

- an institution in the Ministry for Health and Women's Issues
 - in which 18 female experts
 - work at five locations in Austria
 - Vienna (central office)
 - Innsbruck
 - Graz
 - Klagenfurt
 - Linz
- } regional offices



Area of Authority of the Ombud

1) Legal advice and representation

the ombud has legal power to

- counsel and support persons feeling discriminated against
- get information from employer and/or works committee (shop steward)
- negotiate informally with employers how to eliminate discrimination



Area of Authority of the Ombud

2) Information, Promotion, Consciousness-Raising

- E.T.A.
- Precedents decided by the E.T.C.
- Voluntary agreements to carry out the E.T.A.
- Action plans/programmes for the advancement of women
- Codes of practice (E.G. to prevent sexual harassment)
- General equality matters



Area of Authority of the Ombud

3) the ombud has legal power to

- pass a case to the Equal Treatment Commission
- take part in the E.T.C. as experts
- investigate on behalf of the E.T.C. (fact finding mission)



Area of Authority of the Ombud

the ombud has legal power to

- inform the local authority about job advertisements
- report every second year to the national assembly about its work and its observations
- publish independent reports and research on discrimination issues



Structure of the Equal Treatment Commission (ETC)

- Senate I: Gender and multiple discrimination
- Senate II: Groups and minorities in employment and occupation
- Senate III: Ethnic origin in social security, goods and services



The Equal Treatment Commission is

- An institution in the Ministry for Health and Women's Issues
- Meets approximately every three weeks
- Members are working on a voluntary basis
- Meetings are confidential



Members of the E.T.C.

- Chairperson
- Representatives of employer's unions
- Representatives of trade unions and chamber of labour
- Representatives of ministries
- Experts of equal opportunities ombud (without right to vote)



Area of Authority of the E.T.C.

- It has to deal with all questions related to discrimination between the sexes
- Its decisions are expert opinions on whether the E.T.A. has been violated or not
- The involvement of the E.T.C. extends the time-limit to take a case to court
- Court has to give reasons if it does not follow the expert opinion of the E.T.C.
- Expert opinions of the E.T.C. about general discrimination related issues are published



Procedure of E.T.C.

- Persons feeling discriminated against and institutions can take a case to the E.T.C.
- E.T.C. invites involved persons, hears expert opinions, can call in representatives of NGOs, writes down its conclusions
- If it decides that the E.T.A. has been violated, a proposal is presented to the employer how to eliminate discrimination
- If it investigation leads to the suppose of discrimination, the employer can be asked for a general report




Labour Code (BGBl Nr. 22/1974 iG)

since 1993

Internal agreements can be concluded on temporary special measures aimed at accelerating de facto – equality between women and men and/or reconciliation of work and family life

(§ 97 Abs. 1Z 25)



Labour Code (BGBI Nr. 22/1974 igF)

since 1998

The employer has to discuss measures for the advancement of women and/or reconciliation of work and family life with the employee representatives

(§ 92b)



Federal Equal Treatment Act

§ 42 / 43:

Female applicants for job / promotion who are not less qualified than male competitors, have to be employed / promoted according to the provisions of an equality-plan until the proportion of female employees in all fields / on all levels is 40 %.



Federal Equal Treatment Act

§ 44:

Female employees have to be given preferential access to vocational training qualifying for management positions.



Christine-Lover