

Reasonable accommodation in the grounds of religion and belief and gender

Issues in counselling practise
Sandra Konstatzky
Ombud for Equal Treatment



Scope of Austrian Equal Treatment Act

- Sex/gender, ethnic origin, religion and belief, sexual orientation and age in employment
- Sex/gender and ethnic origin beyond employment
- Disability → separate law



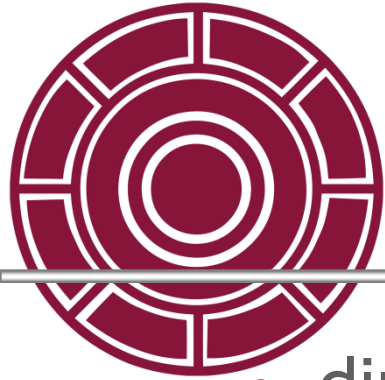
Ombud for Equal Treatment

- counsel and support victims of discrimination
- bring cases before the Equal Treatment Commission
- multiple ground cases with disability → separate institutions, but Ombud can still support



Accessibility duties as Anti-discrimination

- Reasonable Accommodation concept is not mentioned in the Equal Treatment Act
- Objective of the law
 - Inclusion?
 - Fair treatment?
- Third party-effect of human rights



Concept of discrimination

- direct: one person is treated less favourably than another is, has been or would be treated in a comparable situation
- indirect: an apparently neutral provision, criterion, practise put persons at a particular disadvantage → justification possible
- adaption of the workplace, work arrangements and access to goods and services referred to the grounds of sex/gender and religion and belief



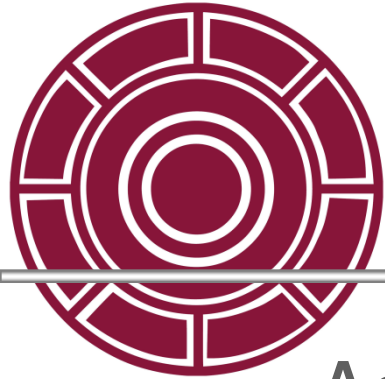
Sex/Gender Cases

- Work arrangements: reconciliation work and private life
- Ms A has to reduce working hours because of child care and asks for part-time work. The employer refuses without any reason.



Sex/Gender Cases

- Equal Treatment Commission considered indirect discrimination
- women or gender roles?
- justification possible, proportionality
- active duty of an employer to care for working conditions referring to gender roles?



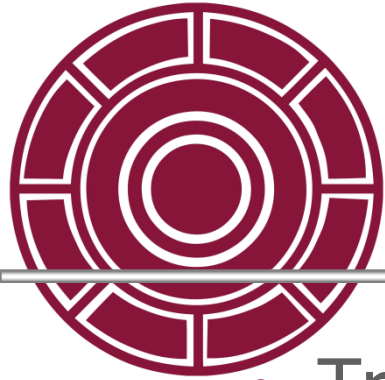
Sex/Gender Cases

- Access to work
- Ms P wants to work in a male dominated work place. There are just male toilets. That is why the employer does not want to take her for the job.



Sex/Gender: answers in labour law and in public administration

- Parental leave, rights to work part time in **maternity protection and parental leave provisions**
- Duty in **labour protection law** to build separate toilets when there are five female and five male workers and financial support from labour ministries for adaption of work place building female toilets



Sex/Gender Cases

- Trans person
- Ms B is in the process of a sex reversal from man to woman. She works as a metal worker and has to take a shower after the working day. In the ongoing process of reversal she does not want to shower together with her male colleagues, so she has to wait until every other colleague had his shower. There is a separate shower in the company but Ms B is not allowed to take her shower there.



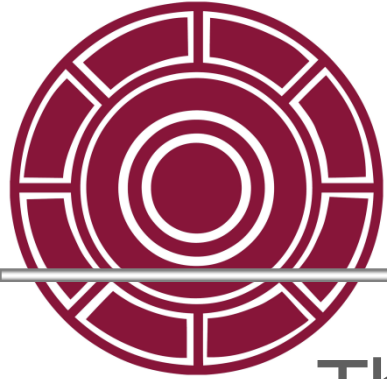
Sex/Gender Cases

- Equal Treatment Commission considered discrimination
- Refusal of the possibility to shower in a separate shower room was seen as discrimination
- „There has to be high sensitivity for the special needs of trans persons“
- „lack of role model for the colleagues to deal with trans persons“



Sex/Gender Cases

- Trans persons
- A transgender person, Ms L, who is physically male but dresses female wants to use the female toilet – also to put her face on. A muslim woman does feel dicriminated because of that. She does not want to use the toilet when Ms L uses it.



Religion and belief

- There is a canteen at a company. They cook pork meat and sell alcohol. Muslim people feel discriminated against.
- No individual cases but requests from employers



Religion and belief

- There is a security problem to work with a muslim headscarf. Should employers offer special head coverings which are for example fireproof?
- Some best practices in companies



Religion and belief

- Collision between working time and duties to prayer
- Provision in the Austrian Act on Rest Period: If an employee works at weekends and on a holiday he/she has the right of exemption to fulfill his/her religious duties
- what about occasional trainings and retraining which affect duties of prayer?
- Duty to provide a special room to fulfill the religious duties?



Cases with Service providers

- pork meet in kindergarden
- provide a seperate fridge for Jewish people in hotels
- Duty to get interpreter for health service
- Trans persons in fitness clubs



Challenges in counselling practise

- No third-party effect of human rights in ETA
- Inclusion as an active duty is not mentioned in the ETA
- Objective of the ETA referred to Gender: „full equality“ (not mentioned with other grounds)
→ indirect discrimination issues/justification?
- no court decisions
- Ombud tries to find compromises and discuss proportionate solutions



Challenges in counselling practise

- Multiple discrimination cases with the ground of disability and other grounds
- Reasonable Accommodation referred to grounds of gender/sex and religion can sometimes affect others
- a lot of labour (protection) law provisions besides the ETA (Parental leave, etc.) that concerns reasonable accommodation issues in ground of gender/religion → Ombud has no legal competence in these areas



Challenges for the Ombud for Equal Treatment

- There should be a strategic active approach in the companies for best practice
- Ombud for Equal Treatment has to address employers/service providers actively
- „Gleichbehandlung UNTERNEHMEN“