WG IV
Attitudes of Recipient Countries

2. Implementation of EU-Directive on Equal Treatment

Future ::: transnational meeting

Malaga, 14.-18.03.07

1. Implementation

- **How/When have the EU Directives Against Discrimination been implemented into national law?**
  - Equal Treatment Act (of men and women in the working environment) - existing in Austria since 1979 – was adapted to the non-discrimination guidelines of the EU and amended on **July 1st 2004** (federal level)
  - In implementation of directive 2000/78/EC the Equal Opportunities for Disabled Persons Package (Behinderten-gleichstellungspaket) was adopted in **July 2005** (federal level)
  - The European Court of Justice (ECJ) ruled in May 2005 that Austria had violated EU law by failing to realise fully an European Directive prohibiting discrimination on the grounds of race or ethnic origin (Directive 2000/43/EC).

- **process and discussions regarding the implementation:**
  - general hostility against EU-Regulations
  - lack of communication and cooperation between NGOs and experts on one side, the ministries in charge on the other side
  - "*There is no dialogue with NGOs at all and no standardised social dialogue on antidiscrimination*"

    (Dieter Schindlauer, Country report on Austria on measures to combat discrimination, January 2005)

2. Characteristics

"*It is a law, which must not cost a lot – ideologically and financially*."

(Johann Gstir, Head of Integration Department, Tyrol)

- Austria is a federal state with 9 provinces, with divided responsibilities between federal state and provinces: in total 25 levels of implementation

- **Federal level (Bund):**

  Equal Treatment Act (ETA)
  - Part I: equal treatment of men and women in the workplace
  - Part II: scope of directive 2000/78/EC, (employment) without disability, including race and ethnic origin (antidiscrimination)
  - Part III: all other discrimination on grounds of race and ethnic origin (antirassism)
- **Provincial level (Länder)**
  - ETAs or Anti-Discrimination Acts in all 9 provinces

2.1 Grounds & definitions

- Grounds of discrimination:
  - gender
  - race or ethnic affiliation (ethnische Zugehörigkeit)
  - religion
  - belief (Weltanschauung; philosophy, view of life)
  - age
  - sexual orientation

- The definition of discrimination covers:
  - direct and indirect discrimination
  - harassment
  - instructions to discriminate
  - victimisation

2.2 Scope and Exceptions

- Public and private sector, labour market (access to employment, education and training, counselling, re-education, working conditions, membership in employers or employees organisations, atypical and part time employment)

  on grounds of ethnic affiliation: access to social and health care services, education, goods and services - including housing
- Exceptions:
  - Employers with an ethos based on religion or belief (churches, public and private organisations)
  - Specific occupations – model, actors, e.t.c.
  - No specific regulation concerning armed forces, police, prison or emergency services

2.3 Specialised Bodies

- Two bodies
  - Equal treatment Commission
  - National Equality Body
  - + Side intervention / NGO: Klagsverband

- federal level:
  - **Equal Treatment Commission**:
    - 3 specialised senates according to 3 parts of ETA
    - members named by ministers and social partners
    - acts on single cases upon request brought up by NEB

- provincial level:
    - obliged to set up specialised bodies, at least now Equal Treatment Commission in every province

- **National Equality Body - NEB (Gleichbehandlungsanwaltschaft)**
  - Already existing institution responsible for equal treatment of women and men (until 2004/2005)
    - central office situated in Vienna
    - 4 regional offices and ombudspersons (=lawyers!)
    - 1 ombudsperson for discrimination related to employment (including race/ethnic origin)
    - 1 ombudsperson for discrimination based on race/ethnic origin outside the working environment
  - Tasks: counselling and supporting victims of discrimination, conducting independent inquiries, all persons involved are obliged to co-operate, can establish a case before the Equal Treatment Commission, publishing reports and recommendations
  - restricted to help in the procedure before the Equal Treatment Commission, help ends at the doors of the courts

Positive Action Measures

- So called “positive action” to promote equality is not regarded as discrimination
- So far no discussion on further positive measures despite
  - positive measures for women
  - national minorities defined within the National Minorities Act (Volksgruppengesetz)
  - disabled persons
- Frequently positive action measures to support younger (and older) people in regard to their opportunities on the labour market (wide range of different governmental policies, mainly coordinated and financed by the Labour Market Service (Arbeitsmarktservice – AMS)

2.3 positive/negative effects

- content:
  - no clear shift of burden of proof (the respondent has to prove that his/her arguments are likely to be true)
  - Very complicated structure
  - very low compensations and penalties (€ 360 - 500)
- Structure:
  - Independent bodies are not fully independent: always under responsibility of a ministry, would require constitutional rank for a complete independent structure
  - NGOs procedural rights are limited to side intervention (third party intervention) only allowed for one specific NGO, (“Klagsverband”)
  - \+ Making responsible the NEB (Gleichbehandlungsanwaltschaft) for equal treatment of women and man: concern of weakening this institution, but the strong expertise and experience of this institution might be to most positive force to implementing ETA in Austria

3. Information

- general information leaflet of the National Equality Body (homepage, leaflet and information material on demand), the Austrian Trade Union (ÖGB) and Chamber of Labour
- some smaller projects financed by the Federal Ministry of Economic Affairs and Labour and the EU Anti-Discrimination Action Programme

  (see also http://www.stop-discrimination.info/index.php?id=1165%20_top)
- Esf-Projects under equal I / equal II

- no marketing campaign when the Ombudspersons for Equal Treatment responsible for the other discrimination grounds covered by the EU Equality Directives took up their activities in March 2005 – but:
- „ *On grounds of Equal Opportunities for Disabled Persons Package (Behindertengleichstellungspaket) Herbert Haupt, former Minister and member of the Alliance Future Austria (BZÖ), was nominated for the Ombudsperson for Disabled Persons on 23.12.2005. The establishment of this new body is accompanied by an extensive marketing campaign launched by the Ministry of Social Security, Generations and Consumer Protection including TV spots, radio spots, advertisements and the production of a special edition of chocolate*.“

  (RAXEN National Report 2005 (European Racism and Xenophobia Information Network) National Focal Point for AUSTRIA)

4. Cases

- no cases on ethnic and racial discrimination yet concluded
- 2006: 2 ongoing cases (working life, access to goods and services)
- Reasons
  - General constraint to take legal actions
  - mistrust, negative experiences with legal system and it's representatives from migrants' side
  - the risk of high costs of civil law procedures
  - very low sanctions and remedies,
  - no successful examples yet

- General remarks:
  - generally used procedures:
    - civil law procedures
    - employment law procedures (Compensation **max. € 500**)
  - Administrative penal only against discriminatory advertisement (**max. administrative fine € 360**)
  - strict time-limit for bringing up claims: 2 weeks (dismissal), 6 months (employment or promotion) 3 years for civil-law claims
  - very complicated legal situation, also in cases where it is not compulsory to be represented by a lawyer, it seems necessary
  - Costs: In labour law cases the trade unions or the Chamber of Labour can grant their members a complete protection

5. Requirements

1. To correct shortcomings like: e.g. burden of proof, low amount of compensations and penalties ...
2. Serious information and sensitisation campaign
3. To increase and enforce the dialogue between NGOs and federal/provincial bodies, to strengthen side party intervention
4. Data collection on discrimination in the fields of education: neither official nor unofficial data available!
5. To implement courses on equal treatment legislation in law studies