



Executive Summary

Country Report LIECHTENSTEIN 2011 on measures to combat discrimination

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1. Introduction

The Principality of Liechtenstein is one of the smallest countries in Europe, with only 36,000 inhabitants. Political power is shared equally between the elected parliament/the people and the monarch. The Parliament (*Landtag*) decides on new legislation, eventually replaced by the electorate by means of popular initiative or referendum. The Prince has the right to sanction new law. The judiciary system is divided between criminal and civil law, on the one hand, that are handled by the Ordinary Courts (*Landgericht*); appeals from first instance are treated by the Upper Court (*Obergericht*), and ultimately by the High Court (*Oberster Gerichtshof*). In cases of dispute between citizens and organs of the state on the other hand, the Administration Court (*Verwaltungsgericht*) and the Constitutional Court (*Staatsgerichtshof*) act as the relevant courts of law. The legal system requires that all acts must be in conformity with the constitution and with relevant international treaties.

2. Main legislation

Constitution of the Principality of Liechtenstein.¹ The constitution states in Article 37 that freedom of religion and belief is guaranteed by the constitution. Article 31 § 1 states that men and women are equal. There are no anti-discrimination provisions in the constitution with respect to other grounds such as disability, racial or ethnic origin, age, or sexual orientation.

Act on Equality of People with Disabilities (AEPD).² This Act aims to eliminate and prevent discrimination against people with disabilities. It seeks to guarantee equal participation of people with disabilities in the daily life of society.

Penal Code.³ This Act states in Article 283 that no person and no group shall be discriminated against on grounds of race, ethnicity, or religion.

Act on Civil Union for Same-Sex Couples.⁴ This Act administers the creation, effects and annulment of registered partnerships of same-sex couples. It states that the

¹ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921 Nr. 15.

² Gesetz über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006 Nr. 243.

³ Strafgesetzbuch vom 24. Juni 1987 (StGB), LGBl. 1988 Nr. 37.

⁴ Gesetz vom 16. März 2011 über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (Partnerschaftsgesetz; PartG), LGBl. 2011 Nr. 350.



partnership of same-sex couples is legally recognised. They therefore have the same rights and responsibilities as different-sex couples when it comes to the legal recognition of the partnership.

Act on Equality between Women and Men (AEWM).⁵ This Act regulates the equality of women and men and seeks equality between them in the workplace as well as in access to goods and services.

There is no comprehensive and general anti-discrimination act in Liechtenstein, nor is anti-discrimination an explicit issue in the constitution. Different grounds of discrimination are treated in special laws covering the relevant grounds: The AEPD covers aspects of discrimination against people with disabilities, the AEWM aims at gender equality. Other grounds of discrimination are covered as an issue among others in different acts on social security, housing, employment, education and more.

In addition to the national legislation, Liechtenstein has signed several international treaties with high relevance to anti-discrimination jurisdiction, according to the Act on the Constitutional Court. The most important are the following: European Convention on Human Rights; Convention on the Elimination of all Forms of Discrimination against Women; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights.

3. Main principles and definitions

Direct discrimination is only defined in the AEPD and the AEWM in Liechtenstein law as “when a person is treated less favourably than another has been or would be treated in a comparable situation”. Direct discrimination according to this legal definition only occurs on grounds of disability (AEPD Art.6 §1) and on grounds of gender (AEWM Art.1a). Race and ethnic origin, religion and belief, age, and sexual orientation are not covered by this definition.

discrimination is defined in both the AEPD and the AEWM; both are very similar. The AEPD defines direct discrimination as follows: discrimination occurs when a person with disability is, has been or would be treated less favourably in a comparable situation than a person without disability (Article 6 § 1 AEPD, Article 1a AEWM). Race and ethnic origin, religion and belief, age, and sexual orientation are not covered by this definition.

Indirect discrimination is defined in both in the AEPD and the AEWM: when an apparently neutral provision, criterion or practice would put persons with disabilities (or of one sex) at a particular disadvantage compared with persons without disability (or of the other sex), unless that provision, criterion or practice is objectively justified

⁵ Gesetz über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999 Nr. 96.



by a legitimate aim, and the means of achieving that aim are appropriate and necessary (Article 6 § AEPD, Article 1a AEWM). Race and ethnic origin, religion and belief, age, and sexual orientation are not included in this definition.

Harassment is defined in both in the AEPD and the AEWM. Harassment is unwanted conduct related to disability (or gender) of a person, with the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 8 AEPD, Article 1a AEWM). Race and ethnic origin, religion and belief, age, and sexual orientation are not included in this definition.

Article 3 of the AEPD defines disability explicitly. Other grounds are not defined in the Liechtenstein national law. Definitions in international conventions and treaties which Liechtenstein has also signed may serve as a substitute.

The AEPD prohibits discrimination against persons who assist people with a disability on a temporary basis or who take care of them, or who report or take action against an act of discrimination on the grounds of disability (Article 5 par 4). There are no further provisions concerning discrimination based on association with persons with particular characteristics, neither regarding people with disabilities, nor discrimination on other grounds.

The legislation on anti-discrimination allows exceptions from the general rule, in case there are such rules, and unequal treatment. Unequal treatment can be “objectively justified” (AEPD and AEWM). In some other fields like employment, exceptions are allowed if there exist genuine and determining occupational requirements, i.e. special knowledge, skills, physical condition, or if special characteristics are required for a job (e.g. male priests). It is also allowed to set positive action. Article 20 AEPD, for example, allows pilot projects in favour of people with disabilities, including incentives for employers to adapt workplaces to the needs of people with disabilities. This does not harm anti-discrimination provisions.

According to the AEPD and the AEWM, victimisation is not allowed. The complainant must not be penalised as a response to a complaint or as a response to the launching of a legal process to secure a ban on discrimination. Neither must anyone who appears as a witness or informant in court proceedings, or who supports a person affected by discrimination, be penalised or disadvantaged.

The AEPD states in Article 23 that multiple discrimination has to be taken into account when it comes to decide on the compensation for immaterial damages at a court trial. There are no provisions regarding multiple discrimination on other grounds like religion and belief, sexual orientation, race and ethnic origin, age, or gender. There are no plans for the adoption of such rules known to the authors.

The AEPD states that indirect discrimination is given if no attempts were undertaken to accommodate the situation of a concerned person. In case that indirect



discrimination is a consequence of barriers, it must be proved whether legal provisions regarding accessibility exist, and if so, whether the legal tasks are fulfilled.

Instruction to discrimination is explicitly forbidden on grounds of disability (Article 9 AEPD), on grounds of race, ethnicity and religion (§ 283 Penal Code), and on grounds of gender (Article 3 AEWG). Judicial interpretation would be required to clarify whether or not discrimination on other grounds is also covered. Legislation is not so clear in this regard, since explicit legal provisions are missing, but the constitution, binding international treaties, and provisions in various national laws eventually could justify a conviction.

4. Material scope

The AEPD states in Article 5 that people with disabilities shall not be discriminated against. This is a general rule concerning discrimination, covering all fields of discrimination. Article 10 specifies that employees in the public sector as well as in the private sector or in any other employment area shall not be discriminated against, neither in a direct nor in an indirect way. The anti-discrimination provisions in Article 10 also include the aspects of recruitment, payment, voluntary social security benefits, vocational training, occupational career and promotion, other working conditions, termination of employment, accessibility to job services, vocational training and other services outside an employment contract, membership and co-operation in trade unions, and conditions for the access to self-employment (Article 10 §1 lit. a to lit. k). There are no such legal provisions with respect to other grounds of discrimination, except gender (AEWG), where the provisions are similar to the AEPD.

In the public sector, anti-discrimination provisions are stronger than in the private sector. For instance, the Act on the Employment of Public Officials stipulates that the human resources management of the Liechtenstein government supports the integration of people with disabilities and guarantees equal opportunities for women and men.

Liechtenstein as a Non-Member of the European Union has not implemented the relevant Directives entirely. Special acts focus on discrimination on grounds of disability and gender (AEPD and AEWG). Discrimination on grounds of race and ethnic origin, religion and belief, age, and sexual orientation are not covered explicitly in separate legal acts, nor is there a general anti-discrimination law in Liechtenstein, covering all grounds. Despite this, the combat against discrimination aims at protecting various vulnerable social groups, such as people with disabilities, women, children, old people, underprivileged members of society, foreigners, or persons with specific sexual orientation. It is a question of judicial interpretation whether or not rather common provisions in the constitution, commitments stemming from international treaties, or provisions in the Common Civil Code, the Penal Code and some other Acts are relevant for the protection of such groups and individuals. The European Convention on Human Rights and the International Convention on the

Elimination of All Forms of Racial Discrimination, for instance, are binding to the jurisdiction in Liechtenstein. The international treaties which are relevant to the Constitutional Court jurisdiction are explicitly listed in Article 15 §2 of the Act on the Constitutional Court.⁶

On national level, there are other legal provisions with relevance to one or other aspect of discrimination, in addition to the main acts (AEPD, AEWG). Among them, most relevant are the Common Civil Code,⁷ the Act on Employment in Industry, Commerce and Trade,⁸ the Act on the Employment of Public Officials,⁹ the Act on Children and Youth,¹⁰ the Personal and Corporate Law,¹¹ the Act on School Education,¹² and the Penal Code.¹³

5. Enforcing the law

Several ministries and workgroups are supporting the enforcement of the laws by advising and counselling concerned persons, by coordinating activities, and by means of public relations and other activities. State authorities strongly co-operate with and support non-governmental associations financially. There exists a growing spectrum of associations and officers in charge of anti-discrimination, listed in section 6. These bodies can advise people and give them support.

Complaints are brought to the Ordinary Courts – or to the Administrative Court, if it is a complaint against public authorities. There is no legal provision which demands the use of a lawyer when bringing a complaint before the court. According to the Code of Civil Procedure, court procedures can be carried out in person or by a representative who must be authorized. Thus, also associations can be mandated.

Court trials have to be carried out according to the Code of Civil Procedures. But there is an exception with respect to the burden of proof. The AEPD states that in case of a complaint on grounds of direct discrimination, it is obligatory to the defendant to prove that it is more likely in all the circumstances that he claims to have another reason for the difference in treatment and that this reason is crucial. With reference to harassment and indirect discrimination, the provisions are similar.

If any person is not able to finance a trial, assistance for court trial can be awarded. This is offered to anybody, not only to people with disabilities. In 2007, the Act on Aid

⁶ Gesetz vom 27. November 2003 über den Staatsgerichtshof (StGHG), LGBl. 2004 Nr. 32.

⁷ Allgemeines Bürgerliches Gesetzbuch vom 1. Juni 1811 (ABGB).

⁸ Gesetz vom 29. Dezember 1966 über die Arbeit in Industrie, Gewerbe und Handel (Arbeitsgesetz); LGBl. 1967 Nr. 6.

⁹ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatsappersonals (Staatspersonalgesetz; StPG), LGBl. 2008 Nr. 144.

¹⁰ Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009 Nr. 29.

¹¹ Personen- und Gesellschaftsrecht (PGR) vom 20. Januar 1926, LGBl. 1926 Nr. 4.

¹² Schulgesetz vom 15. Dezember 1971, LGBl. 1972 Nr. 7.

¹³ Strafgesetzbuch (StGB), LGBl. 1987 Nr. 37.



for Victims of Criminal Offences entered into force. According to this law, the Office for the Support of Victims advises victims free of charge, it supports victims by financial means, and it assists at court trials free of charge. However, the act does not state that the Office can act on behalf of the victims of discrimination.

In 2005 the Act on Mediation in Civil Law Cases entered into force. Mandatory mediation, though, has not yet been introduced.

Article 24 of the AEPD states that claims lapse in a year, reckoned from the day on which the person concerned first learns about the act of discrimination and the perpetrator, or in any event after three years from the day on which the act of discrimination occurred. For further preconditions for statutory limitation, the provisions of the general civil code apply correspondingly.

The AEPD allows associations for people with disabilities to make legal claims on their own behalf for accessibility provision in public buildings, for accessibility of public roads and traffic areas, and for accessibility on public transport systems. This right is limited to associations with Liechtenstein residence and if they have been in existence for at least five years. They are allowed to do this in their own name. The AEWG provides similar regulations for associations to support equality between women and men. Such associations can let confirm by courts on their own behalf that discrimination exists. As a consequence the discrimination in question must be eliminated. There are no such rules regarding other grounds of discrimination.

There are no provisions regarding class action in the Liechtenstein legislation.

Article 2 §2 of the AEPD states that concerned persons with disabilities are entitled to restitution of any financial losses incurred, and to compensation for the personal detriment suffered. The victim can also request an injunction to ban or prevent the threat of future discrimination or to eliminate existing discrimination on grounds of disability. In assessing the extent of compensation for the immaterial injury, the length of the period of discrimination, the seriousness of the act, the extent of the detriment and whether there has been multiple discrimination, must in particular be taken into account. No limits on compensation are stated in the law. There are no similar provisions on compensation with respect to other grounds of discrimination (religion and belief, sexual orientation, race and ethnic origin, or age).

There are no legal provisions or practical examples for situation testing in Liechtenstein. Statistical evidence is not mentioned in the context of discrimination.

6. Equality bodies

The main bodies that are dedicated to anti-discrimination – fully or partly – are:

Office for Equality of People with Disabilities.¹⁴ This Office was installed by the government according to the Act on Equality of People with Disabilities (AEPD) which had entered into force in 2007. The Act states in Article 22 that the government installs an Office for Equality of People with Disabilities, which promotes legal and real equality of people with disabilities. It also states that a private association can be mandated with this task. At present, the Liechtenstein Association for People with Disabilities runs the Office. Article 22 §2 of the AEPD indicates the duties of the Office: Recommendations to the government; counselling of private and public bodies; collaboration in the legislation, drafting of reports; public affairs and information in order to sensibilise the public; design and conduct projects; reporting to the government concerning integration and equality of people with disabilities and reporting on effects of implemented activities and projects; supporting the dialogue between employers and employees and with non-governmental organisations; co-operation with public and private bodies.

Office for Equal Opportunities.¹⁵ The Office is part of the administration and focuses on disadvantages and discrimination on all grounds (disability, gender, sexual orientation, race and ethnic origin, religion and belief, social disadvantage). The Office is related to the Ministry of Family and Equal Opportunities. The basic legal act is the Act on Equality of Women and Men (AEWM), which covers only discrimination on gender grounds. The other tasks of the Office are mandated by the Ministry. Article 19 of the AEWM states that the Office acts independently in some areas: counselling for the administration and private bodies; supporting victims of discrimination in case of complaints; public affairs and information activities; research; recommending appropriate measures to public and private bodies. The head of the office is a counselling member of the Commission for the Equality of Women and Men.

Commission for the Equality of Women and Men.¹⁶ This commission advises the government. The Head of the Commission and all members of the Commission are appointed by the government. The Head of the Office of Equal Opportunities acts as a counselling member of the Commission.

Ombud Office for Children and Young People.¹⁷ This office was installed as a result of Articles 96 to 100 of the Act on Children and Youth.

Commission for Integration and Integration Office at the Alien's Department. The Act on Foreigners¹⁸ states in Article 46 that there shall be a commission for questions of integration, elected by the government, including Liechtenstein citizens as well as

¹⁴ Büro für die Gleichstellung von Menschen mit Behinderung:

<http://www.lbv.li/Dienstleistungen/B%C3%BCrof%C3%BCrdieGleichstellung/tabid/916/Default.aspx>

¹⁵ Stabsstelle für Chancengleichheit: <http://www.llv.li/amtsstellen/llv-scg-home.htm>.

¹⁶ Kommission für die Gleichstellung von Frau und Mann..

¹⁷ Ombudsstelle für Kinder und Jugendliche: <http://www.oskj.li>.

¹⁸ Gesetz vom 17. September 2008 über die Ausländer (Ausländergesetz; AuG), LGBI. 2008 Nr. 311.



foreigners. The By-law to this act states in Article 18 that the expert of the Integration Office at the Alien's Department and a representative of the Office for Equal Opportunities must be members of the commission.¹⁹ The commission counsels the government and gives recommendations to the government.

¹⁹ Verordnung vom 9. Dezember 2008 über die Integration von Ausländern (Ausländer-Integrations-Verordnung; AIV), LGBl. 2008 Nr. 316.