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Non-discrimination

Liechtenstein

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Country report

Non-discrimination

Liechtenstein

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Abbreviations

AA	Act on Aviation
AABP	Act on Assistance for Blind People
AAVCO	Act on Aid for Victims of Criminal Offences
ABP	Association for Assisted Living in Liechtenstein
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	Constitution of the Principality of Liechtenstein
NOWP	National Old Age and Widow's/Widower's Pension
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. 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. Liechtenstein follows a monist approach to the adoption of international 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)¹ protects individuals against any kind of discrimination based on disability;
- Articles 3 to 4a of the Act on Equality between Women and Men (AEWM)² state that disadvantaging someone on the ground of his or her gender is forbidden;
- the Act on Children and Youth (ACY)³ 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)⁴ explicitly prohibits any discrimination based on political, religious, or ideological grounds in its own area (Article 5);
- the Liechtenstein Act on Media (AM)⁵ 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)⁶ 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)⁷ states in Article 10 that employees are not allowed to be treated less favourably due to their involvement in an organisation for workers' representation;
- Article 283 of the Criminal Code⁸ states that any person who publicly incites hatred or discrimination against a person or group of persons on grounds of race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation will be punishable by imprisonment for up to two years. Likewise, under the Criminal Code, anyone who publicly disseminates ideologies aimed at the systematic

¹ Liechtenstein, Act on Equality of People with Disabilities (*Gesetz vom 25 Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen, Behindertengleichstellungsgesetz, BGIG*), LGBl. 2006, no. 243.

² Liechtenstein, Act on Equality between Women and Men (*Gesetz vom 10 März 1999 über die Gleichstellung von Frau und Mann, Gleichstellungsgesetz*), LGBl. 1999, no. 96.

³ Liechtenstein, Act on Children and Youth (*Kinder- und Jugendgesetz vom 10 Dezember 2008, KJG*), LGBl. 2009, no. 29.

⁴ Liechtenstein, Act on Postal Services (*Gesetz vom 18 Dezember 1998 über das liechtensteinische Postwesen, Postgesetz, PG*), LGBl. 1999, no. 35.

⁵ Liechtenstein, Act on Media (*Mediengesetz, MedienG* vom 19 Oktober 2005), LGBl. 2005 Nr.250.

⁶ Liechtenstein, Act on Employment of Public Officials (*Gesetz vom 24 April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz; StPG)*), LGBl. 2008 Nr. 144.

⁷ Liechtenstein, Act on Information and Consultation of Employees in Business Enterprises (*Gesetz vom 23 Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben, Mitwirkungsgesetz; MWG*), LGBl. 1997, no. 211.

⁸ Liechtenstein, Criminal Code (*Strafgesetzbuch, StGB*), LGBl. 1988, no. 37, link: <https://www.gesetze.li/konso/pdf/1988037000?version=18>.

degradation or defamation of persons on account of their race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation is punishable.

In 2013 Liechtenstein committed itself to signing the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), including the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Unfortunately, as of the date of this report, Liechtenstein has still not signed the UNCRPD.

During 2017 there has been no official case law in Liechtenstein regarding discrimination on grounds of race or ethnic origin, religion or belief, disability, age or sexual orientation.

There is no case law in respect of Roma. As of the date of this report, 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 Racial Discrimination (in force since May 2000);
- the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (in force since December 1990);
- the Framework Convention for the Protection of National Minorities (in force since March 1998).

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.⁹ 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 Liechtenstein¹⁰

The Constitution states in Article 37 that freedom of religion and belief is guaranteed by the Constitution. There are no anti-discrimination provisions in the Constitution with respect to other grounds.

Since Liechtenstein's accession to the European Convention on Human Rights (ECHR) and the creation of Article 15(2) of the Constitutional Court Act (StGHG; LGBI. 2004 No. 32), the fundamental rights laid down in the ECHR are regularly asserted in individual complaints before the Constitutional Court together with the fundamental rights laid down in the Constitution. As a result, there is effective implementation of the principle of equal

⁹ Covenant on Civil and Political Rights (ratified in December 1998); Covenant on Economic, Social and Cultural Rights (in force since December 1999); Convention on the Rights of the Child (in force since December 1999) and the optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; Optional Protocol to the CRC on a Communications Procedure.

¹⁰ Liechtenstein, Constitution of the Principality of Liechtenstein (*Verfassung des Fürstentums Liechtenstein*, LV), LGBI. 1921 no. 15.

treatment. No constitutional amendment is therefore being considered at the present time by the Liechtenstein Government.

Act on Equality of People with Disabilities (AEPD)¹¹

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.

Criminal Code

The amendment to Article 283 of the Criminal Code in 2016 introduced a comprehensive prohibition against discrimination. Any person who publicly incites hatred or discrimination against a person or group of persons on grounds of race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation will be punishable by imprisonment for up to two years. Likewise, under the Criminal Code, anyone who publicly disseminates ideologies aimed at the systematic degradation or defamation of persons on account of their race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation is punishable.

Nevertheless, discrimination on grounds of race and ethnic origin, religion and belief and age are not explicitly prohibited by separate legal acts, nor is there a general anti-discrimination law in Liechtenstein covering all grounds.

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.¹²

3. Main principles and definitions

In Liechtenstein, direct discrimination is explicitly prohibited in national law on grounds of disability (AEPD Article 6(1)) and gender (AEWM Article 1a).¹³ 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.

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 at a particular disadvantage compared with persons without disability, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Article 283 of the Criminal Code (StGB) says that any person who publicly incites hatred or discrimination against a person or group of persons on the grounds of race, language, nationality, ethnicity, religion or belief, gender, disability, age or sexual orientation will be sentenced to imprisonment for up to two years. Furthermore, participation in an association as a member, the activity of which consists of promoting or inciting discrimination within the meaning of the provision, is prohibited.

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.

¹¹ Liechtenstein, Act on Equality of People with Disabilities, (*Gesetz über die Gleichstellung von Menschen mit Behinderungen*), LGBl. 2006 no. 243.

¹² Liechtenstein, Act on the Constitutional Court, (*Gesetz vom 27 November 2003 über den Staatsgerichtshof*) (StGHG), LGBl. 2004 no. 32.

¹³ Liechtenstein, Act on Equality between Women and Men (*Gesetz vom 10 März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz*); LGBl. 1999, no. 96.

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.

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'. Exceptions are allowed specifically in the field of employment if there are genuine and determining occupational requirements, such as special knowledge, skills, physical condition, or if special characteristics are required for a job. 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.

In Liechtenstein, the duty to provide reasonable accommodation is included in the law indirectly through the prohibition of indirect discrimination. The AEPD provides no provision to set up reasonable accommodation for people with disabilities in general, but Article 7(3) of the AEPD states that indirect discrimination has occurred if no attempts have been made to accommodate the situation of the person concerned.

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 must not be discriminated against. Article 10 specifies that employees must not be discriminated against, in either a direct or in an indirect way. The provisions in Article 10 also include aspects of prohibition of discrimination in 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 (Article 10, section 1(a) to 1(k)) on the ground of disability in the context of social protection, education and access to goods and services. 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 resources management of the Liechtenstein Government supports the integration of people with disabilities and guarantees equal opportunities for women and men.

Article 283 (1) of the Criminal Code states that a sentence of imprisonment of up to two years will be imposed on any person who refuses to provide a service offered by him or her to a person or group of persons on the grounds of race, language, nationality, ethnicity, religion or belief, gender, disability, age or sexual orientation.

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. 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.

Complaints relating to the anti-discrimination provisions of the Criminal Code (race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation) are also adjudicated by the ordinary courts in the first instance (Article 283 of the Criminal Code). 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.

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 use 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.

6. Equality bodies

Given that Directive 2000/43 has not been transposed into Liechtenstein law, no equality bodies have been officially designated according to Article 13. Nevertheless, Liechtenstein has two main official institutions that are entrusted with a broad spectrum of tasks concerning disadvantage and discrimination.

The **Office for the Equality of Persons with Disabilities**¹⁴ was set up by the Government according to the AEPD (Article 22). The office is attached to the (private) Liechtenstein Association of People with Disabilities and acts independently. The office has the following tasks based on Article 22(2) of the AEPD:

- submit recommendations or applications for action to the government;
- advise public authorities and private individuals;
- participate in the preparation of relevant legislation;
- carry out public relations work to raise public awareness;
- promote social dialogue between employers and employees;
- ensure cooperation with public and private institutions.

The **Association for Human Rights in Liechtenstein** (*Verein für Menschenrechte, VMR*)¹⁵ was founded by 26 non-governmental organisations on 10 December 2016. The former Office of Equal Opportunities was dissolved and its responsibilities were integrated into the new association.¹⁶ The status of this association and the relevant legal provisions had been laid down in a new law, the Law on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte in Liechtenstein; VMLG*).¹⁷ This act entered into force on 1 January 2017, and the association became operational from that day onward. The Association for Human Rights in Liechtenstein is the independent national human rights institution of Liechtenstein in accordance with the United Nations Paris Principles of 1993. The association also has the function of an independent ombudsman for children and young people. Thus, the Ombudsman's Office of Children and Young Persons, based on the Act on Children and Youth (ACY) continues to exist within the new Association for Human Rights in Liechtenstein. The new association brings together various tasks which before had been performed by different governmental offices and NGOs in Liechtenstein. These tasks are:

- Advising authorities and private individuals on human rights issues;
- Counselling people who feel violated in their rights and supporting victims of human rights violations;
- Inform the public about the human rights situation in Liechtenstein;
- Conducting investigations and recommending appropriate measures to authorities and private individuals;
- Giving opinions on draft laws and regulations and on the ratification of international conventions;

¹⁴ Office for the Equality of Persons with Disabilities (*Büro für die Gleichstellung von Menschen mit Behinderung*), link: <http://www.lbv.li/>.

¹⁵ Association for Human Rights in Liechtenstein (*Verein für Menschenrechte in Liechtenstein*), link: <https://www.menschenrechte.li/category/ueber-uns/>.

¹⁶ As Directive 2000/43 has not been transposed in Liechtenstein, the body has not been officially designated in accordance with Article 13.

¹⁷ Liechtenstein, Law on the Association for Human Rights in Liechtenstein, 2016, No. 504. Link: <https://www.gesetze.li/konso/pdf/2016504000?version=1>.

- Promoting dialogue and cooperation with human rights bodies.

There are further commissions/offices dedicated to dealing with questions and issues of various aspects of anti-discrimination.¹⁸

7. Key issues

Liechtenstein's second cycle universal periodic review (UPR) in 2013 raised three recommendations regarding the ratification of the Convention on the Rights of Persons with Disabilities.¹⁹ Liechtenstein accepted all of them.

The universal periodic review of Liechtenstein by selected members of the Human Rights Council urged the Liechtenstein authorities to ratify the United Nations Convention on the Rights of Persons with Disabilities. Furthermore, Liechtenstein was requested to continue its efforts towards ensuring that all children with disabilities have access to education in mainstream schools, where reasonable accommodation and individual supports should be given as necessary. Finally, Liechtenstein still has no general anti-discrimination act and the UNCRPD has not yet been ratified.

Hence, Liechtenstein still needs to make further efforts to challenge discrimination and to enact the relevant legislation. The new Association of Human Rights in Liechtenstein works towards a comprehensive national anti-discrimination act. Furthermore the new Association of Human Rights in Liechtenstein promotes human rights, which mainly affect the weakest groups in Liechtenstein's society (physically impaired persons, children, single mothers, asylum seekers, undocumented foreigners etc.) and coordinates activities with respect to equal opportunities. Finally, it provides recommendations to the relevant authorities and advise them regarding the implementation of recommended activities or processes. This might have a positive effect on the progress of ratification of the Convention on the Rights of Persons with Disabilities.

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.

¹⁸ Commission for the Equality of Women and Men: this commission advises the Government. Commission for Integration and Integration Office at the Immigration and Passport Office: 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.

¹⁹ Council of Europe Commissioner for Human Rights (2012), for the recommendations following the second cycle universal periodic review (UPR), see: https://www.llv.li/files/aaa/pdf-llv-aaa-2_upr-staatenbericht-de.docx.pdf (German) or https://www.llv.li/files/aaa/pdf-llv-aaa-2_upr-staatenbericht-en.docx.pdf (English). Statement of the Liechtenstein Government regarding the second cycle universal periodic review (UPR): https://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_de.pdf (German) or <https://www.llv.li/files/aaa/reaktion-auf-empfehlungen-upr-2018-en.pdf> (English).

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. Les affaires relevant du droit pénal et du droit civil sont traitées par des juridictions ordinaires, et les recours par la Cour supérieure en première instance et par la Cour suprême en dernier ressort. Les litiges entre citoyens et organes de l'État relèvent toutefois de la compétence du Tribunal administratif et de la Cour constitutionnelle. Le Liechtenstein suit une approche moniste pour ce qui concerne l'adoption du droit international. 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 handicapées²⁰ protège les personnes contre toute forme de discrimination fondée sur le handicap;
- les articles 3 à 4a de la loi sur l'égalité entre les femmes et les hommes²¹ dispose qu'il est interdit de défavoriser une personne en raison de son sexe;
- la loi sur les enfants et la jeunesse²² 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 postaux²³ interdit expressément toute discrimination fondée sur un motif politique, religieux ou idéologique dans son propre domaine (article 5);
- la loi sur les médias²⁴ 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 publics²⁵ 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 entreprises²⁶ 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;
- l'article 283 du code pénal²⁷ dispose que toute personne qui incite publiquement à la haine ou à la discrimination envers une personne ou un groupe de personnes pour des motifs de race, de langue, de nationalité, d'origine ethnique, de religion ou de convictions, de genre, de handicap, d'âge ou d'orientation sexuelle est passible d'une

²⁰ Liechtenstein, loi sur l'égalité des personnes handicapées (*Gesetz vom 25 Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen, Behindertengleichstellungsgesetz, BGIG*), LGBl. 2006, n° 243.

²¹ Liechtenstein, loi sur l'égalité entre les femmes et les hommes (*Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann, Gleichstellungsgesetz*), LGBl. 1999, n° 96.

²² Liechtenstein, loi sur les enfants et la jeunesse (*Kinder- und Jugendgesetz vom 10. Dezember 2008, KJG*), LGBl. 2009, n° 29.

²³ Liechtenstein, loi sur les services postaux (*Gesetz vom 18. Dezember 1998 über das liechtensteinische Postwesen, Postgesetz, PG*), LGBl. 1999, n° 35.

²⁴ Liechtenstein, loi sur les médias (*Mediengesetz vom 19. Oktober 2005, MedienG*), LGBl. 2005, n° 250.

²⁵ Liechtenstein, loi sur l'emploi des agents publics (*Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz, StPG*), LGBl. 2008, n° 144.

²⁶ Liechtenstein, loi sur l'information et la consultation des salariés dans les entreprises (*Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben, Mitwirkungsgesetz, MWG*), LGBl. 1997, n° 211.

²⁷ Liechtenstein, code pénal (*Strafgesetzbuch, StGB*), LGBl. 1988, n° 37:
<https://www.gesetze.li/konso/pdf/1988037000?version=18>.

peine d'emprisonnement pouvant aller jusqu'à deux ans. De même, en vertu du code pénal, toute personne qui diffuse publiquement des idéologies visant à dégrader ou à dénigrer systématiquement des personnes en raison de leur race, de leur langue, de leur nationalité, de leur origine ethnique, de leur religion ou convictions, de leur genre, de leur handicap, de leur âge ou de leur orientation sexuelle peut être sanctionnée.

Le Liechtenstein s'est engagé en 2013 à signer la Convention des Nations unies relative aux droits des personnes handicapées (CDPH), y compris son protocole facultatif. À la date du présent rapport, hélas, le Liechtenstein n'avait toujours pas signé la Convention.

Aucune jurisprudence officielle n'a été établie en 2017 en matière de discrimination fondée sur la race ou l'origine ethnique, la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle.

Il n'existe aucune jurisprudence en lien avec les Roms, lesquels sont, à la date du présent rapport, 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 internationale sur l'élimination de toutes les formes de discrimination raciale (en vigueur au Liechtenstein depuis mai 2000);
- la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants (en vigueur au Liechtenstein depuis décembre 1990);
- la Convention-cadre pour la protection des minorités nationales (en vigueur au Liechtenstein depuis mars 1998).

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.²⁸ 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.

Constitution de la Principauté de Liechtenstein²⁹

La Constitution dispose en son article 37 qu'elle garantit la liberté de religion et de conviction. Elle ne contient aucune disposition antidiscrimination concernant d'autres motifs.

Depuis l'adhésion du Liechtenstein à la Convention européenne des droits de l'homme (CEDH) et la création de l'article 15, paragraphe 2, de la loi sur la Cour constitutionnelle (StGHG, LGBI. 2004 n° 32), les droits fondamentaux institués par la CEDH sont

²⁸ Pacte international relatif aux droits civils et politiques (ratifié en décembre 1998); Pacte international relatif aux droits économiques, culturels et sociaux (en vigueur depuis décembre 1999); Convention relative aux droits de l'enfant (en vigueur depuis décembre 1995) et son protocole facultatif concernant la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants (procédure de communication en cours).

²⁹ Liechtenstein, Constitution de la Principauté du Liechtenstein (*Verfassung des Fürstentums Liechtenstein*, LV), LGBI. 1921, n° 15.

régulièrement affirmés, de même que les droits fondamentaux consacrés par la Constitution, dans le cadre de recours individuels dont la Cour constitutionnelle est saisie. Le principe de l'égalité de traitement est donc effectivement mis en œuvre et aucun amendement constitutionnel n'est par conséquent envisagé à l'heure actuelle par le gouvernement du Liechtenstein.

Loi sur l'égalité des personnes handicapées³⁰

Cette loi 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.

Code pénal

La modification de l'article 283 du code pénal en 2016 a instauré une interdiction générale de discrimination. Toute personne qui incite publiquement à la haine ou à la discrimination envers une personne ou un groupe de personnes pour des motifs de race, de langue, de nationalité, d'origine ethnique, de religion ou de convictions, de genre, de handicap, d'âge ou d'orientation sexuelle est passible d'une peine d'emprisonnement pouvant aller jusqu'à deux ans. De même, en vertu du code pénal, toute personne qui diffuse publiquement des idéologies visant à dégrader ou à dénigrer systématiquement des personnes en raison de leur race, de leur langue, de leur nationalité, de leur origine ethnique, de leur religion ou convictions, de leur genre, de leur handicap, de leur âge ou de leur orientation sexuelle peut être sanctionnée.

La discrimination fondée sur la race et l'origine ethnique, la religion et les convictions et l'âge n'est cependant pas explicitement interdite par des actes législatifs distincts, et il n'existe pas au Liechtenstein de loi générale antidiscrimination couvrant tous les motifs.

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.³¹

3. Principes généraux et définitions

La législation nationale du Liechtenstein interdit explicitement la discrimination directe fondée sur le handicap (article 6, paragraphe 1, de la loi sur l'égalité des personnes handicapées) et sur le genre (article 1a de la loi sur l'égalité entre les femmes et les hommes).³² La discrimination directe y est définie comme se produisant lorsqu'une personne est traitée moins favorablement qu'une autre personne ne l'a été ou ne le serait dans une situation comparable.

La loi sur l'égalité des personnes handicapées 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.

L'article 283 du code pénal (StGB) dispose que toute personne qui incite publiquement à la haine ou à la discrimination envers une personne ou un groupe de personnes pour des motifs de race, de langue, de nationalité, d'origine ethnique, de religion ou de convictions,

³⁰ Liechtenstein, loi sur l'égalité des personnes handicapées (*Gesetz über die Gleichstellung von Menschen mit Behinderungen*), LGBI. 2006, n° 243.

³¹ Liechtenstein, loi sur la Cour constitutionnelle (*Gesetz vom 27. November 2003 über den Staatsgerichtshof, StGHG*), LGBI. 2004, n° 32.

³² Liechtenstein, loi sur l'égalité entre les femmes et les hommes (*Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann, Gleichstellungsgesetz*); LGBI. 1999, n° 96

de genre, de handicap, d'âge ou d'orientation sexuelle est passible d'une peine d'emprisonnement pouvant aller jusqu'à deux ans. Est interdite en outre la participation en tant que membre à une association dont l'activité consiste à promouvoir ou à inciter à la discrimination au sens de ladite disposition.

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.

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 autorise certaines dérogations à la règle générale, lorsqu'elle existe, et une inégalité de traitement peut être «objectivement justifiée». Des exceptions sont spécifiquement admises dans le domaine de l'emploi s'il s'agit d'exigences professionnelles véritables et déterminantes (connaissances particulières, aptitudes spécifiques ou caractéristiques spéciales requises pour le poste, 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.

Au Liechtenstein, l'obligation d'aménagement raisonnable est indirectement prévue par la loi via l'interdiction de discrimination indirecte. La loi sur l'égalité des personnes handicapées ne contient aucune disposition instaurant l'aménagement raisonnable pour les personnes handicapées en général, mais son article 7, paragraphe 3, dispose qu'il y a discrimination indirecte si rien n'a été fait pour tenter d'aménager la situation de la personne concernée.

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 peuvent éventuellement 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 doivent faire l'objet d'aucune discrimination, que ce soit de façon directe ou indirecte. Les dispositions visées à l'article 10 couvrent également des aspects de l'interdiction de discrimination en rapport avec le recrutement, la rémunération, les prestations volontaires de sécurité sociale, la formation professionnelle, la carrière et la promotion professionnelles, les autres conditions d'emploi, la résiliation du contrat de travail, l'accessibilité aux services d'emploi, la formation professionnelle et d'autres services non compris dans le contrat de travail, l'appartenance et la participation active à une organisation syndicale, et les conditions d'accès à l'emploi indépendant (article 10, paragraphe 1, points a-k) – discrimination fondée sur le handicap dans le cadre de la protection sociale, de l'éducation et de l'accès aux biens et aux services. 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 publique du Liechtenstein doit veiller à l'intégration des personnes handicapées et garantir l'égalité des chances entre les femmes et les hommes.

L'article 283, paragraphe 1, du code pénal prévoit une peine d'emprisonnement pouvant aller jusqu'à deux ans pour toute personne qui refuse de prester un service qu'elle/il offre à une personne ou un groupe de personnes pour un motif fondé sur la race, la langue, la nationalité, l'origine ethnique, la religion ou les convictions, le genre, le handicap, l'âge ou l'orientation sexuelle.

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. 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.

Les juridictions ordinaires se prononcent également en première instance sur les recours invoquant les dispositions antidiscrimination du code pénal (race, langue, nationalité, origine ethnique, religion ou convictions, genre, handicap, âge ou orientation sexuelle) (article 283 du code pénal). Les recours invoquant la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, entrée en vigueur au Liechtenstein en 2000, peuvent être pour leur part introduits en justice de la même manière que ceux invoquant le droit national (la loi sur l'égalité des personnes handicapées notamment).

Les procédures en cas de discrimination en matière d'emploi diffèrent selon qu'il s'agit du secteur privé ou du secteur public. Lorsqu'il s'agit de litiges privés, la juridiction ordinaire est l'autorité judiciaire compétente en première instance; mais lorsqu'il s'agit de litiges entre des particuliers et le secteur public, c'est le Tribunal administratif (organe de la juridiction publique) qui est saisi en première instance et la Cour constitutionnelle en dernier ressort.

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.

Si le droit national n'autorise pas explicitement les preuves statistiques ou l'utilisation 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 réparation 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.

6. Organismes de promotion de l'égalité de traitement

Étant donné que la directive 2000/43 n'a pas été transposée en droit interne, aucun organisme de promotion de l'égalité de traitement n'a été officiellement désigné au Liechtenstein en vertu de l'article 13. Le pays n'en compte pas moins deux grandes institutions officielles chargées d'un large éventail de tâches en matière de désavantage et de discrimination.

Le Bureau pour l'égalité des personnes handicapées,³³ institué par le gouvernement en vertu de l'article 22 de la loi sur l'égalité des personnes handicapées, est attaché à l'Association (privée) liechtensteinoise des personnes handicapées et agit de manière indépendante. En vertu du deuxième paragraphe de l'article susmentionné, il remplit les missions suivantes:

- soumettre au gouvernement des recommandations ou des demandes d'action;

³³ Bureau pour l'égalité des personnes handicapées (*Büro für die Gleichstellung von Menschen mit Behinderung*): <http://www.lbv.li/>.

- conseiller les pouvoirs publics et les particuliers;
- participer à l'élaboration de la législation pertinente;
- mener un travail de relations publiques en vue de sensibiliser l'opinion;
- promouvoir le dialogue social entre employeurs et salariés;
- collaborer avec des organismes publics et privés.

L'**Association pour les droits de l'homme du Liechtenstein** (*Verein für Menschenrechte*, VMR)³⁴ a été fondée le 10 décembre 2016 par 26 organisations non gouvernementales. L'ex-Bureau pour l'égalité des chances a été dissout et ses compétences ont été intégrées à la nouvelle association.³⁵ Le statut de cette dernière et les dispositions juridiques pertinentes font l'objet d'une nouvelle loi, à savoir la loi sur l'Association pour les droits de l'homme du Liechtenstein (*Gesetz über den Verein für Menschenrechte in Liechtenstein*, VMLG),³⁶ qui est entrée en vigueur le 1^{er} janvier 2017. L'Association, opérationnelle depuis cette date, constitue l'institution nationale indépendante en matière de droits de l'homme en conformité avec les Principes de Paris adoptés par les Nations unies en 1993. Elle assume également la fonction de Médiateur pour les enfants et les jeunes. Par conséquent, le Bureau du Médiateur pour les enfants et les jeunes, institué en vertu de la loi sur les enfants et les jeunes, poursuivra ses activités au sein de la nouvelle Association pour les droits de l'homme. Celle-ci regroupe donc une série de tâches antérieurement assumées au Liechtenstein par diverses administrations et ONG, à savoir:

- conseiller les pouvoirs publics et les particuliers sur les questions de droits de l'homme;
- conseiller les personnes estimant que leurs droits ne sont pas respectés et venir en aide aux victimes de violations des droits de l'homme;
- informer le public de la situation des droits de l'homme au Liechtenstein;
- effectuer des enquêtes et recommander des mesures adéquates aux pouvoirs publics et aux particuliers;
- formuler des avis sur les projets de lois et de règlements ainsi que sur la ratification de conventions internationales;
- promouvoir le dialogue et la coopération avec des organismes de défense des droits de l'homme.

Il existe d'autres commissions/bureaux chargés de questions et de problématiques touchant divers aspects de la non-discrimination.³⁷

7. Points essentiels

Le second cycle de l'Examen périodique universel (EPU) du Liechtenstein a donné lieu en 2013 à trois recommandations concernant la ratification de la Convention des Nations unies relative aux droits des personnes handicapées.³⁸ Le Liechtenstein les a acceptées toutes les trois.

³⁴ Association pour les droits de l'homme du Liechtenstein (*Verein für Menschenrechte in Liechtenstein*): <https://www.menschenrechte.li/category/ueber-uns/>.

³⁵ Étant donné que la directive 2000/43 n'a pas été transposée en droit national, l'organisme n'a pas été officiellement désigné conformément à l'article 13.

³⁶ Liechtenstein, loi sur l'Association pour les droits de l'homme du Liechtenstein, 2016, n° 504: <https://www.gesetze.li/konso/pdf/2016504000?version=1>.

³⁷ 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 Bureau de l'immigration et des passeports: 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.

³⁸ Conseil de l'Europe, Commissaire aux droits de l'homme (2012); pour les recommandations suite au second cycle de l'Examen périodique universel (EPU) voir: http://www.llv.li/files/aaa/pdf-llv-aaa-2_uapr-

L'Examen périodique universel du Liechtenstein effectué par une sélection de membres du Conseil des droits de l'homme a exhorté les autorités du Liechtenstein à ratifier la Convention des Nations unies relative aux droits des personnes handicapées. Le pays a été invité en outre à poursuivre ses efforts pour que tous les enfants handicapés puissent suivre un enseignement dans des écoles ordinaires, lesquelles devraient prévoir les aménagements raisonnables et les soutiens individuels nécessaires. Enfin, le Liechtenstein ne s'est toujours pas doté de loi générale antidiscrimination et n'a pas encore ratifié la Convention des Nations unies relative aux droits des personnes handicapées.

Il apparaît donc que le Liechtenstein doit déployer des efforts supplémentaires pour lutter contre la discrimination et adopter une législation pertinente à cette fin. La nouvelle Association pour les droits de l'homme du Liechtenstein œuvre en faveur d'une loi générale antidiscrimination et s'attache en outre à promouvoir les droits de l'homme, ce qui concerne surtout les groupes les plus faibles de la société du Liechtenstein (personnes souffrant de déficiences physiques, enfants, mères isolées, demandeurs d'asile, étrangers en situation irrégulière, etc.), et à coordonner les activités en matière d'égalité des chances. Enfin, l'Association formule des recommandations à l'intention des autorités concernées et les conseille pour l'exécution des actions ou processus recommandés – ce qui pourrait avoir un effet positif sur l'avancement de la ratification de la Convention relative aux droits des personnes handicapées.

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.

[staatenbericht-de.docx.pdf \(en allemand\)](https://www.llv.li/files/aaa/pdf-llv-aaa-2_upr-staatenbericht-en.docx.pdf) ou [https://www.llv.li/files/aaa/pdf-llv-aaa-2_upr-staatenbericht-en.docx.pdf \(en anglais\)](https://www.llv.li/files/aaa/pdf-llv-aaa-2_upr-staatenbericht-en.docx.pdf). 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-upr-2018-en.pdf \(en anglais\)](http://www.llv.li/files/aaa/pdf-llv-aaa-reaktion-auf-empfehlungen-upr-2018-en.pdf).

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. 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. Liechtenstein folgt bei der Übernahme internationalen Rechts einem monistischen Ansatz. 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)³⁹ schützt vor jeder Form der Diskriminierung aufgrund einer Behinderung;
- Artikel 3 bis 4a des Gesetzes über die Gleichstellung von Frau und Mann (GLG)⁴⁰ verbietet die Benachteiligung aufgrund des Geschlechts;
- das Kinder- und Jugendgesetz (KJG)⁴¹ schützt Kinder und Jugendliche vor Diskriminierung wie Sexismus, Rassismus, politischer Radikalisierung oder Gewalt (Art. 1 und Art. 63);
- das Gesetz über das liechtensteinische Postwesen (PG)⁴² verbietet ausdrücklich jede Form von Diskriminierung aus politischen, religiösen oder weltanschaulichen Gründen in seinem Geltungsbereich (Art. 5);
- nach dem Mediengesetz (MedienG)⁴³ 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)⁴⁴ enthält einen Schutz vor Kündigungen gemäß dem GLG und BGIG (Art. 22 Abs. 3);
- das liechtensteinische Gesetz über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (MWG)⁴⁵ besagt in Artikel 10, dass Arbeitnehmer wegen der Ausübung einer Tätigkeit in der Arbeitnehmervertretung nicht benachteiligt werden dürfen;
- nach Artikel 283 Strafgesetzbuch (StGB)⁴⁶ wird mit Freiheitsstrafe bis zu zwei Jahren bestraft, wer öffentlich gegen eine Person oder eine Gruppe von Personen wegen ihrer „Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, ihres Geschlechts, einer Behinderung, ihres Alters oder ihrer sexuellen Orientierung zu Hass oder Diskriminierung anstachelt. Ebenso wird nach dem Strafgesetzbuch

³⁹ Liechtenstein, Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBI. 2006, Nr. 243.

⁴⁰ Liechtenstein, Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann (Gleichstellungsgesetz; GLG), LGBI. 1999, Nr. 96.

⁴¹ Liechtenstein, Kinder- und Jugendgesetz vom 10. Dezember 2008 (KJG), LGBI. 2009, Nr. 29.

⁴² Liechtenstein, Gesetz vom 18. Dezember 1998 über das liechtensteinische Postwesen (Postgesetz, PG), LGBI. 1999, Nr. 35.

⁴³ Liechtenstein, Mediengesetz (MedienG) vom 19. Oktober 2005, LGBI. 2005 Nr. 250.

⁴⁴ Liechtenstein, Gesetz vom 24. April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz, StPG), LGBI. 2008 Nr. 144.

⁴⁵ Liechtenstein, Gesetz vom 23. Oktober 1997 über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben (Mitwirkungsgesetz, MWG), LGBI. 1997, Nr. 211.

⁴⁶ Liechtenstein, Strafgesetzbuch (StGB), LGBI. 1988, Nr. 37, siehe: <https://www.gesetze.li/konso/pdf/1988037000?version=18>.

bestraft, wer öffentlich Ideologien verbreitet, die auf die systematische Herabsetzung oder Verleumdung von Personen aufgrund ihrer „Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, ihres Geschlechts, einer Behinderung, ihres Alters oder ihrer sexuellen Orientierung gerichtet sind.

2013 verpflichtete sich Liechtenstein, das Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen (UN-Behindertenrechtskonvention, kurz: UN-BRK) einschließlich des Fakultativprotokolls zum Übereinkommen über die Rechte von Menschen mit Behinderungen zu unterzeichnen. Zum Zeitpunkt dieses Berichts hat Liechtenstein die UNCRPD jedoch bedauerlicherweise noch nicht unterzeichnet.

2017 hat es in Liechtenstein keine offizielle Rechtsprechung in Bezug auf Diskriminierungen wegen der „Rasse“ oder der ethnischen Herkunft, der Religion oder Weltanschauung, einer Behinderung, des Alters oder der sexuellen Ausrichtung gegeben.

Es liegt keine Rechtsprechung in Bezug auf Roma vor. Zum Zeitpunkt der Erstellung dieses Berichts leben nur sehr wenige Roma in Liechtenstein.

2. Wichtigste Rechtsvorschriften

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 Rassendiskriminierung (in Kraft seit Mai 2000);
- das Übereinkommen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe (in Kraft seit Dezember 1990);
- das Rahmenübereinkommen zum Schutz nationaler Minderheiten (in Kraft seit März 1998).

Außerdem gelten in Liechtenstein weitere internationale Abkommen mit – gemäß dem Gesetz über den Staatsgerichtshof – hoher Relevanz für das Antidiskriminierungsrecht.⁴⁷ 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 Liechtenstein⁴⁸

Durch Artikel 37 der Verfassung ist die Religions- und Glaubensfreiheit gewährleistet. Die Verfassung enthält keine weiteren Bestimmungen, die Diskriminierung aus anderen Gründen verbieten.

Seit dem Beitritt Liechtensteins zur Europäischen Menschenrechtskonvention (EMRK) und der Schaffung von Artikel 15 Absatz 2 StGHG (Gesetz über den Staatsgerichtshof,

⁴⁷ Pakt über bürgerliche und politische Rechte (ratifiziert im Dezember 1998); Pakt über wirtschaftliche, soziale und kulturelle Rechte (in Kraft seit Dezember 1999); Übereinkommen über die Rechte des Kindes (UN-Kinderrechtskonvention, kurz: UN-KRK, in Kraft seit Dezember 1999) und Fakultativprotokoll zur UN-KRK betreffend Kinderhandel, Kinderprostitution und Kinderpornografie; Fakultativprotokoll zur UN-KRK betreffend die Schaffung eines Beschwerdeverfahrens.

⁴⁸ Liechtenstein, Verfassung des Fürstentums Liechtenstein (LV), LGBI. 1921, Nr. 15.

LGBI. 2004 Nr. 32) werden die in der EMRK verankerten Grundrechte sowie die in der Verfassung festgeschriebenen Grundrechte regelmäßig in Individualbeschwerden vor dem Staatsgerichtshof geltend gemacht. Der Grundsatz der Gleichbehandlung wird folglich wirksam umgesetzt. Eine Verfassungsänderung wird somit von der liechtensteinischen Regierung derzeit nicht in Betracht gezogen.

Gesetz über die Gleichstellung von Menschen mit Behinderungen (BGIG)⁴⁹

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.

Strafgesetzbuch

Mit der Änderung von Artikel 283 des Strafgesetzbuchs im Jahr 2016 wurde ein umfassendes Verbot von Diskriminierung eingeführt. Wer öffentlich gegen eine Person oder eine Gruppe von Personen wegen ihrer „Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, ihres Geschlechts, einer Behinderung, ihres Alters oder ihrer sexuellen Orientierung zu Hass oder Diskriminierung anstachelt, wird mit einer Freiheitsstrafe von bis zu zwei Jahren bestraft. Ebenso wird nach dem Strafgesetzbuch bestraft, wer öffentlich Ideologien verbreitet, die auf die systematische Herabsetzung oder Verleumdung von Personen aufgrund ihrer „Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, ihres Geschlechts, einer Behinderung, ihres Alters oder ihrer sexuellen Orientierung gerichtet sind.

Nichtsdestotrotz ist Diskriminierung aufgrund der „Rasse“, ethnischen Zugehörigkeit, Religion und Weltanschauung sowie des Alters nicht ausdrücklich durch spezielle Rechtsakte verboten und gibt es in Liechtenstein auch kein allgemeines Antidiskriminierungsgesetz, das alle Diskriminierungsgründe abdeckt.

Artikel 15 Absatz 2 des Gesetzes über den Staatsgerichtshof zählt die internationalen Übereinkommen auf, die für die Rechtsprechung des Staatsgerichtshofs als besonders relevant eingestuft werden.⁵⁰

3. Wichtigste Grundsätze und Begriffe

In Liechtenstein ist unmittelbare Diskriminierung nach innerstaatlichem Recht ausdrücklich aufgrund einer Behinderung (Art. 6 Abs. 1 BGIG) und aufgrund des Geschlechts (Art. 1 lit. a GLG) verboten.⁵¹ Nach liechtensteinischem Recht liegt eine unmittelbare Diskriminierung dann vor, wenn eine Person in einer vergleichbaren Situation eine weniger günstige Behandlung erfährt, als eine andere Person erfahren hat oder erfahren würde.

Nach der Definition des BGIG (Art. 6 Abs. 2) liegt eine mittelbare Diskriminierung vor, wenn dem Anschein nach neutrale Vorschriften, Kriterien oder Verfahren Menschen mit Behinderungen gegenüber Menschen ohne Behinderungen in besonderer Weise benachteiligen können, es sei denn, die betreffenden Vorschriften, Kriterien oder Verfahren sind durch einen rechtmäßigen Zweck sachlich gerechtfertigt und die Mittel sind zur Erreichung dieses Zwecks angemessen und erforderlich.

Nach Artikel 283 StGB wird mit Freiheitsstrafe bis zu zwei Jahren bestraft, wer öffentlich gegen eine Person oder eine Gruppe von Personen wegen ihrer „Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, ihres Geschlechts, einer Behinderung,

⁴⁹ Liechtenstein, Gesetz über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz), LGBI. 2006, Nr. 243.

⁵⁰ Liechtenstein, Gesetz vom 27. November 2003 über den Staatsgerichtshof (StGHG), LGBI. 2004, Nr. 32.

⁵¹ Liechtenstein, Gesetz vom 10 März 1999 über die Gleichstellung von Frau und Mann (Gleichstellungsgesetz), LGBI. 1999, Nr. 96.

ihres Alters oder sexuellen Orientierung zu Hass oder Diskriminierung anstachelt. Es ist außerdem verboten, sich an einer Vereinigung als Mitglied zu beteiligen, deren Tätigkeit darin besteht, Diskriminierung im Sinne dieser Vorschrift zu fördern oder dazu anzustacheln.

Belästigung wird ebenfalls im BGIG 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 BGIG 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. Ausnahmen sind speziell im Beschäftigungsbereich zulässig, wenn wesentliche und entscheidende berufliche Anforderungen (z. B. spezielle Kenntnisse, Fähigkeiten oder körperliche Voraussetzungen) bestehen oder wenn für eine Tätigkeit besondere Merkmale erforderlich sind. Auch positive Maßnahmen sind erlaubt. Artikel 20 BGIG erlaubt beispielsweise Pilotversuche zugunsten von Menschen mit Behinderungen, einschließlich von Anreizen für Arbeitgeber zur Einrichtung behindertengerechter Arbeitsplätze. Dies verstößt nicht gegen das Diskriminierungsverbot.

Das BGIG verbietet Viktimisierung (Art. 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 BGIG 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 Liechtenstein ist die Pflicht, angemessene Vorkehrungen zu treffen, über das Verbot von mittelbarer Diskriminierung indirekt im Gesetz enthalten. Das BGIG enthält keine Bestimmung, die generell angemessene Vorkehrungen für Menschen mit Behinderungen vorschreibt; nach Artikel 7 Absatz 3 BGIG liegt jedoch eine mittelbare Diskriminierung vor, wenn keine Bemühungen unternommen wurden, um den Bedürfnissen der betroffenen Person Rechnung zu tragen.

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 darf niemand aufgrund einer Behinderung diskriminiert werden. Artikel 10 präzisiert, dass Arbeitnehmer weder unmittelbar noch mittelbar diskriminiert werden dürfen. Die Bestimmungen in Artikel 10 regeln außerdem Aspekte des Verbots von Diskriminierung in Bezug auf Einstellung, Entgelt, freiwillige Sozialleistungen, Aus- und Weiterbildung, beruflichen Aufstieg und Beförderung, sonstige Arbeitsbedingungen, Beendigung des Arbeitsverhältnisses, Zugang zur Berufsberatung, berufliche Weiterbildung und andere Leistungen außerhalb eines Arbeitsverhältnisses, Mitgliedschaft und Mitwirkung in einer Gewerkschaft und die Bedingungen für den Zugang zu selbständiger Erwerbstätigkeit (Art. 10 Abs. 1 lit. a-k) – Diskriminierung aufgrund von Behinderung im Bereich des Sozialschutzes, der Bildung sowie des Zugangs zu Gütern und Dienstleistungen. 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.

Nach Artikel 283 Absatz 1 StGB werden Personen, die Personen oder Gruppen von Personen eine von ihnen angebotene Leistung wegen der „Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, des Geschlechts, einer Behinderung, des Alters oder der sexuellen Orientierung verweigern, mit Freiheitsstrafe bis zu zwei Jahren bestraft.

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 BGIG definiert die Umstände, unter denen Behindertenorganisationen Rechtsansprüche in eigenem Namen geltend machen können. Die Organisationen können im eigenen Namen durch ein Gericht feststellen lassen, dass eine Diskriminierung vorliegt. Die Diskriminierung muss folglich beseitigt werden.

Beschwerden im Zusammenhang mit den Antidiskriminierungsvorschriften des Strafgesetzbuchs („Rasse“, Sprache, Nationalität, Ethnie, Religion oder Weltanschauung, Geschlecht, Behinderung, Alter oder sexuelle Orientierung) werden in erster Instanz ebenfalls von den ordentlichen Gerichten entschieden (Art. 283 StGB). Ansprüche aufgrund des Übereinkommens zur Beseitigung jeder Form von Rassendiskriminierung, das seit dem Jahr 2000 in Liechtenstein in Kraft ist, können ebenso vor Gericht gebracht werden wie Ansprüche nach nationalem Recht, sprich dem BGIG.

Die Verfahren, mit denen gegen Diskriminierung vorgegangen wird, sind für Beschäftigung im Privatsektor bzw. Beschäftigung im öffentlichen Sektor nicht die gleichen. Bei privatrechtlichen Streitigkeiten ist erste Instanz das ordentliche Gericht, bei Streitigkeiten zwischen natürlichen Personen und der öffentlichen Hand hingegen das Verwaltungsgericht.

(Teil der öffentlichen Gerichtsbarkeit), gefolgt vom Staatsgerichtshof als letztinstanzlichem Gericht.

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 der Einsatz von Testing-Verfahren 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 Testing-Verfahren in Liechtenstein.

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.

6. Gleichbehandlungsstellen

Da die Richtlinie 2000/43 nicht in liechtensteinisches Recht umgesetzt wurde, wurden offiziell keine Gleichbehandlungsstellen im Sinne von Artikel 13 benannt. Nichtsdestotrotz verfügt Liechtenstein über zwei wichtige offizielle Institutionen, die mit einem breiten Aufgabenspektrum im Bereich Benachteiligung und Diskriminierung betraut sind.

Das **Büro für die Gleichstellung von Menschen mit Behinderungen**⁵² wurde von der Regierung gemäß den Bestimmungen des BGIG eingerichtet (Art. 22). Das Büro ist dem (privaten) Liechtensteiner Behinderten-Verband angeschlossen und handelt selbständig. Es hat, basierend auf Artikel 22 Absatz 2 BGIG, folgende Aufgaben:

- Empfehlungen oder Anträge für Maßnahmen bei der Regierung einreichen;
- Behörden und Privatleute beraten;
- bei der Ausarbeitung von relevanten Rechtsvorschriften mitwirken;
- Öffentlichkeitsarbeit zur Sensibilisierung der Bevölkerung durchführen;
- den sozialen Dialog zwischen Arbeitgebern und Arbeitnehmern fördern;
- Zusammenarbeit mit öffentlichen und privaten Einrichtungen sicherstellen.

⁵² Büro für die Gleichstellung von Menschen mit Behinderung, siehe: <http://www.lbv.li/>.

Der **Verein für Menschenrechte in Liechtenstein** (VMR)⁵³ wurde am 10. Dezember 2016 von 26 Nichtregierungsorganisationen ins Leben gerufen. Die frühere Stabsstelle für Chancengleichheit wurde aufgelöst und ihre Aufgaben in den neuen Verein integriert.⁵⁴ Der Status des Vereins und die entsprechenden gesetzlichen Bestimmungen waren in einem neuen Gesetz, dem Gesetz über den Verein für Menschenrechte in Liechtenstein (VMLG), festgelegt worden.⁵⁵ Das Gesetz trat am 1. Januar 2017 in Kraft, und der Verein nahm an diesem Tag seine Arbeit auf. Der Verein für Menschenrechte in Liechtenstein ist die unabhängige nationale Menschenrechtsinstitution Liechtensteins im Sinne der Pariser Prinzipien der Vereinten Nationen von 1993. Der Verein hat auch die Funktion einer unabhängigen Ombudsperson für Kinder und Jugendliche. Somit besteht die auf dem Kinder- und Jugendgesetz (KJG) basierende Ombudsstelle für Kinder und Jugendliche im Rahmen des neuen Vereins für Menschenrechte in Liechtenstein weiter. Der neue Verein bündelt diverse Aufgaben, die bisher von verschiedenen Regierungsstellen und NROs in Liechtenstein wahrgenommen wurden. Diese Aufgaben sind:

- Beratung von Behörden und Privatpersonen in Menschenrechtsfragen
- Beratung von Menschen, die sich in ihren Rechten verletzt fühlen, sowie Unterstützung von Opfern von Menschenrechtsverletzungen
- Information der Öffentlichkeit über die Menschenrechtslage in Liechtenstein
- Durchführung von Untersuchungen und Empfehlung geeigneter Maßnahmen an Behörden und Privatpersonen
- Stellungnahmen zu Gesetzes- und Verordnungsentwürfen und zur Ratifizierung internationaler Abkommen
- Förderung des Dialogs und der Zusammenarbeit mit menschenrechtsrelevanten Stellen

Es gibt weitere Kommissionen/Gremien, die sich mit Fragen unterschiedlicher Aspekte von Antidiskriminierung befassen.⁵⁶

7. Zentrale Punkte

Im Rahmen der zweiten Universellen Periodischen Überprüfung (*Universal Periodic Review*, UPR) im Jahr 2013 wurden drei Empfehlungen bezüglich der Ratifizierung des Übereinkommens über die Rechte von Menschen mit Behinderungen an Liechtenstein gerichtet.⁵⁷ Liechtenstein akzeptierte alle drei.

Im Zuge der Universellen Periodischen Überprüfung Liechtensteins durch ausgewählte Mitglieder des Menschenrechtsrates wurden die liechtensteinischen Behörden aufgefordert, das Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen zu ratifizieren. Darüber hinaus wurde Liechtenstein aufgefordert, seine Bemühungen fortzusetzen, um sicherzustellen, dass alle Kinder mit Behinderungen Zugang zu Bildung in Regelschulen haben, wo bei Bedarf angemessene Vorkehrungen und individuelle Unterstützung gewährt werden sollten. Schließlich verfügt Liechtenstein bis dato über kein allgemeines Antidiskriminierungsgesetz und hat die UN-Behindertenrechtskonvention noch nicht ratifiziert.

⁵³ Verein für Menschenrechte in Liechtenstein, siehe: <https://www.menschenrechte.li/category/ueber-uns/>.

⁵⁴ Da die Richtlinie 2000/43 in Liechtenstein nicht umgesetzt wurde, ist die Stelle nicht offiziell gemäß Artikel 13 benannt worden.

⁵⁵ Liechtenstein, Gesetz über den Verein für Menschenrechte in Liechtenstein, 2016, Nr. 504, siehe: <https://www.gesetze.li/konso/pdf/2016504000?version=1>.

⁵⁶ Kommission für die Gleichstellung von Frau und Mann: Diese Kommission berät die Regierung; 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.

⁵⁷ Menschenrechtskommissar des Europarats (2012), Empfehlungen im Anschluss an die Universelle Periodische Überprüfung, siehe: https://www.llv.li/files/aaa/pdf-llv-aaa-2._upr-staatenbericht-de.docx.pdf. Erklärung der liechtensteinischen Regierung zur zweiten Universellen Periodischen Überprüfung, siehe: https://www.llv.li/files/aaa/pdf-llv-aaa-reaktion_auf_empfehlungen_de.pdf.

Liechtenstein muss also weitere Anstrengungen unternehmen, um Diskriminierung zu bekämpfen und einen entsprechenden Rechtsrahmen zu schaffen. Der neue, unabhängige Verein für Menschenrechte in Liechtenstein arbeitet auf ein umfassendes nationales Antidiskriminierungsgesetz hin. Außerdem setzt sich der neue Verein für Menschenrechte in Liechtenstein für die Menschenrechte ein, was vor allem die schwächsten Gruppen innerhalb der liechtensteinischen Gesellschaft (Menschen mit körperlichen Beeinträchtigungen, Kinder, alleinerziehende Mütter, Asylsuchende, Ausländer ohne gültige Ausweispapiere usw.) betrifft, und koordiniert Maßnahmen im Bereich der Chancengleichheit. Schließlich gibt er den zuständigen Behörden Empfehlungen und berät sie bei der Umsetzung der empfohlenen Maßnahmen und Prozesse. Dies könnte positive Auswirkungen auf den Fortgang der Ratifizierung der UN-Behindertenrechtskonvention haben.

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 Testing-Verfahren 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.

INTRODUCTION

The national legal system

Liechtenstein's constitution defines Liechtenstein as 'a constitutional, hereditary monarchy on a democratic and parliamentary basis'⁵⁸ where 'the power of the State is embodied in the Reigning Prince and the People'.⁵⁹ 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.⁶⁰ 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'. 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.⁶¹

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

Liechtenstein is not a member of the EU.

Directive 2000/43/EC (Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) has not been transposed at all (except in terms of Annex XVIII) to EEC law and therefore to national law in Liechtenstein.

The list below gives an overview of relevant equality and anti-discrimination legislation.

⁵⁸ Article 2 of the Constitution of the Principality of Liechtenstein: (English version; copy link into web browser) <https://www.gesetze.li/lilexprod/dloadpdf.jsp?smatik=201>.

⁵⁹ Article 2 of the Constitution.

⁶⁰ Article 9 of the Constitution.

⁶¹ Constitution of the Principality of Liechtenstein: (English version; copy link into web browser) <https://www.gesetze.li/lilexprod/dloadpdf.jsp?smatik=201>.

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 Gleich-stellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz; BGIG; LGBl. 2006 no 243) ⁶²	25.10.2006	01.01.2007	LGBl. 2016, no. 273	Disability	All sectors
Act on Disability Insurance (Invalidenversicherung ; IVG; LGBl. 1959 no. 5) ⁶³	23.12.1959	01.01.1960	LGBl. 2016 Nr. 235	Disability	Insurance; goods; assistance ; employment
Common Civil Code (Allgemeines Bürgerliches Gesetzbuch; ABGB) ⁶⁴	01.06.1811	18.12.1812	LGBl. 2016 Nr. 267	Nationality, pregnancy	General
Criminal Code (Strafgesetzbuch; StGB; LGBl. 1988 no 37) ⁶⁵	24.06.1987	01.01.1989	LGBl. 2016 Nr. 161	all	Penalties
Act on Foreigners (Ausländergesetz; AuG; LGBl. 2008 no. 311) ⁶⁶	17.09.2008	01.09.2011	LGBl. 2016 Nr. 506	Integration (nationality, race, ethnic origin)	All sectors

Liechtenstein is a State party to the International Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination since 2000 (LGBl. 2000 No. 80). Based on the recommendations of the European Commission against Racism and Intolerance (ECRI) from the Fourth Country Report 2013, the provisions of the Criminal Code (StGB) on racial discrimination were tightened. In April 2016, an amendment to Article 283 of the Criminal Code (StGB) entered into force, introducing a comprehensive prohibition against discrimination. Whereas previously, only racial discrimination constituted a criminal offence, the offence now also includes publicly inciting hatred or discrimination on the grounds of language, nationality, ethnic origin, religion,⁶⁷ ideology, gender, disability, age, or sexual orientation. As the term 'publicly' is not defined in the Criminal Code, judicial interpretation would be needed.

In the last four years, Liechtenstein has ratified a number of international treaties on human rights. In 2013, Liechtenstein committed itself to signing the United Nations

⁶² <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=2006243000&queltigdate=02032016>.

⁶³ <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1960005000&queltigdate=02032016>.

⁶⁴ <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1003001000&queltigdate=02032016>.

⁶⁵ <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1988037000&queltigdate=02032016>.

⁶⁶ <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=2008311000&queltigdate=02032016>.

⁶⁷ According to Article 283 of the Criminal Code (*Strafgesetzbuch, StGB*), punishment is imposed on those who publicly disseminate ideologies aimed at the systematic degradation or defamation of persons on account of their race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation. The Criminal Code does not explicitly mention blasphemy as hatred on the ground of religion.

Convention on the Rights of Persons with Disabilities (UNCRPD), including the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Unfortunately, up to the date of this report, Liechtenstein has still not signed the UNCRPD. The universal periodic review of Liechtenstein by selected members of the Human Rights Council urged the Liechtenstein authorities to ratify the United Nations Convention on the Rights of Persons with Disabilities, which calls for a paradigm shift from a medical approach to one where people with disabilities are fully considered as rights-holders.⁶⁸ Furthermore, Liechtenstein was requested to continue its efforts towards ensuring that all children with disabilities have access to education in mainstream schools, where reasonable accommodation and individual supports should be given as necessary. A truly inclusive education system for pupils with disabilities would not only be beneficial to them but also to their peers and to Liechtenstein society at large. Liechtenstein has not changed its commitment to sign the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The Association for Human Rights in Liechtenstein (Verein für Menschenrechte, VMR) was founded by 26 non-governmental organisations on 10 December 2016 and acts as an independent national human rights institution in accordance with the United Nations Paris Principles of 1992. The status of the association and the relevant legal provisions had been laid down in a new law, the Act on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte in Liechtenstein*; VMLG). This act entered into force on 1 January 2017, and the association became operational from that day onward. The VMR replaced the former Office of Equal Opportunities, which made the following legislative changes necessary (all came into force on 01 January 2017):

Title of Legislation:
Act on the Association for Human Rights in Liechtenstein (<i>Gesetz über den Verein für Menschenrechte in Liechtenstein</i> ; VMLG), LGBI. 2016 no. 504.
Act on the amendment of the Children and Youth Act (<i>Gesetz über die Abänderung des Kinder- und Jugendgesetzes</i>), LGBI. 2016 no. 507.
Act on the amendment of the Act on Equality between Women and Men (<i>Gesetz über die Abänderung des Gleichstellungsgesetzes</i>), LGBI. 2016 no. 505.
Act on the amendment of the Act on Foreigners (<i>Gesetz über die Abänderung des Ausländergesetz</i>), LGBI. 2016 no. 506.

⁶⁸ Report on the Universal Periodic Review, link: https://www.llv.li/files/aaa/el_llv_aaa_bericht_upr-arbeitsgruppe_2013.pdf and <https://www.llv.li/files/aaa/liechtenstein-full-draft-report-for-circulation-ad-referendum.pdf>.

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 ⁶⁹ of the Liechtenstein Constitution	A general clause	Basic principle of equality of all Liechtenstein citizens	General
Article 37(1) of the Liechtenstein Constitution ¹⁰	An explicit clause that guarantees freedom of religion and conscience	Religion, belief	General
Article 39 of the Liechtenstein Constitution ¹⁰	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 ¹⁰	A clause covering freedom of speech (<i>Meinungsfreiheit</i>)	Religion, belief	General
Article 41 of the Liechtenstein Constitution ¹⁰	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 provisions are directly applicable and can be enforced against private actors (in addition to against the State).

Since Liechtenstein's accession to the European Convention on Human Rights (ECHR) and the creation of Article 15(2) of the Constitutional Court Act (StGHG; LGBl. 2004 No. 32), the fundamental rights laid down in the ECHR are regularly asserted in individual complaints before the Constitutional Court together with the fundamental rights laid down in the Constitution. As a result, there is effective implementation of the principle of equal treatment. No constitutional amendment is therefore being considered at the present time by the Liechtenstein government.

⁶⁹ Constitution of the Principality of Liechtenstein (*Verfassung*): (English version; copy link into web browser) <https://www.gesetze.li/lilexprod/dloadpdf.jsp?smatik=201>.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

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

- religion
- belief
- disability
- race
- ethnic origin
- nationality
- ideology
- gender
- sexual orientation
- age
- language

Article 39 of the Liechtenstein Constitution (LC, LGBl. 1921 No. 15) 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 (AEPD)⁷⁰ protects individuals against any kind of discrimination based on **disability**.

The Liechtenstein Act on Children and Youth (ACY)⁷¹ 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)⁷² 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)⁷³ 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 Criminal Code⁷⁴ is applicable to a wider circle of persons.

In Article 283 of the Criminal Code (StGB), **religion and race or ethnicity** are mentioned in relation to acts of discrimination that are subject to criminal liability.

In April 2016, an amendment to Article 283 of the Criminal Code entered into force, introducing a comprehensive prohibition against discrimination, including a broad definition of racial discrimination and regulations of punishing incitement to hatred. The offence includes publicly inciting hatred or discrimination on the grounds of **language**,

⁷⁰ Act on Equality of People with Disabilities (*Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz, BGIG*), link: <https://www.gesetze.li/konso/pdf/1999096000?version=5>.

⁷¹ Liechtenstein Act on Children and Youth (*Kinder- und Jugendgesetz vom 10 Dezember 2008, KJG*), LGBl. 2009, no. 29, link: <https://www.gesetze.li/konso/pdf/2009029000?version=5>.

⁷² Liechtenstein Act on Postal Services (*Gesetz über das liechtensteinische Postwesen, Postgesetz, PG*), LGBl. 1999, no. 35, link: <https://www.gesetze.li/konso/pdf/1999035000?version=7>.

⁷³ Liechtenstein Act on Media (*Mediengesetz, MedienG*), LGBl. 2005 Nr.250, link: <https://www.gesetze.li/konso/pdf/2005250000?version=8>.

⁷⁴ Criminal Code (*Strafgesetzbuch, StGB*), LGBl. 1988, no. 37, link: <https://www.gesetze.li/konso/pdf/1988037000?version=18>.

nationality, ethnic origin, ideology,⁷⁵ gender, disability, age, or sexual orientation⁷⁶ and is punishable with imprisonment of up to two years. It is also punishable to refuse to provide a service intended to be provided to the general public to a person or group of persons on the grounds referred to above.

Article 18(3) of the Liechtenstein Act on Aviation (AA)⁷⁷ 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)⁷⁸ regulates protection against dismissal in reference to the Act on Equality between Women and Men (AEWM)⁷⁹ and the AEPD (Article 22(3)).

The Liechtenstein Act on Information and Consultation of Employees in Business Enterprises (AIC)⁸⁰ states in Article 10 that employees are not allowed to be treated less favourably due to their involvement in an organisation for workers' representation.

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. The basic principle of equality in terms of nationality, ethnic or social origin, language and religion of all Liechtenstein citizens was granted in the Government's national, political position paper, (published 2007), without giving any further definition or interpretation of the grounds of discrimination. For definitions, a reference was made to the European Convention on Human Rights (ECHR).⁸¹ Furthermore, the Liechtenstein Constitutional Court pointed out in 2005 that 'according to the settled case law of the Constitutional Court the ECHR holds a constitutional status.⁸² Therefore, the definitions given within the ECHR at least from then on have been applicable to Liechtenstein and the above given laws.

Additionally, for specific definitions of the grounds of discrimination, reference can be made 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 2000.⁸³

⁷⁵ The Criminal Code does not define ideology. Thus, juridical interpretation would be needed.

⁷⁶ In terms of sexual orientation there are no legal cases known to the authors that refer to the adopted provisions of the Criminal Code (entered into force in April 2016).

⁷⁷ Liechtenstein Act on Aviation (*Gesetz über die Luftfahrt, Luftfahrtgesetz, LFG*), LGBI. 2003 Nr. 39, link: <https://www.gesetze.li/konso/pdf/2003039000?version=3>.

⁷⁸ Act on Employment of Public Officials (*Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz; StPG*), LGBI. 2008 Nr. 144, link: <https://www.gesetze.li/konso/pdf/2008144000?version=8>.

⁷⁹ Act on Equality between Women and Men (*Gesetz über die Gleichstellung von Frau und Mann, GLG*), LGBI. 1999, no. 96, link: <https://www.gesetze.li/konso/pdf/1999096000?version=5>.

⁸⁰ Act on Information and Consultation of Employees in Business Enterprises (*Gesetz über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben, Mitwirkungsgesetz, MWG*), LGBI. 1997, no. 211, link: <https://www.gesetze.li/konso/pdf/1997211000?version=2>.

⁸¹ European Convention on Human Rights (*Europäische Menschenrechtskonvention, EMRK*), LGBI. 1982, Nr. 60, Art. 14, link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1982060001&version=2&search_loc=text&lqblid_von=1982060000&sel_lawtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tables_el=0&observe_date=27.04.2016.

⁸² See Constitutional Court 2005/89: <http://www.gerichtsentscheide.li/default.aspx?mode=suche&txt=EMRK&gericht=2&vonjahr=2005&bisjahr=2006&id=1601&backurl=?mode=suche%26txt=EMRK%26gericht=2%26vonjahr=2005%26bisjahr=2006>.

⁸³ International Convention on the Elimination of All Forms of Racial Discrimination (*Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung*), LGBI. 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.'

Race or ethnic origin

The Liechtenstein legal framework does not contain a specific legal definition of race or ethnic origin. Various criminal offences are listed in Article 283 of the Criminal Code,⁸⁴ which gives a definition of discrimination on grounds of race in terms of practical usage. With the amendment to Article 283 of the Criminal Code (StGB), which entered into force in 2016, discrimination on the ground of ethnic origin also constitutes a criminal offence.

Legal interpretation would be necessary to provide guidance on the limits/scope of ethnic origin or race.

Religion or belief

The Liechtenstein legal framework does not contain a specific legal definition of religion or belief. An interpretation of how 'religion' is defined could be based on Article 9 of the European Convention on Human Rights (ECHR).⁸⁵

Disability

Article 3 of the AEPD gives a definition of disability:

'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.'

It is important to note that the national law refers to 'physiological, mental and physical' conditions that result in disabilities without any reference to limitation based on illness. Furthermore Recital 17 of Directive 2000/78/EC is reflected in national law under Article 10(3) of the AEPD.

Apart from 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 2017. 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), 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)⁸⁶ contains no definition of sexual orientation. Persons living in a registered partnership within the meaning of the Act ACUSSC between Persons of the Same Sex are treated on an equal footing with married couples regarding social security and occupational pensions (Article 30). Therefore, the Act on Civil Union for Same-Sex Couples does not explicitly prohibit discrimination on the

⁸⁴ Criminal Code (*Strafgesetzbuch, StGB*), LGBI. 1988, no. 37, link: <https://www.gesetze.li/konso/pdf/1988037000?version=18>.

⁸⁵ European Convention on Human Rights (*Konvention vom 4 November 1950 zum Schutze der Menschenrechte und Grundfreiheiten*), LGBI. 1982, no. 60/1, link: <https://www.gesetze.li/konso/pdf/1982060001?version=2>.

⁸⁶ Act on Civil Union for Same-Sex Couples (*Gesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare, Partnerschaftsgesetz, PartG*), LGBI. 2011, no. 350, link: <https://www.gesetze.li/konso/pdf/2011350000?version=2>.

ground of sexual orientation in respect to social protection, but grants the same benefits to registered same-sex couples as to married heterosexual couples.⁸⁷

2.1.2 Multiple discrimination

In Liechtenstein, prohibition of multiple discrimination, understood as disability in combination with some other characteristic, is included in the law.

The AEPD states in Article 23 (in combination with Article 5) 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 AEPD 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 than not, 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 AEPD 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 than not 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 explicitly prohibited in national law on the grounds of disability (AEPD Article 6(1)) and gender (AEWM Article 1a). 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.

Nevertheless, the AEPD does not include a specific provision to explicitly prohibit discrimination against people with disability regarding access to and supply of goods and services (see chapter 3.2). 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

⁸⁷ There are no definitions of sexual orientation by the courts or based on case law known to the authors.

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).⁸⁸ Based on Article 2 of the AEPD it can be said that the production or sale (in terms of services) of goods that cannot be used by certain disabled people because of their impairment, cannot be treated as a form of discrimination. This also applies to the supply of such goods.

b) Justification of direct discrimination

Direct discrimination is only explicitly prohibited by law in terms of disability and gender. With regards to all other grounds, there exists no such explicit statement in the law. Thus, 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' provisions can also be relevant for people with disabilities (Article 10(3) AEPD). 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. Therefore, 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)) and gender (AEWM Article 1a). 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

⁸⁸ Where such a service was offered in a building open to the public, the anti-discrimination prohibitions of the AEPD would apply.

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

According to the AEPD (Article 6(2)) 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 (DPA)⁸⁹ 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 DPA 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.

⁸⁹ Data Protection Act (*Gesetz vom 14 März 2002 über den Datenschutz, Datenschutzgesetz, DSG*), LGBl. 2002, no. 55, link: <https://www.gesetze.li/konso/pdf/2002055000?version=8>.

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.

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). 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 without limitations on the scope of this regulation. Thus, juridical interpretation would be necessary to identify certain legal barriers of the scope of the law.

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 AEW, the individual practising discrimination or harassment can be held liable under the terms of Article 5 of the AEW and/or Article 23 of the AEPD.

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.

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 AEPD 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. The AEPD states this without limitations on the scope of the regulation. Thus, juridical interpretation would be necessary to identify certain legal barriers of the scope of the law.

Article 283 of the Criminal Code says that any person who publicly incites hatred or discrimination against a person or group of persons on grounds of race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation will be punishable by imprisonment for up to two years. As the Criminal Code only refers to 'incitement', judicial interpretation would be needed to determine whether 'instructions to discriminate' would fall under this legal definition.

b) Scope of liability for instructions to discriminate

In Liechtenstein, the instructor and the discriminator are liable. Article 9 of the AEPD, stipulates liability for people who give instructions to another person to discriminate against others. It can be assumed that employers can be held directly liable for the actions of their employees as long as they are directly involved in the instruction to discriminate against others (see also Criminal Code Article 283).

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 for people with disabilities in the area of employment

In Liechtenstein, the duty to provide reasonable accommodation is included in the law indirectly through the prohibition of indirect discrimination. The AEPD provides no provision to set up reasonable accommodation for people with disabilities in general, but Article 7(3) of the AEPD 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 other legal provisions regarding accessibility exist, and if so, whether the legal tasks have been fulfilled.

If the requirements set out in other laws have not been met, and barriers exist as a result, the existence of those barriers will be regarded as indirect discrimination. This would be the case, for example, if a public building did not provide wheelchair access as that is a legal requirement stated in Articles 11 and 12 of the AEPD.

The provisions of Articles 19 and 20 of the AEPD 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.

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*) 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.

c) Definition of disability and non-discrimination protection

Articles 11 to 14 of the AEPD make no distinction in the definition of a disability for the purposes of claiming a reasonable accommodation via the prohibition of indirect discrimination or with regard to protection through the general non-discrimination rules.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Liechtenstein, there is no individualised reactive duty to provide reasonable accommodation outside the field of employment.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Liechtenstein, failure to meet the duty of reasonable accommodation via the prohibition of indirect discrimination does count as discrimination. It is not clear from the legislation what would amount to a failure to meet the duty of reasonable accommodation.

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. But in cases of direct discrimination, according to Article 26(2) of the AEPD, it is obligatory on the defendant to prove that it is more likely than not that the claim of unequal treatment in the sense of discrimination has another reason and that this reason is crucial. Article 26(3) states that when making a complaint about harassment or indirect discrimination, it is obligatory on the defendant to prove that in consideration of all circumstances it is more likely than not that the facts substantiated by him are legally 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).

The second part of Article 26 states that the defendant may try to prove that he has a non-discriminatory reason for the difference in treatment and that that reason is of crucial importance to the defendant, in respect of his economic and/or social environment. 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 buildings and infrastructure to be designed and built in a disability-accessible way.

Legal accessibility obligations are provided in the AEPD and the regulations (*Verordnung*) to the AEPD. The provisions and obligations address the public sector to a much greater extent than the private sector. Public buildings, traffic infrastructure and transport systems have to be created or adapted in a barrier-free way. Private house owners, on the other hand, are only legally forced to guarantee accessibility if a building consists of six or more apartments. Private transport is excluded from accessibility obligations.

Article 7 of the AEPD defines exceptions that do not count as discrimination based on disproportionate burden. Article 7(3) says, that if the removal of the conditions that create disadvantages are a disproportionate burden within the scope of Article 7, there might be still the possibility of discrimination if no reasonable measures are taken to realise a substantial improvement of the situation such that it comes as close as possible to equal treatment of the affected person. Thus, the definition of 'disproportionate burden' as detailed in Article 7 of the AEPD 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.

Article 13 of the AEPD states a duty to provide accessibility for people with disabilities outside of their employment. Buildings that were built before the act came into force must be adapted at the next major renovation to make them accessible for people with disabilities. Buildings that cannot be adapted, for any reason, may be exempted by the Government.

Section C of the AEPD provides regulations for public buildings and public transportation facilities regarding their accessibility and suitability for people with disabilities. It is not restricted to employment and includes general duties to provide accessibility (see Article 7 of the AEPD). 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.

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.

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 the Equality of Persons with Disabilities must be consulted before an exception is permitted.

No specific regulations about services available to the public being accessible (with the exception of public transport vehicles) are known to the authors. There is a special exception in respect of election procedures; in practice, on the occasion of each election or referendum in Liechtenstein, the Government issues setup guidelines to guarantee accessibility to all voters. Nevertheless, there are differences between individual polling stations depending on when the building was built and when the latest renovations were carried out (see above).

h) Accessibility of public documents

Article 17 of the AEPD states the obligation of society in general, including the authorities and the Government — as elected representatives of the Liechtenstein population — 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 and 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 Political Rights (APR)⁹⁰ is silent on this topic. In practice, voting documents (including ballot papers) are designed according to the internal guidelines of the Government. These guidelines were introduced in 2006. 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)⁹¹ it can be said that the voting documents are not completely accessible to people with learning difficulties (as a group of people with disabilities). Regarding accessibility to services, disabled voters are entitled to the right to request assistance to mark the ballot paper. This right is subject to the approval of the national electoral commission. This right is stated in Article 49(2) of the APR.

Article 56a of the Act on Media 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 AM 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.

⁹⁰ Act on Political Rights (*Volksrechtengesetz, VRG*), LGBl. 1973, no. 50, link: <https://www.gesetze.li/konso/pdf/1973050000?version=7>.

⁹¹ Source (copy link into Web browser): http://www.leichtesprache.org/images/Regeln_Leichte_Sprache.pdf.

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)

In Liechtenstein, the following residence/citizenship/nationality requirements are applied for protection under the relevant national laws transposing the directives:

The basic rights of Liechtenstein citizens and foreigners are stated in the Constitution of the Principality of Liechtenstein of 1921 (LC).

Article 31 of the Liechtenstein Constitution 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.⁹² 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 Criminal Code. 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.

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

a) Protection against discrimination

In Liechtenstein, the personal scope of anti-discrimination law covers natural persons for the purpose of protection against discrimination. In terms of legal persons, judicial interpretation is required to a certain extent. The Personal and Corporate Law Act (PCL)⁹³ distinguishes between a natural person (*natürliche Person*) and a legal person (*juristische Person*) in the context of discrimination protection and measures against discrimination, etc. 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.

b) Liability for discrimination

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

⁹² 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 (LGBI. 1971, no 22).

⁹³ Personal and Corporate Law Act (*Personen- und Gesellschaftsrecht, PGR*), LGBI. 1926 no. 4, link: <https://www.gesetze.li/konso/pdf/1926004000?version=44>.

(AEPD) does not make a difference between natural and legal persons regarding liability. Thus it can be assumed that national law is valid for natural as well as legal persons.

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

a) Protection against discrimination

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 is 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). For example, the AEPD in relation to housing is not applicable to non-public buildings with less than six apartment units that are without state funding.

Within the Common Civil Code⁹⁴ regulations to protect natural persons against discrimination generally use the phrase 'protection of the personality of the employee'. Section C, VII, Article 27 refers to the 'protection of the personality of the employee', which can be interpreted as protection against discrimination on various grounds. Furthermore, Section C, I Articles 8(a) and 8(b) state that discrimination on ground of gender by an employer is against the law. There is no case law known to the authors on this issue in Liechtenstein.

Article 283 of the Criminal Code rules that penalties apply in cases of discrimination on grounds of race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation and without any restriction to the public or private sector, and therefore include public bodies.

Likewise, under the Criminal Code, anyone who publicly disseminates ideologies aimed at the systematic degradation or defamation of persons on account of their race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation is punishable.

b) Liability for discrimination

In Liechtenstein, the personal scope of the AEPD covers private and public sector including public bodies for the purpose of liability for discrimination.

Within the Common Civil Code (CCC) employers are implicitly held liable in case of discrimination against employees. This includes public and private sector employers. The Common Civil Code is not very specific in regard to the grounds of discrimination (see Article 27 of Section C, VII of the CCC). Only gender is explicitly mentioned in the section on prohibition of discrimination (Section C, Article 9 of the CCC). There is no case law known to the authors regarding such discrimination in Liechtenstein.

Article 74 of the Criminal Code rules that legal persons, without any restriction to the public or private sector, can be held liable for discrimination against others. Penalties apply against discrimination on grounds of race, national origin, ethnicity, language, religion or belief.

⁹⁴ Common Civil Code (*Allgemeine Bürgerlich Gesetzbuch*), link: <https://www.gesetze.li/konso/pdf/1003001000?version=19>.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Liechtenstein, national legislation in terms of discrimination on the ground of disability is explicitly covered and applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service and holding statutory office, for the ground of disability.

Directive 2000/43/EC has not been transposed at all (except in terms of Annex XVIII) to EEC law and therefore to national law in Liechtenstein.

Article 10(1) of the AEPD 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 prohibits discrimination in the following areas:

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 Directive 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 AEPD states that discrimination does not apply in cases where special attributes are necessary to fulfil the professional task and the disabled person concerned does not have such an attribute.

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 AEPD cover recruitment, employment, 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 Officials (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 grounds (race/ethnic origin, religion/belief, age and sexual orientation), 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 prohibits discrimination only on the ground of disability in the following areas: 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), the AEW (Article 3) and the Common Civil Code (Article 9) including discrimination on the ground of disability.

Article 30 of the Act on Civil Union for Same-Sex Couples (ACUSSC) 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 Act on Marriage, AMA).⁹⁵ The equivalent ruling is also stated in Article 54 of the National Old Age and Widow's/Widower's Pension Act (NOWP).⁹⁶

The laws and articles mentioned above refer to regulations regarding avoiding discrimination in the area of employment and working conditions, including payment and dismissal, based on different grounds. 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. Nevertheless, race and religion as grounds for discrimination are not covered by any specific law.

3.2.3.1 Occupational pensions constituting part of pay

Retirement planning in Liechtenstein is based on three pillars: the general national pension, the company pension, and private savings. The first two mentioned are regulated by law and mandatory elements in the working environment. Regarding the given anti-discrimination provisions in Liechtenstein, there is no distinction made between wages and occupational pension payments. Thus, the same anti-discrimination provisions apply.

The given legal provisions within the occupational pensions legislation do not explicitly allow or preclude discrimination on the ground of disability. The Act on Company Personnel Plan (ACPP) (Article 3)⁹⁷ releases employers from the obligation to implement an occupational pension for the individual employee if that employee is two-thirds disabled.

Article 34 of the ACPP 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. So far there has been no legal claim against this law in respect of being discriminated against. Nevertheless juridical interpretation would be required to see whether this provision falls under the given anti-discrimination law of the AEPD.

However, 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

⁹⁵ Act on Marriage (*Ehegesetz, EheG*), LGBl. 1974 mo. 20, link: <https://www.gesetze.li/konso/pdf/1974020000?version=9>.

⁹⁶ National Old Age and Widow's/Widower's Pension Act (*Gesetz über die Alters- und Hinterlassenenversicherung, AHVG*), LGBl. 1952, no. 29, link: <https://www.gesetze.li/konso/pdf/1952029000?version=12>.

⁹⁷ Act on Company Personnel Plan (*Gesetz über die betriebliche Personalvorsorge, BPVG*), LGBl 1988, no. 12, link: <https://www.gesetze.li/konso/pdf/1952029000?version=12>.

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 Directive 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)) 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)⁹⁸ 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.

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 (Article 10(1) of the Act on Equality of People with Disabilities) prohibits discrimination in the following areas: membership of, and involvement in workers or employers' organisations as formulated in the directives for both private and public employment.

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 does not prohibit discrimination by specific anti-discrimination provisions in the following areas: social protection, including social security and healthcare as formulated in the Racial Equality Directive. Liechtenstein provides social security services to all individuals in the sense of equal treatment.

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. Therefore, the Act on Civil Union for Same-Sex Couples does not explicitly prohibit discrimination on the ground of sexual orientation in respect to social protection (it prohibits discrimination in general in the respective areas), but grants the same benefits to registered same-sex couples as to married heterosexual couples.

Nevertheless, the Constitution of the Principality of Liechtenstein lays down 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

⁹⁸ Act on Vocational Training (*Berufsbildungsgesetz, BBG*), LGBL. 2008, no. 103, link: <https://www.gesetze.li/konso/pdf/2008103000?version=4>.

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.

3.2.6.1 Article 3.3 exception (Directive 2000/78)

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 prohibit discrimination in the following areas: social advantages as formulated in the Racial Equality Directive.

In Liechtenstein, the lack of definition of social advantages does not raise problems. Based on the anti-discrimination provisions of the Constitution, it can be assumed that discrimination is prohibited for disability, age and sexual orientation, nevertheless judicial interpretation is necessary.

Liechtenstein has 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. Discrimination is not explicitly prohibited with regards to the provision of these social benefits.

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)⁹⁹ which could be understood to mean that discrimination on the ground of disability with regards to social advantages is prohibited by national law, but judicial interpretation is required.

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. Thus, the Act on Civil Union for Same-Sex Couples does not explicitly prohibit discrimination regarding social advantages on the ground of sexual orientation.

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

In Liechtenstein, national legislation does not prohibit discrimination in the following areas: 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.’

⁹⁹ Act on Disability Insurance (*Invalidenversicherung; IVG*), LGBl. 1959 no. 5, link: <https://www.gesetze.li/konso/pdf/1960005000?version=7>.

No major anti-discrimination case law in the field of education involving migrants is known to the authors. In addition, no major policies that aim to address discrimination against migrants in education are known to the authors.

There are non-discrimination provisions in connection with occupational training (in primary and secondary education): Article 10(1) of the AEPD states that discrimination on grounds of disability is prohibited in the field of access to occupational training. The term 'occupational training' can be interpreted to cover education for people with disabilities in Liechtenstein.

Migrants are not treated differently under anti-discrimination legislation in the field of education in Liechtenstein. Thus, there are no major policies that aim to address discrimination against migrants in the field of education. Language barriers are continuously being removed by offering intensive German courses and appropriate special courses for migrant children of compulsory school age. Families are also informed about the importance of education in terms of employment. There are various additional support measures to break down language barriers through intensive language courses. These offers of extra language tuition do not lead to discrimination or segregation in practice. There are no problems or public cases of unequal treatment known to the authors in this sense.

When drafting new laws or revising existing laws, the Liechtenstein Government also takes into account the provisions of ratified international agreements aimed at non-discrimination and the integration of foreigners (e.g. Protocol No. 12 of the European Convention on Human Rights and the UNESCO Convention against Discrimination in Education).¹⁰⁰

a) Pupils with disabilities

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

Article 18 of the AEPD 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.¹⁰¹
- 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.'

¹⁰⁰ Liechtenstein, Act on the Convention on the Recognition of Higher Education, University Diplomas and Academic Degrees in the States of the European Region, link: <https://www.gesetze.li/konso/1994059000>. Integration concept of the Liechtenstein Government (*Integrationskonzept der Regierung Liechtenstein*), 2010, link: <http://www.integration.li/CFDOCS/cms/cmsout/index.cfm?u=1&GroupID=220&MandID=1&meID=156>.

¹⁰¹ Act on School Education (*Schulgesetz*), LGBl. 1972 no. 7, link: <https://www.gesetze.li/konso/pdf/1972007000?version=8>. Act on Teachers (*Lehrerdienstgesetz*), LGBl. 2004 no 4, link: <https://www.gesetze.li/konso/pdf/2004004000?version=8>.

Based on these general duties to take specific needs of pupils with disabilities into account regarding their education, the Act on Vocational Training (AVT, Article 1c)¹⁰² prohibits 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) have to be considered, based on Article 16 of the AVT, through the possibility of shortening or extending the training period. These are the two issues that are explicitly mentioned by the AVT.

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 intellectual impairments — attend the Special Education Centre. There they have the chance to attend a Special Education Day School (*Sonderpädagogische Tagesschule*) which 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.

Approximately 42 % of pupils with disabilities in Liechtenstein are taught and supported by the Special Education Day School per year (in 2016/2017 this amounted to 63 pupils). Approximately 51 % of all pupils with disabilities are integrated into the mainstream school system in Liechtenstein and the rest are taught in special needs schools abroad. After the given mandatory school years, there exists only partial integration of pupils with disabilities into the post-compulsory school system in Liechtenstein.

b) 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)

Article 283(1) of the Criminal Code states that a sentence of imprisonment of up to two years will be imposed on any person or group of persons who refuses to provide a service offered by him or her to the general public on the grounds of race, language, nationality, ethnicity, religion or belief, gender, disability, age or sexual orientation, as this is regarded as discrimination. This prohibition is not further specified in the Criminal Code. In terms of practical application, the regulation focuses on services offered or provided in general to the public, which cannot be refused in individual cases to a person with reference to one of the above listed grounds.

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. Nevertheless the AEPD does not include a specific provision to explicitly prohibit discrimination against people with disability regarding access to and supply of goods and services. Article 2(2) covers some exceptions from the general

¹⁰² Act on Vocational Training (*Berufsbildungsgesetz, BBG*), LGBL. 2008, no. 103, link: <https://www.gesetze.li/konso/pdf/2008103000?version=4>.

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).¹⁰³ Based on Article 2 of the AEPD it can be said that the production / sale (in terms of services) of goods that cannot be used by certain disabled people because of their impairment, cannot be treated as a form of discrimination. This also applies to the supply of such goods.

Article 9 of the Act on Health Insurance (*Krankenversicherungs-gesetz*) 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.

3.2.9.1 Distinction between goods and services available publicly or privately

In Liechtenstein, national law only distinguishes 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) as mentioned in Article 2(2) of the AEPD. This Article covers some exceptions from the general non-discrimination regulations in Article 2(1) as far as they are privately offered goods and services that do not include specific items for people with disabilities. Based on Article 2(1) it can be said that the production / sale (in terms of services) of goods that cannot be used by certain disabled people because of their impairment cannot be treated as a form of discrimination. This also applies to the supply of such goods.

Article 283 of the Criminal Code provides that it is a criminal offence to refuse an offered service intended for the public to a person or a group of persons on grounds of race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation.

Article 2 of the AEPD 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 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),¹⁰⁴ 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) allows different treatment of employees in case of a disability. It releases employers from the obligation to implement an occupational pension for the individual employee if that employee is two-thirds disabled. Thus, unequal treatment is possible on grounds of disability. Nevertheless, Article 34 of the ACPP grants the employee the right to participate in the occupational pension scheme on his or her own behalf but without the 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) in combination with Article 67bis of the Act on the National Old Age and Widow's /Widower's

¹⁰³ Where such a service was offered in a building open to the public, the anti-discrimination prohibitions of the AEPD would apply.

¹⁰⁴ Act on Health Insurance (*Gesetz über die Krankenversicherung, KVG*); LGBl. 1971, no 50, link: <https://www.gesetze.li/konso/pdf/1971050000?version=16>.

Pension). 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 prohibits discrimination in the following areas: 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 Act on Equality of People with Disabilities (AEPD) covers housing within Articles 11 to 13. The AEPD protects people with disabilities by ensuring access to public buildings. To this end, the Government is obliged to consult the Office for the Equality of Persons with Disabilities (see Article 22 of the AEPD) as well as recognised organisations for people with disabilities (see Article 31 of the AEPD), before formal approval for construction work in accordance with Article 1 of the AEPD is granted.

Private housing areas with more than six apartments must also be accessible to people with disabilities and Article 14 of the AEPD states that residential buildings may only be subsidised if they are adaptable to provide accessibility (if they are not already accessible). Thus, the AEPD ensures accessibility but has no explicit provisions prohibiting discrimination in the field of housing. In respect of accessibility, the AEPD has an exception for private buildings with fewer than six apartments in a private housing area. For those buildings the AEPD prohibitions do not come into force and therefore a landlord of such a private building can refuse to rent his property to a disabled person on the grounds of disability. Furthermore, in such a situation, the legally defined measures for adaptations to building to make them accessible for people with disabilities do not apply.

Based on the integration concept of the Liechtenstein Government,¹⁰⁵ migrants are not treated differently under anti-discrimination legislation in the field of housing. In 2016, 61 % of the migrants in Liechtenstein were from Switzerland, Austria or Germany; 24 % of all migrants took residence for job purposes and 69 % of the migrants were allowed to take residence based on family reunification.¹⁰⁶ These persons have equal access to housing and no patterns of segregation in social housing are known to the authors. No major anti-discrimination case law involving migrants in the field of housing is known to the authors.

3.2.10.1 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 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 in the Liechtenstein Constitution and in the penal legislation, 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. Housing segregation does not occur in the largely rural areas of Liechtenstein.

¹⁰⁵ Integration concept (*Integrationskonzept*), 2010, link:

<http://www.integration.li/CFDOCS/cms/cmsout/index.cfm?u=1&GroupID=220&MandID=1&meID=156>.

¹⁰⁶ Migration statistic (*Migrationsstatistik*) 2016, link: <https://www.llv.li/files/as/migrationsstatistik-2016.pdf>.

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)

In Liechtenstein, national law does not provide for an exception for employers with an ethos based on religion or belief. Apart from the ECHR,¹⁰⁷ 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.¹⁰⁸ 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. Currently, there is no public discussion on any clash of values, e.g. sexual orientation equality and freedom of religion, ongoing in Liechtenstein.

- 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 Constitution 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 between the communities of Liechtenstein and the Catholic Church regarding this issue have not been finalised in 2017 and are still on-going.

¹⁰⁷ European Convention on Human Rights (Europäische Menschenrechtskonvention), LGBl. 1982 no 60/1.

¹⁰⁸ Latest statement of the Government regarding 'disentangling the state and the church', (*Trennung von Staat und Kirche*) as of 6 April 2016: <http://www.landtag.li/kleineanfragen.aspx?nid=4350&auswahl=4350>.

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 among its resident population (as at the end of 2015 the proportion was 33.8 %). 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 requirements, 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.¹⁰⁹ In respect of persons with third country nationality, the Act on Foreigners (AF) regulates residency rights.¹¹⁰

In Liechtenstein, nationality (as well as citizenship) is not mentioned as a protected ground in a specific anti-discrimination law. The Constitution of Liechtenstein (*Verfassung des Fürstentum Liechtenstein*), the Act on Free Movement of EEA Persons and Swiss citizens (*Personenfreizügigkeitsgesetz*)¹¹¹ and the Act of Foreigners (*Ausländergesetz*) include specific regulations regarding nationality but no anti-discrimination provisions.

Article 283 of the Criminal Code states that a person who publicly incites hatred or discrimination against a person or a group of persons on the grounds of nationality will be punishable by imprisonment.

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

Article 283 of the Criminal Code states that a person who publicly incites hatred or discrimination against a person or a group of persons on the grounds of race or ethnic origin will be punishable by imprisonment.

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.

¹⁰⁹ Act on Free Movement of EEA Persons and Swiss citizens (*Gesetz über die Freizügigkeit für EWR- und Schweizer Staatsangehörige, PFZG*), LGBl. 2009, no. 348, link: <https://www.gesetze.li/konso/pdf/2009348000?version=7>.

¹¹⁰ Act on Foreigners (*Gesetz über die Ausländer, Ausländergesetz; AuG*), LGBl. 2008, no. 311, link: <https://www.gesetze.li/konso/pdf/2008311000?version=11>.

¹¹¹ This Act is part of the national law in Liechtenstein.

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

a) Benefits for married employees

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 ACPP benefit claims from a company pension scheme must be treated equally in respect of registered partnerships and married persons, based on the Act on Civil Union for Same-Sex Couples (ACUSSC).

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 opposite-sex partnerships (e.g. married couples) is stated in various acts covering special issues, such as the Act on the Pension Scheme for Public Servants (APPS Article 3a)¹¹² or the Act on the National Old Age and Widow's/Widower's Pension (NOWP Article 54bis), which entered into force after the enactment of the ACUSSC.

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 to the prohibition of direct discrimination on the ground of disability for reasons related to health and safety known to the authors.

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. Different treatment, based on age, in some specific areas is admitted by law (see section 4.7.1 a below).

¹¹² Act on the Pension Scheme for Public Servants (Gesetz über die betriebliche Personalvorsorge des Staates, SBPVG), LGBL. 2013, no. 329, link: <https://www.gesetze.li/konso/pdf/2013329000?version=2>.

a) Justification of direct discrimination on the ground of age

Before the Criminal Code was revised, discrimination on the ground of age was not prohibited. Now, Article 283 of the Criminal Code says that any person who publicly incites hatred or discrimination against a person or group of persons on grounds of age will be punishable by imprisonment for up to two years.

Nevertheless, there is no case law in 2017 known to the authors referring to this issue.

b) 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 general prohibition of discrimination on the grounds of age, some specific age-related regulations exist, for example:

- the special protection of children (the Liechtenstein Act on Children and Youth (ACY) as well as the regulation on Special Provisions for the Protection of Young Employees);¹¹³
- 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) 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.

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

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).

The ACPP (Act on Company Personnel Pension) states in Articles 3(2) and 4(1)(c) 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 and younger workers in order to promote their vocational integration. Positive measures are frequently taken to support younger or older people in regard to their opportunities in the labour market. Such conditions are found in the provisions on the protection of young employees based on the 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

¹¹³ By-law on Special Provisions for the Protection of Young Employees (*Verordnung zum Arbeitsgesetz, ArGV V, Sonderbestimmungen über den Schutz der jugendlichen Arbeitnehmer*), LGBl. 2005, no. 67, link: <https://www.gesetze.li/konso/pdf/2005067000?version=3>.

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.

The Office of Vocational Training and Career Counselling¹¹⁴ is mainly active in advising older persons on finding employment and/or educational training. In addition, the Office of Education supports young people who fulfil certain criteria with scholarships.¹¹⁵ There are no further special conditions known to the authors.

In Liechtenstein, people with disabilities who do not live in residential facilities are predominantly cared for within the family. Such care is mostly provided on a voluntary basis by relatives and has not yet been legally regulated.

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.

4.7.4 Retirement

a) State pension age

In Liechtenstein, there is a state pension age, at which individuals must begin to collect their state pension. The state-imposed and generally applicable pensionable retirement age is 65 for women as well as for men (Article 36 of the NOWP). If an individual wish to work longer, the pension can be deferred. According to Article 74 of the NOWP, it is possible to work until the maximum age of 70.

On the other hand, it is also possible 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) or to defer the pension for a maximum of five years (ending at the age of 70) and receiving a higher pension afterwards. Thus, according to Articles 73 and 74 of the NOWP, an individual can collect state pension (which is a certain pension share of the full amount) and still work.

There is no specific case law in Liechtenstein known to the authors in respect of the directive requirements on unlawful discrimination.

b) Occupational pension schemes

In Liechtenstein, there is a legally 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 and corresponds to the above-mentioned pension age for state pension. Based on the same regulation as for the state pension age, an individual who wishes to enter into retirement earlier than the stated pension age can draw the pension in advance. Early retirement by law can start four years before reaching the legally defined pension age. Occupational pension schemes are free to prolong this period according to their statutory retirement regulations. Thus, they can offer their insurance holders an earlier pension age by contract. Such early retirement has the consequence that the pension is paid at a reduced rate.

¹¹⁴ Office of Vocational Training and Career Counselling (*Amt für Berufsbildung und Berufsberatung, ABB*): <http://www.llv.li/#/1757>.

¹¹⁵ Office of Education (*Schulamt*): <http://www.llv.li/#/11631/schulamt>.

If an individual wish to work longer, payments from such occupational pension schemes can be deferred and through the longer working and pension-contribution period, the future pension payments increase.

There is no specific case law in Liechtenstein known to the authors in respect with the directive requirements on unlawful discrimination.

c) State imposed mandatory retirement ages

In Liechtenstein, there is a state-imposed mandatory retirement age. The state-imposed retirement-age is 65 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). In both cases the choice of doing so is generally up to the employee. Nevertheless in terms of working longer, the employee needs an employer who supports the adjustment in the sense of employing the person longer. Within the last five years there has been a political discussion on changing the age of retirement for economic and demographic reasons.¹¹⁶ The discussion is still ongoing and focuses primarily on the state pension fund.¹¹⁷ European developments in this area might influence relevant national regulation in the future.

d) Retirement ages imposed by employers

The retirement age is defined by Article 8 of the ACPP and corresponds to the above mentioned retirement age for state pension. Thus, Liechtenstein national law does not permit employers to define different pension ages by contract and/or collective bargaining and/or unilaterally in relation to the company pension schemes.

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. as a voluntary – and therefore positive – option for the employee. Nevertheless, the minimum and the maximum age of retirement must be in line with the age given by law.

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 65 without liability for unfair dismissal. Thus, even if the employee wishes to work longer (by prolonging the pension age from 65 to 70), there is no legal binding condition on the employer to do so. 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,

¹¹⁶ Interviews with H.S.H. Prince Hans-Adam II: 2013 - <http://www.vaterland.li/index.cfm?ressort=home&source=lv&id=21429>; 2018 - <http://www.vaterland.li/liechtenstein/politik/fuerst-hans-adam-ii-mit-leserbrief-zu-pensionsalter;art169,316652>.

¹¹⁷ Letter to the head of government, 10/2012 (copy link into Web browser): 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 profile¹¹⁸ / 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 CCC defines redundancy due to reasons based on personal attributes (age would be defined as a personal attribute in judicial interpretation)¹¹⁹ as improper and therefore against the law.

b) Age taken into account for redundancy compensation

In Liechtenstein, national law provides compensation for redundancy in general, in line with the given anti-discrimination prohibitions. As age is not permitted by law to be taken into account in selecting workers for redundancy, no age-related redundancy compensation would be in line with the law. Thus, 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) this would be classified as improper and therefore against the law.

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);
- the bylaw on Special Provisions for the Protection of Young Employees;
- the Decree on the Organisation of the Police;¹²⁰
- the Act on Foreigners;
- the Act of National Old Age and Widow's /Widower's Pension.

¹¹⁸ <http://www.landespolizei.li/Polizeiiberuf.aspx>.

¹¹⁹ Public statement of a Liechtenstein law firm: <http://www.wanger.net/schuldrecht/items/wann-ist-eine-kuendigung-des-arbeitsvertrags-missbraeuchlich.html>.

¹²⁰ Decree on the Organisation of the Police (Verordnung über den Dienstbetrieb und die Organisation der Landespolizei, PoIDOV), LGBI. 2000, no 195, link: <https://www.gesetze.li/konso/pdf/2000195000?version=6>.

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.

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

a) Scope for positive action measures

In Liechtenstein, positive action in respect of disability is permitted in national law.

Basically only the AEPD, implementing Directive 2000/78, 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 AEPD 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 foreigners or old people. Such activities are directly supported by the government (via the integration department of the Immigration and Passport Office or the Office of Social Services), or indirectly by mandating private associations with such tasks.

The Association for Human Rights in Liechtenstein (*Verein für Menschenrechte*, VMR) has the task, among other things, of raising public awareness of human rights and of combatting all forms of discrimination, in particular racial discrimination, by increasing public awareness, through information and education and the use of press and media.

b) Main positive action measures in place on national level

Articles 17 to 20 of the AEPD state that different measures in favour of people with disabilities may be supported. Article 19(3) of the AEPD 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.

Liechtenstein Disability Insurance¹²¹ supports potential employment with various services, e.g. wage subsidies that motivate businesses to employ people with reduced work performance.

¹²¹ Liechtenstein Disability Insurance (*AHV-IV-FAK Liechtenstein*), link: <http://www.ahv.li/leistungen/iv/berufliche-massnahmen/>.

Measures are being taken to ensure that non-German-speaking Liechtenstein residents are provided with high-quality and cost-effective German lessons, which are as far as possible adapted to the individual abilities and needs of the students. No further major positive action measures related to migrants to promote their integration in employment are known to the authors.

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.

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. Claims are adjudicated according to the CCP.

Complaints relating to the anti-discrimination provisions of the Criminal Code (race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation) are also adjudicated by the ordinary courts in the first instance (Article 283 of the Criminal Code). 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. Furthermore, in 2005 the Act on Mediation in Civil Law Cases (AMCLC)¹²² 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.¹²³ 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.

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.

¹²² Act on Mediation in Civil Law Cases (Gesetz über die Mediation in Zivilrechtssachen, Zivilrechts-Mediations-Gesetz, ZMG), LGBl. 2005 no. 31, link: <https://www.gesetze.li/konso/pdf/2005031000?version=1>.

¹²³ Bylaw to the Act on Mediation in Civil Law Cases (Verordnung zum Gesetz über die Mediation in Zivilrechtssachen, Zivilrechts-Mediations-Verordnung, ZMV), LGBl. 2005, no. 71, link: <https://www.gesetze.li/konso/pdf/2005071000?version=2>.

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 judgment 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) Engaging 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. There is no discrimination case law known to the author where this right has been exercised in 2017.

Article 25 of the AEPD 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) Engaging in support of victims of discrimination

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 Articles 11, 17 and the following articles¹²⁴ 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*).

¹²⁴ Code of Civil Procedure (*Gesetz über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten, Zivilprozessordnung, ZPO*), LGBI. 1912 no. 9/1, link: <https://www.gesetze.li/konso/pdf/1912009001?version=18>.

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 AEPD 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),¹²⁵ 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, referring to Articles 11 and 25 of the CCP, 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 full shift of the burden of proof from the complainant to the respondent in cases of direct and indirect discrimination as well as harassment. In terms of reasonable accommodation the AEPD lists disproportional burdens in Article 7 (please see chapter 2.6 (b) above). The shift in the burden of proof applies also to cases concerning reasonable accommodation.

¹²⁵ Act on the Constitutional Court (*Gesetz über den Staatsgerichtshof, StGHG*), LGBI. 2004, no. 32, link: <https://www.gesetze.li/konso/pdf/2004032000?version=5>.

Article 26 on burden of proof in the AEPD 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 has been hardly any case law regarding discrimination. There has not been a full shift of the burden of proof in those cases where information is publicly available.

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).

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

Article 283(1) of the Criminal Code states that a person who publicly incites hatred or discrimination against a person or a group of persons on the grounds of race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation will be punishable by imprisonment up to two years.

Likewise, under the Criminal Code, anyone who publicly disseminates ideologies aimed at the systematic degradation or defamation of persons on account of their race, language, nationality, ethnicity, religion or belief, sex, disability, age or sexual orientation is punishable.

Article 23(1) of the AEPD 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)). In case of a valid claim of discrimination on the ground of disability regarding reasonable accommodation, the court may order the defendant to carry out specific measures to fulfil their duty to provide reasonable accommodation.

- b) Ceiling and amount of compensation

Article 23(1) of the AEPD (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 AEPD (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.

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

Given that Directive 2000/43 has not been transposed into Liechtenstein law, no equality bodies have been officially designated according to Article 13. Nevertheless, Liechtenstein has two main official institutions that are entrusted with tasks concerning a broad spectrum of disadvantage and discrimination.

The **Office for the Equality of Persons with Disabilities** (*Liechtensteiner Behinderten-Verband – Büro für Gleichstellung*)¹²⁶ was set up 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) Liechtenstein Association of Persons with Disabilities and acts independently. The Office has the following tasks relating to the integration and equality of people with disabilities:

- Submit recommendations or applications for action to the Government;
- Advise public authorities and private individuals;
- Participate in the preparation of relevant legislation;
- Carry out public relations work to raise public awareness;
- Promote social dialogue between employers and employees;
- Ensure cooperation with public and private institutions.

The Office of Equal Opportunities (*Stabsstelle für Chancengleichheit*) was created based on Article 22 of the AEWM and is regarded as the main administrative body covering the broadest spectrum of issues concerning disadvantage and discrimination. From 2013 onwards, there were repeated demands from many non-governmental organisations for a comprehensive national anti-discrimination act and more efforts to strengthen the credibility of Liechtenstein's human rights policies, which included creating an independent human rights institution. As a result, the **Association for Human Rights in Liechtenstein** (Verein für Menschenrechte, VMR)¹²⁷ was founded by 26 non-governmental organisations on 10 December 2016. The former Office of Equal Opportunities was dissolved and its responsibilities were integrated into the new association.¹²⁸ The status of this association and the relevant legal provisions had been laid down in a new law, the Law on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte*; VMLG).¹²⁹ This act entered into force on 1 January 2017, and the association became operational from that day onward. The Association for Human Rights in Liechtenstein is the independent national human rights institution of the Principality of Liechtenstein in accordance with the United Nations Paris Principles of 1992. The association also has the function of an independent ombudsman for children and young people. Thus, the Ombudsman's Office of Children and Young Persons, based on the Act on Children and Youth (ACY) continues to exist within the new Association for Human Rights in Liechtenstein.

As of January 2017, the new association acts independently and brings together various tasks which had previously been performed by different governmental offices and NGOs in Liechtenstein. These tasks are:

- Advising authorities and private individuals on human rights issues;

¹²⁶ Office for the Equality of Persons with Disabilities: <http://www.lbv.li/Buero-Gleichstellung.php>.

¹²⁷ Association for Human Rights in Liechtenstein: <https://www.menschenrechte.li/category/ueber-uns/>.

¹²⁸ As Directive 2000/43 has not been transposed in Liechtenstein, the body has not been officially designated in accordance with Article 13.

¹²⁹ Law on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte in Liechtenstein*, VMRG), LGBl. 2016, no 504; link: <https://www.gesetze.li/konso/pdf/2016504000?version=1>.

- Counselling people who feel violated in their rights and supporting victims of human rights violations;
- Informing the public about the human rights situation in Liechtenstein;
- Conducting investigations and recommending appropriate measures to authorities and private individuals;
- Giving opinions on draft laws and regulations and on the ratification of international conventions;
- Promoting dialogue and national/international cooperation with human rights bodies.

The Association for Human Rights in Liechtenstein also promotes the concept of a comprehensive national anti-discrimination act, covering all grounds. Due to the defined areas of responsibility of the Association for Human Rights in Liechtenstein, there is theoretically a certain overlap with the tasks of the Office for the Equality of People with Disabilities with regard to advising authorities and private organisations on issues of discrimination against people with disabilities. In practice, however, there is close coordination between the two associations, which has not yet led to any differences.

The Association for Human Rights in Liechtenstein is the body dealing with discrimination on racial/ethnic origin. This is based on Article 4 of the Law on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte*).

People from over 100 different countries live in Liechtenstein. Thus, the Liechtenstein population has a great diversity in linguistic, cultural and ethnic terms. In order to ensure continued co-existence on the basis of common fundamental values and the rule of law, the governmental Office of Social Services¹³⁰ promotes measures that:

- contribute to intercultural tolerance in Liechtenstein;
- improve mutual understanding and respect;
- provide advice, support and information for migrants;
- promote participation in the social life of migrants and combat any discrimination, xenophobia and racism.

With the founding of the Association for Human Rights in Liechtenstein, the official tasks of the former Office of Equal Opportunities and the integration projects of the Office of Foreigners and Passports had been transferred to the Office of Social Services. Thus, the Office of Social Services acts as the Government's specialist unit for issues of integration and equal opportunities. It is responsible for integration agreements, integration courses, public information, campaigning and other activities for the successful integration of migrants in Liechtenstein. It is based on the Act on Foreigners. In cases of discrimination on grounds of race, ethnicity or nationality, the Office of Social Services refers to the Association for Human Rights in Liechtenstein.

b) Political, economic and social context for the designated body

The Association for Human Rights in Liechtenstein (including the Ombudsman Office of Children and Young Persons) is not just a non-governmental organisation (NGO), as it was established according to the Paris Principles. On the basis of these principles, the association is recognised, promoted and reviewed as the key actor in the implementation and monitoring of human rights at national level. Its most important characteristics are its independence (financial, human resources, and its legal basis), sufficient resources and a broad mandate for the protection of human rights.

The Association for Human Rights in Liechtenstein is politically independent and denominationally neutral, based on Article 3 of the Law on the Association for Human Rights in Liechtenstein (LGBI. 2016 No. 504). It acts on its own initiative, without any

¹³⁰ Link: <https://www.llv.li/#/117687/chancengleichheit>.

commitment to any requirements and instructions of the Government and other authorities or interest groups. In the spirit of plurality, the association involves all civil society forces in the promotion and protection of human rights.

The Association for Human Rights in Liechtenstein is financed by funds from the state (the given financial budget is approximately EUR 300 000 per annum (CHF 350 000) and municipalities, membership fees, donations, income from its own contributions and other contributions. The association's services include the preparation of expert opinions and public literature, the organisation of training courses and seminars as well as consulting services. Thus, the association can acquire private funds.

By creating the Association for Human Rights in Liechtenstein through the Law on the Association for Human Rights in Liechtenstein, the Government actively committed itself to promote and protect human rights and the civil society's demand for an independent contact and advice centre was met. Furthermore it implemented the long-standing international recommendation for an independent human rights association and thus strengthens the credibility of Liechtenstein's foreign policy on human rights.

The Government proposed that a non-profit association should act as such an institution, politically independent and on its own initiative. The legal status and tasks of the association were established by law according to the Paris Principles of the United Nations.

The association was established in 2016 with a mandate to take up work from January 2017 onward. Thus no comparison to previous years regarding budget increases etc. are possible. Cutbacks have not yet been an issue.

The authors know of no evidence of recent political hostility to or interference in the governance of the Association for Human Rights in Liechtenstein, no popular debate that is hostile to equality and diversity or to the association, and no evidence of budget increases or cuts to the association.

Office for the Equality of Persons with Disabilities

When the Disability Equality Act entered into force in January 2007, the Office for the Equality of Persons with Disabilities was established as part of the non-governmental Liechtenstein Association of Persons with Disabilities.

The office is politically independent and denominationally neutral. It acts on its own initiative, without any commitment to the requirements and instructions of the Government and other authorities. In the spirit of plurality, it involves all civil society forces in the promotion of integration and equality of people with disabilities.

In accordance with the Disability Equality Act, the state is charged with promoting the legal and factual equality of people with disabilities in all areas of life. Every year, the Ministry of Society awards prizes for innovative and sustainable ideas or projects to improve equal opportunities.

The authors know of no evidence of recent political hostility to or interference in the governance of the Office for the Equality of Persons with Disabilities, no evidence of budget increases or cutbacks and no evidence of any popular debate that is hostile to equality and diversity or to the association.

c) Institutional architecture

The **Association for Human Rights in Liechtenstein** is recognised, promoted and reviewed as the key actor in the implementation and monitoring of human rights at national level. It has a mandate as the national human rights institution. In order to make better

use of synergies, the tasks of the Ombudsman's Office of Children and Young People were transferred to the Association for Human Rights in Liechtenstein in 2017.

As the Association for Human Rights in Liechtenstein has a mandate as the national human rights institution, staff resources and budget are not divided between different mandates. Given that the Association for Human Rights in Liechtenstein was founded only in December 2016, no assessment of the level of attention given to the anti-discrimination or equality mandate in the work of the association can be made so far. The first half of the year of the association's existence was dominated by construction work and the second half of 2017 was the starting phase for content work.

Statements from NGOs and other human rights organisations, including the Council of Europe Commissioner for Human Rights pointed out that the initiative of founding an Association for Human Rights in Liechtenstein with a national mandate was very much appreciated and welcome.¹³¹ The expectations regarding future visibility of the association, especially regarding its mandate for equality and non-discrimination, are high. The public expects a sustainable active role in terms of promoting and protecting human rights in Liechtenstein. Due to the fact that the association took up work in 2017 no assessment can be made so far.

The Government mandated the private Liechtenstein Association of Persons with Disabilities (*LBV*) to set up the **Office for the Equality of Persons with Disabilities**. The main task of the office is to advise public authorities and private individuals on the integration and equality of people with disabilities and to assist in the drafting of legislation in so far as it is relevant to the integration and equality of people with disabilities. However, assisting victims of disability discrimination is the responsibility of the Association for Human Rights in Liechtenstein.

The Office for the Equality of Persons with Disabilities has a clear focused mandate in relation to the integration and equality of persons with disabilities. Therefore, the splitting of staff time or financial resources is not an issue for the office.

The Office for the Equality of Persons with Disabilities is a very active and well known institution, promoting the integration and equality of people with disabilities in all areas of living in Liechtenstein. It focuses on public relations work to raise public awareness and on developing and implementing projects in cooperation with public or private organisations for people with disabilities. The office is often contacted by private individuals for advice in relation to non-discrimination of people with disabilities.

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

i) Status of the body

In accordance with the Paris Principles of the United Nations, the legal status and tasks of the **Association for Human Rights in Liechtenstein** have been enshrined in the Law on the Association for Human Rights in Liechtenstein. Further details are set out in the articles of the association.¹³² The legal form as an association guarantees the greatest possible independence. In addition, the association is a fundamentally democratic form of organisation with equal rights and obligations for all members. The registration of the association in the commercial register is intended to ensure transparency.

¹³¹ Link: <https://www.menschenrechte.li/besuch-des-kommissars-fuer-menschenrechte-des-europarats-nils-muiznieks-beim-verein-fuer-menschenrechte/>.

¹³² Statutes of the Association for Human Rights in Liechtenstein: <https://www.menschenrechte.li/wp-content/uploads/2017/09/Statuten-VMR-definitiv.pdf>.

The general assembly, which consists of all association members, appoints the board of directors for a period of four years. Re-election is permitted. The board of directors consists of seven members. It is independent, and its composition is balanced according to age, gender and origin. The members of the board of directors were selected on the basis of their professional competence in the areas of equal opportunities, non-discrimination, protection against violence and integration, as well as their expertise in international law and human rights. The aim was to strike a balance between practical experience and knowledge of the Liechtenstein situation as well as professional expertise and international experience.

The Association for Human Rights in Liechtenstein has legally defined income streams. These are:

- a) state contributions;
- b) membership fees;
- c) private donations;
- d) income from own services.

Thus, the association can acquire private funds.

The Association for Human Rights in Liechtenstein has a permanent office, which is supervised by the board of directors. The office is managed by a managing director who is responsible for the operational management of the association. The managing director is appointed by the board of directors. The contract is preceded by a public invitation to tender. The substantive work of the association is monitored by the board of directors.

An external auditor must audit the annual financial statements and balance sheet and prepare a written report to the board of directors on its findings for submission to the general assembly.

The **Office for the Equality of Persons with Disabilities** is a non-governmental organisation. The office is part of the private self-help Liechtenstein Association of Persons with disabilities. The general assembly is the meeting of the association's members and the supreme organ of the association. The board of directors consists of five to nine persons elected by the general assembly, who must also appoint the president and vice-president. All board functions are honorary and unpaid. The financial management of the association is carried out by the executive committee within the framework of a budget to be decided upon annually in advance.

In order to be able to offer diverse services and activities, the organisation depends on volunteers, financial donations including legacies and inheritances, ordinary membership fees, and special collections within the association or public collections.

ii) Independence of the body

The **Association for Human Rights in Liechtenstein** has a legal basis and a comprehensive mandate as well as an appropriate infrastructure and financing. These factors promise a considerable degree of independence vis à vis the Government as the association is only answerable to its members.¹³³ The board members are selected on the basis of their professional competence in the areas

¹³³ Members of the Association for Human Rights in Liechtenstein can be private persons, NGOs or other associations. In the latter two cases membership can be open to the public.

of equal opportunities, non-discrimination, protection against violence and integration, as well as their expertise in international law and human rights.

Nevertheless, the institution's activities are financed mainly by contributions from the Government. In order to avoid conflicts of interest, it was decided that the Association for Human Rights in Liechtenstein would have its own section in the national budget and the power to decide on the use of its financial resources on its own.

The **Office for the Equality of Persons with Disabilities** acts independently. Whether assistance can be provided depends on financial and staff resources. As a non-governmental organisation, the office is largely dependent on volunteers and financial donors.

e) Grounds covered by the designated body/bodies

The **Association for Human Rights in Liechtenstein** has a broad mandate in promoting and acting in the implementation and monitoring of human rights at national level. It has a mandate as the national human rights institution. The corresponding legal act does not explicitly list the grounds covered, instead it covers all areas of human rights and violation against them (e.g. equality between women and men, disability, migration and integration including race and ethnic origin, social disadvantages and sexual orientation). Nevertheless, the Association for Human Rights in Liechtenstein does not have a mandate to deal with integration agreements for migrants in Liechtenstein. The Office of Social Services is responsible for integration courses, public information, campaigning and other activities for the successful integration of migrants. However, in cases of discrimination on grounds of race, ethnicity or nationality, the Office of Social Services refers to the Association for Human Rights in Liechtenstein.

The association was founded at the end of 2016 and started its work at the beginning of 2017. After the foundation activities had been completed, a strategy meeting was held in October 2017 to define the main topics of the future work of the association. Five situation analyses were carried out on disability rights, women's rights and equality between women and men, children's rights, foreigners' rights and social discrimination. Different fields of action have been identified which will serve as a basis for the activities of the association in 2018. These actions will be presented at the general meeting in spring 2018. Thus, no assessment can be made whether adequate and appropriate expertise and attention has been given to each of these grounds by the Association for Human Rights in Liechtenstein so far.

In September 2017, representatives of various organisations and authorities met under the leadership of the Association for Human Rights in Liechtenstein and Amnesty Liechtenstein to discuss issues in the field of asylum. The aim of this open dialogue, which has been in existence since 2014, is to strengthen cooperation between the different institutions, optimise procedures and develop a common understanding of the challenges and opportunities in the field of asylum. Based on publicly available information, discrimination issues in regard to migrants have not been an issue for discussion. Thus, this is not a priority for the association.

The **Office for the Equality of Persons with Disabilities** has a mandate to focus on discrimination on the ground of disability. All other grounds of discrimination are not in the scope of the institution.

- f) Competences of the designated body/bodies – and their independent and effective exercise
- i) Independent assistance to victims

In Liechtenstein, the designated bodies do have the competence to provide independent assistance to victims.

- Independence

The **Association for Human Rights in Liechtenstein** acts in an independent manner as an ombudsman; it can receive complaints from those affected and bring them to the courts on their behalf. Since the association started its business, there has been no indication that the body does not exercise its competences in an independent manner. So far, politically controversial issues have also been discussed and raised with the relevant government department. Furthermore the Association for Human Rights in Liechtenstein acts as a one-stop-contact point for those affected. It provides general information to victims of discrimination, it advises them about the legal situation and their options and refers victims to the relevant institutions, etc.

The **Office for the Equality of Persons with Disabilities** is run by the Liechtenstein Association of Persons with Disabilities (LBV), established within the meaning of Articles 246 et seq. of the Personal and Company Act (law of 20.1.1926) as a private association. It provides general information about discrimination based on disability and refers in individual cases to the Association for Human Rights in Liechtenstein or any other relevant institution (e.g. the Office of Aid for Victims of Criminal Offences).

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

- Effectiveness

As a contact and information centre, the **Association for Human Rights in Liechtenstein** brings together knowledge and acts therefore as a one-stop-contact point for those affected. Since the office was established, it has used its competences in an independent way. No assessment can be made by the authors of the quality of the work of the Association for Human Rights in Liechtenstein (no sufficient cases and actions due to the short time period).

The **Office for the Equality of Persons with Disabilities** provides general information about discrimination based on disability and refers individual cases to the Association for Human Rights in Liechtenstein or other relevant institutions (e.g. the Office of Aid for Victims of Criminal Offences). It has no specific mandate to assist people with disabilities who have faced discrimination based on the ground of disability in financial or legal matters.

The **Office of Aid for Victims of Criminal Offences** provides assistance to victims. It advises victims for free and supports victims by financial means. The office also assists victims at court trials. There is no publicly available data about the effectiveness of the office and the number of cases they assist each year.

All three organisations have different tasks in supporting individuals and only the Association for Human Rights in Liechtenstein and the Office of Aid for Victims of Criminal Offences advise and support victims of discrimination. There is no specific process or system in place as to how these organisations interact with each other.

- **Resources**
Within the **Association for Human Rights in Liechtenstein** and the **Office for the Equality of Persons with Disabilities** there are no specific resources allocated to the assistance to victims as no competence-related budget has been setup so far. Thus, no particular financial budget or staff are allocated to the competence of the body to assist victims of discrimination and that duty is carried out under the general budget of the institution.

The **Office of Aid for Victims of Criminal Offences** is part of the Office of Social Services and therefore an official institution of the public administration. No information about any shortage in resources is known to the authors.

ii) Independent surveys and reports

The **Association for Human Rights in Liechtenstein** states in its statutes¹³⁴ that it has the task of carrying out investigations and can recommend suitable measures to authorities and private individuals. Associated with this, the association can carry out independent surveys, reports and studies and publish them.

The **Office for the Equality of Persons with Disabilities** prepares recommendations and applications based on issues affecting people with disabilities to arrange better situations for people with disabilities. Within this role, the office can conduct independent surveys or reports.

- **Independence**
Based on the given material, reports and surveys produced by the **Association for Human Rights in Liechtenstein**, it can be said, that the association produces surveys and reports in an independent manner without influence from the Government or governmental organisations.

The **Office for the Equality of Persons with Disabilities** commissions surveys and reports from independent third parties who have the competence and experience in the execution of such activity. This is mainly based on the fact that the office itself has limited resources.

- **Effectiveness**
Given that the **Association for Human Rights in Liechtenstein** was founded only in December 2016, no assessment whether this competence is effectively exercised in an independent manner can be made so far. The first half of the association's existence was dominated by construction work and the second half of 2017 was the starting phase for content work.

The **Office for the Equality of Persons with Disabilities** reports periodically to the Government on developments in the integration and equality of people with disabilities and on the impact of actions and projects undertaken, as required by law. Furthermore the association

¹³⁴ Statutes of the Association for Human Rights in Liechtenstein, link: <https://www.menschenrechte.li/wp-content/uploads/2017/09/Statuten-VMR-definitiv.pdf>.

responds to consultations on new laws relevant to people with disabilities (and the Government officially invites the association to participate).

- Resources

Due to the short time since the **Association for Human Rights in Liechtenstein** was founded and started operations, no assessment of the financial situation has been made. It is therefore not yet possible to say whether the institution has sufficient financial and human resources to fulfil its tasks.

The **Office for the Equality of Persons with Disabilities** reports on an annual basis. There are no issues regarding insufficient resources (financial and in terms of staff) known to the authors.

iii) Independent recommendations

In Liechtenstein, the designated bodies do have the competence to issue independent recommendations on discrimination issues.

- Independence

The **Association for Human Rights in Liechtenstein** states in its statutes¹³⁵ that it can recommend suitable measures to authorities in terms of recommendations to change law and give opinions within the framework of legislative hearings. Furthermore, the association provides advice and recommendations to private individuals in cases of discrimination. This includes information about the legal situation and suggestions for improvement, e.g. situations in private companies, conducting workshops, etc.

The **Office for the Equality of Persons with Disabilities** prepares recommendations and applications independently. It advises authorities on integration and equality issues based on its own assumptions and recommendations and issues opinions within the framework of legislative hearings. Advice to private individuals is given in a general manner in terms of public relations work to raise public awareness and to promote dialogue between employers and employees and to mediate on discrimination issues. It provides a platform for promoting social dialogue and contributes to ensuring cooperation with public and private institutions.

- Effectiveness

Given that the **Association for Human Rights in Liechtenstein** was founded only in December 2016, no assessment regarding the scale/level and quality of implementation of activities under this competence can be made so far. The first half of the year of the association's existence was dominated by construction work and the second half of 2017 was the starting phase for content work.

The **Office for the Equality of Persons with Disabilities** reports periodically to the Government on developments in the integration and equality of people with disabilities and on the impact of actions and projects undertaken, as required by law. Furthermore the association responds to consultations on new laws relevant to people with disabilities (and the Government officially invites the association to participate).

¹³⁵ Statutes of the Association for Human Rights in Liechtenstein, link: <https://www.menschenrechte.li/wp-content/uploads/2017/09/Statuten-VMR-definitiv.pdf>.

- **Resources**
Due to the short time since the Association for Human Rights in Liechtenstein was founded and started operations, no assessment of the financial situation has been made. It is therefore not yet possible to say whether the institution has sufficient financial and human resources to fulfil its tasks.

The authors know of no issues regarding insufficient resources (financial and in terms of staff) for the Office for the Equality of Persons with Disabilities.

iv) Other competences

The **Association for Human Rights in Liechtenstein** has the following additional competences in relation to the protection and promotion of human rights:

- advising authorities and private individuals on human rights issues (best practice approaches);
- informing the public about the human rights situation in Liechtenstein;
- delivering opinions on draft laws and regulations and on the ratification of international conventions in so far as they are relevant to human rights;
- promoting dialogue and national and international cooperation with human rights bodies.

As the association has only been operating since the beginning of 2017, no assessment of how effectively these competences are exercised by the association can be made.

The **Office for the Equality of Persons with Disabilities** is also mandated to carry out public relations work to raise public awareness of the needs of people with disabilities.

v) Positive duties

Liechtenstein law relating to equality and non-discrimination do not set out any positive duties.

vi) Further competences/activities

The **Association for Human Rights in Liechtenstein** has the following tasks in protecting and promoting human rights:

- to advise the authorities and private individuals on human rights issues;
- support victims of human rights violations;
- inform the public about the human rights situation in Liechtenstein;
- carry out investigations and recommend appropriate measures to public authorities and private individuals;
- deliver opinions on draft laws and regulations and on the ratification of international conventions in so far as they are relevant to human rights;
- promote dialogue between national and international bodies with human rights mandates;
- act as an independent ombudsman for children and adolescents according to Article 96 (2) of the Children and Youth Act.

The **Office for the Equality of Persons with Disabilities** is responsible for the following duties concerning the integration and equality of people with disabilities:

- advising public authorities and private individuals on issues of integration and equality of people with disabilities;
- participating in the drafting of legislation, insofar as it is relevant to the integration and equality of persons with disabilities;
- issuing opinions in consultation procedures on legislative proposals;
- carrying out public relations work to raise public awareness of the needs of people with disabilities;
- developing and implementing projects;
- promoting social dialogue between employers and employees with a view to promoting the implementation of the principle of equal treatment;
- promoting dialogue with non-governmental organisations involved in combating discrimination;
- ensuring cooperation with public and private institutions.

g) Legal standing of the designated body/bodies

In Liechtenstein, the designated body does have legal standing. The association may, with the consent of a victim of a human rights violation, participate in judicial and administrative proceedings either on behalf of the victim or in support of the victim, represented by an external lawyer contracted by the association. The legal basis is stated in Article 5 of the Law on the Association for Human Rights in Liechtenstein (LGBI. 2016 No. 504).

No case law is known to the authors.

h) Quasi-judicial competences

In Liechtenstein, the bodies are not quasi-judicial institutions.

The Association for Human Rights in Liechtenstein and the Office for the Equality of Persons with Disabilities are not judicial bodies. None of their roles can be interpreted as being quasi-judicial. Their statements have no binding legal character and they do not automatically trigger a right of action (in court).

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

The **Office for the Equality of Persons with Disabilities** does not register the number of inquiries and complaints (by ground, field, type of discrimination, etc.). This data is not available to the public.

At this point in time, it is unclear how the new **Association for Human Rights in Liechtenstein** will act. The legal provisions are silent about any obligation of registering inquiries and complaints and publishing the data.

j) Planning

Regarding the **Association for Human Rights in Liechtenstein** the first strategy meeting of the executive board and the office members took place in October 2017. At the general assembly in spring 2018, the board of directors will present the association's plan and prioritisation for the upcoming months (For more details please see section 7 e).

The **Office for the Equality of Persons with Disabilities** plans activities and projects in the area of integration of people with disabilities and measures to avoid discrimination

of people with disabilities in close cooperation with public authorities, Government representatives and private associations.

k) Stakeholder engagement

The **Association for Human Rights in Liechtenstein** can engage with national and international human rights-relevant bodies based on the corresponding legal provision in Article 4 of the Law on the Association for Human Rights in Liechtenstein. It is a non-profit association in accordance with the provisions of personal and company law. Its activities must comply with the articles of association. It is not bound by government directives. Therefore, it is free to choose to cooperate or engage with civil society associations, public bodies, local government entities, trade unions or employee associations, NGOs, private institutions and/or organisations and individuals as long as it is in the context of human rights-relevant bodies.

Regarding the **Office for the Equality of Persons with Disabilities**, engagement with the following bodies is possible:

- public and private institutions;
- local government bodies;
- business entities/ employers;
- NGOs as far as they engaged in the fight against discrimination against people with disabilities.

Partnership between the Office for the Equality of Persons with Disabilities and the Liechtenstein Association of Disabled Persons is provided for in law and operates in practice. The Act on Equality of Persons with Disabilities provides for such a relationship in Article 22 with reference to Article 31.

l) Accessibility

The Association for Human Rights in Liechtenstein:

- the designated body does have an accessible and publicly visible office;
- the designated body does not have local or regional offices;
- the designated body does conduct outreach activities in local areas or communities;
- the designated body does have procedures in place to identify and respond to the access needs of specific complainants (e.g. people with disabilities, people with caring responsibilities, people speaking different languages, people with literacy issues etc).

Given that the Association for Human Rights in Liechtenstein was founded only in December 2016, no assessment regarding the way in which the Association for Human Rights in Liechtenstein responds to and accommodates access needs can be made so far. The first half of the year of the association's existence was dominated by construction work and the second half of 2017 was the starting phase for content work.

Office for the Equality of Persons with Disabilities:

- the designated body does have an accessible and publicly visible office;
- the designated body does not have local or regional offices;
- the designated body does conduct outreach activities in local areas or communities;
- the designated body does have procedures in place to identify and respond to the access needs of specific complainants (e.g. people with disabilities, people with caring responsibilities, people speaking different languages, people with literacy issues etc).

The Office for the Equality of Persons with Disabilities responds well and in a timely fashion. The authors know of no complaints or inappropriate / inadequate reports regarding the way in which the office responds to access needs.

m) 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. The main activity fields identified by the Association for Human Rights in Liechtenstein in its first strategic workshop did not include Roma and/or Travellers as a priority issue for Liechtenstein.¹³⁶

¹³⁶ See report of the strategy meeting of the executive board of the Association for Human Rights 2017, link: <https://www.menschenrechte.li/strategietagung-des-vorstands/>.

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The 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.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The Liechtenstein Association of Persons with Disabilities gives assistance to people with disabilities in many regards. Much of the public information work is done via the Liechtenstein daily newspapers. 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' Association¹³⁷ 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.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

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).

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*).¹³⁸

¹³⁷ Liechtenstein Employees' Association (*ArbeitnehmerInnenverband, LANV*), link: <http://www.lanv.li>.

¹³⁸ SAVE, link: <http://www.zpk.li/>.

d) Addressing the situation of Roma and Travellers

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

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

There are no 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).

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 (integration, equal opportunities, social services);
- 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, since 2016, the Office of Integration and Equal Treatment. 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.

Finally, the new independent national Association for Human Rights in Liechtenstein will promote human rights in areas that mainly affect the weakest groups in Liechtenstein's society (people with disabilities, children, single mothers, asylum seekers, undocumented foreigners etc.) and coordinate activities with respect to equal opportunities. Additionally, it will have to address the implementation of an interdepartmental anti-discrimination policy.¹³⁹

¹³⁹ Government report for consultation: <http://www.llv.li/files/srk/vnb-scg.pdf>.
Government bill 2016 for submission to the Parliament:
<http://bua.gmg.biz/BuA/default.aspx?year=2016&nr=57&content=449861478&erweitert=true>.

10 CURRENT BEST PRACTICES

Liechtenstein set up a triple T programme for refugees, based on the educational philosophy, 'We train the trainers' trainer', to support them in their particular life situations. The Liechtenstein Government hopes that this will have a multiplier effect that goes far beyond the limited resources at its disposal. The Liechtenstein language project is a German language programme for refugees with a strong focus on oral communication skills rather than writing. Within a very short period of time, the participants gain knowledge for their initial orientation in society, especially with regard to the basic structures of coexistence and everyday life. This is central for integration in society and for easier entry to the working world.

The Office of 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 Association for Assisted Living in Liechtenstein (ABP) – *Verein für Betreutes Wohnen*, (VBW)¹⁴⁰ offers personal assistance and support for professional rehabilitation and integration with training opportunities in various activity areas. ABP also offers care at the external workplace as a means to secure employment.

Liechtenstein Disability Insurance¹⁴¹ (AHV-IV-FAK Liechtenstein) supports potential employment with various services. It offers career counselling, assumes the additional costs for professional basic and continuing employment due to disability and funds trial employment relationships to assess employability. With capital assistance, it encourages disabled people to start up their own business. Wage subsidies motivate businesses to employ people with reduced work performance.

The Social Pedagogical Office of the Liechtenstein Association of Persons with Disabilities¹⁴² supports people seeking work by means of joint consideration of realistic employment options and demands at the proposed workplace as well as helping in searching for jobs.

¹⁴⁰ Association for Assisted Living in Liechtenstein: <http://www.vbw.li/arbeits Trainingsprogramm/>.

¹⁴¹ Liechtenstein Disability Insurance : <http://www.ahv.li/leistungen/iv/berufliche-massnahmen/>.

¹⁴² Liechtenstein Association of Persons with Disabilities: <http://www.lbv.li/Sozialpaedagogische-Fachstelle.php>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives

With reference to Liechtenstein it has to be said, that Directive 2000/43/EC has not been transposed at all (except in terms of Annex XVIII which 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.

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. Regulations with regard to disability have been transposed from the directive into national law.

11.2 Other issues of concern

During Liechtenstein's second cycle universal periodic review (UPR) in 2013, three recommendations regarding the ratification of the Convention on the Rights of Persons with Disabilities were made. Liechtenstein accepted all of them without any further comment. The Government of Liechtenstein has appointed an inter-office working group to assess the need for preparation of its ratification. The main reason for not having signed the UNCRPD yet can be seen in the lack of administrative resources within this area. Additionally, the latest changes within the governmental organisation and the newly founded Association for Human Rights in Liechtenstein (*Verein für Menschenrechte*, VMR) as independent national human rights institution in Liechtenstein in 2016, did not speed-up the process of preparing for the UNCRPD ratification.

The focus of Liechtenstein's involvement in ECtHR reform continues to be on the national implementation of the ECHR in the states parties as well as on safeguarding the right of individual complaint and the independence of the Court.

Liechtenstein still needs to make further efforts to challenge discrimination. As such, a comprehensive anti-discrimination act, covering all grounds of discrimination would be welcome. Although the European Convention on Human Rights (ECHR) 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.

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 only one case as of February 2014 within the last four years.¹⁴³

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.

¹⁴³ Reference number: RA 2011/2986-4292; decision as of VGH 2013/134; VGH 2013/131, VGH 2013/133, VGH 2013/135 as of 21.02.2014. 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>.

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

12 LATEST DEVELOPMENTS IN 2017

12.1 Legislative amendments

The legal provisions for the Association for Human Rights in Liechtenstein were laid down in a new law, the Law on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte in Liechtenstein*; VMLG).¹⁴⁴ The VMLG came into force on 1 January 2017.

There were no further legal developments in 2017.

12.2 Case law

In 2017 there has been no official case law in Liechtenstein regarding discrimination on grounds of race or ethnic origin, religion or belief, disability, age or sexual orientation.

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

¹⁴⁴ Law on the Association for Human Rights in Liechtenstein (*Gesetz über den Verein für Menschenrechte in Liechtenstein*; VMLG), LGBl. 2016 no. 504. Available at: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgblid=2016504000&version=1&search_text=Menschenrechte&search_loc=text&sel_lawtype=conso&compl_list=1&rechts_ggebiet=0&menu=0&tablesel=0&observe_date=26.01.2017.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Liechtenstein
Date: 1 January 2018

Act on Equality of People with Disabilities	<p>Title of the Law: Act on Equality of People with Disabilities (<i>Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz</i>)</p> <p>Abbreviation: AEPD/BGIG</p> <p>Date of adoption: 25.10.2006</p> <p>Latest amendments: LGBL 2016, no. 273</p> <p>Entry into force: 01.01.2007</p> <p>Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbldid=2006243000&gueltigdate=02032016</p> <p>Grounds covered: Disability</p> <p>Civil/administrative/criminal law: Civil/Administrative Law</p> <p>Material scope: All sectors</p> <p>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>
Act on Disability Insurance (<i>Invalidenversicherung</i>)	<p>Title of the law: Act on Disability Insurance (<i>Invalidenversicherung</i>)</p> <p>Abbreviation: IVG</p> <p>Date of adoption: 23.12.1959</p> <p>Latest amendments: LGBL 2016 Nr. 235</p> <p>Entry into force: 04.02.1960</p> <p>Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbldid=1960005000&gueltigdate=02032016</p> <p>Grounds covered: Disability</p> <p>Civil/administrative/criminal law: Civil/Administrative Law</p> <p>Material scope: Insurance; goods; assistance; employment</p> <p>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>
Act on Civil Union for Same-Sex Couples (Partnerschaftsgesetz)	<p>Title of the law: Act on Civil Union for Same-Sex Couples (<i>Gesetz vom 16 März 2011 über die eingetragene Partnerschaft gleichgeschlechtlicher Paare</i>)</p> <p>Abbreviation: ACUSSC/PartG</p> <p>Date of adoption: 16.03.2011</p> <p>Latest amendments: -</p> <p>Entry into force: 01.09.2011</p> <p>Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbldid=2011350000&gueltigdate=02032016</p> <p>Grounds protected: sexual orientation</p> <p>Civil/administrative/criminal law: Civil Law</p> <p>Material scope: Same-sex registered partnership</p> <p>Principal content: Official Recognition of same-sex partnership/same-sex couples</p>
Common Civil Codes (<i>Allgemeines</i>)	<p>Title of the Law: Common Civil Code (<i>Allgemeines Bürgerliches Gesetzbuch</i>)</p> <p>Abbreviation: CCC/ABGB</p> <p>Date of adoption: 01.06.1812</p> <p>Latest amendments: LGBL 2016 Nr. 267</p>

<i>Bürgerliches Gesetzbuch)</i>	Entry into force: 18.12.1812
	Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1003001000&gueltigdate=02032016
	Grounds covered: Nationality, pregnancy
	Civil/administrative/criminal law: Civil Law
	Material scope: General
Criminal Code (Strafgesetzbuch)	Principal content: Civil rights
	Title of the Law: Criminal Code (Strafgesetzbuch)
	Abbreviation: StGB
	Date of adoption: 24.06.1987
	Latest amendments: LGBI. 2016 Nr. 161
	Entry into force: 22.10.1988 (announcement)
	Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1988037000&gueltigdate=02032016
	Grounds covered: race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation
	Civil/administrative/criminal law: Criminal Law
	Material scope: Penalties
Act on Foreigners (Ausländergesetz)	Principal content: Prohibition of racial discrimination by threat of punishment
	Title of the law: Act on Foreigners (Ausländergesetz)
	Abbreviation: AuG
	Date of adoption: 17.09.2008
	Latest amendments: LGBI. 2016 Nr. 506
	Entry into force: 15.12.2008
	Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=2008311000&gueltigdate=02032016
	Grounds covered: Integration (nationality, race, ethnic origin)
	Civil/administrative/criminal law: Civil Law
	Material scope: regulation regarding foreigners in Liechtenstein
Constitution of the Principality of Liechtenstein (Verfassung des Fürstentums Liechtenstein)	Principal content: Specific regulation in context to nationality
	Title of the law: Constitution of the Principality of Liechtenstein (Verfassung des Fürstentums Liechtenstein)
	Abbreviation: LC
	Date of adoption: 5.10.1921
	Latest amendments: LGBI. 2010, no. 372
	Entry into force: 5.10.1921
	Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1921015000&version=5&search_text=Verfassung&search_loc=text&sel_la_wtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tablesel=0&observe_date=18.05.2017
	Grounds covered: national origin
	Civil/administrative/criminal law: all
	Material scope: regulation equal treatment of all Liechtenstein citizens
Law of the Association for Human Rights	Principal content: Specific regulation in context to religion and belief
	Title of the law: Law on the Association for Human Rights in Liechtenstein (Gesetz über den Verein für Menschenrechte in Liechtenstein)
	Abbreviation: VMRG
	Date of adoption: 104.11.2016
	Latest amendments: -
	Entry into force: 01.01.2017
	Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid

	=2016504000&version=1&search_text=Menschenrechte&search_loc=text&sel_lawtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tablesel=0&observe_date=26.01.2017 Grounds covered: race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation Civil/administrative/criminal law: Civil Law Material scope: promotes human rights Principal content: promotion of human rights
Act on Equality between Women and Men (Gleichstellungsgesetz)	Title of the law: Act on Equality between Women and Men (Gesetz über die Gleichstellung von Frau und Mann) Abbreviation: GLG (AEWM) Date of adoption: 10.03.1999 Latest amendments: LGBl. 2015 no. 33 Entry into force: 01.01.2017 Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lglid=1999096000&version=5&search_text=Gleichstellungsgesetz&search_loc=text&sel_lawtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tablesel=0&observe_date=18.05.2017 Grounds covered: equal treatment of men and women Civil/administrative/criminal law: Civil Law Material scope: equal treatment of men and women Principal content: equal treatment of men and women
Act on the National Old Age and Widow's /Widower's Pension (Gesetz über die Alters- und Hinterlassenenversicherung)	Title of the law: Act on the National Old Age and Widow's /Widower's Pension (Gesetz über die Alters- und Hinterlassenenversicherung) Abbreviation: AHVG Date of adoption: 14.12.1952 Latest amendments: LGBl. 2016 no. 230 Entry into force: 15.12.1952 Web link: https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lglid=1952029000&version=11&search_text=AHVG&search_loc=abk_list&sel_lawtype=conso&compl_list=1&rechts_gebiet=0&menu=0&tablesel=0&observe_date=18.05.2017 Grounds covered: age, disability Civil/administrative/criminal law: Civil Law Material scope: Principal content: pension insurance

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Liechtenstein
Date: 1 January 2018

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 November 1978 ¹⁴⁵	8 September 1982	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 ¹⁴⁶	Not ratified	N/A	N/A	N/A
International Covenant on Civil and Political Rights (CCPR)	16 December 1966 ¹⁴⁷	10 December 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 with other rights contained in the present Covenant.'	Yes	Yes

¹⁴⁵ European Convention on Human Rights (*Europäische Menschenrechtskonvention*), LGBl. 1982 no. 60/1), link: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1982060001&gueltigdate=02032016>.

¹⁴⁶ Source: <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=7&DF=26/10/2008&CL=ENG>.

¹⁴⁷ International Covenant on Civil and Political Rights (*Internationaler Pakt vom 16 Dezember 1966 über bürgerliche und politische Rechte*), LGBl. 1999 no. 58, link: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1999058000&gueltigdate=02032016>.

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?
Framework Convention for the Protection of National Minorities	No signature. Direct Ratification ¹⁴⁸	18 September 1997	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, Social and Cultural Rights (CESRC)	No signature. Direct Ratification	10. December 1998 ¹⁴⁹	No derogations.	Yes	Yes

¹⁴⁸ Framework Convention for the Protection of National Minorities (*Rahmenübereinkommen vom 1. Februar 1995 zum Schutz nationaler Minderheiten*), LGBl. 1998 no. 10, link: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbld=1998010000&gueltigdate=02032016>.

¹⁴⁹ International Covenant on Economic, Social and Cultural Rights (*Internationaler Pakt vom 16. Dezember 1966 über wirtschaftliche, soziale und kulturelle Rechte*), LGBl. 1999 no. 57, link: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbld=1999057000&gueltigdate=02032016>.

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?
Convention on the Elimination of All Forms of Racial Discrimination (CERD)	No signature. Direct Ratification	1 March 2000 ¹⁵⁰	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 December 1995	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 (male primogeniture etc.)	Yes	Yes
Protocol 12, ECHR	4 November 2000	Not ratified.	N/A	N/A	N/A

¹⁵⁰ Convention on the Elimination of All Forms of Racial Discrimination (*Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung*), LGBl. 2000 no. 80, link: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgblid=20000800000&gueltigdate=02032016>.

Instru- ment	Date of signature	Date of ratificatio n	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted ?	Can this instrument be directly relied upon in domestic courts by individuals?
ILO Conventio n No. 111 on Discrimina tion	Not Signed. Liechtenst ein is not an ILO member state	N/A	N/A	N/A	N/A
Conventio n on the Rights of the Child (CRC)	30 September 1990	22 December 1995	On 1 October 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. 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	Yes	Yes

Instru- ment	Date of signature	Date of ratificatio n	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?
			Liechtenstein legislation according to which Liechtenstein nationality is granted under certain conditions.'		
Conventio n on the Rights of Persons with Disabilities (CRPD)	Not Signed	N/A	N/A	N/A	N/A

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