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Non-discrimination

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Country report

Non-discrimination

Liechtenstein

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Abbreviations

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| AA | Act on Aviation |
| AABP | Act on Assistance for Blind People |
| AAVCO | Act on Aid for Victims of Criminal Offences |
| ACC | Act on the Constitutional Court |
| ACPP | Act on Company Personnel Plan |
| ACRPD | Act on Central Register of Personal Data |
| ACUSSC | Act on Civil Union for Same-Sex Couples |
| ACY | Act on Children and Youth |
| ADI | Act on Disability Insurance |
| AEPO | Act on the Employment of Public Officials |
| AEICT | Act on Employment in Industry, Commerce and Trade |
| AEPD | Act on Equality of People with Disabilities |
| AEPO | Act on Employment of Public Officials |
| AEWM | Act on Equality between Women and Men |
| AF | Act on Foreigners |
| AFM | Act on Free Movement of Persons of EEA and Swiss citizens |
| AIC | Act on Information and Consultation of Employees in Business Enterprises |
| AM | Act on Media |
| AMA | Act on Marriage |
| AMCLC | Act on Mediation in Civil Law Cases |
| APPS | Act on the Pension Scheme for Public Servants |
| APS | Act on Postal Services |
| APR | Act on Political Rights |
| ARAF | Act on Rent Allowance for Families |
| AS | Act on Statistics |
| ASANP | Act on Supplementary Aid to the National Old Age and Widow's/Widower's Pension |
| ASA | Act on State Administration |
| ASH | Act on Social Help |
| ASE | Act on School Education |
| AVT | Act on Vocational Training |
| CCC | Common Civil Code |
| CCP | Code of Civil Procedure |
| ECHR | European Convention on Human Rights |
| DPA | Data Protection Act |
| LC | Liechtenstein Constitution, Constitution of the Principality of Liechtenstein |
| NOWP | National Old Age and Widow's/Widower's Pension |
| PC | Penal Code |
| PCL | Personal and Corporate Law |

EXECUTIVE SUMMARY

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 decides on new legislation, which can be amended by the electorate by means of popular initiative or referendum. New laws must be sanctioned by the Prince. There is a dual legal system. Criminal and civil law is handled by the ordinary courts, and appeals are dealt with by the Upper Court in the first instance, and ultimately by the High Court. However, in cases of dispute between citizens and organs of the state, the Administrative Court and the Constitutional Court act as the relevant courts of law. The legal system requires that all acts must conform to the constitution and relevant international treaties.

The following grounds of discrimination are explicitly protected in national law:

- Article 39 of the Common Civil Code (CCC) states that the exercise of civil and political rights is not dependent on religious affiliation;
- the Act on Equality of People with Disabilities (AEPD) protects individuals against any kind of discrimination based on disability;
- Article 3 to 4a of the Act on Equality between Women and Men (AEWM)¹ state that disadvantaging someone on the ground of his or her gender is forbidden;
- the Act on Children and Youth (ACY)² protects children and young persons from discrimination due to sexism, racism, political radicalisation or violence (Article 1 and Article 63);
- the Act on Postal Services (APS)³ explicitly prohibits any discrimination based on political, religious, or ideological grounds in its own area (Article 5);
- the Liechtenstein Act on Media (AM)⁴ declares that media content will be considered to be illegal if it incites or supports discrimination based on racial or ethnic origin, gender, religion, age, disability, or sexual orientation;
- the Act on Employment of Public Officials (AEPO)⁵ regulates protection against dismissal in relation to the AEWM and the AEPD (Article 22 § 3);
- the Liechtenstein Act on Information and Consultation of Employees in Business Enterprises (AIC)⁶ states in Article 10 that employees are not allowed to be treated less favourably due to their involvement in an organisation for workers' representation.

In 2014, the Liechtenstein government once again failed to sign the Convention on the Rights of Persons with Disabilities, contrary to its commitment to do so, which was made in 2013. In 2014, there were no legislative amendments in Liechtenstein within the non-discrimination field either.

¹ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

² Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, no. 29.

³ Gesetz vom 18. Dezember 1998 über das liechtensteinische Postwesen (Postgesetz; PG), LGBl. 1999, no. 35.

⁴ Mediengesetz (MedienG) vom 19. Oktober 2005, LGBl. 2005 Nr.250.

⁵ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz; StPG), LGBl. 2008 Nr. 144.

⁶ Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (Mitwirkungsgesetz; MWG), LGBl. 1997, no. 211.

Only one relevant case occurred in 2014 in Liechtenstein.⁷ A private individual claimed that his right to freedom of religion had been violated by the law (Article 37 of the CCC⁸ and Article 9 of the ECHR).⁹ The appeal was declined in the first instance. The final ruling of the Administrative Court amended the previous judgment in the sense that the applicants received a dispensation from swimming courses in school education as they had requested.

There is no case law in respect of Roma. As of today, there are very few Roma in Liechtenstein.

2. Main legislation

Directives 2000/78/EC and 2000/43/EC are based on Article 13 of the EC Treaty. The directives have not been incorporated into the EEA Agreement. Liechtenstein, as a Member State of the EEA and a Non-Member of the European Union, has refrained from implementing the directives autonomously. The reluctant attitude of Liechtenstein can be explained by the lack of administrative resources and the overriding objective to keep regulatory density as low as possible. On the other hand, Liechtenstein has signed and ratified, among others, the following international treaties:

- the European Convention on Human Rights (in force since 1982);
- the Convention on the Elimination of All Forms of Discrimination against Women (in force since December 1995);
- the Convention on the Elimination of All Forms of Racial Discrimination (in force since May 2000).

In addition, further international treaties with high relevance to anti-discrimination jurisdiction – according to the Act on the Constitutional Court – are in force in Liechtenstein.¹⁰

The UN Convention on the Rights of Persons with Disabilities (UNCRPD)¹¹ has not yet been ratified by Liechtenstein. Nevertheless, the Liechtenstein government declared in 2013 that it had accepted the recommendations to ratify the UNCRPD, which were made during the universal periodic review (UPR)¹² on 30 January 2013.¹³ It can be assumed that this process will be done before the next UPR of Liechtenstein takes place.

Liechtenstein law includes different legal acts, which cover most aspects of the above mentioned directives. This applies in particular to the equal treatment of women and men as well as to discrimination on the ground of disability.

Constitution of the Principality of Liechtenstein.¹⁴

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.

⁷

<http://www.gerichtsentscheide.li/default.aspx?mode=gerichte&prim=3&value=2014&id=4042&backurl=?mode=gerichte%26prim=3%26value=2014>.

⁸ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921, no. 15.

⁹ Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten, 8. September 1982, LGBl. 1982, no. 60/1.

¹⁰ Convention on the Rights of the Child (into force since Dec. 1995); Covenant on Civil and Political Rights (ratification in Dec. 1998); Covenant on Economic, Social and Cultural Rights (into force since Dec. 1999).

¹¹ <http://www.un.org/disabilities/default.asp?id=259>.

¹² Recommendations out of the second cycle universal periodic review (UPR): http://www.llv.li/files/aaa/el_llv_aaa_bericht_upr-arbeitsgruppe_2013.pdf.

¹³ Statement of the Liechtenstein government regarding the second cycle universal periodic review (UPR): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

¹⁴ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921 no. 15.

Act on Equality of People with Disabilities (AEPD).¹⁵

This act aims to eliminate and prevent discrimination against people with disabilities. It seeks to guarantee people with disabilities equal participation in the daily life of society.

Act on Equality between Women and Men (AEWM).¹⁶

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.

In summary, 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. Although there is no specific non-discrimination legal act covering all grounds, there are some regulations to protect individual aspects of non-discrimination, for example on the ground of sexual orientation. Despite this, the fight against discrimination aims to protect various vulnerable social groups, such as people with disabilities, women, children, old people, underprivileged members of society, foreigners, and persons with a specific sexual orientation. It is a question of judicial interpretation whether or not the 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 applicable and sufficient to protect such groups and individuals from discrimination.

The international treaties that are deemed explicitly relevant to the Constitutional Court jurisdiction are listed in Article 15 §2 of the Act on the Constitutional Court.¹⁷

3. Main principles and definitions

Direct discrimination is defined in the AEPD. 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)). Indirect discrimination is defined in the AEPD (Article 6(2)) as occurring 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 by a legitimate aim, and the means of achieving that aim are appropriate and necessary. Race and ethnic origin, religion and belief, age, and sexual orientation are not included in the definitions of direct and indirect discrimination. Definitions in international conventions and treaties that Liechtenstein has signed may serve as a substitute.

Harassment is defined in the AEPD. Harassment is unwanted conduct related to the disability 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). Race and ethnic origin, religion and belief, age, and sexual orientation are not included in this definition.

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(4)). There are no further provisions concerning discrimination based on association with persons with particular characteristics, neither regarding people with disabilities, nor in relation to discrimination on other grounds.

¹⁵ Gesetz über die Gleichstellung von Menschen mit Behinderungen, LGBl. 2006 no. 243.

¹⁶ Gesetz über die Gleichstellung von Frau und Mann, LGBl. 1999 no. 96.

¹⁷ Gesetz vom 27. November 2003 über den Staatsgerichtshof (StGHG), LGBl. 2004 no. 32.

The legislation on anti-discrimination allows exceptions from the general rule, in cases where there are such rules, and unequal treatment can be 'objectively justified' (AEPD and AEWM). In other fields, such as employment, exceptions are allowed if there are genuine and determining occupational requirements, i.e. special knowledge, skills, physical condition, or if special characteristics are required for a job — an example of this would be male priests. Positive action is also allowed. Article 20 of the 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 (Article 5), victimisation is prohibited. 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. Anyone who appears as a witness or informant in court proceedings, or who supports a person affected by discrimination, must not be penalised or disadvantaged.

The AEPD states in Article 23 that multiple discrimination must be taken into account when deciding on the compensation for immaterial damages at a court trial. There are no provisions regarding multiple discrimination on other grounds, such as religion and belief, sexual orientation, race and ethnic origin or age.

Concerning reasonable accommodation, Article 19 §3 of the AEPD states that various programmes may be implemented and supported by the government, including programmes on vocational training and integration as well as on housing. Article 20 specifies that pilot projects on the integration of people with disabilities into the work environment may be supported by society.

Instruction to discriminate is explicitly forbidden on the ground of disability (Article 9 AEPD), and on grounds of race, ethnicity and religion (Article 283 Penal Code).

Judicial interpretation would be required to clarify whether or not discrimination on other grounds is also covered, since there are no explicit legal provisions. The constitution, binding international treaties, and provisions in various national laws might eventually justify a conviction.

4. Material scope

The AEPD states in Article 5 that people with disabilities shall not be discriminated against. Article 10 specifies that employees shall not be discriminated against, neither in a direct nor in an indirect way. Article 10 §1 of the AEPD¹⁸ states that people with disabilities may not be discriminated against as employees in the public and in the private sector or at any other workplace, either directly or indirectly.

The provision 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, section 1(a) to 1(k)). There is hardly any protection against discrimination on grounds other than disability and gender in both employment and non-employment law.

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

¹⁸ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

resources management of the Liechtenstein government supports the integration of people with disabilities and guarantees equal opportunities for women and men.

5. Enforcing the law

Several ministries and workgroups support the enforcement of the laws by advising and counselling people affected by discrimination and by coordinating activities. State authorities strongly cooperate with and provide financial support to the non-governmental associations that are listed in section 6 below.

Complaints are brought to the ordinary courts, or in the case of a complaint against public authorities, to the Administrative Court. Court procedures can be carried out in person or by a representative (Article 25 of the Code of Civil Procedure, CCP). The representative may be a lawyer, but the CCP (Articles 26 and 28) does not restrict representation to lawyers; the CCP allows any authorised, mandated person — thus including associations — to act as a legal representative. Article 31 of the AEPD defines the circumstances under which associations for persons with disabilities can claim on their own behalf for discrimination. Similar rules are set out in Article 7 of the AEWM. Such associations can, on their own behalf, ask the courts to confirm that discrimination exists. As a consequence the discrimination in question must be eliminated.

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

Statistical evidence or the method of situation testing in the context of discrimination is not explicitly permitted, nor are there general restrictions on the use of such material by national law. One can assume, though, that any evidence, including evidence from statistical data, is admissible in court. Due to the low regulatory density and the limited capacity of civil servants within Liechtenstein, as of now, there are no legal provisions for, or practical examples of, situation testing in Liechtenstein.

Article 24 of the AEPD states that claims have a limitation period of 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 Common Civil Code (CCC) apply correspondingly.

The AEPD states that persons with disabilities who are discriminated against are entitled to the 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 the ground 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 be taken into account. No limits on compensation are stated in the law. Similar rules are stated in the AEWM. The AEWM, however, defines a minimum and maximum level of compensation, distinguishing between the rejection of a job application, termination of a work contract, and harassment or sexual harassment.

6. Equality bodies

The main bodies that are dedicated to anti-discrimination — either fully or partly — are listed below.

The Office for Equality of People with Disabilities,¹⁹ was installed by the government according to the AEPD (Article 22). At present, the Liechtenstein Association for People with Disabilities runs the office. Article 22 §2 of the AEPD indicates the duties of the office, of which the main ones are: making recommendations to the government; advising private and public bodies; collaborating in the legislation; drafting of reports; designing and conducting projects; reporting to the government; and cooperating with public and private bodies.

The main focus of the Office for Equal Opportunities²⁰ is on gender equality based on the Act on Equality between Women and Men (AEWM). Article 19 of the AEWM states that the office acts independently in some areas: advising the Administration and private bodies; supporting victims of discrimination in making complaints; public relations and information activities; research; and recommending appropriate measures to public and private bodies. The office is also mandated by the government to cover other grounds of discrimination (disability, sexual orientation, migration and integration, social disadvantage), which are listed on the homepage of the office.²¹ The Office for Equal Opportunities covers migration and integration, which includes discrimination on grounds of race, nationality and ethnic origin, although that is not a major task of the office. The office is subordinate to the government (the Ministry for Social Affairs).

There are further commissions/offices dedicated to dealing with questions and issues of various aspects of anti-discrimination.²²

7. Key issues

The Liechtenstein law includes different legal acts, which cover most aspects of the relevant directives. This applies in particular to the equal treatment of women and men as well as to discrimination on the ground of disability. In addition, international treaties, such as the Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights (ECHR) and others, which must be taken into account by the Constitutional Court in its decisions, help to combat discrimination.

On the other hand, there is no general anti-discrimination act and the UNCPRD has still not been ratified, although the Liechtenstein government, after thorough consideration and consultation, accepted the recommendation²³ to ratify the Convention before the next UPR.²⁴ This declaration, made in 2013, has not yet been put in place.

Hence, Liechtenstein still needs further efforts to challenge discrimination and to enact the relevant legislation. A comprehensive anti-discrimination act, covering all grounds of discrimination and including provisions regarding an independent ombudsman and office would be welcome from the point of view of anti-discrimination. Although the ECHR²⁵ and

¹⁹ Büro für die Gleichstellung von Menschen mit Behinderung: <http://www.lbv.li/>.

²⁰ Stabsstelle für Chancengleichheit: <http://www.llv.li/#/12395>.

²¹ Source: <http://www.llv.li/#/12395/stabsstelle-chancengleichheit>

²² *Commission for the Equality of Women and Men*: this commission advises the government. *Ombud Office for Children and Young People*: the main objective of this office is to implement the UN Convention on the Rights of the Child and to provide assistance and information for children and young persons in all areas of life. *Commission for Integration and Integration Office at the Alien's Department*. Article 46 of the Act on Foreigners states that there shall be an integration commission elected by the government, including Liechtenstein citizens as well as foreigners. The commission advises the government and makes recommendations to the government.

²³ Statement of the Liechtenstein government regarding the second cycle universal periodic review (UPR): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_de.pdf or http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

²⁴ Recommendations out of the second cycle universal periodic review (UPR): <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/179/98/PDF/G1217998.pdf?OpenElement>.

²⁵ Convention of 4. November 1950 on the Protection of Human Rights and Fundamental Freedoms, LGBI. 1982, no. 60/1.

other international treaties are binding to the Liechtenstein jurisdiction, clear legal anti-discrimination provisions at the national level covering all grounds of discrimination are still absent.

It should be noted that there has been hardly any case law concerning discrimination on the grounds of race or ethnic origin, age, disability, religion and belief or sexual orientation. A very small number of victims actually bring their cases to court. Case law in regard to race or ethnic origin, age, disability and sexual orientation is almost non-existent. Furthermore, as there has not been any case law so far in which situation testing or statistical data was used as evidence in relation to discrimination, no prior judgement can be made about its acceptance or about any ethical or methodological issues and so on. This issue can be described as unknown terrain within the legal framework of Liechtenstein.

RÉSUMÉ

1. Introduction

La Principauté de Liechtenstein est l'un des plus petits pays d'Europe puisqu'elle ne compte que 36 000 habitants. Le pouvoir politique est partagé à parts égales entre le parlement élu/le peuple et le monarque. Le parlement décide de la nouvelle législation, laquelle peut être modifiée par les électeurs au moyen d'une initiative populaire ou d'un référendum. Les nouvelles lois doivent être sanctionnées par le Prince. Le système juridique est double: d'une part, les affaires relevant du droit pénal et du droit civil relèvent des juridictions ordinaires, et les recours sont traités par la Cour supérieure en première instance et par la Cour suprême en dernier ressort; d'autre part, les litiges entre citoyens et organes de l'État relèvent de la compétence du Tribunal administratif et de la Cour constitutionnelle. Le système juridique exige que toutes les lois soient conformes à la Constitution et aux traités internationaux pertinents.

Les motifs suivants de discrimination sont expressément protégés en droit national:

- l'article 39 du code civil général dispose que l'exercice des droits civils et politiques ne dépend pas de l'affiliation religieuse;
- la loi sur l'égalité des personnes handicapées protège les personnes contre toute forme de discrimination fondée sur le handicap;
- l'article 3 à 4a de la loi sur l'égalité entre les femmes et les hommes²⁶ dispose qu'il est interdit de défavoriser une personne en raison de son sexe;
- la loi relative aux enfants et à la jeunesse²⁷ protège les enfants et les jeunes à l'encontre d'une discrimination fondée sur le sexisme, le racisme, la radicalisation politique ou la violence (article 1 et article 63);
- la loi sur les services postaux²⁸ interdit expressément toute discrimination fondée sur un motif politique, religieux ou idéologique dans son propre domaine (article 5);
- la loi sur les médias²⁹ stipule qu'un contenu médiatique est considéré illégal s'il encourage ou soutient une discrimination fondée sur l'origine raciale ou ethnique, le genre, la religion, l'âge, un handicap ou l'orientation sexuelle;
- la loi sur l'emploi des agents publics³⁰ régit la protection contre un licenciement en rapport avec la loi sur l'égalité entre les femmes et les hommes et la loi sur l'égalité des personnes handicapées (article 22, paragraphe 3);
- la loi sur l'information et la consultation des salariés dans les entreprises³¹ dispose en son article 10 que les salariés ne peuvent faire l'objet d'un traitement moins favorable en raison de leur participation à une organisation représentant les travailleurs.

Le gouvernement du Liechtenstein n'a toujours pas signé en 2014 la Convention relative aux droits des personnes handicapées, alors qu'il avait pris en 2013 l'engagement de le faire. Il n'y a pas eu non plus en 2014 d'amendement législatif dans le domaine de la non-discrimination.

²⁶ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, n° 96.

²⁷ Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, no. 29.

²⁸ Gesetz vom 18. Dezember 1998 über das liechtensteinische Postwesen (Postgesetz; PG), LGBl. 1999, n° 35.

²⁹ Mediengesetz (MedienG) vom 19. Oktober 2005, LGBl. 2005, n° 250.

³⁰ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz; StPG), LGBl. 2008, n° 144.

³¹ Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (Mitwirkungsgesetz; MWG), LGBl. 1997, n° 211.

Une seule affaire pertinente est à signaler au Liechtenstein en 2014:³² un particulier a fait valoir que son droit à la liberté de religion n'avait pas été respecté par la loi (article 37 du code civil général³³ et article 9 de la CEDH).³⁴ Son recours a été rejeté en première instance. L'arrêt définitif du Tribunal administratif a modifié le jugement précédent dans la mesure où, comme il l'avait réclamé, le requérant a obtenu pour ses enfants une dispense des cours de natation à l'école.

Il n'existe aucune jurisprudence en rapport avec les Roms, lesquels sont à ce jour très peu nombreux au Liechtenstein.

2. Législation principale

Les directives 2000/78/CE et 2000/43/CE, qui se fondent sur l'article 13 du traité CE, n'ont pas été incorporées dans l'accord EEE. En tant que membre de l'EEE et que non-membre de l'UE, le Liechtenstein s'est abstenu de transposer les directives de façon autonome – une réticence qui peut s'expliquer par un manque de ressources administratives et par l'objectif prioritaire que constitue le maintien d'une intensité réglementaire aussi faible que possible. Le Liechtenstein a par ailleurs signé et ratifié les traités internationaux suivants:

- la Convention européenne des droits de l'homme (en vigueur au Liechtenstein depuis 1982);
- la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (en vigueur au Liechtenstein depuis décembre 1995);
- la Convention internationale sur l'élimination de toutes les formes de discrimination raciale (en vigueur au Liechtenstein depuis mai 2000).

D'autres traités internationaux très pertinents pour la juridiction antidiscrimination – en vertu de la loi sur la Cour constitutionnelle – sont également en vigueur au Liechtenstein.³⁵

Le Liechtenstein n'a pas encore ratifié la Convention des Nations unies relative aux droits des personnes handicapées,³⁶ mais le gouvernement a déclaré en 2013 avoir accepté les recommandations de ratifier cette Convention formulées dans le cadre de l'Examen périodique universel (EPU)³⁷ le 30 janvier 2013.³⁸ On peut supposer que ce processus aura été effectué avant le prochain EPU consacré au Liechtenstein.

La législation du Liechtenstein comprend divers actes juridiques couvrant la plupart des aspects visés par les directives susmentionnées, et en particulier l'égalité de traitement entre femmes et hommes ainsi que la discrimination fondée sur le handicap.

La Constitution de la Principauté de Liechtenstein³⁹ dispose en son article 37 qu'elle garantit la liberté de religion et de conviction, et en son article 31, paragraphe 1, que les

³²

<http://www.gerichtsentseide.li/default.aspx?mode=gerichte&prim=3&value=2014&id=4042&backurl=?mode=gerichte%26prim=3%26value=2014>.

³³ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921, n° 15.

³⁴ Convention de sauvegarde des droits de l'homme et des libertés fondamentales du 4 novembre 1950, LGBl. 1982, n° 60/1.

³⁵ Convention relative aux droits de l'enfant (en vigueur depuis décembre 1995); Pacte international relatif aux droits civils et politiques (ratification en décembre 1998); et Pacte international relatif aux droits économiques, culturels et sociaux (en vigueur depuis décembre 1999).

³⁶ <http://www.un.org/french/disabilities/default.asp?id=1413>.

³⁷ Recommandations issues du deuxième cycle de l'Examen périodique universel (EPU):

http://www.llv.li/files/aaa/el_llv_aaa_bericht_upr-arbeitsgruppe_2013.pdf.

³⁸ Déclaration du gouvernement du Liechtenstein concernant le deuxième cycle de l'Examen périodique universel (EPU): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

³⁹ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921, n° 15.

hommes et les femmes sont égaux. Elle ne contient aucune disposition antidiscrimination concernant d'autres motifs.

La loi sur l'égalité des personnes handicapées⁴⁰ vise à éliminer et à prévenir la discrimination envers les personnes handicapées, auxquelles elle veut garantir une égalité de participation à la vie courante de la société.

La loi sur l'égalité entre les femmes et les hommes⁴¹ régit l'égalité hommes-femmes et vise à instaurer cette égalité sur le lieu de travail ainsi qu'en matière d'accès aux biens et aux services.

En résumé, la discrimination fondée sur la race et l'origine ethnique, la religion et les convictions, l'âge et l'orientation sexuelle n'est pas explicitement couverte par des actes législatifs distincts, et il n'existe pas au Liechtenstein de loi générale antidiscrimination couvrant tous les motifs. Ceci dit, s'il n'y a pas d'acte législatif spécifique couvrant tous les motifs de discrimination, un certain nombre de réglementations protègent des aspects particuliers de l'interdiction de discrimination fondée, par exemple, sur l'orientation sexuelle. La lutte contre la discrimination n'en vise pas moins à protéger les groupes vulnérables au sein de la société, tels que les personnes handicapées, les femmes, les enfants, les personnes âgées, les personnes défavorisées, les étrangers et les personnes ayant une orientation sexuelle particulière. La question de savoir si les dispositions ordinaires de la Constitution, les obligations découlant des traités internationaux ou les dispositions du code civil général, du code pénal ou d'autres actes législatifs s'appliquent et suffisent à protéger ces groupes et ces personnes à l'encontre d'une discrimination relève de l'interprétation judiciaire.

Les traités internationaux considérés comme explicitement pertinents pour la juridiction de la Cour constitutionnelle sont énumérés à l'article 15, paragraphe 2, de la loi sur la Cour constitutionnelle.⁴²

3. Principes généraux et définitions

La discrimination directe est définie dans la loi sur l'égalité des personnes handicapées, qui en donne la définition suivante: une discrimination se produit lorsqu'une personne handicapée est, a été ou serait traitée moins favorablement qu'une personne non handicapée dans une situation comparable (article 6, paragraphe 1). La même loi définit comme suit la discrimination indirecte en son article 6, paragraphe 2: une situation dans laquelle une disposition, un critère ou une pratique apparemment neutre désavantagerait particulièrement les personnes handicapées par rapport à des personnes non handicapées, à moins que cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un but légitime et que les moyens pour parvenir à ce but soient appropriés et nécessaires. Les définitions de la discrimination directe et de la discrimination indirecte ne couvrent pas la race et l'origine ethnique, la religion et les convictions, l'âge et l'orientation sexuelle. Les définitions figurant dans les conventions et traités internationaux signés par le Liechtenstein peuvent servir de substituts.

Le harcèlement est défini dans la loi sur l'égalité des personnes handicapées comme un comportement non désiré lié au handicap d'une personne qui a pour objet ou pour effet de porter atteinte à la dignité de la personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant (article 8). Cette définition ne couvre pas la race et l'origine ethnique, la religion et les convictions, l'âge et l'orientation sexuelle.

⁴⁰ Gesetz über die Gleichstellung von Menschen mit Behinderungen, LGBl. 2006, n° 243.

⁴¹ Gesetz über die Gleichstellung von Frau und Mann, LGBl. 1999, n° 96.

⁴² Gesetz vom 27. November 2003 über den Staatsgerichtshof (StGHG), LGBl. 2004, n° 32.

La loi sur l'égalité des personnes handicapées interdit la discrimination à l'égard des personnes qui aident temporairement ou qui s'occupent d'une personne handicapée, ou qui signalent ou intentent une action contre un acte discriminatoire fondé sur le handicap (article 5, paragraphe 4). Il n'existe aucune autre disposition concernant la discrimination basée sur l'association avec des personnes présentant une caractéristique particulière, qu'il s'agisse d'une discrimination en rapport avec le handicap ou d'une discrimination fondée sur d'autres motifs.

La législation antidiscrimination (loi sur les personnes handicapées et loi sur l'égalité hommes-femmes) autorise certaines dérogations à la règle générale, lorsqu'elle existe, et une inégalité de traitement peut être «objectivement justifiée». Dans d'autres domaines (emploi notamment), des exceptions sont admises en cas d'exigences professionnelles véritables et déterminantes – autrement dit, lorsque l'emploi requiert des connaissances particulières, des aptitudes spécifiques ou des caractéristiques spéciales (prêtres de sexe masculin, par exemple). L'action positive est également permise. Ainsi l'article 20 de la loi sur l'égalité des personnes handicapées autorise-t-il des projets pilotes en faveur de personnes handicapées, en ce compris des incitations à l'intention des employeurs pour qu'ils adaptent les lieux de travail aux besoins de ces personnes. Ceci ne préjudicie nullement les dispositions antidiscrimination.

L'article 5 de la loi sur l'égalité des personnes handicapées interdit les rétorsions. En d'autres termes, un plaignant ne peut être pénalisé parce qu'il a introduit un recours ou parce qu'il a engagé une action en justice pour obtenir l'interdiction d'une discrimination. Toute personne se présentant comme témoin ou informateur dans le cadre de poursuites judiciaires, ou apportant son soutien à une personne victime de discrimination, ne peut être pénalisée ou défavorisée.

La loi sur l'égalité des personnes handicapées dispose en son article 23 qu'il convient de prendre la discrimination multiple en compte au moment de fixer en justice le montant de l'indemnisation pour préjudice moral. Aucune disposition n'est prévue pour ce qui concerne la discrimination multiple en rapport avec d'autres motifs tels que la religion et les convictions, l'orientation sexuelle, la race et l'origine ethnique, ou l'âge.

En ce qui concerne l'aménagement raisonnable, l'article 19, paragraphe 3, de la loi sur l'égalité des personnes handicapées dispose que divers programmes peuvent être mis en œuvre et soutenus par le gouvernement, y compris des programmes en matière de formation et d'insertion professionnelles et en matière de logement. L'article 20 précise que des projets pilotes en faveur de l'insertion professionnelle de personnes handicapées peuvent être soutenus par la société.

L'injonction de discriminer est explicitement interdite en ce qui concerne le motif du handicap (article 9 de la loi sur l'égalité des personnes handicapées) et les motifs de la race, de l'origine ethnique et de la religion (article 283 du code pénal).

En l'absence de dispositions légales explicites, une interprétation judiciaire s'avère nécessaire pour déterminer si une discrimination fondée sur d'autres motifs est – ou n'est pas – couverte. La Constitution, les traités internationaux contraignants et les dispositions de diverses lois nationales pourraient justifier une condamnation.

4. Champ d'application matériel

La loi sur l'égalité des personnes handicapées dispose en son article 5 que ces personnes ne peuvent faire l'objet d'aucune discrimination. L'article 10 précise que les salariés ne feront l'objet d'aucune discrimination, que ce soit de façon directe ou indirecte.

L'article 10, paragraphe 1, de cette même loi⁴³ stipule que les personnes handicapées ne peuvent, directement ou indirectement, faire l'objet d'une discrimination en tant que salariés dans le secteur public et dans le secteur privé, ou sur quelque lieu de travail que ce soit.

La disposition visée à l'article 10 couvre également les aspects liés au recrutement, à la rémunération, aux prestations volontaires de sécurité sociale, à la formation professionnelle, à la carrière et à la promotion professionnelles, aux autres conditions d'emploi, à la résiliation du contrat de travail, à l'accessibilité aux services d'emploi, à la formation professionnelle et à d'autres services non compris dans le contrat de travail, à l'appartenance et la participation active à une organisation syndicale, et aux conditions d'accès à l'emploi indépendant (article 10, paragraphe 1, points a-k). Il n'existe pas vraiment de protection contre la discrimination fondée sur des motifs de discrimination autres que le handicap et le genre, que ce soit dans la législation relative à l'emploi ou dans celle couvrant d'autres domaines.

Les dispositions antidiscrimination sont plus strictes dans le secteur public que dans le secteur privé. Ainsi par exemple, la loi sur l'emploi des agents publics prévoit que la gestion des ressources humaines de l'administration du Liechtenstein doit veiller à l'intégration des personnes handicapées et garantir l'égalité des chances entre les femmes et les hommes.

5. Mise en application de la loi

Plusieurs ministères et groupes de travail participent à la mise en œuvre des lois en fournissant des conseils aux personnes touchées par des discriminations et en coordonnant les activités en la matière. Les pouvoirs publics collaborent étroitement avec les organisations non gouvernementales énumérées au point 6 ci-après et les soutiennent financièrement.

Les plaintes sont adressées aux juridictions ordinaires ou, s'il s'agit d'une plainte contre une autorité publique, au Tribunal administratif. Les procédures judiciaires peuvent être effectuées en personne ou par un représentant (article 25 du code de procédure civile). Cette représentation peut être assurée par un avocat, mais pas nécessairement (articles 26 et 28 du code de procédure civile): toute personne dûment autorisée et mandatée, en ce compris dès lors une association, peut agir en qualité de représentant légal. L'article 31 de la loi sur l'égalité des personnes handicapées définit les circonstances dans lesquelles une association en faveur de personnes handicapées peut invoquer une discrimination en son propre nom. Des règles analogues sont fixées à l'article 7 de la loi sur l'égalité entre les femmes et les hommes. Ce type d'association peut, en son propre nom, faire confirmer par une juridiction l'existence d'une discrimination et, partant, l'obligation de l'éliminer.

Tout procès doit se dérouler conformément au code de procédure civile, mais une exception est prévue pour ce qui concerne la charge de la preuve. La loi sur l'égalité des personnes handicapées dispose qu'en cas de plainte alléguant une discrimination directe, il incombe obligatoirement à la partie défenderesse de démontrer l'existence plus probable, compte tenu de l'ensemble des circonstances qu'il invoque, d'un autre motif expliquant la différence de traitement ainsi que le caractère déterminant du motif en question. Des dispositions analogues s'appliquent en cas de harcèlement et de discrimination indirecte.

⁴³ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, n° 243.

Si le droit national n'autorise pas explicitement les preuves statistiques ou la méthode du test de situation dans le contexte de la discrimination, il n'impose pas non plus de restriction générale quant à l'utilisation de ce type d'éléments. On peut donc supposer que toute preuve, y compris une preuve tirée de données statistiques, est recevable en justice. La faible intensité réglementaire et la capacité limitée des agents publics au Liechtenstein font qu'il n'existe à ce jour ni disposition légale concernant le test de situation, ni exemple pratique de son utilisation.

L'article 24 de la loi sur l'égalité des personnes handicapées fixe un délai d'un an pour la prescription des recours à compter du jour où la personne concernée a été informée pour la première fois de l'acte discriminatoire et de son auteur, ou en tout état de cause un délai de trois ans à dater du jour où l'acte discriminatoire a eu lieu. Les dispositions correspondantes du code civil général s'appliquent pour ce qui concerne les autres conditions préalables relatives au délai légal de prescription.

La loi sur l'égalité des personnes handicapées dispose que ces personnes ont droit, lorsqu'elles sont victimes de discrimination, à la restitution de toute perte financière encourue ainsi qu'à une indemnisation pour le préjudice personnel subi. La victime peut également réclamer une ordonnance visant à interdire ou prévenir tout risque de discrimination future, ou à éliminer toute discrimination existante fondée sur le handicap. Il convient, lors de l'évaluation de l'indemnisation pour préjudice moral, de prendre en compte la durée de la période de discrimination, la gravité des faits, l'ampleur du préjudice et l'existence éventuelle d'une discrimination multiple. La loi ne fixe aucun plafond en ce qui concerne l'indemnisation. Des règles analogues figurent dans la loi sur l'égalité entre les femmes et les hommes, mais cette dernière fixe une indemnité minimale et maximale en établissant une distinction entre le rejet d'une candidature à un emploi, la résiliation d'un contrat de travail et un harcèlement ou harcèlement sexuel.

6. Organismes de promotion de l'égalité de traitement

Les principaux organismes qui se consacrent — intégralement ou partiellement — à la lutte contre la discrimination sont énumérés ci-après.

Le Bureau pour l'égalité des personnes handicapées,⁴⁴ institué par le gouvernement en vertu de l'article 22 de la loi sur l'égalité des personnes handicapées, est actuellement géré par l'Association liechtensteinoise des personnes handicapées. Le deuxième paragraphe de l'article susmentionné précise les tâches du Bureau, qui consistent principalement à formuler des recommandations au gouvernement; à conseiller des organismes privés et publics; à collaborer à l'élaboration de la législation; à rédiger des rapports; à concevoir et exécuter des projets; à faire rapport au gouvernement; et à collaborer avec des organismes publics et privés.

Le Bureau pour l'égalité des chances⁴⁵ concentre pour sa part son activité sur l'égalité de genre en s'appuyant sur la loi sur l'égalité entre les femmes et les hommes, dont l'article 19 dispose qu'il agira de façon indépendante dans une série de domaines: fourniture de conseils à l'Administration et à des organismes privés; aide aux victimes de discrimination pour l'introduction de recours; relations publiques et autres activités d'information; travaux de recherche; et recommandation de mesures adéquates à l'intention d'organismes publics et privés. Le Bureau est également chargé par le gouvernement de couvrir d'autres motifs de discrimination (handicap, orientation sexuelle, immigration et intégration sociale, inégalité sociale), dont la liste figure sur la page d'accueil de son site.⁴⁶ Le Bureau pour l'égalité des chances couvre l'immigration et

⁴⁴ Büro für die Gleichstellung von Menschen mit Behinderung: <http://www.lbv.li/>.

⁴⁵ Stabsstelle für Chancengleichheit: <http://www.llv.li/#/12395>.

⁴⁶ Source: <http://www.llv.li/#/12395/stabsstelle-chancengleichheit>

l'intégration, ce qui inclut la discrimination fondée sur la race, la nationalité et l'origine ethnique, bien qu'il ne s'agisse pas de l'une de ses tâches principales. Le Bureau est placé sous la tutelle du gouvernement (ministère des Affaires sociales).

Il existe d'autres commissions/bureaux chargés de questions et de problématiques touchant divers aspects de la non-discrimination.⁴⁷

7. Points essentiels

La législation antidiscrimination du Liechtenstein comprend plusieurs actes juridiques couvrant la plupart des aspects visés par les directives pertinentes. Il s'agit plus particulièrement de l'égalité de traitement entre femmes et hommes, et de la discrimination fondée sur le handicap. Des traités internationaux tels que la Convention sur l'élimination de toutes les formes de discrimination raciale, la Convention européenne des droits de l'homme et d'autres, doivent en outre être pris en considération par la Cour constitutionnelle dans ses décisions, et contribuent ainsi à lutter contre la discrimination.

Ceci étant dit, le Liechtenstein ne s'est pas doté de loi générale antidiscrimination et n'a pas encore ratifié la Convention des Nations unies relative aux droits des personnes handicapées, alors que le gouvernement a accepté, après une analyse et des consultations approfondies, les recommandations⁴⁸ de ratifier ladite Convention avant le prochain EPU.⁴⁹ Aucune suite n'a encore été réservée à cette déclaration faite en 2013.

Il apparaît donc que le Liechtenstein doit déployer des efforts supplémentaires pour lutter contre la discrimination et adopter une législation pertinente à cette fin. Cette lutte aurait tout à gagner d'une loi générale antidiscrimination qui couvrirait tous les motifs de discrimination et prévoirait un Médiateur et un Bureau indépendants. Bien que la CEDH⁵⁰ et d'autres traités internationaux soient contraignants pour la juridiction du Liechtenstein, des dispositions juridiques claires en matière de non-discrimination, couvrant l'ensemble des motifs, font encore défaut.

Il convient de signaler la quasi-absence de jurisprudence concernant la discrimination fondée sur la race ou l'origine ethnique, l'âge, le handicap, la religion et les convictions, ou l'orientation sexuelle. En réalité, très peu de victimes saisissent la justice. La jurisprudence en rapport avec la race ou l'origine ethnique, l'âge, un handicap et l'orientation sexuelle est pratiquement inexistante. De surcroît, en l'absence à ce jour d'un cas de jurisprudence dans lequel le test de situation ou des données statistiques auraient servi de preuves de discrimination, on ne peut préjuger de leur recevabilité ni des questions éthiques ou méthodologiques y afférentes, entre autres. On peut parler à cet égard de terrain inconnu à l'intérieur du cadre juridique du Liechtenstein.

⁴⁷ *Commission pour l'égalité entre les femmes et les hommes, chargée de conseiller le gouvernement; Bureau du Médiateur des enfants et des adolescents, dont la mission principale est la mise en œuvre de la Convention des NU relative aux droits de l'enfant et l'apport d'une assistance et d'informations aux enfants et adolescents dans tous les domaines de la vie; Commission pour l'intégration et Bureau pour l'intégration au sein du service des étrangers: l'article 46 de la loi sur les étrangers prévoit la mise en place d'une commission chargée des questions d'intégration qui, élue par le gouvernement, comprend à la fois des citoyens du Liechtenstein et des ressortissants étrangers. Cette commission conseille le gouvernement et lui adresse des recommandations.*

⁴⁸ Déclaration du gouvernement du Liechtenstein concernant le deuxième cycle de l'Examen périodique universel (EPU): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_de.pdf ou http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

⁴⁹ Recommandations issues du deuxième cycle de l'Examen périodique universel (EPU): <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/179/98/PDF/G1217998.pdf?OpenElement>.

⁵⁰ Convention de sauvegarde des droits de l'homme et des libertés fondamentales du 4 novembre 1950, LGBI. 1982, n° 60/1.

ZUSAMMENFASSUNG

1. Einleitung

Das Fürstentum Liechtenstein ist mit nur 36.000 Einwohnern eines der kleinsten Länder Europas. Die politische Macht liegt zu gleichen Teilen beim gewählten Parlament, also dem Volk, und beim Monarchen. Das Parlament verabschiedet Gesetze, die Wählerschaft kann Gesetzentwürfe durch Volksinitiativen oder Referenden beeinflussen. Neue Gesetze müssen vom Fürsten ratifiziert werden. Das Rechtssystem ist zweigeteilt. Für straf- und zivilrechtliche Verfahren sind die ordentlichen Gerichte zuständig, Berufungsverfahren werden zunächst vom Obergericht und in letzter Instanz vom Obersten Gerichtshof entschieden. Streitfälle zwischen Bürgern und staatlichen Organen werden vom Verwaltungsgerichtshof und vom Staatsgerichtshof verhandelt. Nach liechtensteinischem Recht müssen alle Gesetze der Verfassung und den einschlägigen internationalen Übereinkommen entsprechen.

Die folgenden Diskriminierungsgründe sind durch liechtensteinisches Recht ausdrücklich geschützt:

- nach Artikel 39 des Allgemeinen Bürgerlichen Gesetzbuchs (ABGB) ist die Ausübung bürgerlicher und politischer Rechte nicht an die Religionszugehörigkeit gebunden,
- das Gesetz über die Gleichstellung von Menschen mit Behinderungen (BGIG) schützt vor jeder Form der Diskriminierung aufgrund einer Behinderung,
- Artikel 3 bis 4a des Gesetzes über die Gleichstellung von Frau und Mann (GLG)⁵¹ verbietet die Benachteiligung aufgrund des Geschlechts,
- das Kinder- und Jugendgesetz (KJG)⁵² schützt Kinder und Jugendliche vor Diskriminierung wie Sexismus, Rassismus, politischer Radikalisierung oder Gewalt (Artikel 1 und Artikel 63),
- das Gesetz über das liechtensteinische Postwesen (PG)⁵³ verbietet ausdrücklich jede Form von Diskriminierung aus politischen, religiösen oder weltanschaulichen Gründen in seinem Geltungsbereich (Artikel 5),
- nach dem Mediengesetz (MedienG)⁵⁴ sind Medieninhalte illegal, die aufgrund von Rasse oder ethnischer Zugehörigkeit, Geschlecht, Religion, Alter, Behinderung oder sexueller Ausrichtung zu Diskriminierung anstiften oder diese unterstützen.
- das Gesetz über das Dienstverhältnis des Staatspersonals (StPG)⁵⁵ enthält einen Schutz vor Kündigungen gemäß dem GLG und BGIG (Artikel 22 § 3),
- das liechtensteinische Gesetz über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (MWG)⁵⁶ besagt in Artikel 10, dass Arbeitnehmer wegen der Ausübung einer Tätigkeit in der Arbeitnehmervertretung nicht benachteiligt werden dürfen.

Im Jahr 2014 versäumte die liechtensteinische Regierung es erneut, das Übereinkommen über die Rechte von Menschen mit Behinderungen zu unterzeichnen, obwohl sie sich im Jahr 2013 zu einer Unterzeichnung verpflichtet hatte. Auch sonst gab es 2014 keine Gesetzesänderungen im Bereich des Antidiskriminierungsrechts.

⁵¹ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann, Gleichstellungsgesetz, LGBl. 1999, Nr. 96.

⁵² Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, Nr. 29.

⁵³ Gesetz vom 18. Dezember 1998 über das liechtensteinische Postwesen (Postgesetz, PG), LGBl. 1999, Nr. 35.

⁵⁴ Mediengesetz (MedienG) vom 19. Oktober 2005, LGBl. 2005 Nr. 250.

⁵⁵ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz, StPG), LGBl. 2008 Nr. 144.

⁵⁶ Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (Mitwirkungsgesetz, MWG), LGBl. 1997, Nr. 211.

2014 gab es in Liechtenstein nur einen relevanten Fall.⁵⁷ Eine Privatperson reichte Klage ein, weil sie ihre Religionsfreiheit durch liechtensteinisches Recht verletzt sah (Artikel 37 des ABGB⁵⁸ und Artikel 9 der EMRK).⁵⁹ Die Klage wurde in erster Instanz abgewiesen. Das rechtskräftige Urteil des Verwaltungsgerichts änderte das vorherige Urteil ab und stellte die Kläger, wie von diesen gewünscht, vom schulischen Schwimmunterricht frei.

Es gibt keine Rechtsprechung in Bezug auf Roma. Heute leben nur sehr wenige Roma in Liechtenstein.

2. Wichtigste Gesetze

Die Richtlinien 2000/78/EG und 2000/43/EG basieren auf Artikel 13 des EG-Vertrags. Die Richtlinien wurden nicht in das EWR-Abkommen übernommen. Liechtenstein hat als Mitgliedstaat des EWR und Nichtmitglied der Europäischen Union die Richtlinien nicht auf freiwilliger Basis umgesetzt. Die zögernde Haltung Liechtensteins lässt sich auf die geringen administrativen Ressourcen des Landes und auf das übergeordnete Ziel zurückführen, die Regulierungsdichte so niedrig wie möglich zu halten. Andererseits hat Liechtenstein unter anderem die folgenden internationalen Verträge unterzeichnet und ratifiziert:

- die Europäische Menschenrechtskonvention (in Kraft seit 1982),
- das Übereinkommen zur Beseitigung jeder Form von Diskriminierung der Frau (in Kraft seit Dezember 1995),
- das Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung (in Kraft seit Mai 2000).

Außerdem gelten gemäß dem Gesetz über den Staatsgerichtshof in Liechtenstein weitere internationale Abkommen mit hoher Relevanz für das Antidiskriminierungsrecht.⁶⁰

Das Übereinkommen über die Rechte von Menschen mit Behinderungen (BRK)⁶¹ wurde von Liechtenstein noch nicht ratifiziert. Allerdings hat die Regierung von Liechtenstein 2013 erklärt, dass sie die Empfehlung zur Ratifizierung der UN-Behindertenrechtskonvention akzeptiert hat, die im Rahmen der allgemeinen regelmäßigen Überprüfung der Vereinten Nationen (UPR)⁶² am 30. Januar 2013 ausgesprochen worden war.⁶³ Es ist anzunehmen, dass die Konvention vor der nächsten UPR Liechtensteins ratifiziert wird.

Zum liechtensteinischen Recht gehören mehrere Gesetze, die die meisten Aspekte der oben genannten Richtlinien abdecken. Dies gilt insbesondere für die Gleichstellung von Frauen und Männern und für Diskriminierung aufgrund von Behinderung.

Verfassung des Fürstentums Liechtenstein.⁶⁴

⁵⁷ <http://www.gerichtsentscheide.li/default.aspx?mode=gerichte&prim=3&value=2014&id=4042&backurl=?mode=gerichte%26prim=3%26value=2014>.

⁵⁸ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921, Nr. 15.

⁵⁹ Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten, 8. September 1982, LGBl. 1982, Nr. 60/1.

⁶⁰ Übereinkommen über die Rechte des Kindes (in Kraft seit Dezember 1995), Pakt über bürgerliche und politische Rechte (Ratifizierung im Dezember 1998), Pakt über wirtschaftliche, soziale und kulturelle Rechte (in Kraft seit Dezember 1999).

⁶¹ <http://www.un.org/disabilities/default.asp?id=259>.

⁶² Empfehlungen nach dem zweiten Zyklus der allgemeinen regelmäßigen Überprüfung (UPR): http://www.llv.li/files/aaa/el_llv_aaa_bericht_upr-arbeitsgruppe_2013.pdf.

⁶³ Erklärung der liechtensteinischen Regierung zum zweiten Zyklus der allgemeinen periodischen Überprüfung (UPR): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

⁶⁴ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LV), LGBl. 1921, Nr. 15.

Durch Artikel 37 der Verfassung ist die Religions- und Glaubensfreiheit gewährleistet. Nach Artikel 31 § 1 sind Mann und Frau gleichberechtigt. Die Verfassung enthält keine weiteren Bestimmungen, die Diskriminierung aus anderen Gründen verbieten.

Gesetz über die Gleichstellung von Menschen mit Behinderungen (BGIG).⁶⁵

Ziel des Gesetzes ist es, die Diskriminierung von Menschen mit Behinderungen zu bekämpfen und zu verhindern. Es garantiert Menschen mit Behinderungen eine gleichberechtigte Teilhabe am gesellschaftlichen Leben.

Gesetz über die Gleichstellung von Frau und Mann (GLG)⁶⁶

Dieses Gesetz regelt die Gleichstellung von Frauen und Männern unter anderem im Arbeitsleben und beim Zugang zu Gütern und Dienstleistungen.

Zusammenfassend lässt sich sagen, dass Diskriminierung aufgrund von Rasse und ethnischer Zugehörigkeit, Religion und Weltanschauung, Alter und sexueller Ausrichtung nicht ausdrücklich in speziellen Gesetzen verboten ist und es in Liechtenstein auch kein allgemeines Antidiskriminierungsgesetz gibt, das alle Diskriminierungsgründe abdeckt. Obgleich es kein allgemeines Antidiskriminierungsgesetz gibt, das alle Diskriminierungsgründe abdeckt, bestehen Rechtsvorschriften, die in einzelnen Aspekten vor Diskriminierung schützen, zum Beispiel aufgrund der sexuellen Ausrichtung. Dennoch haben die Vorschriften gegen Diskriminierung das Ziel, besonders gefährdete soziale Gruppen zu schützen, z. B. Menschen mit Behinderungen, Frauen, Kinder, ältere Menschen, unterprivilegierte Mitglieder der Gesellschaft, Ausländer und Menschen mit einer speziellen sexuellen Ausrichtung. Es ist eine Frage der juristischen Auslegung, ob die Bestimmungen der Verfassung, die Verpflichtungen aus internationalen Abkommen oder die Bestimmungen des Allgemeinen Bürgerlichen Gesetzbuchs, des Strafgesetzbuchs oder andere Gesetze anwendbar sind und diese Gruppen und einzelnen Personen ausreichend vor Diskriminierung schützen.

Artikel 15 § 2 des Gesetzes über den Staatsgerichtshof zählt die internationalen Übereinkommen auf, die für die Rechtsprechung des Staatsgerichtshofs besonders relevant sind.⁶⁷

3. Wichtigste Grundsätze und Begriffe

Unmittelbare Diskriminierung wird im BGIG definiert. Das BGIG definiert unmittelbare Diskriminierung wie folgt: eine unmittelbare Diskriminierung liegt vor, wenn eine Person aufgrund einer Behinderung in einer vergleichbaren Situation eine weniger günstige Behandlung erfährt, als eine andere Person erfährt, erfahren hat oder erfahren würde (Artikel 6 Abs. 1). Nach dem BGIG liegt eine mittelbare Diskriminierung vor, „wenn dem Anschein nach neutrale Vorschriften, Kriterien oder Verfahren sowie Merkmale gestalteter Lebensbereiche Menschen mit Behinderungen gegenüber anderen Personen in besonderer Weise benachteiligen können, es sei denn, die betreffenden Vorschriften, Kriterien oder Verfahren sowie Merkmale gestalteter Lebensbereiche sind durch einen rechtmäßigen Zweck sachlich gerechtfertigt und die Mittel sind zur Erreichung dieses Zwecks angemessen und erforderlich“ (Artikel 6 Abs. 2). Rasse und ethnische Zugehörigkeit, Religion und Weltanschauung, Alter und sexuelle Ausrichtungen sind durch die Definition von unmittelbarer und mittelbarer Diskriminierung nicht abgedeckt. Als Ersatz können die Begriffsbestimmungen der internationalen Übereinkommen und Verträge dienen, die Liechtenstein unterzeichnet hat.

⁶⁵ Gesetz über die Gleichstellung von Menschen mit Behinderungen, LGBI. 2006, Nr. 243.

⁶⁶ Gesetz über die Gleichstellung von Frau und Mann, LGBI. 1999, Nr. 96.

⁶⁷ Gesetz vom 27. November 2003 über den Staatsgerichtshof (StGHG), LGBI. 2004, Nr. 32.

Belästigung wird ebenfalls im BGIB definiert. Belästigung liegt vor, wenn im Zusammenhang mit einer Behinderung unerwünschte, unangebrachte oder anstößige Verhaltensweisen gesetzt werden, die bezwecken oder bewirken, dass die Würde der betroffenen Person verletzt oder ein einschüchterndes, feindseliges, entwürdigendes, beleidigendes oder demütigendes Umfeld für die betroffene Person geschaffen wird (Artikel 8). Rasse und ethnische Zugehörigkeit, Religion und Weltanschauung, Alter und sexuelle Ausrichtungen sind durch diese Definition nicht abgedeckt.

Das BGIB verbietet die Diskriminierung von Personen, die Menschen mit Behinderungen vorübergehend assistieren oder betreuen oder die eine Diskriminierung aufgrund einer Behinderung anzeigen oder bekämpfen (Artikel 5 Abs. 4). Es gibt keine weiteren Bestimmungen zur Diskriminierung aufgrund der Assoziierung mit Menschen mit besonderen Eigenschaften, weder in Bezug auf Menschen mit Behinderung noch in Bezug auf andere Diskriminierungsgründe.

Die Rechtsvorschriften zur Antidiskriminierung sehen Ausnahmen vom allgemeinen Diskriminierungsverbot vor, wenn die Ungleichbehandlung „sachlich gerechtfertigt“ ist (BGIB und GLG). In anderen Bereichen, z. B. im Arbeitsleben, sind Ausnahmen zulässig, wenn wesentliche und entscheidende berufliche Anforderungen vorliegen, d. h. wenn Spezialkenntnisse, Fähigkeiten oder körperliche Leistungsfähigkeit nötig ist oder wenn für eine Stelle besondere Merkmale erforderlich sind, z. B. für männliche Priester. Auch positive Maßnahmen sind erlaubt. Artikel 20 des BGIB erlaubt beispielsweise Pilotversuche zugunsten von Menschen mit Behinderungen, einschließlich von Anreizen für Arbeitgeber zur Einrichtung behindertengerechter Arbeitsplätze. Dies verstößt nicht gegen das Diskriminierungsverbot.

Das BGIB verbietet Viktimisierung (Artikel 5). Personen, die gegen eine Diskriminierung Klage einreichen, dürfen nicht aus diesem Grund benachteiligt werden oder weil sie den Rechtsweg beschreiten, um ein Verbot der Diskriminierung zu erwirken. Auch Personen, die vor Gericht als Zeugen aussagen und eine von Diskriminierung betroffene Person unterstützen, dürfen nicht diskriminiert oder benachteiligt werden.

Nach Artikel 23 des BGIB muss bei der Bemessung der Höhe des immateriellen Schadenersatzes auch Mehrfachdiskriminierungen berücksichtigt werden. Es gibt keine Bestimmungen für Mehrfachdiskriminierung aus anderen Gründen, wie Religion oder Weltanschauung, sexuelle Ausrichtung, Rasse oder ethnische Herkunft und Alter.

In Bezug auf angemessene Vorkehrungen erlaubt Artikel 19 § 3 des BGIB der Regierung die Durchführung von Förderprogrammen, z. B. Programmen in den Bereichen Berufsausbildung, Integration und Wohnen. Nach Artikel 20 kann das Gemeinwesen Pilotversuche durchführen, um die Eingliederung von Menschen mit Behinderungen in den Arbeitsmarkt zu fördern.

Anweisung zur Diskriminierung ist ausdrücklich verboten, sowohl für den Diskriminierungsgrund Behinderung (Artikel 9 BGIB) als auch für die Gründe Rasse, ethnische Zugehörigkeit und Religion (Artikel 283 Strafgesetzbuch).

Für andere Diskriminierungsgründe gibt es keine ausdrücklichen Bestimmungen, daher muss die Frage, ob diese ebenfalls abgedeckt sind, durch die Rechtsprechung geklärt werden. Die Verfassung, verbindliche internationale Übereinkommen und die Bestimmungen mehrerer liechtensteinischer Gesetze könnten eine Verurteilung rechtfertigen.

4. Sachlicher Anwendungsbereich

Gemäß Artikel 5 des BGIG ist die Diskriminierung von Menschen mit Behinderungen verboten. Artikel 10 besagt, dass Arbeitnehmer weder unmittelbar noch mittelbar

diskriminiert werden dürfen. Nach Artikel 10 §1 des BGIG⁶⁸ darf aufgrund einer Behinderung im Zusammenhang mit einem Arbeitsverhältnis privaten oder öffentlichen Rechts sowie in der sonstigen Arbeitswelt niemand unmittelbar oder mittelbar diskriminiert werden.

Die Bestimmungen in Artikel 10 gelten insbesondere für Einstellung, Entgelt, freiwillige Sozialleistungen, Aus- und Weiterbildung, beruflichen Aufstieg und Beförderung, sonstige Arbeitsbedingungen, Beendigung des Arbeitsverhältnisses, beim Zugang zur Berufsberatung, beruflichen Weiterbildung und anderen Leistungen außerhalb eines Arbeitsverhältnisses, bei der Mitgliedschaft und Mitwirkung in einer Gewerkschaft und bei den Bedingungen für den Zugang zu selbständiger Erwerbstätigkeit (Artikel 10 Abs. 1(a) bis 1(k)). Weder im Arbeitsrecht noch in anderen Bereichen ist ein Schutz vor Diskriminierung aufgrund anderer Gründe als Behinderung und Geschlecht vorgesehen.

Im öffentlichen Sektor ist der Gleichbehandlungsgrundsatz stärker als in der Privatwirtschaft. So besagt beispielsweise das Gesetz über das Dienstverhältnis des Staatspersonals, dass die Personalpolitik der liechtensteinischen Regierung die Eingliederung von Menschen mit Behinderungen fördern und die Chancengleichheit von Frau und Mann gewährleisten soll.

5. Rechtsdurchsetzung

Mehrere Ministerien und Arbeitsgruppen unterstützen die Rechtsdurchsetzung, indem sie Diskriminierungsoffer beraten und entsprechende Maßnahmen koordinieren. Staatliche Stellen arbeiten mit den in Abschnitt 6 aufgezählten Nichtregierungsorganisationen eng zusammen und unterstützen sie finanziell.

Klagen können vor den ordentlichen Gerichten oder, bei Beschwerden gegen staatliche Institutionen, vor den Verwaltungsgerichtshof gebracht werden. Gerichtsverfahren können entweder in Person oder durch Bevollmächtigte vorgenommen werden (Artikel 25 der Zivilprozessordnung, ZPO). Der Bevollmächtigte kann ein Anwalt sein, aber die ZPO (Artikel 26 und 28) beschränkt die Vertretung nicht auf Anwälte, nach der ZPO ist jede bevollmächtigte Person – also auch eine Vereinigung – berechtigt, als rechtlicher Vertreter zu handeln. Artikel 31 des BGIG definiert die Umstände, unter denen Behindertenorganisationen Rechtsansprüche in eigenem Namen geltend machen können. Ähnliche Bestimmungen sind in Artikel 7 des GLG vorgesehen. Die Organisationen können im eigenen Namen durch ein Gericht feststellen lassen, dass eine Diskriminierung vorliegt. Dies führt dazu, dass die Diskriminierung beseitigt werden muss.

Diskriminierungsverfahren werden nach der ZPO geführt, jedoch gibt es eine Ausnahme bei der Beweislast. Wurde laut BGIG eine unmittelbare Diskriminierung glaubhaft gemacht, obliegt es dem Beklagten zu beweisen, dass es bei Abwägung aller Umstände wahrscheinlicher ist, dass ein anderes von ihm geltend gemachtes Motiv für die unterschiedliche Behandlung ausschlaggebend war. Für Belästigung und mittelbare Diskriminierung gelten ähnliche Bestimmungen.

Statistische Beweise oder Situationstests sind bei Diskriminierungsklagen nicht ausdrücklich erlaubt, es gibt im liechtensteinischen Recht aber auch kein allgemeines Verbot dieser Beweisführung. Daher ist anzunehmen, dass alle Beweise, also auch statistische Daten, vor Gericht zulässig sind. Aufgrund der geringen Regulierungsdichte und der begrenzten Kapazitäten des öffentlichen Dienstes in Liechtenstein gibt es bisher noch keine Rechtsvorschriften oder praktischen Anwendungsbeispiele für Situationstests in Liechtenstein.

⁶⁸ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz, BGIG), LGBl. 2006, Nr. 243.

Nach Artikel 24 des BGIG verjähren Ansprüche in einem Jahr von dem Tage an gerechnet, an dem die betroffene Person von der Diskriminierung und der diskriminierenden Person Kenntnis erlangt, jedenfalls aber mit dem Ablauf von drei Jahren vom Tag der Diskriminierung. In Bezug auf die Voraussetzungen für eine gesetzliche Verjährung gelten die Bestimmungen des Allgemeinen Bürgerlichen Gesetzbuchs (ABGB).

Nach dem BGIG haben Menschen mit Behinderungen, die diskriminiert wurden, Anspruch auf Ersatz des Vermögensschadens und auf eine Entschädigung für die erlittene persönliche Beeinträchtigung. Außerdem kann das Opfer beantragen, eine drohende Diskriminierung zu verbieten oder zu unterlassen oder eine bestehende Diskriminierung aufgrund von Behinderungen zu beseitigen. Bei der Bemessung der Höhe des immateriellen Schadenersatzes sind insbesondere die Dauer der Diskriminierung, die Schwere des Verschuldens, die Erheblichkeit der Beeinträchtigung und Mehrfachdiskriminierungen zu berücksichtigen. Das Gesetz legt keine Ober- oder Untergrenzen für den Schadenersatz fest. Das GLG enthält ähnliche Bestimmungen. Allerdings legt das GLG eine Ober- oder Untergrenze für die Entschädigung fest und unterscheidet dabei zwischen der Ablehnung einer Anstellung oder einer Kündigung und Fällen von Belästigung oder sexueller Belästigung.

6. Gleichbehandlungsstellen

Im Folgenden werden die wichtigsten Stellen aufgeführt, deren Aufgabe – ganz oder teilweise – im Kampf gegen Diskriminierung besteht.

Das Büro für die Gleichstellung von Menschen mit Behinderung⁶⁹ wurde von der Regierung gemäß den Bestimmungen des BGIG eingerichtet (Artikel 22). Derzeit wird das Büro vom Liechtensteinischen Behinderten-Verband geführt. Artikel 22 § 2 des BGIG regelt die Aufgaben des Büros, die wichtigsten sind dabei: Ausarbeitung von Empfehlungen für die Regierung, Beratung von öffentlichen und privaten Einrichtungen, Mitwirkung bei der Gesetzgebung, Abgabe von Stellungnahmen, Ausarbeitung und Durchführung von Projekten, periodische Berichterstattung an die Regierung und Zusammenarbeit mit öffentlichen und privaten Einrichtungen.

Arbeitsschwerpunkt der Stabsstelle für Chancengleichheit⁷⁰ ist die Förderung der Geschlechtergleichstellung auf der Grundlage des Gesetzes über die Gleichstellung von Frau und Mann (GLG). Nach Artikel 19 des GLG hat die Stabsstelle in den folgenden Bereichen eigenständige Befugnisse: Beratung von Behörden und privaten Einrichtungen, Unterstützung der Opfer von Diskriminierung bei der Einreichung von Beschwerden, Öffentlichkeitsarbeit und Bereitstellung von Informationen und Empfehlung geeigneter Maßnahmen für staatliche und private Einrichtungen. Die Stabsstelle wurde von der Regierung außerdem ermächtigt, auch andere Diskriminierungsgründe abzudecken (Behinderung, sexuelle Orientierung, Migration und Integration, soziale Benachteiligung), die auf der Website der Stabsstelle aufgeführt sind.⁷¹ Die Stabsstelle für Chancengleichheit ist auch für Migration und Integration zuständig, d. h. sie deckt die Diskriminierungsgründe Rasse, Nationalität und ethnische Herkunft ab, wenn dies auch nicht zu den Hauptaufgaben der Stabsstelle gehört. Die Stabsstelle untersteht der Regierung (Ministerium für Gesellschaft).

Es gibt weitere Ausschüsse und Büros, die sich mit Fragen und Themen zu einzelnen Aspekten von Diskriminierung befassen.⁷²

⁶⁹ Büro für die Gleichstellung von Menschen mit Behinderung: <http://www.lbv.li/>.

⁷⁰ Stabsstelle für Chancengleichheit: <http://www.llv.li/#/12395>.

⁷¹ Quelle: <http://www.llv.li/#/12395/stabsstelle-chancengleichheit>

⁷² *Kommission für die Gleichstellung von Frau und Mann*: diese Kommission berät die Regierung. *Kinder- und Jugendbeirat*: wichtigstes Ziel des Beirats ist die Umsetzung der UN-Kinderrechtskonvention und die

7. Wichtige Punkte

Zum liechtensteinischen Recht gehören mehrere Gesetze, die die meisten Aspekte der beiden Richtlinien abdecken. Dies gilt insbesondere für die Gleichstellung von Frauen und Männern und für Diskriminierung aufgrund von Behinderung. Außerdem tragen internationale Übereinkommen wie das Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung und die Europäische Menschenrechtskonvention (EMRK), die der Staatsgerichtshof bei seinen Urteilen berücksichtigen muss, zum Kampf gegen Diskriminierung bei.

Andererseits gibt es kein allgemeines Antidiskriminierungsgesetz und die UN-Behindertenrechtskonvention wurde noch nicht ratifiziert, obwohl die liechtensteinische Regierung nach gründlichen Überlegungen und Beratungen die Empfehlung⁷³ zur Ratifizierung der Konvention vor der nächsten UPR angenommen hat.⁷⁴ Diese Erklärung von 2013 wurde bis heute nicht umgesetzt.

Somit muss Liechtenstein weitere Anstrengungen unternehmen, um Diskriminierung zu bekämpfen und einen entsprechenden Rechtsrahmen zu schaffen. Für die Durchsetzung des Gleichbehandlungsgebots wäre ein umfassendes Antidiskriminierungsgesetz, das alle Diskriminierungsgründe abdeckt und die Einrichtung eines unabhängigen Ombudsmanns und eines Büros vorsieht, sehr förderlich. Obwohl die EMRK⁷⁵ und andere internationale Übereinkommen für die Gerichte in Liechtenstein bindend sind, fehlt es an einem klaren gesetzlichen Diskriminierungsverbot auf nationaler Ebene, das alle Diskriminierungsgründe abdeckt.

Es ist anzumerken, dass es so gut wie keine Rechtsprechung zu Diskriminierung aufgrund von Rasse oder ethnischer Zugehörigkeit, Alter, Behinderung, Religion und Weltanschauung oder sexueller Ausrichtung gibt. Nur sehr wenige Opfer bringen ihren Fall vor Gericht. Rechtsprechung in Bezug auf ethnische Zugehörigkeit, Alter, Behinderung und sexuelle Ausrichtung gibt es praktisch nicht. Da es auch keine Rechtsprechung gibt, in denen Situationstests oder statistische Daten als Beweise für Diskriminierung vorgelegt wurden, lässt sich nicht sagen, ob diese Beweise zulässig sind oder ob es ethische oder methodologische Probleme bei deren Zulassung gibt. Hier handelt es sich um unbekanntes Terrain des liechtensteinischen Rechts.

Unterstützung und Unterrichtung von Kindern und Jugendlichen in allen Lebensbereichen. *Kommission für Integrationsfragen und Integrationsstelle des Ausländer- und Passamts*. Nach Artikel 46 des Ausländergesetzes setzt die Regierung eine Kommission für Integrationsfragen ein, die sich aus Ausländern und Liechtensteinern zusammensetzt. Die Kommission berät die Regierung und gibt Empfehlungen ab.

⁷³ Erklärung der liechtensteinischen Regierung zum zweiten Zyklus der allgemeinen periodischen Überprüfung (UPR): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_de.pdf oder http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

⁷⁴ Empfehlungen nach dem zweiten Zyklus der allgemeinen regelmäßigen Überprüfung (UPR): <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/179/98/PDF/G1217998.pdf?OpenElement>.

⁷⁵ Konvention vom 4. November 1950 zum Schutz der Menschenrechte und Grundfreiheiten, LGBl. 1982, Nr. 60/1.

INTRODUCTION

The national legal system

Liechtenstein's constitution defines Liechtenstein as 'a constitutional, hereditary monarchy on a democratic and parliamentary basis'⁷⁶ where 'the power of the State is embodied in the Reigning Prince and the People'.⁷⁷ This means that political power is shared equally between the elected parliament/the people and the monarch. However, the Prince must approve every law and financial resolution in order for it to attain legal force.⁷⁸ Article 45 of the Constitution states that the Parliament (*Landtag*) is the 'legal organ which represents and asserts the rights and interests of the people in relation to the government in accordance with the constitution'.⁷⁹ In respect of international relations, the Parliament is not allowed to amend a treaty that has already been signed by the government, although it can accept or reject it completely. In addition, the people have the direct democratic rights of initiative and referendum, including the right to hold a referendum on international treaties. New laws, and amendments to laws and the constitution, therefore, can also be initiated and decided on by the people in a popular vote.

The members of the government are selected on the recommendation of the Parliament and are appointed by the reigning Prince. The government consists of five members, including the Prime Minister, who has to countersign the laws and financial resolutions that have been passed by the Parliament and have been signed by the reigning Prince.⁸⁰

The legal system is dual. Criminal and civil law is handled by the Ordinary Courts (*Landgericht*); appeals in the 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, the Administrative Court (*Verwaltungsgericht*) and the Constitutional Court (*Staatsgerichtshof*) act as the relevant courts of law.

The legal system requires that all laws must be in conformity with the constitution and with relevant international treaties. Article 104(1) of the constitution requires that a Constitutional Court be established as a court of public law to protect the rights guaranteed by the constitution, to decide in conflicts of jurisdiction between the courts and the administrative authorities, and to act as a disciplinary court for government ministers. Article 104(2) states that the Constitutional Court shall have jurisdiction to review the constitutionality of laws and international treaties and the legality of Government ordinances, and that in such matters, it may declare their annulment.

The national laws of Liechtenstein and the international treaties that have primary relevance for anti-discrimination in Liechtenstein are listed in the appendix 1.

List of main legislation transposing and implementing the directives

As a Non-Member State of the EU and a small country with a strong international orientation, Liechtenstein relies on stable and predictable international rules. Thus, Liechtenstein's relations within the framework of the EEA and the EU play an important role in Liechtenstein's policy. Regarding the adoption of international law, Liechtenstein follows a monist approach. In 2013 Liechtenstein committed itself to signing the

⁷⁶ Article 2 of the Constitution of the Principality of Liechtenstein: <http://www.llv.li/verfassung-e-01-02-09.doc.pdf>. Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15.

⁷⁷ Article 2 of the Constitution.

⁷⁸ Article 9 of the Constitution.

⁷⁹ Article 45 of the Constitution.

⁸⁰ www.liechtenstein.li/index.php?id=19&L=1. Constitution of the Principality of Liechtenstein: <https://www.gesetze.li/Seite1.jsp?LGBl=1921015.xml&Searchstring=Verfassung&showLGBl=true>.

Convention on the Rights of Persons with Disabilities, but unfortunately, in 2014, the government has once again failed to sign the convention. In 2014 there were no legislative amendments in relation to non-discrimination.

| Title of Legislation | Date of adoption | Date of entry into force | Date of latest amendments | Grounds covered | Material Scope |
|--|-------------------|--------------------------|---------------------------|--|--|
| Act on Equality of People with Disabilities (Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz; BGIG; LGBl. 2006 no 243) ⁸¹ | 25 October 2006 | 1 January 2007 | LGBl. 2012, no. 269 | Disability | All sectors |
| Act on Disability Insurance (Invalidenversicherung; IVG; LGBl. 1959 no. 5) ⁸² | 23 December 1959 | 1 January 1960 | LGBl. 2013 Nr. 68 | Disability | Insurance; goods; assistance; employment |
| Common Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB) ⁸³ | 1 June 1811 | 18 December 1812 | LGBl. 2014 Nr. 199 | Nationality, pregnancy | General |
| Penal Code (Strafgesetzbuch; StGB; LGBl. 1988 no 37) ⁸⁴ | 24 June 1987 | 1 January 1989 | LGBl. 2014 Nr. 110 | Race, national origin, ethnicity, language, religion, belief | Penalties |
| Act on Foreigners (Ausländergesetz; AuG; LGBl. 2008 no. 311) ⁸⁵ | 17 September 2008 | 1 September 2011 | LGBl. 2012 Nr. 30 | Integration (nationality, race, ethnic origin) | All sectors |

⁸¹

<http://www.gesetze.li/Seite2.jsp?LGBI=2006243.xml&Searchstring=behinderung&showLGBI=true&suchart=lgbaktuell>.

⁸²

<http://www.gesetze.li/Seite2.jsp?LGBI=1960005.xml&Searchstring=invaliden&showLGBI=true&suchart=lgbaktuell>.

⁸³

<http://www.gesetze.li/Seite2.jsp?LGBI=1003001.xml&Searchstring=invaliden&showLGBI=true&suchart=lgbaktuell>.

⁸⁴

<http://www.gesetze.li/Seite2.jsp?LGBI=1988037.xml&Searchstring=strafgesetzbuch&showLGBI=true&suchart=lgbaktuell>.

⁸⁵

<http://www.gesetze.li/Seite2.jsp?LGBI=2008311.xml&Searchstring=ausl%E4ndergesetz&showLGBI=true&suchart=lgbaktuell>.

1 GENERAL LEGAL FRAMEWORK

The Liechtenstein constitution includes the following articles dealing with non-discrimination:

| Article | Type of clause | Grounds covered | Material scope |
|---|---|---|----------------|
| Article 27bis ⁸⁶ of the Liechtenstein Constitution | A general clause | Basic principle of equality of all Liechtenstein citizens | General |
| Article 37(1) of the Liechtenstein Constitution ⁸⁷ | An explicit clause that guarantees freedom of religion and conscience | religion, belief | General |
| Article 39 of the Liechtenstein Constitution ⁸⁸ | A specific clause stating that the exercise of civil and political rights is not dependent on religious affiliation | religion, belief | General |
| Article 40 of the Liechtenstein Constitution ⁸⁹ | A clause covering freedom of speech (<i>Meinungsfreiheit</i>) | religion, belief | General |
| Article 41 of the Liechtenstein Constitution ⁹⁰ | A clause covering the right of assembly and association (<i>Vereins- und Versammlungsrecht</i>) | not explicitly specified | General |

These provisions do not apply to all areas covered by the directives. Their material scope is not broader than those of the directives. There are no specific provisions in relation to disability, sexual orientation, age and racial/ethnic origin in the Constitution.

These constitutional clauses are directly applicable and can be enforced against private actors (as opposed to the State).

There is no constitutional provision protecting the grounds dealt with in the directives.

⁸⁶ Verfassung des Fürstentums Liechtenstein, LGBl.1921, no. 15.

⁸⁷ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15.

⁸⁸ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15.

⁸⁹ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15.

⁹⁰ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15, <https://www.gesetze.li/Seite1.jsp?LGBl=1921015.xml&Searchstring=Verfassung&showLGBl=true>.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

Article 39 of the Liechtenstein Constitution (LC) states that the exercise of civil and political rights is not dependent on religious affiliation. It also refers to the possibility of exceptions in respect of particular subjects, which can result from specific rules in certain laws.

The Act on Equality of People with Disabilities (*Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz; AEPD/BGIG*)⁹¹ protects individuals against any kind of discrimination based on disability.

The Liechtenstein Act on Children and Youth (ACY)⁹² protects children and young persons from discrimination due to sexism, racism, political radicalisation or violence (Articles 1 and 63).

The Liechtenstein Act on Postal Services (APS)⁹³ explicitly prohibits any discrimination based on political, religious, or ideological grounds (Article 5) for any kind of postal services.

The Liechtenstein Act on Media (AM)⁹⁴ declares that media content will be considered to be illegal if it incites or supports discrimination based on racial or ethnic origin, gender, religion, age, disability or sexual orientation. The act is applicable to media companies and media owners in the territory of Liechtenstein, whereas the Penal Code (*Strafgesetzbuch*)⁹⁵ is applicable to a wider circle of persons. In Article 283 of the Penal Code, religion and race or ethnicity are mentioned in relation to acts of discrimination that are subject to criminal liability. The other grounds mentioned by the Act on Media, such as age, disability, sexual orientation and so on, are not explicitly mentioned in the Penal Code and therefore need judicial interpretation in court cases.

Article 18(3) of the Liechtenstein Act on Aviation (AA)⁹⁶ governs the process of acceptance of foreign licences. In this context, discrimination due to nationality is explicitly excluded.

The Liechtenstein Act on Employment of Public Officials (AEPO)⁹⁷ regulates protection against dismissal in reference to the AEWM⁹⁸ and the AEPD (Article 22(3)).

The Liechtenstein Act on Information and Consultation of Employees in Business Enterprises (AIC)⁹⁹ states in Article 10 that employees are not allowed to be treated less favourably due to their involvement in an organisation for workers' representation.

⁹¹

<http://www.gesetze.li/Seite2.jsp?LGBI=2006243.xml&Searchstring=behinderung&showLGBI=true&suchart=lgbIaktuell>.

⁹² Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBI. 2009, no. 29.

⁹³ Gesetz vom 18. Dezember 1998 über das liechtensteinische Postwesen (Postgesetz; PG), LGBI. 1999, no. 35.

⁹⁴ Mediengesetz (MedienG) vom 19. Oktober 2005, LGBI. 2005 Nr.250.

⁹⁵ Strafgesetzbuch (StGB) vom 24. Juni 1987; LGBI. 1988, no. 37.

⁹⁶ Gesetz vom 15. Mai 2002 über die Luftfahrt (Luftfahrtgesetz, LFG), LGBI. 2003 Nr. 39.

⁹⁷ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz; StPG), LGBI. 2008 Nr. 144.

⁹⁸ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBI. 1999, no. 96.

⁹⁹ Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (Mitwirkungsgesetz; MWG), LGBI. 1997, no. 211.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

There is no specific discrimination law in Liechtenstein. Thus, no definitions of any of the grounds of discrimination are provided by a specific law on discrimination. In some cases, national law provides equivalent terms.

Racial or ethnic origin

There are no definitions in the national law of Liechtenstein. To use an equivalent term we can refer to the International Convention on the Elimination of All Forms of Racial Discrimination of 4 November 1950, which entered into force in Liechtenstein on 31 March 2000.¹⁰⁰

Religion or belief

The Liechtenstein legal framework does not contain a legal definition of, or any equivalent terms for, religion or belief. An interpretation of how 'religion' is defined, could be based on Article 9 of the European Convention on Human Rights (ECHR).¹⁰¹ In general, judicial interpretation seems to be necessary.

Disability

Article 3 of the AEPD gives a definition of disability.¹⁰² It is important to note that the national law refers to 'physiological, mental and physical' limitations that occur in disabilities without any interpretation of limitation based on illness. Furthermore Recital 17 of Directive 2000/78/EC is reflected in national law under Article 10(3) of the AEPD.¹⁰³

Beside Liechtenstein's commitment to sign the Convention on the Rights of Persons with Disability, no further action took place and there were no legislative amendments in 2014 within the non-discrimination field. Thus, the influence of the Convention is not fully reflected in Liechtenstein's national law, including the definition of disability as mentioned above.

Age

The law is silent on the definition of age in respect of discrimination. Only one definition is given in the Liechtenstein Act on Children and Youth (ACY),¹⁰⁴ stating that children and young people up to and including the age of 18 enjoy special protection.

Sexual orientation

The Act on Civil Union for Same-Sex Couples (ACUSSC)¹⁰⁵ contains no definition of sexual orientation.

2.1.2 Multiple discrimination

In Liechtenstein, prohibition of multiple discrimination is included in the law.

¹⁰⁰ Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung, LGBl. 2000, no. 80. Definition: It defines racial discrimination in Article 1 as: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'

¹⁰¹ Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten, LGBl. 1982, no. 60/1.

¹⁰² The definition of disability is: 'the result of a deficiency of functions that is not just temporary and is based on a physiological, mental, or psychological condition or an impairment of sensory functions which constitutes a possible complication for participation in the labour market. Such a condition is not deemed temporary if it is likely to last for more than 6 months.'

¹⁰³ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁰⁴ Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, no. 29.

¹⁰⁵ Gesetz vom 16. März 2011 über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (Partnerschaftsgesetz; PartG), LGBl. 2011, no. 350.

The AEPD states in Article 23 that multiple discrimination must be taken into account when deciding on the compensation for immaterial damages at a court trial. Nevertheless there is no definition or description of grounds of multiple discrimination in the sense of listing possible grounds or even combinations of grounds to fall under the term 'multiple discrimination'. There are no provisions regarding multiple discrimination on other grounds (religion or belief, sexual orientation, race and ethnic origin or age). There are no plans for the adoption of such rules known to the authors.

In Liechtenstein there is no case law dealing with multiple discrimination.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Liechtenstein the national law (including case law) does not explicitly prohibit discrimination based on perception or assumption of what a person is. The law is silent in terms of assumed discrimination. From the regulations in Article 26 of the AEPD¹⁰⁶ it can be said, that if a person claims assumed discrimination he/she has to prove that in consideration of all circumstances it is more likely that the facts substantiated by her/him are truthful.

b) Discrimination by association

In Liechtenstein the national law (including case law) does not explicitly prohibit discrimination based on association with persons with particular characteristics. The law is silent in terms of discrimination by association. From the regulations in Article 26 of the AEPD¹⁰⁷ it can be said, that if a person claims to be discriminated against by association, he/she has to prove that in consideration of all circumstances it is more likely that the facts substantiated by her/him are truthful.

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(4)).

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Liechtenstein, direct discrimination is prohibited in national law on grounds of disability (AEPD Article 6(1)) and on grounds of gender (AEWM Article 1a).¹⁰⁸ Direct discrimination is defined in Liechtenstein law as occurring when a person is treated less favourably than another person has been or would be treated in a comparable situation.

b) Justification of direct discrimination

There is no explicit justification of direct discrimination relating to sexual orientation, religion and belief, or ethnic origin. However, exceptions and different treatment are allowed in the working environment if, for instance, special knowledge, skills, physical conditions or other characteristics are required for a job. These 'objectively justified'

¹⁰⁶ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁰⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁰⁸ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

provisions can also be relevant for people with disabilities (Article 10(3) AEPD).¹⁰⁹ In addition, public service jobs can be restricted to Liechtenstein citizens, but race and ethnicity would not be permitted as selection criteria.

As an example, the question whether skin colour could be held to be a genuine occupational requirement for an actor in a movie cannot be answered by the authors. Judicial interpretation would be required and the person claiming the discrimination would have to produce evidence.

In Liechtenstein there are no specific requirements for a test to justify direct discrimination. As long as there are obvious reasons for specific requirements, it would not be interpreted as discriminating against people with other characteristics.

2.2.1 Situation testing

a) Legal framework

In Liechtenstein situation testing is not mentioned by any national legislative act. Furthermore, there are no defined conditions for using this kind of evidence in court and as there are no relevant legal cases so far, there is no evidence as to how courts would handle such cases.

Whether situation testing could be accepted by the court as evidence under the general evidence rules in the civil procedure code remains an open question, as there is no case law. As such, judicial interpretation would be required.

b) Practice

In Liechtenstein situation testing is not used in practice. There are no activities known to the authors for any preparation of situation testing in connection with discrimination in the near future in Liechtenstein.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Liechtenstein, indirect discrimination is explicitly prohibited and defined in national law on grounds of disability (AEPD Article 6(2))¹¹⁰ and gender (AEWM Article 1a).¹¹¹ Indirect discrimination is defined as occurring when apparently neutral provisions, criteria or procedures would put persons of a specific ground of discrimination at a particular disadvantage compared to other persons. There are no legal prohibitions on indirect discrimination in relation other grounds in place.

The definition given in the national law as stated above complies with those given in the directives.

b) Justification test for indirect discrimination

¹⁰⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹¹⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹¹¹ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

According to the AEPD (Article 6(2))¹¹² different treatment is objectively justified if provisions, criteria or procedures are necessary in order to achieve a legitimate aim, although no specific justification test is mentioned. In addition, the means of achieving that aim must be appropriate. Liechtenstein law thus states that justification of indirect discrimination is possible in certain situations.

The justification for indirect discrimination in Liechtenstein law is compatible with the directives.

c) Comparison in relation to age discrimination

The AEWM and the AEPD do not include age discrimination. There is no further law quoting the directive in respect of age discrimination.

2.3.1 Statistical evidence

a) Legal framework

In Liechtenstein there are national rules permitting data collection. The Data Protection Act (DAG),¹¹³ which refers to EU Directive 95/46/EG of 24 October 1995, governs the processing of sensitive data and communicating personal data to a third party, e.g. collecting personal data from natural persons and legal entities.

Article 5(1) of the DPA¹¹⁴ sets out rules for the use of collected data. The DPA contains no explicit regulation regarding data collection for the purposes of litigation and positive action measures. The officials of the Data Protection Agency would have to decide whether data collection for purposes of litigation and positive action measures would be allowed—or not—in a specific case. Data collection without the explicit duty to inform the involved person about the collection of data is allowed for statistical or scientific purposes (Article 5(1) of the DPA).

Racial or ethnic origin:

Article 3(1)(e) of the DPA defines data regarding race/ethnicity as especially sensitive personal data that require particular protection.

Religion or belief:

Article 3(1)(e) of the DPA defines data regarding religious, ideological or political beliefs as especially sensitive personal data that require particular protection.

Disability / Age / Sexual orientation:

Data collection in respect of information about disability, age and sexual orientation is not explicitly mentioned in the DPA but could be subsumed under 'data on personal privacy', which is treated as sensitive personal data that must be protected.

b) Practice

In Liechtenstein statistical evidence in order to establish indirect discrimination is not used in practice. Statistical evidence is not explicitly permitted by national law in order to establish indirect discrimination. The same applies to case law, although there is no general restriction on the use of statistical data. However, one can assume that any evidence, including evidence from statistical data, is admissible in court. Up to now, no case of discrimination has been brought to court using statistical data as evidence.

¹¹² Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹¹³ Gesetz vom 14. März 2002 über den Datenschutz (Datenschutzgesetz; DSG), LGBl. 2002, no. 55.

¹¹⁴ Datenschutzgesetz vom 14. März 2002 (DSG), LGBl. 2002, no. 55.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Liechtenstein, harassment is prohibited by national law. It is defined. The main act regarding anti-discrimination prohibits harassment within its specific scope on grounds of disability (AEPD Article 8).¹¹⁵ In general, harassment is defined as unwanted modes of behaviour towards a person with the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or abusive environment. Such behaviour can relate to a person's disability.

In Liechtenstein harassment does explicitly constitute a form of discrimination. Article 8 of the AEPD clearly states that harassment constitutes discrimination.

b) Scope of liability for harassment

In Liechtenstein, where harassment is perpetrated by an employee, the employer and the employee are liable. In relation to the AEPD and the AEWM, the individual practising discrimination or harassment can be held liable under the terms of Article 5 of the AEWM¹¹⁶ and/or Article 23 of the AEPD.¹¹⁷

Employers may be held liable for the actions of their employees. Article 10(2) of the AEPD states that discrimination also exists when an employer, in the event of harassment by employees, fails to act to remedy the situation in accordance with statutory regulations and the norms and standards in the labour contract. This means that the employer can also be punished. In addition, Article 3(3) of the AEWM¹¹⁸ and Article 9 of the AEPD stipulate that people who instruct others to discriminate can be held liable.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Liechtenstein, instructions to discriminate are prohibited in national law. Instructions are defined. Article 9 of the AEPD¹¹⁹ states that discrimination also occurs when a person instructs another to discriminate or harass someone on the grounds of disability.

In Liechtenstein instructions do explicitly constitute a form of discrimination in the sense set out above.

b) Scope of liability for instructions to discriminate

In Liechtenstein the instructor and the discriminator are liable. Article 9 of the AEPD,¹²⁰ stipulate liability for people who give instructions to discriminate. It can be assumed that

¹¹⁵ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹¹⁶ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

¹¹⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹¹⁸ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

¹¹⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹²⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

employers can be held directly liable for the actions of third parties as long as they are directly involved in the instruction (see also PC Article 283).¹²¹

Based on the given law, there exists no general exclusion-clause of being held liable for persons who discriminated on any grounds other than disability and gender because s/he received the instruction to do so by another person. There are no specific provisions regarding the liability of people who give the instructions to discriminate (e.g. to what extent they can be held liable) and the person who discriminated against another person because s/he received such an instruction. Judicial interpretation is required as such a situation would have to be evaluated and legally decided based on the individual case, given that the degree of the dependency relationship between the person giving the instruction to discriminate and the person who discriminated might be of relevance regarding the question of punishment.

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

a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Liechtenstein the duty to provide reasonable accommodation is not included in the law. It is not defined. The AEPD provides no provision to set up reasonable accommodation for people with disabilities in general, but Article 7(3) of the AEPD¹²² states that indirect discrimination has occurred if no attempts have been made to accommodate the situation of the person concerned. In cases where indirect discrimination is a consequence of barriers, Article 7(4) states that it must be proved whether legal provisions regarding accessibility exist, and if so, whether the legal tasks have been fulfilled.

The provisions of Articles 19 and 20 of the AEPD¹²³ are rather vague, saying that the state supports the integration of people with disability, and that the community may establish appropriate programmes. Thus, given that binding and strong legal obligations on employers are lacking in Liechtenstein legislation, adaptations to workplaces and other integrative activities are developed on a case-by-case basis.

Segregation is practiced more regularly than integration into the common work environment. According to Article 82 of the Act on Disability Insurance,¹²⁴ the insurance can support public and private, non-profit residential care homes, integration centres, and sheltered workshops for people with disabilities. All of these are specialised to assist people with disabilities.

There are no specific regulations implemented in national law relating to the duty to provide reasonable accommodation in respect of discrimination due to race or ethnic origin, religion or belief, age or sexual orientation.

b) Practice

Article 10(1) and (2) of the AEPD specify the extent of the duty to make provisions for the avoidance of discrimination within the area of working world. In addition, Article 7 of the AEPD lists the type of disproportionate burden (*unverhältnismässige Belastungen*)

¹²¹ Strafgesetzbuch (StGB) vom 24. Juni 1987; LGBl. 1988, no. 37.

¹²² Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹²³ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹²⁴ Gesetz vom 23. Dezember 1959 über die Invalidenversicherung (IVG), LGBl. 1960, no. 5.

that may justify unequal treatment and prevent this from being regarded as indirect discrimination (cf. 2.3a for the definition of indirect discrimination). In detail, Article 7(2) specifies that the following criteria in particular have to be taken into consideration when deciding whether the likely burden is 'disproportionate':

- the costs of the accommodation;
- the resources of the enterprise;
- the extent to which public assistance is available;
- the time period between the entering into force of the AEPD and the complaint;
- the effect on the general interest of people with disabilities.

Regarding public assistance, Articles 17 to 21 of the AEPD provide rules on government aid in the above stated cases.

c) Definition of disability and non-discrimination protection

Articles 11 to 16 of the AEPD¹²⁵ make no distinction in the definition of a disability for the purposes of claiming a reasonable accommodation or protection from non-discrimination in general.

d) Duties to provide reasonable accommodation outside the field of employment

Article 13 of the AEPD¹²⁶ states a duty to provide reasonable accommodation for people with disabilities outside of their employment. However, this duty is qualified and focuses on accessibility: buildings that were built before the act came into force should be adapted at the next major renovation and buildings which, for any reason, cannot be adapted, may be exempted by the government.

Within section C of the AEPD, which provides regulations for buildings and public transportation facilities regarding the accessibility and suitability for people with disabilities and which is not restricted to the employment area, there are general duties to provide accessibility (see Article 7 of the AEPD).¹²⁷

The definition of 'disproportionate burden' as detailed in Article 7 of the AEPD¹²⁸ does not differ between cases in areas of employment and those outside employment. There is no case law known to the authors nor has any been officially published.

e) Failure to meet the duty of reasonable accommodation

In Liechtenstein failure to meet the duty of reasonable accommodation does count as discrimination. The failure to provide accessibility to buildings, facilities or public transportation facilities in line with the AEPD counts as discrimination under Liechtenstein law. The law is silent about the classification of failures to meet the obligation of reasonable accommodation as direct or indirect discrimination. Therefore, judicial interpretation would be required.

With reference to direct discrimination and according to Article 26(2) of the AEPD it is obligatory on the defendant to prove that it is more likely in all the circumstances that he

¹²⁵ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹²⁶ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹²⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹²⁸ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

claims to have another reason for the difference in treatment and that this reason is crucial. Article 26(3) states that when citing a reference to harassment as well as indirect discrimination, it is obligatory on the defendant to prove that in consideration of all circumstances it is more likely that the facts substantiated by him are truthful. The provisions of Article 26 refer to the section on the protection against discrimination in general and in employment (Articles 5 to 10 of the AEPD).

In other cases the complaining person has to make the claim credible. Article 26 of the AEPD on the burden of proof states in Article 26(1) that when a person claims to be discriminated against according to Articles 5 to 10, that person must make the claim credible.

The second part of article 26 states that the defendant may try to prove that he has another reason for the difference in treatment and that that reason is crucial. This can also be applied to the right to reasonable accommodation. If the defendant can come up with a sensible and crucial reason for him to have ignored the law on reasonable accommodation the courts can exonerate him.

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

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

g) Accessibility of services, buildings and infrastructure

In Liechtenstein national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

Section C of the AEPD provides regulations for buildings and public transportation facilities regarding their accessibility and suitability for people with disabilities. These rules can be seen as a general duty to provide accessibility, which exists in the absence of an individual request. According to the AEPD, public buildings must be constructed in a way that gives people with disabilities the possibility to move around freely. If buildings are not convenient for people with disabilities—especially public places—they must be adapted in order to give people with disabilities the freedom to move around freely as soon as work has been completed on the building. Houses with six or more apartments that were constructed before the law entered into force must be adapted at the first major renovation that the house undergoes in order to give people with disabilities access and free movement. If such a building is constructed under the new law, it must be accessible from the beginning. These subjects are covered in Articles 11 to 14 of the AEPD.¹²⁹

Article 23(5) on legal claims states that:

'If the discrimination consists in the violation of the provisions on accessibility and adaptability according to articles 11 to 16, the assertion of claims under section 1 and 2 is excluded. If in civil cases the claim is made that discrimination is based on a violation of the provisions on the accessibility and adaptability, the court shall rule on the objection without interrupting the process itself.'

This clearly shows that the national law requires public buildings and infrastructures to be designed, built, and possibly adapted in a disability-accessible way. If anyone fails to comply, the courts must decide on the penalties.

¹²⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

In Liechtenstein national law contains a general duty to provide accessibility by anticipation for people with disabilities.

Article 3(1)(g) of the AEPD defines accessibility as follows: accessibility is given when built features of the landscape designed for public use are accessible and usable for people with disabilities in the usual way, without any particular difficulty and in principle without assistance from others. According to Article 12 of the AEPD, new public buildings must be constructed in an accessible way and existing buildings must be adapted as soon as they are renewed. Private housing areas with more than six apartments also have to be accessible to people with disabilities and Article 14 of the AEPD states that residential buildings may only be subsidised if they are adaptable.

Exceptions can be made in respect of public buildings (Article 12(7) AEPD) and also to private housing areas if the terrain makes it difficult to realise accessibility (Article 13(1)). The Office for Equality of People with Disabilities must be consulted before an exception is permitted.

h) Accessibility of public documents

Article 17 of the AEPD¹³⁰ states the obligation of society to take into consideration the special requirements of people with disabilities when interacting with them. This obligation is combined with the right of people with speech, hearing or visual impairments to use familiar facilities or tools, e.g. sign language, when communicating with official authorities in Liechtenstein. This includes also the availability—on request—of forms, documents relating to court cases and official notices in a format that is understandable and comprehensible to disabled people, without additional cost.

Regarding voting and tax declaration documents, there are no legally binding regulations in place. The Act on the Political Rights (APR; *Volksrechtgesetz*) is silent on this topic. In practice, voting documents (including ballot papers) are designed according to the internal guidelines of the government. Thus, comparing the internal guidelines of the government with the rules of easy language for people with disabilities (published by the Organisation of the Disabled)¹³¹ it can be said, that the voting documents are not completely accessible to people with learning difficulties (as a group of people with disabilities).

Article 56a of the Act on Media (AM; *Mediengesetz*)¹³² states the obligation for all broadcasters to implement adequate measures to ensure that their programmes are made accessible to hearing-impaired and visually-impaired people. Article 2 of the AM¹³³ defines broadcasters and all persons who provide media content in terms of their responsibilities to the general public. Thus, there is a legal obligation for broadcasters to ensure that the media content of election debates and broadcasts by political parties etc. is accessible to people with hearing or visual impairments.

¹³⁰ Gesetz über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), 25.10.2006, LGBl. 2006, no. 243. Source:

<https://www.gesetze.li/Seite1.jsp?LGBl=2006243.xml&Searchstring=Gleichstellung&showLGBl=true>.

¹³¹ Source: http://www.leichtesprache.org/images/Regeln_Leichte_Sprache.pdf.

¹³² Mediengesetz (MedienG), 19.10.2005, LGBl. 2005 no. 250. Source:

<https://www.gesetze.li/Seite1.jsp?LGBl=2005250.xml&Searchstring=Mediengesetz&showLGBl=true>.

¹³³ Mediengesetz (MedienG), 19.10.2005, LGBl. 2005 no. 250. Source:

<https://www.gesetze.li/Seite1.jsp?LGBl=2005250.xml&Searchstring=Mediengesetz&showLGBl=true>.

3 PERSONAL AND MATERIAL SCOPE

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)

The basic rights of Liechtenstein citizens and foreigners are stated in the Constitution of the Principality of Liechtenstein¹³⁴ of 1921. In Liechtenstein, the following residence / citizenship / nationality requirements are applied for protection under the relevant national laws transposing the directives.

‘Article 28

- 1) Every Liechtenstein citizen shall have the right to reside freely in any location within the territory of the State and to acquire all forms of property, in accordance with further detailed legal provisions.
- 2) The entry and exit, stay and residence of foreigners shall be governed by international treaties and by legislation.
- 3) Persons present within the borders of the Principality shall be bound to observe its laws and shall be entitled to the protection afforded by the Constitution and the other laws.’

‘Article 31

- 1) All Liechtenstein citizens shall be equal before the law. Public offices shall be equally open to them, subject to observance of the legal provisions.
- 2) Men and women shall enjoy equal rights.
- 3) The rights of foreigners shall be determined in the first instance by international treaties, or, in their absence, by reciprocity.’

Article 31 of the Liechtenstein Constitution (LC)¹³⁵ states that all citizens are equal before the law. The term citizen is to be understood as referring to all persons holding Liechtenstein national citizenship without distinction of sex.¹³⁶ Foreigners are excluded from this definition. The rights of foreigners are governed by treaty and, in the absence of any treaty, by reciprocal law. Furthermore the LC states in Article 39 that the exercise of civil and political rights is not dependent on religious affiliation.

Regarding the AEPD, there is no distinction made between Liechtenstein citizens and others.

Special provisions regarding racial discrimination are contained in Article 283 of the Penal Code (PC).¹³⁷ Again, there is no distinction made between Liechtenstein citizens and foreigners. Protection against racial discrimination is independent of citizenship. Thus, foreigners are also entitled to protection from racial discrimination

There are no further national laws dealing with discrimination based on grounds of race or origin.

¹³⁴ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921 Nr. 15.

¹³⁵ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15.

¹³⁶ The phrase ‘without distinction of sex’ makes sense because in the German language there is a difference between male citizens (der Landesangehörige) and female citizens (die Landesangehörige). The constitution only uses the male term (der Landesangehörige), but this term also includes women. This was explicitly stated in an act amending the constitution (LGBl. 1971, no 22).

¹³⁷ Strafgesetzbuch (StGB) vom 24. Juni 1987; LGBl. 1988, no. 37.

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Liechtenstein the personal scope of national law covers natural and legal persons for the purpose of protection against discrimination. The Personal and Corporate Law Act (PCL)¹³⁸ distinguishes between a natural person (*natürliche Person*) and a legal person (*juristische Person*). Regarding discrimination, the law does not make a difference between natural and legal persons. Concerning protection against discrimination on grounds of disability, the AEPD focuses on natural persons. This is defined in Articles 2 and 3(2) of the AEPD. As the term 'person' is defined as referring to members of both female and male gender the law applies to both women and men. Article 23(1) of the AEPD covers the restitution of any financial losses incurred and compensation for the personal detriment suffered. Only persons, i.e. natural persons, are mentioned in that section.

In Liechtenstein the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. The law regarding discrimination (AEPD) does not make a difference between natural and legal persons regarding liability. Thus it can be assumed that both national laws are valid for natural as well as legal persons. Employers may be held liable for the actions of employees. Article 10(2) of the AEPD¹³⁹ states that discrimination also exists when an employer, in the event of harassment by employees, fails to act to remedy the situation in accordance with statutory regulations and the norms and standards in the labour contract. This means that the employer can also be punished. In addition, Article 9 of the AEPD,¹⁴⁰ stipulates that people who give instructions to discriminate are liable.

Furthermore, Article 282 of the Penal Code¹⁴¹ (PC) defines liability for persons who call on someone or approve someone's action to discriminate in a way that is against the law. For the application of Article 282 of the PC, the discriminating action has to be done in a way to be applicable to the general public respectively its content infringe against the general legal sense. Since there are no further references it cannot be generally judicially ruled out that service providers might be held directly liable for the actions of third parties, even if they are not directly involved in the incident or instruction (see also PC Article 283).¹⁴²

b) Private and public sector including public bodies

In Liechtenstein the personal scope of national law covers private and public sector including public bodies under specific conditions for the purpose of protection against discrimination. Basically the AEPD and the AEWM (Article 2)¹⁴³ are applicable to both the private and public sector. Nevertheless, within the AEPD there are some regulations that restrict the application of the law to the private sector (Article 2(2) of the AEPD).¹⁴⁴ For example, the AEPD is not applicable to non-public buildings with less than six apartment units that are without state funding.

¹³⁸ Personen- und Gesellschaftsrecht (PGR) vom 20. Januar 1926, LGBl. 1926 Nr. 4.

¹³⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁴⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁴¹ Strafgesetzbuch (StGB), LGBl. 1988, no. 37.

¹⁴² Strafgesetzbuch (StGB), LGBl. 1988, no. 37.

¹⁴³ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

¹⁴⁴ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

The personal scope of the anti-discrimination law in Liechtenstein says that employers, without making any further differentiation between private and public sector, can be held liable for the actions of employees. Article 10(2) of the AEPD¹⁴⁵ states that discrimination exists when an employer, in the event of harassment by employees, fails to act to remedy the situation in accordance with statutory regulations and the norms and standards in the labour contract. Article 9 of the AEPD,¹⁴⁶ stipulates that people who give instructions to discriminate are liable.

Concerning protection against discrimination on grounds of disability, the AEPD focuses on natural persons.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Liechtenstein, national legislation in terms of discrimination in the field of Directives 2000/43 and 2000/78 applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service, holding statutory office, for the ground of disability.

Article 10(1) of the AEPD¹⁴⁷ states that people with disabilities may not be discriminated against as employees in the public and in the private sector or at any other workplace, either directly or indirectly.

Beside these explicit anti-discrimination provisions in the AEPD, no specific antidiscrimination law exists. For other grounds of discrimination, judicial interpretation is required to confirm whether rather general anti-discrimination provisions in the Constitution, in international treaties and in national law are sufficient to protect against discrimination. There is no case law known to the authors on this issue.

3.2.2 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 Liechtenstein, national legislation in terms of discrimination includes 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 ground of disability in both private and public sectors as described in Directives 2000/43 and 2000/78.

Article 5 of the AEPD states that nobody shall be discriminated against due to disability.

There are exceptions to this general rule in Article 10(3) and (4). Article 10(3) of the AEPD¹⁴⁸ states that discrimination does not apply if a special attribute is necessary to fulfil the professional task and the disabled person concerned does not have such an attribute.

¹⁴⁵ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁴⁶ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁴⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁴⁸ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

Article 10(4) states that wages may be set in relation to merit, without this being regarded as discrimination. Article 10(1), paragraphs (a) to (k) of the AEPD¹⁴⁹ cover 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 cooperation in trade unions, and conditions for access to self-employment.

As there are no specific references in the AEPD it can be assumed that the scope of discrimination covers all aspects of the conditions for access to employment, self-employment or occupation. However, in relation to the public sector, discrimination is further limited by the Act on the Employment of Public Officials¹⁵⁰ (AEPO), which explicitly states the guarantee of equal opportunities for women and men (Article 4(2)(f)), as well as the integration of people with special needs, such as people with disabilities (Article 4(2)(i)), as an objective of personnel policy, whereas there are no such positive statements relating to the private sector.

Apart from the AEPD, no specific national law exists on the conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the other three grounds, in both private and public sectors, as described in the directives. Therefore judicial interpretation is required to confirm, whether the general anti-discrimination provision in the Constitution (LC) are sufficient to protect against discrimination.

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

In Liechtenstein national legislation does not include working conditions, including pay and dismissals, for all five grounds and for both private and public employment. There are explicit anti-discrimination provisions in the AEPD (Article 10),¹⁵¹ the AEWG (Article 3)¹⁵² and the Common Civil Code (Article 9)¹⁵³ including discrimination on the ground of disability. For other grounds of discrimination, judicial interpretation is required to confirm whether the rather general provisions in the Constitution, in international treaties and in national law are sufficient to protect against discrimination.

Article 30 of the Act on Civil Union for Same-Sex Couples (ACUSSC)¹⁵⁴ stipulates equal treatment for pension rights in the event of a divorce, regardless of whether the person was living in a legally recognised same-sex partnership in accordance with the ACUSSC, or in a marriage (see also Article 86b of the AMA).¹⁵⁵ The equivalent ruling is also stated in Article 54 of the National Old Age and Widow's/Widower's Pension Act (NOWP).¹⁵⁶

The laws and articles mentioned above refer to regulations regarding avoiding discrimination in the area of employment and working conditions, including payment and

¹⁴⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁵⁰ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatsappersonals (Staatspersonalgesetz; StPG), LGBl. 2008 Nr. 144.

¹⁵¹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁵² Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

¹⁵³ Allgemeines bürgerliches Gesetzbuch (ABGB), publiziert im ASW, LGBl. 1967, no. 34.

¹⁵⁴ Gesetz vom 16. März 2011 über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (Partnerschaftsgesetz; PartG), LGBl. 2011, no. 350.

¹⁵⁵ Art. 86 b) of the Act on Marriage, Ehegesetz (EheG) vom 13. Dezember 1973, LGBl. 1974 Nr. 20.

¹⁵⁶ Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG), LGBl. 1952, no. 29.

dismissal, based on different grounds, including age and sexual orientation. Nevertheless, race and religion as grounds for discrimination are not covered by any specific law.

– Occupational pensions constituting part of pay

The pension age in Liechtenstein is 64 years for both men and women.¹⁵⁷ Retirement planning is based on three pillars: the general national pension, the company pension, and private savings. There is no distinction made between men and women, nor between Liechtenstein citizens and foreigners or people with disabilities and others.

The given legal provisions within the occupational pensions' legislation do not explicitly allow discrimination on ground of disability nor preclude it. Thus, the Act on Company Personnel Plan (ACPP) (Article 3)¹⁵⁸ releases employers from the obligation to implement an occupational pension for the individual employee if that employee is two-thirds disabled. Nevertheless, Article 34 of the ACPP¹⁵⁹ grants the employee the right to participate in the occupational pension scheme on his or her own behalf. Hence there is no obligation on the employer to contribute.

Nevertheless, without any discrimination, there are differences in the amount of pension, since the company pension in particular depends on how much capital was paid into the pension account during a person's professionally active years. To a lesser degree, the general national pension is also dependent on the duration of professional career, but the differences between the minimum and the maximum pensions are not so great. For these reasons, people with limited opportunities on the labour market have significantly lower pensions than others.

No specific law exists regarding discrimination on grounds of race and religion, thus, judicial interpretation is required.

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

In Liechtenstein, national legislation regarding disability in the context of Directives 2000/43 and 2000/78 applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

The AEDP (Article 10(1))¹⁶⁰ covers all types and stages of vocational training and education. This includes access to careers guidance, vocational training, retraining, and further training, as well as access to practical professional experience. In addition to the AEDP, the Act on Vocational Training (AVT, Article 1c)¹⁶¹ promotes, among other things, equal treatment of women and men as well as the elimination of discrimination against people with disabilities in relation to any vocational training system.

¹⁵⁷ Art. 55 of the National Old Age and Widow's/Widower's Pension (NOWP). Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG), LGBl. 1952, no. 29.

¹⁵⁸ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl. 1988, no. 12.

¹⁵⁹ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl. 1988, no. 12.

¹⁶⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁶¹ Berufsbildungsgesetz (BBG) vom 13. März 2008, LGBl. 2008, no. 103.

3.2.5 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 Liechtenstein, national legislation based on disability includes membership of, and involvement in workers or employers' organisations as formulated in the directives for both private and public employment.

Based on the Act on Information and Consultation of Employees in Business Enterprises (*Mitwirkungsgesetz*, AIC), any discrimination based on the fact that a person holds a membership or has any kind of involvement in an organisation of workers or employees is defined as a prohibited ground of discrimination. The rule stays valid even if the membership has been terminated (Article 10 AIC).¹⁶²

Furthermore, according to the AEWM (Article 3(2))¹⁶³ people cannot be treated less favourably on the ground of gender in respect of membership in an organisation of workers or employees, or any organisation whose members carry on a particular profession. Contravention of this rule represents discrimination.

There is no specific case law regarding this topic known to the authors.

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

In Liechtenstein, national legislation covers social protection, including social security and healthcare as formulated in the Racial Equality Directive for the grounds of disability, age and sexual orientation. There exists no specific regulation within national law regarding grounds of racial, religion or ethnic origin. For grounds of sexual orientation the Act on Civil Union for Same-Sex Couples states that regarding social security and occupational pensions (Article 30) the same rules apply to same-sex couples as to heterosexual married couples.

Nevertheless the Constitution of the Principality of Liechtenstein (LC) lays down the basic principle of equality. Article 27bis¹⁶⁴ states that 'human dignity shall be respected and protected', and that 'no one may be subjected to inhuman or degrading treatment or punishment.' Article 31 notes that 'all Liechtenstein citizens shall be equal before the law.' This equality rule is, through international treaties such as the ECHR, extended to non-nationals as well, with the exception of political rights, especially voting rights.

Within the AEPD, discrimination in the context of social protection (e.g. social security or healthcare) is not explicitly listed. Under Article 2 of the AEPD, all areas of life of people with disabilities are covered and therefore social protection falls under the anti-discrimination regulation of the act.

In general, Liechtenstein provides social security services to all individuals. The main law in this regard is the Act on Social Help (ASH).¹⁶⁵ Children and young persons up to the age of 16 benefit from a premium waiver. Persons who receive the official pension or disability pension payment are granted a discount of up to 70 % (as of 2012) on the social security contribution. Many additional instruments to support people in need are

¹⁶² Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (*Mitwirkungsgesetz*; MWG), LGBl. 1997, no. 211.

¹⁶³ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

¹⁶⁴ Verfassung des Fürstentums Liechtenstein, LGBl. 1921, no. 15.

¹⁶⁵ Sozialhilfegesetz vom 15. November 1984, LGBl. 1985 no 17.

provided in the Act on Supplementary Aid to the National Old Age and Widow's/Widower's Pension (ASANP).¹⁶⁶ This act focuses mainly on supportive measures in respect of age and disability. A further special act provides support for people with a sensory disability (Act on Assistance for Blind People, AABP).¹⁶⁷ In the areas of race, ethnic origin, religion or belief, and sexual orientation there exist no distinct provisions.

There is also financial assistance for people who cannot afford accommodation (Act on Rent Allowance for Families, ARAF).¹⁶⁸ Rent allowance is restricted to Liechtenstein residents who have to support dependent persons in their own household (immature children, parents etc.) and whose household income lies below defined thresholds.

There are many other legal provisions in different acts that support individuals, families or client systems in the sense of social protection by financial or other means. It is not only the state and its administration that are involved in social assistance activities, but also municipal authorities and private associations.

– Article 3.3 exception

There are payments of various kinds made by state schemes or similar, including state social security or social protection schemes, which refer to the exceptions in Article 3.3 of the Employment Equality Directive. There are no national problems known to the authors based on these exceptions.

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

In Liechtenstein, national legislation does not include social advantages as formulated in the Racial Equality Directive.

In Liechtenstein, the lack of definition of social advantages does not raise problems.

In the last decades Liechtenstein's economy has developed very well. This has allowed the state and municipalities to give a wide range of benefits to groups of persons with lower incomes. Thus, tax reduction for families, child birth grants, monthly extra pay for children, discounts for access to public buses and facilities for young and old people and many other benefits have been implemented. Support in this regard is not interpreted as discriminating against others. The benefits are provided to all people or to people with special characteristics, e.g. age or income, yet do not discriminate on any grounds such as disability, sexual orientation, race and ethnicity, religion and belief.

The Act of National Old Age and Widow's /Widower's Pension (NOWP) covers aspects of the old age pension with reference to the Act on Disability Insurance (ADI; *Invalidenversicherung*; IVG; LGBl. 1959 no. 5)¹⁶⁹ in the sense that discrimination on the ground of disability with regards to social advantages is prohibited by national law. Thus the NOWP states that discrimination in the area of social advantages on grounds of disability is prohibited.

The Act on Civil Union for Same-Sex Couples states in Article 30 that regarding occupational pension the same rules apply to same-sex couples as apply to heterosexual married couples.

¹⁶⁶ Gesetz vom 10. Dezember 1965 über Ergänzungsleistungen zur Alters-, Hinterlassenen- und Invalidenversicherung (ELG), LGBl. 1956 no 46.

¹⁶⁷ Gesetz vom 17. Dezember 1970 über die Gewährung von Blindenbeihilfen (BBHG), LGBl. 1971 no 7.

¹⁶⁸ Gesetz vom 13. September 2000 über Mietbeiträge für Familien, LGBl. 2000 no 202.

¹⁶⁹

<http://www.gesetze.li/Seite2.jsp?LGBl=1960005.xml&Searchstring=invaliden&showLGBl=true&suchart=lgbliktuell>.

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

In Liechtenstein, national legislation does not include education as formulated in the Racial Equality Directive. Liechtenstein law says nothing about specific educational measures in relation to racial or ethnic origin, age, sexual orientation and religion or belief. Nevertheless, the Constitution of the Principality of Liechtenstein includes the basic principle of equality. Article 27bis states that 'human dignity shall be respected and protected' and that 'no one may be subjected to inhuman or degrading treatment or punishment.' Article 31 notes that 'all Liechtenstein citizens shall be equal before the law.'

The national AEPD has specific regulations with regard to discrimination only on the ground of disability.

In general, foreign children are integrated into the regular schools. If they have deficits in respect of German language or other skills, special language and educational assistance is given in classes for these children.

– Pupils with disabilities

In Liechtenstein the general approach to education for pupils with disabilities does not raise problems.

Article 18 of the AEPD¹⁷⁰ states:

'1) The State shall ensure that children and young people with disabilities receive early intervention and a basic training that is customized to their specific needs. Decisive are the provisions of the Act on School Education (ASE).

2) The State promotes appropriate forms of training for pupils as well as adequate training and support for teachers to integrate children and young people with disabilities into regular schools. The rules of the Act on School Education and the Act on Teachers are decisive.¹⁷¹

3) The State shall further ensure that children and young people with disabilities receive vocational education with respect to their special needs, abilities and interests. The State can participate in the disability-related costs, provided they are not covered by insurance and other benefits.'

In addition, the Act on Vocational Training (AVT, Article 1c)¹⁷² supports the elimination of discrimination against people with disabilities in any area of vocational training. The specific needs of people with disabilities in respect of their pre-vocational training (in terms of basic education and training) are taken into account by Article 16 of the AVT through the possibility of shortening or extending the training period.

The priority in the legal framework is to include disabled children within mainstream education. However, in practice, in many cases children and young people with disabilities—especially those with mental impairment—attend the Special Education Centre.¹⁷³ There they have the chance to attend a Special Education Day School,¹⁷⁴ which

¹⁷⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁷¹ Schulgesetz vom 15. Dezember 1971, LGBl. 1972 no. 7; Lehrerdienstgesetz vom 26. November 2003, LGBl. 2004 no 4.

¹⁷² Berufsbildungsgesetz (BBG) vom 13. März 2008, LGBl. 2008, no. 103.

¹⁷³ Heilpädagogische Zentrum, located in Schaan.

¹⁷⁴ Sonderpädagogische Tagesschule.

gives them individual tuition and prepares them for the professional world. There are also various other organisations that provide children, young people and adults with an interesting and varied programme that they can attend after school, during weekends and holidays. If possible, children are integrated into the regular schools and assistance by professionals is given in such cases.

– Trends and patterns regarding Roma pupils

In Liechtenstein, there are no specific patterns existing in education regarding Roma pupils, such as segregation.

There are no specific problems that need to be addressed concerning Roma or other minorities. A Roma minority does not exist in Liechtenstein.

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

In Liechtenstein, national legislation does not include access to and supply of goods and services as formulated in the Racial Equality Directive.

The national law on discrimination says nothing about access to and supply of goods and services in relation to the grounds of racial or ethnic origin, religion or belief, or sexual orientation. Nevertheless, the Constitution of the Principality of Liechtenstein includes the basic principle of equality. Article 27bis states that 'human dignity shall be respected and protected and that no one may be subjected to inhuman or degrading treatment or punishment.'

Regarding the ground of disability, the AEPD aims to eliminate and prevent discrimination against people with disabilities and covers therefore the access to and supply of goods and services within Article 2(1). It aims to guarantee equal participation by people with disabilities in the daily life of society. Article 2(2) covers some exceptions from the general non-discrimination regulations in Article 2(1), e.g. privately offered goods and services, as far as they do not include specific items for people with disabilities, are excluded from the non-discrimination law (for example, if a beautician offers her services in a treatment room within her private building, the AEPD regulations regarding accessibility do not apply).

Article 9 of the Act on Health Insurance (*Krankenversicherungsgesetz*) states that equal treatment regarding the access to and supply of goods and services must be given and that discrimination on grounds of age is not allowed.

– Distinction between goods and services available publicly or privately

In Liechtenstein national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association). Nonetheless, the principle of non-discrimination is more strongly anchored within the public sector as there are additional laws concerning the public sector.

Article 2 of the AEPD¹⁷⁵ states that all areas of life of people with disabilities are equally affected by the non-discrimination act. Exceptions to this general clause are listed in Article 2(2) of the AEPD and include: private offerings of goods and services that are not

¹⁷⁵ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen; LGBl. 2006, no. 243.

explicitly defined for people with disabilities; non-public buildings that fulfil specific conditions; private transportation and roads.

To capture differences in treatment on the grounds of age and disability relating to social insurance, one has to distinguish between obligatory and voluntary insurance. According to the Act on Health Insurance (Art. 9),¹⁷⁶ insurance companies have to offer the obligatory benefits without consideration of the age and health of the applicant. For insurance benefits outside the obligatory regulations, insurance companies are free to define age limits and to exclude insurance for diseases from which the applicant has suffered in the past (Articles 8 and 9 of the Act on Health Insurance).

The Act on Company Personnel Plan (ACPP) (Article 3)¹⁷⁷ releases employers from the obligation to implement an occupational pension for the individual employee if that employee is two-thirds disabled. Nevertheless, Article 34 of the ACPP¹⁷⁸ grants the employee the right to participate in the occupational pension scheme on his or her own behalf. Hence there is no obligation on the employer to contribute. People with a degree of disability of more than 60 % and of the official retirement age are given a helplessness allowance in addition to the state pension (see Article 3bis of the Act of Supplementary Aid to the National Old Age and Widow's/Widower's Pension (ASANP)¹⁷⁹ in combination with Article 67bis of the Act on the National Old Age and Widow's /Widower's Pension).¹⁸⁰ The degree of disability, on the other hand, is defined and stated by the disability insurance.

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

In Liechtenstein, national legislation in respect of disability includes housing as formulated in the Racial Equality Directive. There are no similar regulations that provide protection on the grounds of race and ethnic origin or any other grounds.

The national law on equality of people with disabilities (AEPD) covers housing within Article 11 – 13.¹⁸¹ The AEPD protects people with disabilities by ensuring access to public buildings. To this end, the government is obliged to consult the Office for Equal Opportunities¹⁸² as well as recognised associations for people with disabilities, before formal approval for construction work is granted. Private housing areas with more than six apartments must also be accessible to people with disabilities and Article 14 of the AEPD¹⁸³ states that residential buildings may only be subsidised if they are adaptable to provide accessibility (if they are not already accessible).

– Trends and patterns regarding housing segregation for Roma

In Liechtenstein there are no patterns of housing segregation and discrimination against the Roma.

There are no specific problems that need to be addressed concerning Roma since there is no Roma minority living in Liechtenstein. Turks, Kosovars and other foreigners living in

¹⁷⁶ Gesetz vom 24. November 1971 über die Krankenversicherung (KVG); LGBl. 1971, no 50.

¹⁷⁷ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl 1988, no. 12.

¹⁷⁸ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl 1988, no. 12.

¹⁷⁹ Gesetz vom 10. Dezember 1965 über Ergänzungsleistungen zur Alters-, Hinterlassenen- und Invalidenversicherung (ELG), LGBl. 1956 no 46.

¹⁸⁰ Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG), LGBl. 1952, no. 29.

¹⁸¹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹⁸² Stabsstelle für Chancengleichheit: <http://www.llv.li/#/12395/stabsstelle-chancengleichheit>.

¹⁸³ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

Liechtenstein have the same status as Liechtenstein nationals with respect to different grounds of discrimination. Discrimination on grounds of race, ethnicity or nationality is generally forbidden, though not stated clearly in the law regarding housing. In relation to housing segregation, the Convention on the Elimination of All Forms of Racial Discrimination states in Article 3 that the Contracting States Parties are obliged to avoid any actions of segregation based on discrimination.¹⁸⁴ Housing segregation does not occur in the largely rural areas of Liechtenstein.

¹⁸⁴ Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung, LGBl 2000 Nr.80.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

The AEPD (Article 10(3)) states, that exceptions from general anti-discrimination rules can be allowed if special skills, physical condition etc. are required for a job, thus potentially excluding people with disabilities from such jobs.

There are no such reservations for other grounds.

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

- Exception for employers with an ethos based on religion or belief

In Liechtenstein national law does not provide for an exception for employers with an ethos based on religion or belief. Apart from the ECHR,¹⁸⁵ there is no specific legislation dealing with discrimination against people in the case of employers with an ethos based on religion or belief. ECHR, like several other international treaties, is relevant to Constitutional Court decisions and thus can have an effect on decisions regarding discrimination.

In Liechtenstein, the Catholic Church still enjoys a special status by comparison with other religious communities. The current government's efforts to establish a plan for disentangling the state and the church are a challenge. There are no specific provisions or case law on this subject. Judicial interpretation is required to see how rather general provisions in the constitution and in international treaties, e.g. the ECHR, are applicable.

- Religious institutions affecting employment in state funded entities

In Liechtenstein religious institutions are permitted to select people (on the basis of their religion) and to hire or to dismiss someone from a job when that job is in a state entity or in an entity financed by the state. Article 16(4) of the Constitution¹⁸⁶ states that the respective church-related institutions are responsible for religious education in school. The funding is ensured by the state. Provisions on Catholic religion classes are stated in an agreement between the Liechtenstein government and the Archdiocese Vaduz as of 21 January 2003. According to this agreement, the Catholic teachers are selected by the Catholic church. They must have the necessary theological qualifications as well as pedagogical and didactical qualifications, and they must have church permission to teach Catholic religion classes. They are nominated by the church and appointed by the state.

So far there exists no case law on the potentially discriminatory selection of teachers of religion, but this area might become an issue in the future because there have been continuing efforts over many years to loosen the close ties between church and state. In autumn 2012, the parliament debated both a new draft concordat with the Vatican and a new law on religion. In future, the trend for those religious communities officially recognised (by regulation) will be to place them on an equal footing. The new rules also include provision for the churches to be financed through a special tax (*Mandatssteuer*), and there will also be new rules covering religious instruction in schools. The negotiations

¹⁸⁵ European Convention on Human Rights (Europäische Menschenrechtskonvention), LGBI. 1982 no 60/1.

¹⁸⁶ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBI. 1921 Nr. 15.

between the communities of Liechtenstein and the Catholic church regarding this issue have not been finalised in 2014 and are still ongoing.

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

In Liechtenstein 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). Liechtenstein abolished its armed forces in 1868. Since then Liechtenstein has focused on a neutral position with an independent and active foreign policy. Due to the fact that there are no armed forces in Liechtenstein, no discrimination can occur in this area.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Liechtenstein national law includes exceptions related to difference of treatment based on nationality. Free movement of persons, one of the basic European freedoms, is restricted in Liechtenstein with respect to taking up residence. This is a crucial issue for Liechtenstein. The annually available number of residence permits is limited according to a special treaty between Liechtenstein and the European Union as a result of the access of Liechtenstein to the European Economic Area (EEA) in 1995. This special regulation was introduced because Liechtenstein already had a high share of foreigners — 33 % — among its resident population. Following this agreement, the Liechtenstein government differentiates between persons of Swiss and EEA nationality, and persons of third countries, when applying different procedures and quotas. This is also valid for integration requirement, e.g. family reunion. However, there is no discrimination between permanent residents with respect to a specific nationality. The specific regulations are laid down for persons with EEA and Swiss nationality in the Act on Free Movement of EEA Persons and Swiss citizens.¹⁸⁷ In respect of persons with third country nationality, the Act on Foreigners (AF) regulates residency rights.¹⁸⁸

In Liechtenstein, nationality (as well as citizenship) is not explicitly mentioned as a protected ground in anti-discrimination provisions in the national law. The Constitution of Liechtenstein (*Verfassung des Fürstentum Liechtenstein*), the Act on Free Movement of EEA Persons and Swiss citizens (*Personenfreizügigkeitsgesetz*)¹⁸⁹ and the Act of Foreigners (*Ausländergesetz*) include specific regulations regarding nationality and have to be taken into consideration when talking about nationality as a protected ground in national law.

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

Regarding racial discrimination, the Penal Code does not explicitly list nationality as a ground of discrimination. There is no regulation or definition within the Liechtenstein law that defines the relationship between 'nationality' and 'race or ethnic origin'. Therefore judicial interpretation is needed.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

¹⁸⁷ Gesetz über die Freizügigkeit für EWR- und Schweizer Staatsangehörige (PFZG), LGBl. 2009, no. 348.

¹⁸⁸ Gesetz vom 17. September 2008 über die Ausländer (Ausländergesetz; AuG), LGBl. 2008, no. 311.

¹⁸⁹ This Act is part of the national law in Liechtenstein.

In Liechtenstein it cannot be determined whether benefits given only to those employees who are married are unlawful as there are no legal provisions or case law dealing with benefits provided by an employer to employees in respect of their partners.

However, taking into account the high importance of the freedom of contracts in Liechtenstein, one might assume that such benefits are lawful. Thus, for instance, it is likely that benefits for extra holiday leave only for married couples would not be interpreted as discriminating against others. However, the law is silent on this subject and judicial interpretation would be required. In the state administration, marriage and registered partnerships are treated equally in relation to such benefits. This is not necessarily the case for other employers, namely employers in the private sector.

According to Article 2b of the ACPP¹⁹⁰ benefit claims from a company pension scheme must be treated equally in respect of non-married persons and registered partnerships, based on the Act on Civil Union for Same-Sex Couples (ACUSSC).¹⁹¹

b) Benefits for employees with opposite-sex partners

In Liechtenstein it would most likely constitute unlawful discrimination if an employer were only to provide benefits to those employees with opposite-sex partners. Due to the ACUSSC, discrimination on grounds of sexual orientation must be interpreted as unlawful, although it is not explicitly stated in the law and is thus dependent on judicial interpretation. Hence, benefits cannot be confined to opposite-sex partners. The principle of equality of same-sex partnerships and married couples is stated in various acts covering special issues, such as the Act on the Pension Scheme for Public Servants (APPS Article 3a)¹⁹² or the Act on the National Old Age and Widow's/Widower's Pension (NOWP Article 54bis),¹⁹³ which entered into force after the enactment of the ACUSSC.

In the state administration, marriage and registered partnerships are treated equally in respect of such benefits. This is not necessarily the case in all respects for employers in the private sector. Hence, whether or not different treatment is lawful would require judicial interpretation. There exists no case law on this subject so far.

4.6 Health and safety (Article 7(2) Directive 2000/78)

a) Exceptions in relation to disability and health/safety

In Liechtenstein there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78) explicitly mentioned in the national law.

Article 19 of the AEPD¹⁹⁴ covers integration programmes for people with disabilities (education, employment, accommodation, transport, culture, sports); Article 20 covers pilot projects of integration into work life.

Besides this, there are no exceptions in relation to disability and health and safety.

¹⁹⁰ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl 1988, no. 12.

¹⁹¹ Gesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (PartG), LGBl. 2011, no. 350.

¹⁹² Gesetz vom 20. Dezember 1988 über die Pensionsversicherung für das Staatspersonal (Pensionsversicherungsgesetz; PVG), LGBl. 1989, no. 7.

¹⁹³ Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG), LGBl. 1952, no. 29.

¹⁹⁴ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

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

4.7.1 Direct discrimination

In Liechtenstein national law does not provide an exception for direct discrimination on age. The anti-discrimination legislation of Liechtenstein does not define discrimination on the grounds of age and there are no relevant provisions regarding this. Different treatment, based on age, in some specific areas is admitted by law (see section 4.7.1 a below).

Nevertheless the Constitution of the Principality of Liechtenstein includes the basic principle of equality. Article 27bis states that 'human dignity shall be respected and protected and that no one may be subjected to inhuman or degrading treatment or punishment.' It has to be stated that judicial interpretation is required.

– Justification of direct discrimination on the ground of age

In Liechtenstein it is not possible – in principle or under specified circumstances – to justify direct discrimination on the ground of age. The anti-discrimination legislation of Liechtenstein does not define discrimination on the grounds of age and there are no relevant provisions regarding that (apart from the special protection of children). Hence, there are no exceptions. Since age as a ground of discrimination is not explicitly stated in the law, discrimination on the ground of age cannot be justified. As age discrimination is not mentioned, unequal treatment in employment is therefore allowed, for instance by defining a minimum or a maximum age when hiring employees.

There is no case law known to the authors referring to this issue.

a) Permitted differences of treatment based on age

In Liechtenstein, national law neither explicitly permits nor prohibits differences of treatment based on age for any activities within the material scope of Directive 2000/78. Although there is no defined discrimination on the grounds of age, some specific age-related exceptions exist, for example:

- the special protection of children (the Liechtenstein Act on Children and Youth (ACY)¹⁹⁵ as well as the regulation on Special Provisions for the Protection of Young Employees);¹⁹⁶
- the Decree on the Organisation of the Police (Article 56), which states that, in general, a candidate for the police must not be older than 35 years;
- the Act on Foreigners (Article 13e)¹⁹⁷ states that an application for a residence and working permit can be refused if various factors - including the age of the applicant - suggest that the applicant might not be able to achieve long-term integration into society and the world of work, according to Article 41 of the Act on Foreigners.

b) Occupational pension schemes' fixed ages for admission or entitlements

In Liechtenstein, 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).

¹⁹⁵ Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, no. 29.

¹⁹⁶ Verordnung vom 22. März 2005 zum Arbeitsgesetz (ArGV V) (Sonderbestimmungen über den Schutz der jugendlichen Arbeitnehmer), LGBl. 2005, no. 69.

¹⁹⁷ Gesetz vom 17. September 2008 über die Ausländer (Ausländergesetz; AuG), LGBl. 2008, no. 311.

The ACPP (Act on Company Personnel Pension) states in Articles 3(2) and 4(1)(c))¹⁹⁸ that insurance is mandatory for employees who fulfil the following criteria:

- They are insured through the occupational pension fund (AHV, IV);
- Their annual salary reaches at least two thirds of the maximum pension from the occupational pension fund;
- in the case of old age pension: a minimum age of 23 years, if the employment is not limited in time (i.e. temporary);
- in the case of disability pension: a minimum age of 17.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Liechtenstein there are special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection. Positive measures are frequently taken to support younger or older people in regard to their opportunities in the labour market. The Office for Vocational Training and Career Counselling¹⁹⁹ is mainly active in advising persons on finding employment and/or educational training. The Office of Economic Affairs together with its subdepartment, the Labour Market Service, is focused on advising and supporting unemployed persons.²⁰⁰ In addition, the Office of Education supports people who fulfil certain criteria with scholarships.²⁰¹

There are no further special conditions known to the authors.

4.7.3 Minimum and maximum age requirements

In Liechtenstein there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training. Minimum and maximum age requirements are not regulated by the legislation as long as it is not child labour. Provisions on the protection of young employees are enacted in a regulation (*Verordnung*) to the Act on Employment (regulation on Special Provisions for the Protection of Young Employees, LGBl. 2005 no. 69). According to this regulation, the employment of children (*Kinder*, i.e. persons below 16 years), and young persons (*Jugendliche*, i.e. persons below 18 years) who attend school, is forbidden. Exceptions can be permitted. There are numerous provisions concerning the exclusion of special employment duties (e.g. dangerous work) as well as working hours, rest time, night work etc. (See also 4.7.1 b above).

4.7.4 Retirement

a) State pension age

In Liechtenstein a state pension age, at which individuals must begin to collect their state pension, exists. The state-imposed and generally applicable mandatory retirement age is 64 for women as well as for men (Article 36 of the NOWP).²⁰² It is possible, however, to draw the pension at a maximum of four years in advance by accepting fixed reductions in the monthly payable amount (Article 73 of the NOWP). At the same time, according to Article 74 of the NOWP, it is also possible to work longer (at least to the age of 70).

¹⁹⁸ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl. 1988, no. 12.

¹⁹⁹ Amt für Berufsbildung und Berufsberatung (ABB): <http://www.llv.li/#/1757>.

²⁰⁰ Amt für Volkswirtschaft (AVW): <http://www.llv.li/#/12481/amt-fur-volkswirtschaft>.

²⁰¹ Schulamt (SA): <http://www.llv.li/#/11631/schulamt>.

²⁰² Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG), LGBl. 1952, no. 29.

b) Occupational pension schemes

In Liechtenstein there is a defined age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. The pension age is defined by Article 8 of the ACPP.²⁰³ The regulation is primarily linked to the rules of the NOWP (see 4.7.4.a), according to which the retirement age is 64, with no differentiation between men and women. However, the ACPP includes the possibility of defining a different age limit as long as insurance of at least the equivalent value is provided. The option of drawing the pension from one to four years earlier is also given.

c) State imposed mandatory retirement ages

In Liechtenstein there is a state-imposed mandatory retirement age. The state-imposed retirement age is 64 for all sectors and regardless of gender. It is possible, however, to draw a pension from a maximum of four years earlier (Article 73 of the NOWP) or to extend the working period up to the age of 70 (Article 74 of the NOWP) if the employee wishes to do so. Within the last two to three years there has been a political discussion on changing the age of retirement for economic and demographic reasons.²⁰⁴ The discussion is still ongoing and focuses primarily on the state pension fund.²⁰⁵ European developments in this area might influence relevant national regulation in the future.

d) Retirement ages imposed by employers

In Liechtenstein national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

Employers, both public and private, have the right to set specific retirement ages for their specific company pension schemes in the sense of early retirement with payment deductions etc. Nevertheless, the maximum age of retirement must be in line with the age given by law. Specific company pension scheme rules have no effect on the pension age set by the public pension fund regulation.

e) Employment rights applicable to all workers irrespective of age

Age is not defined as a permissible reason for dismissal in national law. Furthermore, there is no upper age limit for protection against unfair dismissal. Employers can impose retirement at the pension age of 64 without liability for unfair dismissal as long as no different contractual provision has been made between the employer and the employee. Judicial decisions would be required in this regard. The relevant provisions apply to all workers irrespective of their age.

f) Compliance of national law with CJEU case law

In Liechtenstein, national legislation is not in line with the CJEU case law on age regarding compulsory retirement.

Directive 2000/78 prohibits discrimination on grounds of age in the field of employment and occupation. However, the directive does not preclude national measures that are necessary for the protection of very specific reasons, meaning that national legislature can provide, in certain cases, for differences of treatment based on age, and this will not,

²⁰³ Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge (BPVG); LGBl 1988, no. 12.

²⁰⁴ Interview with H.S.H. Prince Hans-Adam II:

<http://www.vaterland.li/index.cfm?ressort=home&source=lv&id=21429>.

²⁰⁵ Letter to The head of government, 10/2012: http://www.llv.li/files/srk/pdf-llv-rk_stellungnahme_PV_Freie%20Liste.pdf. Article in the local daily newspaper, 01/2013: <http://www.vaterland.li/index.cfm?ressort=liechtenstein&source=lv&id=21429>.

therefore, be treated as discrimination. The anti-discrimination legislation of Liechtenstein does not define discrimination on the grounds of age and there are no relevant provisions regarding this. Different treatment in some specific areas based on age is not prohibited by law. Since age as a ground of discrimination is not explicitly stated in the law, discrimination on the ground of age does not need to be justified and unequal treatment in employment is therefore allowed, for instance by defining a minimum or a maximum age when hiring employees.

There is no national legislation aiming to control age discrimination or demanding proportionality in age requirements. Therefore it can be said that national legislation has not implemented the content and rationale of Directive 2000/78 regarding discrimination on the grounds of age. However, documented and practical treatment of age limits in employment in Liechtenstein comply with the CJEU case law (e. g. Liechtenstein police requirements profile²⁰⁶ / Wolf CJEU 12 January 2012) and are therefore in line with Article 4.1 of Directive 2000/78.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Liechtenstein national law does not permit age or seniority to be taken into account in selecting workers for redundancy. The anti-discrimination legislation of Liechtenstein does not explicitly define discrimination on the grounds of age. Nevertheless, Article 46 of the CCC²⁰⁷ defines redundancy due to reasons based on personal attributes (age would be defined as a personal attribute in judicial interpretation)²⁰⁸ as improper and therefore against the law.²⁰⁹

b) Age taken into account for redundancy compensation

In Liechtenstein national law provides compensation for redundancy. This is affected by the age of the worker. In the case of an improper redundancy based on personal attributes (age would be defined as a personal attribute in judicial interpretation based on Article 46 of the CCC)²¹⁰ this would be classified as improper and therefore against the law. Article 47 of the CCC requires the employer to pay compensation in such cases.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Liechtenstein national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. The below listed special regulations include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive:

- the Liechtenstein Act on Children and Youth (ACY);²¹¹
- the bylaw on Special Provisions for the Protection of Young Employees;²¹²
- the Decree on the Organisation of the Police;²¹³

²⁰⁶ <http://www.landespolizei.li/Polizeiiberuf.aspx>.

²⁰⁷ Allgemeines bürgerliches Gesetzbuch (ABGB), publiziert im ASW, LGBl.1967, no. 34.

²⁰⁸ Public statement of a Liechtenstein law firm: <http://www.wanger.net/schuldrecht/items/wann-ist-eine-kuendigung-des-arbeitsvertrags-missbraeuchlich.html>.

²⁰⁹ Allgemeines bürgerliches Gesetzbuch (ABGB), publiziert im ASW, LGBl.1967, no. 34.

²¹⁰ Allgemeines bürgerliches Gesetzbuch (ABGB), publiziert im ASW, LGBl.1967, no. 34.

²¹¹ Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, no. 29.

²¹² Verordnung vom 22. März 2005 zum Arbeitsgesetz (ArGV V) (Sonderbestimmungen über den Schutz der jugendlichen Arbeitnehmer), LGBl. 2005, no. 69.

²¹³ Verordnung vom 22. August 2000 über den Dienstbetrieb und die Organisation der Landespolizei (PoIDOV); LGBl. 2000, no 195.

- the Act on Foreigners;²¹⁴
- the Act of National Old Age and Widow's /Widower's Pension.²¹⁵

There are no other provisions explicitly referring to these issues.

4.9 Any other exceptions

There are no other exceptions to the prohibition of discrimination (on any ground) provided by national law in Liechtenstein.

²¹⁴ Gesetz vom 17. September 2008 über die Ausländer (Ausländergesetz; AuG), LGBl. 2008, no. 311.

²¹⁵ Gesetz vom 14. Dezember 1952 über die Alters- und Hinterlassenenversicherung (AHVG), LGBl.1952, no. 29.

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

a) Scope for positive action measures

Basically only the AEPD,²¹⁶ implementing the directives, states that positive action is permissible and does not constitute discrimination. Article 4 on positive measures in the AEPD states: 'Specific measures to achieve equal participation of people with a disability in daily life within society are not considered to be discriminatory.' The AEPD allows for positive measures to integrate people with disabilities. However, most positive measures are soft law and Liechtenstein does not have any kind of quotas. Article 19 of the AEPD²¹⁷ covers integration programmes for people with disabilities (education, employment, accommodation, transport, culture, sports) and Article 20 covers pilot projects of integration into work life. Within the AEPD other grounds are not covered. Additionally there are no similar definitions of positive action measures against discrimination based on religion or belief, age, racial or ethnic origin or sexual orientation in any other specific national law. This corresponds with the fact that there are no specific laws on these grounds of discrimination. Furthermore, there is no comprehensive anti-discrimination act in Liechtenstein, covering all grounds of discrimination. Positive action measures on grounds other than disability are not clearly stated in the law as a legal commitment. Nevertheless, measures have been implemented. These have mainly been communication campaigns, such as campaigns in relation to aliens or old people. Such activities are directly supported by the government (via the activities of the Office for Equal Opportunities or the integration department of the Immigration and Passport Office), or indirectly by mandating private associations with such tasks.

b) Main positive action measures in place on national level

Articles 17 to 20 of the AEPD²¹⁸ state that different measures in favour of people with disabilities may be supported. Article 19(3) of the AEPD²¹⁹ specifies that various programmes may be implemented and supported by the government, including programmes on vocational training and integration as well as on housing. Article 20 states that pilot projects on the integration of people with disabilities into the work environment may be supported by society. The term 'society' is not elaborated any further, but one can assume that it refers to the government and the municipalities, and perhaps to disability insurance and other public services. One of the measures – according to Article 20 – is financial support in order to adapt a workplace to the special needs of a person with disability.

There are additional measures in the field of education; this part of the act declares that the state will provide early intervention and basic education according to the Education Act, that the state supports special schools with special training for teachers, and that the state will make sure that these children and young people have a chance in the working world. Priority is given to the integration of people with disabilities into regular schools.

²¹⁶ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²¹⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²¹⁸ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²¹⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

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 Liechtenstein the following procedures exist for enforcing the principle of equal treatment.

Based on Article 24 of the AEPD²²⁰ and Article 5 of the AEWM,²²¹ persons who are affected by any discrimination covered by these legal acts have a legal recourse. The legal basis for court trials is the Code of Civil Procedure (CCP).²²²

Article 25 of the AEPD states that the civil courts (part of the ordinary courts) are the appropriate authority to decide upon complaints against discrimination on the ground of disability. Any claim will be adjudicated according to the CCP, except in relation to the burden of proof, for which special provisions are made in Article 26 of the AEPD (cf. paragraph 2.6e above). Article 12 of the AEWM²²³ similarly states that disputes on discrimination have to be brought to the ordinary courts (the first instance of the ordinary jurisdiction, followed by the Upper Court and the High Court as last instance).

Complaints relating to the anti-discrimination provisions of the Penal Code (race, ethnicity and so on) are also adjudicated by the ordinary courts in the first instance (Article 283 of the Penal Code).²²⁴ Claims based on the Convention on the Elimination of All Forms of Racial Discrimination, which came into force in Liechtenstein in 2000, can be brought to court in the same way as those claims based on national law, e.g. the AEPD.

Procedures for addressing discrimination are not the same for employment in the private sector and the public sector. In private disputes, the ordinary court is the first judicial authority, whereas in disputes between individuals and the public sector it is the Administrative Court (part of the public jurisdiction), followed by the Constitutional Court as the court of last instance.

The out-of-court settlement of disputes is regulated by Article 594 to 616 of the CCP.²²⁵ Furthermore, in 2005 the Act on Mediation in Civil Law Cases (AMCLC)²²⁶ entered into force. This law defines mediation and mediators as well as the rights and duties of mediators. Details concerning the necessary qualifications of a mediator are stated in the bylaw to the Act on Mediation in Civil Law Cases.²²⁷ However, mandatory mediation in particular law cases has not yet been introduced. If this were to be implemented, it might open the way to making a complaint without the financial risk of undertaking a court process. However, there are no current discussions about such an extended use of mediation.

²²⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²²¹ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

²²² Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung; ZPO), LGBl. 1912 Nr. 9/1.

²²³ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

²²⁴ Strafgesetzbuch (StGB), LGBl. 1988, no. 37.

²²⁵ Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung; ZPO), LGBl. 1912 Nr. 9/1.

²²⁶ Gesetz vom 15. Dezember 2004 über die Mediation in Zivilrechtssachen (Zivilrechts-Mediations-Gesetz; ZMG), LGBl. 2005 Nr. 31.

²²⁷ Verordnung vom 12. April 2005 zum Gesetz über die Mediation in Zivilrechtssachen (Zivilrechts-Mediations-Verordnung; ZMV), LGBl. 2005, no. 71.

b) Barriers and other deterrents faced by litigants seeking redress

There is no legal provision that requires the use of a lawyer when bringing a complaint before the court, although using a lawyer is probably helpful. Article 25 of the CCP states that court procedures can be carried out either in person or by a representative (e.g. a lawyer). Articles 63 to 73 of the CCP concern assistance for court trials (*Verfahrenshilfe*). Assistance has to be provided for persons if they are not able to finance a trial without this having a negative effect on their ability to feed themselves properly. This holds for anyone, not just for people with disabilities or other groups with specific characteristics.

The time schedule for court proceedings is regulated by particular acts, or, where that is not the case, the judge can decide on deadlines with respect to the needs and the character of the specific court case.

Since Liechtenstein is a very small country and all national judicial authorities are located in Liechtenstein, the travelling distances to the courts are very short.

c) Number of discrimination cases brought to justice

In Liechtenstein there are no available statistics on the number of cases related to discrimination brought to justice.

Discrimination law cases that are prosecuted by national courts are not generally open to the public. Whether the case and the judgement are made open to the public depends on the court's decision. The main criteria for a court decision to be published or not are the interest of the public and the protection of the privacy of the parties involved.

d) Registration of discrimination cases by national courts

In Liechtenstein discrimination cases are not registered as such by national courts.

As stated under paragraph c above, no specific statistics on discrimination court cases are made public.

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

a) Standing to act on behalf of victims of discrimination (representing them)

In Liechtenstein associations/organisations/trade unions are entitled to act on behalf of victims of discrimination if they have been mandated by the victim as a representative.

Article 25 of the AEPD²²⁸ states that court trials have to be carried out according to the Code of Civil Procedure (CCP), with the exception of the provision with respect to the burden of proof in Article 26. Basically the CCP states that court procedures can be carried out in person or by a representative (Article 25 of the CCP). The representative may be a lawyer, but the CCP (Articles 26 and 28) does not restrict the term to lawyers, and a representative can be any authorised, mandated person. There are no provisions with respect to the engagement of associations acting on behalf of a person raising a complaint. The mandating of a representative must be authorised by the person raising the complaint.

b) Standing to act in support of victims of discrimination

²²⁸ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

In Liechtenstein associations/organisations/trade unions are entitled to act in support of victims of discrimination under specific criteria.

The AEPD is silent about any regulation of associations entitled to act in support of victims of discrimination joining already ongoing proceedings. The Code of Civil Procedure (CCP) states in Article 17²²⁹ and the following articles that the admission of a third party to participate or intervene in a case, makes the individual a party to the judicial proceeding. With the consent of the parties involved in the judicial case, the third party as intervener can even take the place of the party for whom he/she intervened.

c) Actio popularis

In Liechtenstein national law allows, under specific conditions, associations/organisations/ trade unions to act in the public interest on their own behalf, without supporting or representing a specific victim (*actio popularis*).

Whether associations are allowed to act in the public interest on their own behalf depends on the relevant law. Article 31 and Articles 27 to 29 of the AEPD²³⁰ entitle associations for people with disabilities to make legal claims on their own behalf for accessibility provisions in public buildings, for accessibility of public roads and traffic areas, and for accessibility on public transport systems. There are preconditions, which are that such associations must be based in Liechtenstein and have been in existence for at least five years. They can make such claims in their own name (cf. paragraph 7e below).

In addition, according to the Act on the Constitutional Court (ACC),²³¹ the Constitutional Court decides on the compatibility of laws and regulations (*Verordnung*) with the constitution and international treaties. Concerning regulations, inter alia, 100 or more individuals entitled to vote can demand a review of the provision by the Constitutional Court (Article 20 of the ACC) within one month following the publication of the respective regulation. Associations are not allowed to ask for such a review, but Article 20 of the ACC gives them the opportunity to collect the required number of signatures in order to have a regulation examined by the Constitutional Court.

The above mentioned provisions cover the review of regulations. Concerning the verification of the compatibility of laws and international treaties with the constitution, the right to demand a review by the Constitutional Court is restricted to other courts, to the government, municipalities, administrative bodies, or the constitutional court itself, depending on the case.

d) Class action

In Liechtenstein national law allows organisations/trade unions to act in the interest of more than one individual victim (*class action*) for claims arising from the same event.

Class action is possible under Liechtenstein law but there is no case known to the authors regarding discrimination, regardless of the ground. There are no specific provisions regarding class action in the sense of a concentrated process filed by an association on behalf of a group of identifiable individuals affected by the same discrimination. However,

²²⁹ Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung; ZPO), LGBI. 1912 Nr. 9/1.

²³⁰ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBI. 2006, no. 243.

²³¹ Gesetz vom 27. November 2003 über den Staatsgerichtshof (StGHG), LGBI. 2004, no. 32.

referring to Articles 11 and 25 of the CCP,²³² joint claimants (*Streitgenossen*), with or without a legal representative, are generally possible in case law. However, certain conditions have to be fulfilled. These are:

- the claimants must form a legal community with respect to the subject of litigation or they must be entitled in law or in fact on the same grounds;
- the claims of the claimants must be based on similar matters of law or facts which form the subject-matter of the dispute and at the same time allocates jurisdiction to the court for each individual claimant.

In this sense class actions are possible, but there is as yet no case law or any case pending which relates to this issue.

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

In Liechtenstein national law requires a shift of the burden of proof from the complainant to the respondent in case of direct and indirect discrimination as well as harassment.

Article 26 on burden of proof in the AEPD²³³ states that:

- '1) When a person claims to be discriminated against according to Arts. 5 to 10, this person shall make this claim credible.
- 2) With reference to direct discrimination, it is obligatory on the defendant to prove that it is more likely in consideration of all circumstances that another reason claimed by him was crucial for the difference in treatment.
- 3) When citing a reference to harassment as well as indirect discrimination, it is obligatory on the defendant to prove that in consideration of all circumstances it is more likely that the facts substantiated by him are truthful.'

There is no case law known to the authors regarding the burden of proof.

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

In Liechtenstein there are legal measures of protection against victimisation. The AEPD states that any adverse consequence as a reaction to a complaint or similar proceedings, in compliance with the principle of equal treatment on grounds of disability (as defined by the AEPD) is forbidden. The complainant must not be penalised in response to a complaint or to the launching of a legal process to secure a ban on discrimination. Similarly, anyone who appears as a witness or informant in court proceedings, or who supports a person affected by discrimination, must not be penalised or disadvantaged (Article 23(4) of the AEPD).²³⁴

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

²³² Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung; ZPO), LGBl. 1912 Nr. 9/1.

²³³ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²³⁴ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

Article 23(1) of the AEPD²³⁵ states that in any case the person concerned is 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 (Article 23(2)). 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 be taken into account in particular (Article 23(3)).

b) Ceiling and amount of compensation

Article 23(1) of the AEPD²³⁶ (discrimination on grounds of disability) states that, in any case the person concerned is entitled to restitution of any financial losses incurred, and to compensation for the personal detriment suffered. No limit is stated in the law.

c) Assessment of the sanctions

Regarding the Act on Equality of People with Disabilities and the Act on Equality between Women and Men it can be said that the available sanctions are likely to be effective and proportionate as required by the directives. As there is no data available regarding the effectiveness or proportionality of the given sanctions and as almost no case law in this regard exists, it is not possible to give a final assessment as to whether the sanctions are dissuasive or not. So far, a very low number of victims actually bring their cases to court and even if they do so, there is no public data available about the details of the case and the ruling.

Article 23(1) of the AEPD²³⁷ (discrimination on grounds of disability) states that the person concerned is entitled in any case to restitution of any financial losses incurred and to compensation for the personal detriment suffered. No limit is stated in the law. Article 23(3) lists the criteria for evaluating the amount of non-pecuniary damages.

There are no provisions on the maximum amount of compensation with respect to other grounds of discrimination.

²³⁵ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²³⁶ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²³⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

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

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive.

Liechtenstein has designated for the promotion of equal treatment according to Article 13 of the Racial Equality Directive the bodies listed below, with partly differing tasks.

The Office for Equality of People with Disabilities²³⁸ was installed by the government according to Article 22 of the AEPD after the act entered into force in 2007. The Office is attached to the (private) Association for People with Disabilities and acts independently.

The Office for Equal Opportunities²³⁹ is the administrative department covering the broadest spectrum of issues concerning disadvantage and discrimination. The main focus, based on the Act on Equality between Women and Men (AEWM), is gender equality. The Office is also mandated by the government to cover other grounds of discrimination (disability, sexual orientation, migration and integration, social disadvantage). These grounds are listed on the homepage of the office.²⁴⁰ Disability, to a lesser extent, is also covered by the Office for Equality of People with Disabilities. Migration and integration as one of the fields of work of the Office for Equal Opportunities includes discrimination on grounds of race, nationality and ethnic origin, although this is not a major task of the Office. In addition, the integration department of the Immigration and Passport Office serves as the institution to advise people and to carry out activities aimed towards the better integration of migrants.

The Office for Equal Opportunities is subordinated to the government department of Society and Social Welfare. In some respect it acts independently, namely in the following areas: advising administrative bodies and private persons in equality affairs; supporting victims of discrimination; public information; undertaking research; and making recommendations to administrative bodies and private stakeholders (Article 19(3) AEWM).²⁴¹

The integration department of the Immigration and Passport Office²⁴² is responsible for integration agreements, integration courses, public information, campaigning and other activities for a successful integration of migrants in Liechtenstein. It is based on the Act on Aliens.²⁴³ In cases of discrimination on grounds of race or ethnicity, the integration department refers to the Office for Equal Opportunities as the competent authority.

The Ombudsman Office for Children and Young Persons²⁴⁴ was created under Articles 96 to 100 of the Act on Children and Youth (ACY).²⁴⁵

As mentioned above, in 2013 the government announced its intention to create a new Centre for Human Rights that would take over the tasks of the Equal Opportunities Office –there has long been a demand for the greater independence of the Equal Opportunities Office from the political world – and also those of the Ombudsman Office for Children and Young People. In addition, it was planned to integrate other thematic fields: the elderly, gender, refugees and asylum seekers, people with a disability, migration and integration,

²³⁸ Liechtensteiner Behinderten-Verband: <http://www.lbv.li/>.

²³⁹ Stabsstelle für Chancengleichheit: <http://www.llv.li/#/12395>.

²⁴⁰ Source: <http://www.llv.li/#/12395/stabsstelle-chancengleichheit>.

²⁴¹ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

²⁴² Integrationsbüro: <http://www.llv.li/#/11302/integration>.

²⁴³ Gesetz vom 17. September 2008 über die Ausländer (Ausländergesetz; AuG), LGBl. 2008, no. 311.

²⁴⁴ Ombusstelle für Kinder und Jugendliche: <http://www.oski.li/%C3%9CberdieOSKJ/tabid/62/Default.aspx>.

²⁴⁵ Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBl. 2009, no. 29.

racism, and sexual orientation. According to the government plans, the Centre for Human Rights would be managed by a private association for human rights, which would be financially supported by the government. The specific centre is not in place by the time of writing of this report.

b) Status of the designated body/bodies – general independence

The Office for Equality of People with Disabilities is attached to the (private) Association for People with Disabilities and acts independently. Access to financial resources is given via membership fees, donations, allowances, and state subsidies.

The Office for Equal Opportunities is attached to the government. The government appoints the staff of the office. According to Article 19(3) of the AEW, ²⁴⁶ the office acts independently in respect of a number of duties (advising administrative bodies and private persons in equality affairs, supporting victims of discrimination, public information work, research, and making recommendations to administrative bodies and private stakeholders). Nevertheless, dependency on the government is quite clear: the office is funded by the government, under the Ministry for Social Affairs.

The integration office is part of the Immigration and Passport Office and is thus dependent on the government.

The Ombudsman Office for Children and Young Persons is based on an official government mandate. The Ombudsman is elected by the parliament of Liechtenstein for a four-year term. The office acts independently, although it is financed by the government.

c) Grounds covered by the designated body/bodies

The Office for Equal Opportunities is committed to promoting equal opportunities in the following areas: equality between women and men, disability, migration and integration (including race and ethnic origin), social discrimination, and sexual orientation. Migration, integration, race and ethnic origin, social discrimination, nationality and sexual orientation are not explicitly mentioned in national law, but the government has mandated the office to deal with discrimination, to raise awareness, and to combat discrimination for any of the above listed grounds.

The Office for Equality of People with Disabilities focuses on discrimination on grounds of disability.

The integration office at the Immigration and Passport Office carries out activities for the better integration of migrants into society, including language courses and integration tests, public campaigns and more. The focus thus is more on integration than on non-discrimination, although these aspects cannot be clearly separated. The main focus is on immigrants from non-German speaking countries, namely from Mediterranean countries, south-east Europe and Turkey.

The main objective of the Ombudsman Office for Children and Young Persons ²⁴⁷ is the implementation of the UN Convention on the Rights of the Child, and providing assistance and information for children and young persons in all areas of life.

d) Competences of the designated body/bodies – and their independent exercise

²⁴⁶ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

²⁴⁷ Ombudsstelle für Kinder und Jugendliche: <http://www.oskj.li/>.

According to Article 19(3) of the AEWG,²⁴⁸ the Office for Equal Opportunities acts independently in the following fields: advising administrative bodies and private persons in equality affairs; supporting victims of discrimination; public information; conducting research; and making recommendations to administrative bodies and private stakeholders. The Office for Equal Opportunities has the mandate to publish independent surveys and reports. During 2014 it has not done so. Furthermore, no officially available recommendations regarding discrimination were made in 2014.

The Office for Equality of People with Disabilities acts independently. Whether assistance can be provided depends on financial and staff resources.

The Ombudsman Office for Children and Young Persons is supposed to act independently. Recommendations on discrimination issues in respect of children have been published in the past. Furthermore, the Ombudsman Office for Children and Young Persons assists individuals in issues concerning official authorities (e.g. the Education Authority).

The Act on Aid for Victims of Criminal Offences (AAVCO) also provides for assistance of victims. This Office for Aid for Victims of Criminal Offences advises victims for free and supports victims by financial means. The office also assists victims at court trials. The office is part of the Department of Social Services, but is supposed to act independently (Article 9(1) AAVCO).

e) Legal standing of the designated body/bodies

In Liechtenstein the designated bodies (Office for Equal Opportunities, the Commission for Equal Opportunities and the Office for Equality of People with Disabilities) do not have legal standing to bring discrimination complaints on behalf of identified victims or to intervene in legal cases concerning discrimination.

The Office for Equal Opportunities, the Commission for Equal Opportunities and the Office for Equality of People with Disabilities can advise victims, but they cannot bring a complaint to the court on behalf of the victims.

Associations for people with disabilities, which are based in Liechtenstein and have been in existence for at least five years, are entitled to make legal claims on their own behalf for accessibility provision in public buildings, accessibility of public roads and traffic areas, and accessibility on public transport systems. They can do this in their own name (Article 31, Articles 27 to 29 of the AEPD).²⁴⁹

There are no relevant provisions on the legal standing of designated bodies concerning other grounds of discrimination.

f) Quasi-judicial competences

In Liechtenstein the bodies are not quasi-judicial institutions.

The Office for Equal Opportunities and the Commission for Equal Opportunities are not judicial bodies. The role of neither can be interpreted as quasi-judicial. Their statements have no binding legal character and they do not automatically trigger a right of action (in court).

²⁴⁸ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

²⁴⁹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

g) Registration by the body/bodies of complaints and decisions

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

The Office for Equal Opportunities published a yearly activity report²⁵⁰ up to 2013 as part of the official annual report of the government (*Rechenschaftsbericht der Regierung*). Part of this report was the number of contacts/complaints which were made at the office without giving the grounds, fields or type of discrimination. Furthermore the various activities in the different fields of discrimination were outlined in the report. The Office for Equal Opportunities did not publish official statistics on complaints and court decisions by different grounds, fields or types of discrimination since the office did not provide any statistical data itself. In 2014 the annual report of the government did not include the activity report of the Office for Equal Opportunities. Some general statements about the most relevant activities have been integrated into the report, but with no details.

The Office for Children and Young People publishes an annual report²⁵¹ about the tasks and activities of the office. An overview on the number of complaints and decisions in relation to the Office for Children and Young People is given within the annual report, but there are no comprehensive statistics available regarding case laws etc.

h) Roma and Travellers

Roma and Travellers are not a priority issue since there is no Roma minority living in Liechtenstein nor are there Travellers. There are no specific problems that need to be addressed concerning Roma and Travellers at this time.

²⁵⁰ <http://www.llv.li/files/srk/Rechenschaftsbericht%202013-mit%20Landesrechnung.pdf>.

²⁵¹ <http://www.oskj.li/Portals/0/docs/TAETKBER%20OSKJ%202012%20pdf%20%20.pdf>.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

The dissemination of information concerning legal protection against discrimination is not directly promoted by state organs. However, the state supports private agencies that are active in this regard.

The Association for People with Disabilities gives assistance to people with disabilities in many regards. Much of the public information work is done via the Liechtenstein daily newspapers. There are many news articles and so on addressed to the public through this media channel. Information on websites is important as well. The association runs its own website. The following webpage contains links to websites related to one or another aspect of disability [<http://www.lbv.li/Links-FL.php#>].

The Liechtenstein Employees' Association²⁵² provides information and support for members as well as for non-members. However, the Liechtenstein Employees' Association is rather weak. Only a small share of workers are members of the association and thus it lacks financial and staff resources.

'Flay' is an organisation for gay people. It provides information about legal protection against discrimination based on sexual orientation.

There are several other organisations that campaign against discrimination as well as for education on discrimination. They also provide information on legal protection and rights in cases of discrimination.

During the process of developing new legal provisions there are regular consultations (*Vernehmlassung*). Relevant social groups are invited to make comments and statements on draft bills. These eventually have an impact on the final version of an act.

When it comes to the role of the state as an employer, the objective is to act as an employer with responsibility, taking into account the needs of underprivileged groups such as people with disabilities or women (Article 4 of the AEPO).²⁵³

The state leaves negotiations between the employees' association and the employers to a high degree to the social partners themselves. State interventions are restricted mainly to the monitoring of the respective laws. The foundation SAVE (founded 12/2007) is maintained jointly by the Liechtenstein Employees' Association and the Chamber of Commerce. SAVE has set up a central parity commission (*Zentrale Paritätische Kommission*) in order to monitor collective labour agreements (*Gesamtarbeitsverträge*).

There are no specific problems that need to be addressed concerning Roma and Travellers at this time. Therefore no specific body or organ is appointed to carry out such work.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

²⁵² ArbeitnehmerInnenverband (LANV): <http://www.lanv.li>.

²⁵³ Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz; StPG), LGBl. 2008 Nr. 144.

The legal system of Liechtenstein demands that laws are in accordance with the Constitution and relevant international law; regulations have to be in harmony with the respective laws and the constitution. Thus, complaints to the courts can ultimately result in the Constitutional Court declaring a provision null and void.

b) Rules contrary to the principle of equality

The political system of Liechtenstein is a combination of democracy and hereditary monarchy. The family statute of the Princely House²⁵⁴ rules that the oldest son of the Prince shall be the successor to the throne (male primogeniture). Women are therefore excluded from succession to the throne. This traditional rule of succession to the throne was affirmed by the Princely House in 1993.

There are no further laws or regulations known to the authors that are contrary to the principle of equality and are legally in force. Nevertheless, there are some areas of equality of treatment that are not explicitly regulated or where no specific law is in place. These areas are mainly related to unequal treatment on grounds of nationality (i.e. different treatment of nationals and foreigners, different treatment of EEA-foreigners, Swiss nationals and third country nationals), religion (i.e. privileged status of the Catholic church), sex (i.e. different treatment of men and women in insurance contracts) or sexual orientation (i.e. different rights of married couples and same-sex couples).

²⁵⁴ Hausgesetz des Fürstlichen Hauses vom 26. Oktober 1993, LGBl. 1993 Nr. 100.

9 COORDINATION AT NATIONAL LEVEL

The following government departments are responsible for dealing with issues, or coordinating issues, regarding non-discrimination:

- Ministry for Social Affairs (social services, family, equal opportunities etc.);
- Ministry for Home Affairs, Justice and Economics;
- Ministry for Foreign Affairs, Education and Culture.

The ministries are involved in different aspects of discrimination. The Ministry for Social Affairs is responsible for the implementation of the AEW and supervising the Office for Equal Opportunities, which covers all aspects of discrimination. Thus, the Ministry for Social Affairs is the leading ministry within the government concerning discrimination. Cooperation between the different ministries is quite close since the government, by constitution, is collegiate and decisions are taken collectively.

10 CURRENT BEST PRACTICES

A National Action Plan against racism was discussed in 2002 (*Nationaler Aktionsplan gegen Rassismus*). A working group with representatives from several administrative departments finally stated that a national action plan against racism would be very hard to implement due to the overlaps between the parties involved. Based on this outcome, specific action plans for single areas of potential discrimination were developed (e.g. establishing the Commission on protection against violence (*Gewaltschutzkommission*),²⁵⁵ and the action plan against right-wing extremism).

The Office for Aid for Victims of Criminal Offences advises victims for free and supports victims by financial means. The office also assists victims at court trials. The office is part of the Department of Social Services, but is supposed to act independently (Article 9(1) AAVCO). It is legally based on the Act on Aid for Victims of Criminal Offences (AAVCO).

The following private organisation has established a continuous service to persons with issues related to discrimination on various grounds:

- 'Flay' is an organisation for gay people. It provides information about legal protection against discrimination based on sexual orientation. In the context of the current discussion about the unequal treatment of same-sex couples who want to adopt children, the organisation is raising the 'discrimination question' and bringing it to the public attention by media engagement.

²⁵⁵ Gewaltschutzkommission Liechtenstein:
<http://www.respect-bitte.li/Aktivitaeten/GewaltimSport/tabid/69/Default.aspx>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

With reference to Liechtenstein it has to be said, that Directive 2000/78/EC was not incorporated into the EEA Agreement, based on the fact that the legal background of the directive was not declared compatible with the EEA Agreement. The directive is based on the former Article 13 of the EEC Treaty (today Article 19 TFEU), which was brought into the EC Treaty by the Amsterdam Treaty. A similar legal basis does not exist in the EEA Agreement. Therefore it was concluded that the directive did not fall within the territory covered by the EEA Agreement. Liechtenstein has refrained from implementing the directives autonomously.

In terms of Directive 43/2000/EC, Annex XVIII (Health and Safety at Work, Labour Law and Equal Treatment for Men and Woman) has been adopted to EEC law and therefore to national law in Liechtenstein. No further attempts have been made so far to incorporate the directive into the EEA Agreement or national law.

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) has not yet been ratified by Liechtenstein. The government has appointed an inter-office working group to assess the need for preparation of its ratification. It has been assumed that ratification is highly connected to the issue of the administrative reform. The administrative reform was approved by the Parliament in September 2012 and has been implemented step by step over the last months of 2013. By now, the administrative reform has been completed, but there is no official statement known to the authors as to how far the process of the ratification of the UN Convention on the Rights of Persons with disabilities has developed meanwhile.

In addition, Liechtenstein law includes different legal acts that cover most aspects of the directives. This applies in particular to the equal treatment of women and men as well as to discrimination on grounds of disability. However, the Convention on the Elimination of All Forms of Racial Discrimination governs additional grounds of discrimination that are not regulated by a specific national legal act in Liechtenstein. Thus protection for race/ethnicity, religion/belief, age and sexual orientation is not explicitly mentioned in the national law.

Nevertheless the Liechtenstein government declared in 2013, that the recommendations made during its universal periodic review²⁵⁶ on 30 January 2013 are welcome. After thorough consideration and consultation, Liechtenstein accepted the recommendation to ratify the Convention on the Rights of Persons with Disabilities by the next UPR.²⁵⁷

Hence, Liechtenstein still needs to make further efforts to challenge discrimination. As such, a comprehensive anti-discrimination act, covering all grounds of discrimination and including provisions regarding an independent ombudsman office would be welcome. Although the European Convention on Human Rights (ECHR)²⁵⁸ and other international treaties are binding to the Liechtenstein jurisdiction, there are no clear legal anti-discrimination provisions at the national level covering all grounds of discrimination.

²⁵⁶ Recommendations out of the second cycle universal periodic review (UPR):

http://www.llv.li/el_llv_aaa_bericht_upr-arbeitsgruppe_2013.pdf.

²⁵⁷ Statement of the Liechtenstein government regarding the second cycle universal periodic review (UPR):

http://www.llv.li/pdf-llv-aaa-reaktion_auf_empfehlungen_en.pdf.

²⁵⁸ Convention of 4. November 1950 on the Protection of Human Rights and Fundamental Freedoms, LGBl. 1982, no. 60/1.

11.2 Other issues of concern

In general, there has not been a lot of case law so far in relation to discrimination on grounds of race or ethnic origin, age, disability, religion or belief and sexual orientation. Currently, very few victims actually bring their cases to court. Case law in regard to race or ethnic origin, age, disability and sexual orientation is almost non-existent. Regarding religion and belief there has been one case within the last three years.²⁵⁹ A private individual claimed that his right to freedom of religion had been violated by the law (Article 37 of the CCC²⁶⁰ and Article 9 ECHR)²⁶¹ regarding his children participating in swimming classes in school.

Furthermore, as there has not been any case law so far in which situation testing or statistical data was used as evidence in cases of discrimination, no prior judgment can be made about its acceptance, or in relation to ethical or methodological issues, etc. This issue could be described as unknown terrain within the legal framework of Liechtenstein.

Generally speaking, the national courts do not usually amend national case law based on developments in other jurisdictions.

²⁵⁹ Reference number: RA 2011/2986-4292. Address of the webpage:
<http://www.gerichtsentscheide.li/default.aspx?mode=gerichte&prim=3&value=2014&id=4042&backurl=?mode=gerichte%26prim=3%26value=2014>.

²⁶⁰ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 192, no. 15,
<https://www.gesetze.li/Seite1.jsp?LGBl=1921015.xml&Searchstring=Verfassung&showLGBl=true>.

²⁶¹ Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten, 8. September 1982, LGBl. 1982, no. 60/1.

12 LATEST DEVELOPMENTS

Unfortunately in 2014 the Liechtenstein government made no progress regarding the ratification of the Convention on the Rights of Persons with Disabilities. The government declared its intention to ratify the convention in 2013. It has to be seen whether the government will keep its word to do so by the next UPR.²⁶²

12.1 Legislative amendments

There have been no legislative amendments in 2014 in Liechtenstein within the non-discrimination field.

12.2 Case law

Name of the court: Administration Court

Date of decision: 21 February 2014

Name of the parties: not published

Reference number: RA 2011/2986-4292

Address of the webpage:

<http://www.gerichtsentscheide.li/default.aspx?mode=gerichte&prim=3&value=2014&id=4042&backurl=?mode=gerichte%26prim=3%26value=2014>

Brief summary: A private individual claimed that his right to freedom of religion had been violated by the law (Article 37 of the CCC²⁶³ and Article 9 of the ECHR).²⁶⁴ The appeal for his children to be excused from swimming classes in school for religious reasons was declined by the Ministry of Education with the argument that the attendance of the swimming classes based on the official school education plan is reasonable by wearing full length bathing clothing and using separate changing rooms and therefore there is no conflict with the religious rules. The concept of reasonable accommodation of religious practice was not raised in this case.

The applicant challenged the decision of the Ministry of Education. A long court procedure ended with the final ruling of the Administration Court that the judgment of the Liechtenstein Government (29 October 2013) and of the Ministry of Education (19 June 2013) is amended in the sense that the applicants should receive the dispensation from school swimming classes.

There is no case law in respect of Roma. As of today, there are very few Roma in Liechtenstein.

²⁶² Statement of the Liechtenstein government regarding the second cycle universal periodic review (UPR): http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_de.pdf.

²⁶³ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921 (LC), LGBl. 1921, no. 15, <https://www.gesetze.li/Seite1.jsp?LGBl=1921015.xml&Searchstring=Verfassung&showLGBl=true>.

²⁶⁴ Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten, 8. September 1982, LGBl. 1982, no. 60/1.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Liechtenstein

Date: 01 January 2015

| | |
|--|---|
| Title of legislation (including amending legislation) | <p>Title of the Law: Act on Equality of People with Disabilities (<i>Behindertengleichstellungsgesetz</i>)²⁶⁵ Abbreviation: AEPD/BGIG Date of adoption: 25.10.2006 Latest amendments: LGBl. 2012, no. 269 Entry into force: 01.01.2007 Web link: https://www.gesetze.li/Seite1.jsp?LGBl=2006243.xml&Searchstring=BGIG&showLGBl=true Grounds covered: Disability Civil/administrative/criminal law: Civil/Administrative Law Material scope: All sectors Principal content: Equality of people with disabilities; prohibition of discrimination; support for people with disabilities; reasonable accommodation for persons with disability; pilot projects for integration into work environment.</p> |
| Title of legislation (including amending legislation) | <p>Title of the law: Act on Disability Insurance (<i>Invalidenversicherung</i>)²⁶⁶ Abbreviation: IVG Date of adoption: 23.12.1959 Latest amendments: LGBl. 2013, no. 68 Entry into force: 04.02.1960 Web link: https://www.gesetze.li/Seite1.jsp?LGBl=1960005.xml&Searchstring=Invalidenversicherung&showLGBl=true Grounds covered: Disability Civil/administrative/criminal law: Civil/Administrative Law Material scope: Insurance; goods; assistance; employment Principal content: Financial support for people with disabilities; direct and indirect assistance to improve living and working conditions; support of care homes and sheltered workshops</p> |
| Title of legislation (including amending legislation) | <p>Title of the law: Act on Civil Union for Same-Sex Couples (<i>Partnerschaftsgesetz</i>)²⁶⁷ Abbreviation: ACUSSC/PartG Date of adoption: 16.03.2011 Latest amendments: - Entry into force: 01.09.2011 Web link: https://www.gesetze.li/Seite1.jsp?LGBl=2011350.xml&Searchstring=PartG&showLGBl=true Grounds protected: sexual orientation</p> |

²⁶⁵ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

²⁶⁶ Link:
http://www.gesetze.li/Seite2.jsp?LGBl=1960005.xml&Searchstring=invaliden&showLGBl=true&suchart=lqbl_aktuell

²⁶⁷ Link:
http://www.gesetze.li/Seite2.jsp?LGBl=2011350.xml&Searchstring=partnerschaft&showLGBl=true&suchart=lqbl_aktuell

| | |
|--|--|
| | Civil/administrative/criminal law: Civil Law |
| | Material scope: Same-sex registered partnership |
| | Principal content: Official Recognition of same-sex partnership/same-sex couples |
| Title of legislation (including amending legislation) | Title of the Law: Common Civil Code (<i>Allgemeines Bürgerliches Gesetzbuch</i>) |
| | Abbreviation: CCC/ABGB |
| | Date of adoption: 01.06.1812 |
| | Latest amendments: LGBL 2012, no. 265 |
| | Entry into force: 18.12.1812 |
| | Web link: https://www.gesetze.li/Seite1.jsp?LGBL=1003001.xml&Searchstring=Allgemeines+B%FCrgerliches+Gesetzbuch&showLGBL=true |
| | Grounds covered: Nationality, pregnancy |
| | Civil/administrative/criminal law: Civil Law |
| | Material scope: General |
| | Principal content: Civil rights |
| Title of legislation (including amending legislation) | Title of the Law: Penal Code (<i>Strafgesetzbuch</i>) |
| | Abbreviation: PC/StGB |
| | Date of adoption: 24.06.1987 |
| | Latest amendments: LGBL 2013, no. 73 |
| | Entry into force: 22.10.1988 (announcement) |
| | Web link: https://www.gesetze.li/Seite1.jsp?LGBL=1988037.xml&Searchstring=Strafgesetzbuch&showLGBL=true |
| | Grounds covered: Race, national origin, ethnicity, language, religion, belief |
| | Civil/administrative/criminal law: Criminal Law |
| | Material scope: Penalties |
| | Principal content: Prohibition of racial discrimination by threat of punishment |
| Title of legislation (including amending legislation) | Title of the law: Act on Foreigners (<i>Ausländergesetz</i>) |
| | Abbreviation: AuG |
| | Date of adoption: 17.09.2008 |
| | Latest amendments: |
| | Entry into force: 15.12.2008 |
| | Web link: https://www.gesetze.li/Seite1.jsp?LGBL=2008311.xml&Searchstring=Ausl%E4ndergesetz&showLGBL=true |
| | Grounds covered: Integration (nationality, race, ethnic origin) |
| | Civil/administrative/criminal law: Civil Law |
| | Material scope: regulation regarding foreigners in Liechtenstein |
| | Principal content: Specific regulation in context to nationality |

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Liechtenstein

Date: 01 January 2015

| 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) | 23.11.1978 ²⁶⁸ | 08.09.1982 (entry into force) | Art. 64 and Art. 6(1): Regarding publicity of trials, several existing national legal provisions that might limit publicity shall remain valid. | Yes | Yes |
| Revised European Social Charter | Not signed ²⁶⁹ | Not ratified | N/A | N/A | N/A |
| International Covenant on Civil and Political Rights (CCPR) | 16.12.1966 ²⁷⁰ | 10.12.1998 | Art. 26: 'The Principality of Liechtenstein reserves the right to guarantee the rights contained in article 26 of the Covenant concerning the equality of all persons before the law and their entitlement without any discrimination to the equal protection of the law only in connection | Yes | Yes |

²⁶⁸ Europäische Menschenrechtskonvention, LGBl. 1982 no. 60/1),

<http://www.gesetze.li/Seite1.jsp?LGBIm=1982060a>.

²⁶⁹ <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=7&DF=26/10/2008&CL=ENG>

²⁷⁰ Internationaler Pakt vom 16. Dezember 1966 über bürgerliche und politische Rechte; LGBl. 1999 no. 58.

<http://www.gesetze.li/Seite1.jsp?LGBIm=1999058>.

| 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? |
|--|---|--|---|--|---|
| | | | with other rights contained in the present Covenant.' | | |
| Framework Convention for the Protection of National Minorities | No signature. Direct Ratification ²⁷¹ | 18.09.1997 (parliament) 01.03.1998 (entry into force) | Declaration that no national minorities are present in Liechtenstein and that the ratification has to be seen as an act of solidarity with the goals of the convention. | No specific regulation is given within the framework. Nevertheless Article 3 is accepted, saying that 'Persons belonging to national minorities may exercise the rights flowing from the principles enshrined in the framework Convention individually as well as in community with others' | No signature. Direct Ratification |
| International Covenant on Economic, | No signature. Direct Ratification | 16.09.1998 (parliament) 10.03.1999 | No derogations. | Yes | Yes |

²⁷¹ Rahmenübereinkommen vom 1. Februar 1995 zum Schutz nationaler Minderheiten; LGBl. 1998 no. 10, <http://www.gesetze.li/Seite1.jsp?LGBIm=1998010>.

| 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? |
|--|---|--|---|---|---|
| Social and Cultural Rights (CESRC) | (10.12.1998) ²⁷² | (entry into force) | | | |
| Convention on the Elimination of All Forms of Racial Discrimination (CERD) | No signature. Direct Ratification (01.03.2000) ²⁷³ | 21.10.1999 (parliament) 31.03.2000 (entry into force) | Art. 14: Only applicable if a case is not investigated by another international agency at the same time | Yes | Yes. Pursuant to article 14, paragraph 2, of the Convention, the Constitutional Court has been designated as competent to 'receive and consider petitions from individuals and groups of individuals within the jurisdiction of Liechtenstein who claim to be victims of a violation of any of the rights set forth in the Convention.' |
| Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) | No signature. Direct Ratification (22.12.1995) ²⁷⁴ | 31.10.1995 (parliament) 21.01.1996 (entry into force) | Art. 3 of the Liechtenstein Constitution regarding the succession to the throne etc. laid down by the Princely House in the form of a Law on the Princely House | Yes | Yes |

²⁷² Internationaler Pakt vom 16. Dezember 1966 über wirtschaftliche, soziale und kulturelle Rechte; LGBl. 1999 no. 57, <http://www.gesetze.li/Seite1.jsp?LGBIm=1999057>.

²⁷³ Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung, LGBl. 2000 no. 80, <http://www.gesetze.li/Seite1.jsp?LGBIm=2000080>.

²⁷⁴ Übereinkommen zur Beseitigung jeder Form von Diskriminierung der Frau; LGBl. 1996 no. 164, <http://www.gesetze.li/Seite1.jsp?LGBIm=1996164>.

| 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? |
|---|--|-----------------------------|--|---|---|
| | | | (male primogeniture etc.) | | |
| Protocol 12, ECHR | 04.11.2000 ²⁷⁵ | Not ratified. | N/A | N/A | N/A |
| ILO Convention No. 111 on Discrimination | Not Signed. Liechtenstein is not an ILO member state | N/A | N/A | N/A | N/A |
| Convention on the Rights of the Child (CRC) | 30.09.1990 | 22.12.1995 | On 01.10.2009, the Government of Liechtenstein informed the Secretary-General that it had decided to withdraw the declaration concerning article 1 and the reservation concerning article 7 made upon ratification of the Convention. The text of the declaration withdrawn reads as follows: 'According to the legislation of the Principality of Liechtenstein children reach majority at 20 years of age. | Yes | Yes |

²⁷⁵ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=1&DF=10/02/2010&CL=ENG>.

| 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? |
|--|--------------------------|-----------------------------|---|---|---|
| | | | However, Liechtenstein law provides for the possibility to prolong or to shorten the duration of minority.' The text of the reservation withdrawn reads as follows: 'The Principality of Liechtenstein reserves the right to apply the Liechtenstein legislation according to which Liechtenstein nationality is granted under certain conditions.' | | |
| Convention on the Rights of Persons with Disabilities (CRPD) | Not Signed | N/A | N/A | N/A | N/A |

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