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# Country report

## Non-discrimination

Liechtenstein  
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including summary



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# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

## **Liechtenstein**

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Reporting period 1 January 2018 – 31 December 2018

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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
ACUSSC	Act on Civil Union for Same-Sex Couples
ACY	Act on Children and Youth
ADI	Act on Disability Insurance
AEICT	Act on Employment in Industry, Commerce and Trade
AEPD	Act on Equality of People with Disabilities
AEPO	Act on the Employment of Public Officials
AEWM	Act on Equality between Women and Men
AF	Act on Foreigners
AFM	Act on the Free Movement of Persons from the EEA and Switzerland
AIC	Act on Informing and Consulting Employees in Enterprises
AM	Act on the Media
AMA	Act on Marriage
AMCLC	Act on Mediation in Civil Law Cases
AOP	Act on Occupational Pensions.
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
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
EEA	European Economic Area
DPA	Data Protection Act
LC	Constitution of the Principality of Liechtenstein
NOWP	National Old Age and Widow's/Widower's Pension Act
PCL	Personal and Corporate Law
VMR	Verein für Menschenrechte – Association for Human Rights in Liechtenstein

## 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 of the Principality of Liechtenstein and relevant international treaties.

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.

Liechtenstein has not signed nor ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which is regarded as a global standard. Given the recommendations to ratify the CRPD by the Human Rights Council's Working Group on the Universal Periodic Review in February 2018, discussions on this issue have gained new momentum at national level. At the end of September 2018, the Government organised a national conference to evaluate the impact of ratifying the CRPD. The outcome has not yet been made public, and no decision has been taken by the Government on the issue so far.<sup>1</sup>

There has been no official case law in Liechtenstein in 2018 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

In Liechtenstein there exists no specific anti-discrimination law covering all five grounds under the directives. Besides the anti-discrimination provisions in various national acts listed below, judicial interpretation is required to confirm whether the general anti-discrimination provisions in the Constitution are sufficient to protect against discrimination.

The following list of anti-discrimination laws in Liechtenstein includes those laws that explicitly cover the relevant grounds of discrimination:

- The Common Civil Code (CCC) states that the exercise of civil and political rights is not dependent on religious affiliation;

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<sup>1</sup> The aim of the CRPD is the comprehensive inclusion of persons with disabilities, i.e. their unrestricted participation in social, economic, cultural and political life. Following a Government statement towards the end of 2017 in response to a brief parliamentary enquiry from an individual parliamentarian, available at <https://www.landtag.li/kleineanfragenprint.aspx?id=13514&t=636970674903984073>, national legislation in this regard now largely complies with the provisions of the Convention.



- the Act on Equality of People with Disabilities (AEPD)<sup>2</sup> protects individuals against any kind of discrimination based on disability;
- the Act on Equality between Women and Men (AEWM)<sup>3</sup> states that disadvantaging someone on the ground of his or her gender is forbidden;
- the Act on Children and Youth (ACY)<sup>4</sup> protects children and young persons from discrimination due to sexism, racism, political radicalisation or violence;
- the Act on Postal Services (APS)<sup>5</sup> explicitly prohibits any discrimination based on political, religious or ideological grounds in this area;
- the Act on the Media (AM)<sup>6</sup> 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 the Employment of Public Officials (AEPO)<sup>7</sup> governs protection against dismissal in the public sector in relation to the AEWM and the AEPD;
- the Act on Informing and Consulting Employees in Enterprises (AIC)<sup>8</sup> states that employees are not allowed to be treated less favourably due to their involvement in a workers' representative organisation;
- the Criminal Code<sup>9</sup> 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. This is likewise applicable to anyone who publicly disseminates ideologies aimed at the systematic degradation or defamation of persons.

### **Constitution of the Principality of Liechtenstein<sup>10</sup>**

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, the fundamental rights laid down in the ECHR have been 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.

The international treaties that are deemed explicitly relevant to the Constitutional Court's jurisdiction are listed in Article 15(2) of the Act on the Constitutional Court.<sup>11</sup>

### **Act on Equality of People with Disabilities (AEPD)<sup>12</sup>**

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

<sup>2</sup> Gesetz vom 25 Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen, Behindertengleichstellungsgesetz, BGIG; LGBl. 2006, No. 243.

<sup>3</sup> Gesetz vom 10 März 1999 über die Gleichstellung von Frau und Mann, Gleichstellungsgesetz; LGBl. 1999, No. 96.

<sup>4</sup> Kinder- und Jugendgesetz vom 10 Dezember 2008, KJG; LGBl. 2009, No. 29.

<sup>5</sup> Gesetz vom 18 Dezember 1998 über das liechtensteinische Postwesen, Postgesetz, PG; LGBl. 1999, No. 35.

<sup>6</sup> Mediengesetz, MedienG vom 19 Oktober 2005; LGBl. 2005 No. 250.

<sup>7</sup> Gesetz vom 24 April 2008 über das Dienstverhältnis des Staatspersonals (Staatspersonalgesetz, StPG; LGBl. 2008 No. 144.

<sup>8</sup> Gesetz über die Unterrichtung und Anhörung der Arbeitnehmerschaft in den Betrieben, Mitwirkungsgesetz; MWG; LGBl. 1997, No. 211.

<sup>9</sup> Strafgesetzbuch, StGB; LGBl. 1988, No. 37.

<sup>10</sup> Constitution of the Principality of Liechtenstein (Verfassung des Fürstentums Liechtenstein, LV), LGBl. 1921 No. 15.

<sup>11</sup> Liechtenstein, Act on the Constitutional Court, (Gesetz vom 27 November 2003 über den Staatsgerichtshof) (StGHG), LGBl. 2004 No. 32.

<sup>12</sup> Liechtenstein, Act on Equality of People with Disabilities, (Gesetz über die Gleichstellung von Menschen mit Behinderungen), LGBl. 2006 No. 243.

## **Criminal Code**

In addition, the scope of Article 283 of the Criminal Code was extended to other groups worthy of protection against discrimination in 2016, thus following a recommendation of the European Commission against Racism and Intolerance (ECRI) from its Fourth Country Report 2013. The law now states that any person shall be punished with imprisonment of up to two years if they

- publicly incite hatred or discrimination against another person or any group of persons on the grounds of their race, language, nationality, ethnic origin, religion or ideology, gender, disability, age, or sexual orientation;
- publicly disseminate ideologies that have as their objective the systematic denigration or defamation of persons on the same grounds as listed above;
- with the same objective, organise, encourage or participate in propaganda campaigns;
- publicly denigrate or discriminate against another person or group of persons on the grounds listed above in a manner that violates human dignity, whether verbally, in writing or pictorially, by using signs transmitted by electronic media, gestures, through acts of aggression or otherwise;
- publicly deny, grossly trivialise or seek justification for genocide or other crimes against humanity, whether verbally, in writing or pictorially, by using signs transmitted by electronic media, gestures, through acts of aggression or otherwise;
- refuse to provide a service that is intended to be provided to the general public to another person or a group of persons on the grounds listed above;
- take part as a member of a group whose activity consists in promoting or inciting discrimination within the meaning of the present provision.

Furthermore, the Criminal Code states that any person shall likewise be punished who, with regard to discriminatory written materials, audio or video recordings, signs transmitted by electronic media, images or other objects of this kind,

- produces, imports or stores them or brings them into circulation for the purposes of dissemination;
- publicly advertises, exhibits, offers or shows them.

## **International human rights treaties**

Liechtenstein has signed and ratified the following main international human rights treaties, among others:

- the International Covenant of 16 December 1966 on Economic, Social and Cultural Rights; entry into force: 10 March 1999;
- the International Covenant of 16 December 1966 on Civil and Political Rights, entry into force: 10 March 1999;<sup>13</sup>
- the International Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination; entry into force: 31 March 2000;
- the Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women; entry into force: 21 January 1996;<sup>14</sup>
- the Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; entry into force: 2 December 1990;<sup>15</sup>
- the Convention of 20 November 1989 on the Rights of the Child; entry into force: 21 January 1996.<sup>16</sup>

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<sup>13</sup> Including the Optional Protocol of 16 December 1966; entry into force: 10 March 1999; and the Second Optional Protocol of 15 December 1989, aiming at the abolition of the death penalty; entry into force: 10 March 1999.

<sup>14</sup> Including the Optional Protocol of 6 October 1999; entry into force: 24 January 2002.

<sup>15</sup> Including the Optional Protocol of 18 December 2002; entry into force: 3 December 2006.

<sup>16</sup> Including the Optional Protocol of 25 May 2000 on the involvement of children in armed conflict.

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.<sup>17</sup> Liechtenstein law includes various legal acts, covering most aspects of the above-mentioned international human rights treaties. This applies in particular to the equal treatment of women and men and to discrimination on the ground of disability.

### **3. Main principles and definitions**

Out of the grounds covered by this report, direct discrimination is explicitly prohibited only on the ground of disability (AEPD, Article 6(1)). It is defined 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 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 a period of imprisonment of up to two years. Furthermore, participation as a member of an association whose activity 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.

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 or 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 their workplaces to the needs of people with disabilities. This does not harm anti-discrimination provisions.

According to Article 5 of the AEPD, 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

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<sup>17</sup> 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), its Optional Protocol on the sale of children, child prostitution and child pornography; and its Optional Protocol on a communications procedure.

in court proceedings, or anyone 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 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. The provisions on victim assistance in the Victim Assistance Act (*Opferhilfegesetz, OHG*) also extend the legal scope of civil law compensation provisions and substantive criminal law provisions with regard to anti-discrimination.<sup>18</sup>

There was no case law regarding discrimination or multiple discrimination in Liechtenstein in 2018.

#### **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 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 (k)) relating to disability in the context of social protection, education and access to goods and services. There is no explicitly mentioned protection against discrimination on grounds other than disability and gender in either employment or non-employment law.

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 law 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.

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<sup>18</sup> For example, victims of racist assaults can make a claim for compensation within the framework of criminal proceedings (Article 32 of the Criminal Procedure Code). Compensation for non-material damages can be claimed through civil law. Both criminal law and civil law allow for the use of procedural assistance, which includes, among other things, an exemption from legal costs.

Victim Assistance Act, available at: <https://www.gesetze.li/konso/pdf/2007228000?version=6>.

Complaints are brought to the ordinary courts or, in the case of a complaint against a public authority, to the Administrative Court. Court procedures can be carried out in person or through 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 for discrimination on their own behalf. Such associations can, on their own behalf, call upon the courts to consider that a discrimination has occurred. As a consequence, the discriminatory actions in question must be eliminated if the court finds that such discrimination has occurred.

Since an amendment was made to the Criminal Code in 2016, introducing a comprehensive prohibition of discrimination, not only racial discrimination but public incitement to hatred or discrimination on the basis of language, nationality, ethnicity, religion, ideology, gender, disability, age, or sexual orientation now constitute a criminal offence, subject to a custodial penalty of up to two years (Article 283(1), first and fourth sentences, of the Criminal Code).<sup>19</sup>

Complaints relating to these anti-discrimination provisions are 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 can be brought to court in the same way as claims based on national law, including the AEPD.

Procedures for addressing discrimination in employment in the private sector are not the same as in 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 must be carried out according to the CCP, although there is an exception with respect to the burden of proof. The AEPD states that, for complaints 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 and the use of situation testing in the context of discrimination are not explicitly permitted, but nor are there general restrictions on the use of such material under national law. One can assume, however, 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, there are currently 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, starting from the day on which the person concerned first learned about the act of discrimination and the perpetrator, or in any event lasting three years from the day when the act of discrimination occurred. The provisions of the Common Civil Code (CCC) apply correspondingly to further preconditions for statutory limitation.

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

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<sup>19</sup> See also the draft report of the Working Group on the Universal Periodic Review, February 2018, p. 10, available at: <https://www.llv.li/files/aaa/liechtenstein-full-draft-report-for-circulation-ad-referendum.pdf>.

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 the question whether there has been multiple discrimination, must be taken into account. No limits on compensation are set out in the law.

## 6. Equality bodies

Given that the directives have not been transposed into Liechtenstein law, no equality bodies have been officially designated in accordance with the directives. 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**<sup>20</sup> was set up by the Government in accordance with 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:

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

The **Association for Human Rights in Liechtenstein** (Verein für Menschenrechte, VMR)<sup>21</sup> 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.<sup>22</sup> 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 has the following main functions:

- Advising authorities and private individuals on human rights issues;
- Acting as the independent ombudsman for children and young people;
- Counselling people 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 on the ratification of international conventions;
- Promoting dialogue and cooperation with human rights bodies.

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

It should be mentioned that, in respect of either body, there are no specific complaints mechanisms in place for an individual to complain to a treaty body. Since the purpose of

<sup>20</sup> Office for the Equality of Persons with Disabilities (*Büro für die Gleichstellung von Menschen mit Behinderung*). See: <http://www.lbv.li/>.

<sup>21</sup> Association for Human Rights in Liechtenstein (*Verein für Menschenrechte in Liechtenstein*). See: <https://www.menschenrechte.li/category/ueber-uns/>. Act on the Association for Human Rights in Liechtenstein, 2016, No. 504. Available at: <https://www.gesetze.li/konso/pdf/2016504000?version=1>.

<sup>22</sup> As Directive 2000/43 has not been transposed in Liechtenstein, the body has not been officially designated in accordance with Article 13.

the Association for Human Rights in Liechtenstein is the protection and promotion of human rights in Liechtenstein, the Association can only perform an advisory function on human rights issues with regard to private individuals. The same is true for the Office for the Equality of Persons with Disabilities. Its main responsibility is advising private individuals on issues relating to the integration and equality of persons with disabilities.

## **7. Key issues**

- In 2018, the Principality of Liechtenstein was reviewed for the third time by the UN Human Rights Council. The questions and recommendations of the participating UN representatives focused, among other topics, on the ratification of the CRPD. Nearly half of the statements made on this subject recommended that Liechtenstein ratify the Convention. In its statement regarding the recommendations for a speedy ratification of the CRPD, Liechtenstein rejected them for the present time. As justification, the Government stated that a process is planned, in cooperation with various organisations and civil society, to clarify in detail the anticipated effects of ratification. A final decision on ratification will be taken on the basis of the outcome of this process.
- The CRPD includes claims to self-determination, freedom from discrimination and equal participation in society, enshrining them in a legally binding manner and linking them with enforcement instruments. According to the Convention, individual autonomy and social inclusion are indissolubly linked, and they must always be considered together in the practical implementation of commitments. Thus, challenges are envisaged for Liechtenstein regarding the extent of adjustments to the structure of social welfare and in the provision of adequate financial resources, including those required to fund more social assistance services and outpatient services in support of people with disabilities in everyday life.
- A relevant education structure is in place to integrate children with disabilities into regular schools. In practice, however, many young people with disabilities attend the Special Education Centre, especially those with intellectual impairment. According to the Association for the Disabled, the inclusion effort should be expanded in order to integrate children with disabilities in regular schools in a much more comprehensive way, including by increasing the number of specialised teachers. In the area of tertiary education, no measures or policies at a state level are in place. Furthermore, statistical data and information are lacking for Liechtenstein. One recommendation is therefore to conduct statistical research to help understand the situation of young people with disabilities and to support them in an effective and useful way.
- Additional focus from the Government may be given to specific employment schemes and to political support to encourage private sector employers to put more effort into integrating unemployed persons with disabilities (e.g. state contributions to social security payments, financial promotion of employment and setting up internships).
- The situation in Liechtenstein is unchanged as regards case law. There was no case law concerning discrimination on the grounds of race or ethnic origin, age, disability, religion and belief or sexual orientation in 2018. A very small number of victims actually bring their cases to court. Furthermore, as there has not been any case law so far in which situation testing or statistical data have been used as evidence in relation to discrimination, no prior judgement can be made about the acceptance of this, or about any ethical or methodological issues. This issue can be described as unknown terrain within the legal framework of Liechtenstein.

## INTRODUCTION

### The national legal system

Liechtenstein's Constitution defines the country as 'a constitutional, hereditary monarchy on a democratic and parliamentary basis',<sup>23</sup> where 'the power of the State is embodied in the Reigning Prince and the People'.<sup>24</sup> 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.<sup>25</sup> 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. Therefore, new laws and amendments to laws and the Constitution can 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 signed by the reigning Prince.<sup>26</sup>

The legal system is dual in nature. Criminal and civil law is handled by the Ordinary Courts (*Landgericht*); appeals in the first instance are dealt with 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 regulations 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 annexes.

### 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) and Directive 2000/78/EC (Council Directive establishing a general framework for equal treatment in employment and occupation) have not been transposed to EEC law and therefore to national law in Liechtenstein. Both these directives were considered not to be EEA relevant, because Articles 6 and 13 of the Treaty establishing

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<sup>23</sup> 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>.

<sup>24</sup> Article 2 of the Constitution.

<sup>25</sup> Article 9 of the Constitution.

<sup>26</sup> Constitution of the Principality of Liechtenstein (English version; copy link into web browser): <https://www.gesetze.li/lilexprod/dloadpdf.jsp?smatik=201>.



the European Community (TEC) (in the Amsterdam version) form the legal basis, and there are no provisions that correspond to these articles in the EEA Agreement. An adoption of the directives would thus have extended the scope of the EEA Agreement.

The following national laws are of relevance in terms of equality and anti-discrimination legislation:

- Act on Equality of People with Disabilities;<sup>27</sup> date of adoption: 09.06.2016; grounds covered: disability; material scope: all sectors; Criminal Code;<sup>28</sup> date of adoption in relation to discrimination: 28.01.2016; grounds covered: all; material scope: penalties;<sup>29</sup> Act on Equality between Women and Men;<sup>30</sup> date of adoption: 04.11.2016; grounds covered: disability; material scope: general. The amendments were necessary because of the new act regarding the Association for Human Rights in Liechtenstein (Verein für Menschenrechte, VMR).

Liechtenstein has been a State Party to the International Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination since 2000 (LGBI. 2000 No. 80). In 2013, Liechtenstein committed itself to signing the CRPD, including the Optional Protocol to the Convention.<sup>31</sup> Liechtenstein's Government is well aware that its commitment had not yet been fulfilled by the end of 2018.<sup>32</sup> Liechtenstein has not yet acceded to the Convention.

With the participation of its member organisations, the **Association for Human Rights in Liechtenstein** (VMR)<sup>33</sup> pointed out in its 2018 report that, in the field of disability, the ratification of the CRPD, as a comprehensive and ground-breaking instrument for shaping disability policy, was a central concern for the Association. Occasionally, a more comprehensive type of 'case management' has been desired, with better coordination of the various institutions providing assistance under a single leadership. Increased attention is also demanded for the specific needs of people with mental illnesses. In the view of the VMR, there is nothing to prevent the signing and ratification of the CRPD and its Additional Protocol on the right of individual complaints, especially since the Convention can provide important impulses for the shaping of Liechtenstein policy on the treatment of people with disabilities.

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<sup>27</sup> *Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz, BGIG; LGBI. 2006 No. 243, available at:*

<https://www.gesetze.li/konso/pdf/2006243000?version=4>.

<sup>28</sup> *Strafgesetzbuch; StGB; LGBI. 1988 No. 37, available at: https://www.gesetze.li/konso/pdf/1988.37.*

In 2016, an amendment to Article 283 of the Criminal Code (StGB) entered into force, introducing a comprehensive prohibition against discrimination. Criminal offences now include publicly inciting hatred or discrimination on the grounds of language, nationality, ethnic origin, religion, ideology, gender, disability, age, or sexual orientation as well as racial discrimination.

<sup>29</sup> Amendment to the Criminal Code: see LGBI No. 2016.014, available at:

<https://www.gesetze.li/chrono/2016014000>).

<sup>30</sup> *Gleichstellung von Frau und Mann, Gleichstellungsgesetzes, GLG; LGBI. 1999 No. 96, available at:*

<https://www.gesetze.li/konso/pdf/1999096000?version=5>.

<sup>31</sup> Second national report for the Universal Periodic Review (UPR) of the Human Rights Council, 16.10.2012; see: Recommendations Nos. 64/2, 64/3 and 65/1, Convention on the Rights of Persons with Disabilities and its Optional Protocol.

First national report for the Universal Periodic Review (UPR) of the Human Rights Council, 26.08.2008, point 61, available at: <https://www.llv.li/files/aaa/pdf-llv-aaa-upr-bericht-final-aug.08-de.pdf>.

<sup>32</sup> Report of the third Universal Periodic Review, Working Group of the Human Rights Council, February 2018, available at: <https://www.llv.li/files/aaa/liechtenstein-full-draft-report-for-circulation-ad-referendum.pdf>.

<sup>33</sup> <https://www.menschenrechte.li/>.

# 1 GENERAL LEGAL FRAMEWORK

## Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of the Principality of Liechtenstein includes the following articles dealing with non-discrimination:

Article	Type of clause	Grounds covered	Material scope
Article 27bis <sup>34</sup>	A general clause, not listing any specific grounds of discrimination. The article says: 'Human dignity must be respected and protected. No one shall be subjected to inhuman or degrading treatment or punishment.' <sup>35</sup>	Basic principle of equality of all Liechtenstein citizens	General
Article 31	A general clause on equality between persons with Liechtenstein citizenship.	Basic principle of equality of all Liechtenstein citizens	General
Article 37(1) <sup>10</sup>	An explicit clause that guarantees freedom of religion and conscience	Religion, belief	General
Article 39 <sup>10</sup>	A specific clause stating that the exercise of civil and political rights is not dependent on religious affiliation	Religion, belief	General
Article 40 <sup>10</sup>	A clause covering freedom of speech ( <i>Meinungsfreiheit</i> )	Religion, belief	General
Article 41 <sup>10</sup>	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, and their material scope is not broader than those of the directives. They are directly applicable and can be enforced against private individuals (as well as 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,<sup>36</sup> the fundamental rights laid down in the ECHR have been 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.

<sup>34</sup> Constitution of the Principality of Liechtenstein (*Verfassung*) (English version; copy link into web browser): <https://www.gesetze.li/lilexprod/dloadpdf.jsp?smatik=201>.

<sup>35</sup> As far as the authors are aware, this article has never been interpreted or challenged to include protection on the basis of sexual orientation.

<sup>36</sup> *Gesetz über den Staatsgerichtshof, StGHG*; LGBI. 2004 No. 32, available at: <https://www.gesetze.li/konso/pdf/2004032000?version=8>.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

Besides gender, disability is the only ground that is explicitly covered by specific anti-discrimination law in Liechtenstein. The Act on Equality of People with Disabilities (AEPD)<sup>37</sup> protects individuals against any kind of discrimination based on **disability**.

Furthermore, the fourth sentence of Article 283(1) of the Criminal Code includes a comprehensive prohibition against discrimination on the grounds of language, nationality, ethnic origin, ideology,<sup>38</sup> gender, disability, age, or sexual orientation.<sup>39</sup> 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.

The Act on the Media (AM)<sup>40</sup> 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 Code<sup>41</sup> is applicable to a wider circle of persons.

The Act on the Employment of Public Officials (AEPO)<sup>42</sup> regulates protection against dismissal in reference to the AEPD (Article 22(3)) and the Act on Equality between Women and Men (AEWM).<sup>43</sup>

In addition, the following grounds of discrimination are protected by other types of legislation in very limited circumstances:

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

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

There is no general anti-discrimination law in Liechtenstein. Thus, besides the AEPD, Article 3(1) of which provides a definition of the ground of disability, no definition of any other grounds of discrimination are provided. For definitions, a reference can be made to the European Convention on Human Rights (ECHR).<sup>44</sup> In 2005 the Liechtenstein

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<sup>37</sup> *Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz, BGIG*, available at: <https://www.gesetze.li/konso/pdf/1999096000?version=5>.

<sup>38</sup> The Criminal Code does not define ideology. Thus, judicial interpretation would be needed here.

<sup>39</sup> 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).

<sup>40</sup> *Mediengesetz, MedienG*, LGBl. 2005 No. 250, available at: <https://www.gesetze.li/konso/pdf/2005250000?version=8>.

<sup>41</sup> *Strafgesetzbuch, StGB*, LGBl. 1988, No. 37, available at: <https://www.gesetze.li/konso/pdf/1988037000?version=18>.

<sup>42</sup> *Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz; StPG*, LGBl. 2008 No. 144, available at: <https://www.gesetze.li/konso/pdf/2008144000?version=8>.

<sup>43</sup> *Gesetz über die Gleichstellung von Frau und Mann, GLG*, LGBl. 1999, No. 96, available at: <https://www.gesetze.li/konso/pdf/1999096000?version=5>.

<sup>44</sup> European Convention on Human Rights (*Konvention zum Schutze der Menschenrechte und Grundfreiheiten*), LGBl. 1982, No. 60, Article 14, available at: <https://www.gesetze.li/konso/pdf/1982060001?version=2>.

Constitutional Court pointed out that, according to the settled case law of the Constitutional Court, the ECHR holds a constitutional status,<sup>45</sup> and that the definitions within the ECHR are applicable to Liechtenstein and national law.

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.<sup>46</sup>

a) Racial 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,<sup>47</sup> which gives a definition of discrimination on grounds of race or ethnic origin in terms of practical usage.

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

b) Religion and belief

The Liechtenstein legal framework does not contain a specific legal definition of religion or belief. An interpretation of how 'religion' is defined may be based on Article 9 of the European Convention on Human Rights (ECHR).<sup>48</sup>

c) Disability

Article 3(1) of the AEPD gives the following 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. In Article 29 of the Disability Insurance Act, disability is defined as the probable permanent or prolonged incapacity for work caused by physical or mental damage to health as a result of a birth defect, illness or accident.<sup>49</sup> It can be assumed by this definition that illness may be regarded as a disability under the AEPD. Thus, the AEPD states that, in the case of unequal treatment on grounds of a characteristic related to a disability, there shall be no discrimination where the characteristic concerned constitutes a genuine and determining occupational qualification by reason of the nature of the

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<sup>45</sup> See Constitutional Court 2005/89, available at: <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>.

<sup>46</sup> International Convention on the Elimination of All Forms of Racial Discrimination (*Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung*), LGBl. 2000, No. 80. The Convention 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.'

<sup>47</sup> Criminal Code (*Strafgesetzbuch, StGB*), LGBl. 1988, No. 37, available at: <https://www.gesetze.li/konso/pdf/1988.37>.

<sup>48</sup> European Convention on Human Rights (*Konvention vom 4 November 1950 zum Schutze der Menschenrechte und Grundfreiheiten*), LGBl. 1982, No. 60/1, available at: <https://www.gesetze.li/konso/1982060001>.

<sup>49</sup> Disability Insurance Act, available at: <https://www.gesetze.li/konso/pdf/1960005000?version=39>.

particular occupational activities concerned or the context in which they are carried out, and where the objective is legitimate and the requirement proportionate.

d) Age

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

e) Sexual orientation

The Liechtenstein legal framework does not contain a specific legal definition of sexual orientation. Even the Act on Civil Union for Same-Sex Couples (ACUSSC)<sup>50</sup> contains no definition of sexual orientation. Based on the case law known to the authors, no definitions of sexual orientation have been made by the courts.

### 2.1.2 Multiple discrimination

In Liechtenstein, multiple discrimination is prohibited by law.

The AEPD states in Article 23 (in combination with Article 5) that multiple discrimination must be taken into account when deciding on compensation for immaterial damages at a court trial. However, 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). No plans for the adoption of such rules are 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, discrimination based on a perception or assumption of a person's characteristics is not prohibited in national law.

National law (including case law) does not explicitly prohibit discrimination by assumption. According to the regulations under Article 26 of the AEPD, if a person claims in court that they have been the subject of discrimination pursuant to Articles 5 to 10 of the AEPD, they must substantiate this fact. In cases where direct discrimination is invoked, on the other hand, it is for the defendant to prove that it is more probable, weighing up all the circumstances, that another motive invoked by them was decisive as far as the difference in treatment was concerned, and that the matter should not therefore count as discrimination.

b) Discrimination by association

In Liechtenstein, discrimination based on association with persons with particular characteristics is not prohibited in national law. National law (including case law) does not explicitly prohibit discrimination by association; the law is silent on the matter.

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<sup>50</sup> Act on Civil Union for Same-Sex Couples (*Gesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare, Partnerschaftsgesetz, PartG*), LGBl. 2011, No. 350, available at: <https://www.gesetze.li/konso/pdf/2011350000?version=2>.

The AEPD contains a prohibition of 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 ground of disability (Article 5(4)).

In Liechtenstein, there is no case law dealing with discrimination by association.

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

### **a) Prohibition and definition of direct discrimination**

In Liechtenstein, direct discrimination is prohibited in national law. It is defined.

Out of the grounds covered by this report, direct discrimination is explicitly prohibited only on the ground of disability (AEPD, Article 6(1)). It is defined as occurring when a person is treated less favourably than another person has been or would be treated in a comparable situation.

The anti-discrimination provisions of the Criminal Code, which punish discrimination on the grounds of race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation, constitute a prohibition of discrimination against another person or a group of persons (Article 283(1), fourth sentence). The Code does not provide a definition of direct discrimination.

The AEPD does not include a specific provision to explicitly prohibit discrimination against people with disability regarding access to and the supply of goods and services (see chapter 3.2). Article 2(2) covers some exceptions to the general non-discrimination regulations in Article 2(1). For example, privately offered goods and services, insofar as they do not include specific items for people with disabilities, are excluded from non-discrimination law (for instance, if a beautician offers her services in a treatment room within her private building, the AEPD regulations regarding accessibility do not apply).<sup>51</sup> On the basis of 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 for direct discrimination**

In Liechtenstein, there are no specific requirements for a test to justify direct discrimination. Thus, exceptions and differential 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 long as there are obvious reasons for specific requirements to be made, this would not be interpreted as discriminating against people with other characteristics. There has not been any recent case law regarding this issue. Nevertheless, judicial interpretation would be required, and the person claiming that discrimination had taken place would have to produce evidence.

### **2.2.1 Situation testing**

#### **a) Legal framework**

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<sup>51</sup> Where such a service was offered in a building open to the public, the anti-discrimination prohibitions of the AEPD would apply.

In Liechtenstein, situation testing is not explicitly permitted in national law. The law is silent on the matter.

There are no defined conditions for using this kind of evidence in court. 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. There is no case law on the matter. Therefore, judicial interpretation would be required.

b) Practice

In Liechtenstein, situation testing is not used in practice.

As far as is known to the authors, no preparation is being made for situation testing in connection with discrimination in Liechtenstein. There is no case law on the matter.

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

a) Prohibition and definition of indirect discrimination

In Liechtenstein, indirect discrimination is prohibited in national law.

Out of the grounds covered by this report, indirect discrimination is explicitly prohibited only on the ground of disability (AEPD, Article 6(2)). It is defined as occurring when apparently neutral provisions, criteria or procedures would put some persons at a particular disadvantage compared with others on a specific ground of discrimination.

The anti-discrimination provisions of the fourth sentence of Article 283(1) of the Criminal Code, which punish discrimination on the grounds of race, language, national origin, ethnicity, religion or belief, gender, disability, age or sexual orientation, do not include any definition of indirect discrimination. The law constitutes a prohibition of discrimination against another person or a group of persons (Article 283(1), fourth sentence, of the Criminal Code).

There are no legal prohibitions in place regarding indirect discrimination in relation to other grounds.

There has not been any case law on the matter.

b) Justification test for indirect discrimination

According to the AEPD (Article 6(2)), differential 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 the AEPD is compatible with the directives.

### **2.3.1 Statistical evidence**

a) Legal framework

In Liechtenstein, there is legislation regulating the collection of personal data.

The Data Protection Act (DPA),<sup>52</sup> which refers to the EU General Data Protection Regulation, entered into force on 26 May 2018 (EU Regulation 2016/679 and 2016/680 as of 27 April 2016), and governs the protection of the personality and the fundamental rights of natural persons with regard to the collection and processing of their personal data. The provisions of Chapter III, Articles 45 and 46 DPA apply to the processing of personal data by public bodies responsible for the prevention, investigation, detection or prosecution of criminal offences or for the execution of criminal sentences, insofar as they process data for the purpose of carrying out those tasks.

In Article 46(o), the DPA specifies sensitive personal data that requires particular protection as a separate category of personal data. This special category of data consists of:

- data regarding race/ethnicity;
- data regarding religious, ideological or political beliefs;
- data on sexual orientation;
- genetic data;
- biometric data for the unique identification of a natural person;
- health data.

The law is silent about how to identify data on sexual orientation, for instance, as national law does not provide any specific definition of sexual orientation.

Data collection in respect of information about disability and age is not explicitly mentioned in the DPA, but could be subsumed under 'biometric' or 'health' data.

The processing of data from this category is only permitted if it is absolutely necessary to fulfil the institution's duties and if

- a law expressly provides for it;
- it serves to safeguard the vital interests of a person; or
- it relates to personal data which is made public by the data subject himself/herself.

Where special categories of personal data are processed, appropriate safeguards have to be provided to protect the legal interests of the data subjects.

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 or not data collection for the purposes of litigation and positive action measures should be allowed in a specific case. Data collection is allowed for statistical or scientific purposes without an explicit duty to inform the person involved about that collection of data (Article 27 of the DPA).

In Liechtenstein, the use of statistical evidence in order to establish indirect discrimination is not permitted by national law.

## b) Practice

In practice, statistical evidence is not used in order to establish indirect discrimination, and its use is not explicitly permitted by national law for this purpose. 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.

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<sup>52</sup> Data Protection Act (*Datenschutzgesetz vom 4 Oktober 2018, DSG*), LGBI. 2018, No. 272, available at: <https://www.gesetze.li/konso/pdf/2018272000?version=1>.



## **2.4 Harassment (Article 2(3))**

### **a) Prohibition and definition of harassment**

In Liechtenstein, harassment is prohibited in national law. It is defined.

Article 8 of the AEPD prohibits harassment within its specific scope on grounds of disability. 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. Thus, sexual harassment is prohibited but, apart from gender and disability, no other grounds are subject to protection against harassment.

In Liechtenstein, harassment does explicitly constitute a form of discrimination in relation to persons with disabilities. Article 8 of the AEPD clearly states that harassment constitutes discrimination, without placing limitations on the scope of this regulation. Thus, judicial interpretation would be necessary to identify certain legal barriers regarding the scope of the law.

There has not been any recent case law on the matter.

### **b) Scope of liability for harassment**

In Liechtenstein, in cases where harassment is perpetrated by an employee, the employer and the employee are liable.

In relation to the AEPD and the AEW, the individual who has been practising discrimination or harassment can be held liable under the terms of Article 5 of the AEW and 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 fails to act to remedy a situation of harassment by employees in accordance with statutory regulations and the norms and standards set out 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 occurs when a person instructs another to discriminate or harass someone on the ground of disability. The AEPD states this without placing limitations on the scope of the regulation. Thus, judicial interpretation would be necessary to identify certain legal barriers regarding the scope of the law.

The first sentence of Article 283(1) 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' and does not explicitly include the text 'instructs another person to discriminate', judicial interpretation would be needed to determine whether 'instructions to discriminate' fall under this legal definition.

In Liechtenstein, instructions explicitly constitute a form of discrimination, as set out above.

b) Scope of liability for instructions to discriminate

In Liechtenstein, the instructor and the discriminator can be held liable.

According to the first sentence of Article 283(1) of the Criminal Code, a person who publicly incites hatred or discrimination against a person or group of persons can be held liable for this action. As the law does not explicitly include the wording 'instructs another person to discriminate', judicial interpretation would be needed to determine whether 'instructions to discriminate' fall under this legal definition. Regarding the discriminator, the fourth sentence of Article 283(1) states that the person who carries out the discrimination can be punished by imprisonment of up to two years.

Article 9 of the AEPD stipulates that people who give instructions to another person to discriminate against others may be held liable. It may 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 Article 283 of the Criminal Code).

Based on the law as it stands, there is no general exclusion clause for holding a person liable for discriminating against persons on any grounds other than disability and gender because she or he received an instruction to do so from another person. There are no specific provisions regarding the liability of people who have given instructions to discriminate (e.g. to what extent they can be held liable) or of the person who discriminated against another person because she or he received an instruction to do so. Judicial interpretation is required, as such a situation would have to be evaluated and legally decided upon 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 to 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 on employers to provide reasonable accommodation for people with disabilities is not defined. It can be assumed that it is included in the law indirectly, through the prohibition of indirect discrimination. Article 10 of the AEPD states that no person shall be discriminated against directly or indirectly on grounds of disability in connection with an employment relationship in either the private or public sector or in any other sphere of employment, in particular with regard to other working conditions. Furthermore, 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. This could be interpreted as individualised measures to accommodate the needs of a specific person with a disability in a specific situation. So far, no case law has been generated, therefore judicial interpretation is needed.

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 appropriate legal tasks have been fulfilled.

If the requirements that are 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 under Articles 11 and 12 of the AEPD.

The provisions of Articles 19 and 20 of the AEPD are rather vague, setting out that the state supports the integration of people with disability, and that the community may establish appropriate programmes. Article 10(1) of the AEPD states that no one may be discriminated against directly or indirectly on the grounds of disability in connection with an employment relationship in either the private or public sector. Nevertheless, there is no legal provision that specifically obliges a private sector employer to accommodate the particular needs of persons with disabilities in a certain way.

Thus, given that binding and 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 and case law

Article 10(1) and (2) of the AEPD specifies the extent of the duty to make provisions for the avoidance of discrimination in the world of work. The law states that no one may be directly or indirectly discriminated against in connection with an employment relationship in either the private or public sector or elsewhere in the world of work on account of a disability. This prohibition covers, in particular, the establishment of the employment relationship, training and retraining measures and promotions.

In addition, Article 7 of the AEPD lists the type of disproportionate burden (*unverhältnismässige Belastungen*) that may justify unequal treatment and prevent it from being regarded as indirect discrimination (see section 2.3(a) for the definition of indirect discrimination). Article 7(2) AEPD 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.

The AEPD does not specify that the availability of financial assistance from the state should be taken into account in assessing whether or not the burden is disproportionate.

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

In Liechtenstein, the law is silent with regard to an explicit duty of reasonable accommodation for people with disabilities in employment. However, under Article 10(1) of the AEPD, no one may be discriminated against on the ground of disability in connection with an employment relationship in either the private or public sector, in particular with regard to other working conditions. Thus, it may be assumed that this provision includes the duty of reasonable accommodation for employees. Furthermore, 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. This could be interpreted as individualised measures to accommodate the needs of a specific person with a disability in a specific situation. Judicial interpretation would be needed in such cases.

Regarding the burden of proof, Article 26(1) of the AEPD states that, when a person claims to have been discriminated against according to Articles 5 to 10, that claim must be credible. In cases of direct discrimination, however, under Article 26(2) of the AEPD, the defendant is obliged to prove that it is more likely than not that the claim of unequal treatment in the sense of discrimination can be explained for another reason, and that this reason is crucial. Article 26(3) states that, when a complaint is made about harassment or indirect discrimination, the defendant must prove that, in consideration of all the circumstances, it is more likely than not that the facts substantiated by him or her are legally truthful. The provisions of Article 26 refer to the section on 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 or she 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 or her 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 having ignored the law on reasonable accommodation, he or she may be exonerated by the court.

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

In Liechtenstein, there is no legal duty to provide reasonable accommodation for people with disabilities outside the area of employment. This means that there is no individualised reactive duty to provide reasonable accommodation outside the field of employment.

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

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

### 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 when it comes to 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.<sup>53</sup> Foreigners are excluded from this definition. The rights of foreigners are governed by treaty and, in the absence of any treaty, by reciprocal law.

The purpose of the AEPD is to eliminate or prevent discrimination against persons with disabilities, thereby ensuring the equal participation of persons with disabilities in society and enabling them to lead their life autonomously. The AEPD does not make a distinction between Liechtenstein citizens and others.

Special provisions regarding discrimination on grounds of race, nationality or origin are contained in Article 283 of the Criminal Code. Like the AEPD, the Criminal Code does not make any distinction between Liechtenstein citizens and foreigners. Protection against racial discrimination or discrimination on the ground of origin is independent of citizenship.

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.

Judicial interpretation is required to a certain extent when it comes to legal persons. The Personal and Corporate Law Act (PCL)<sup>54</sup> distinguishes between a natural person (*natürliche Person*) and a legal person (*juristische Person*) in the context of protection and measures against discrimination. As regards protection against discrimination on grounds of disability, the AEPD focuses on natural persons. This is set out 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 of the Act.

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<sup>53</sup> The phrase 'without distinction of sex' makes sense because, in German, there is a difference between male citizens (*der Landesangehörige*) and female citizens (*die Landesangehörige*). The Constitution only uses the male term (*der Landesangehörige*), but this term also includes women. This was explicitly stated in an act amending the constitution (LGBl. 1971, No. 22).

<sup>54</sup> *Personen- und Gesellschaftsrecht*, PGR, LGBl. 1926 No. 4, available at: <https://www.gesetze.li/konso/pdf/1926004000?version=44>.

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 AEPD does not make a distinction between natural and legal persons with regard to liability.

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

a) Protection against discrimination

In Liechtenstein, the personal scope of national anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination. Basically, the AEPD is applicable to both the private and public sectors. Nevertheless, the AEPD contains some regulations that restrict the application of the law to the private sector (Article 2(2) of the AEPD). For example, its provisions on housing are not applicable to non-public buildings containing fewer than six apartment units that do not attract state funding.

b) Liability for discrimination

In Liechtenstein, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination. This applies under the AEPD.

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

Article 74a of the Criminal Code states that legal persons, without being restricted to either the public or private sector, can be held liable for discrimination against others. This includes legal persons insofar as they do not act in compliance with the law, through being responsible for offences and crimes committed unlawfully and culpably by persons in the exercise of business activities within the scope of the purpose of the legal person. The Criminal Code further states that the legal person shall be held responsible only for actions that are committed by employees of the legal entity, although not culpably, if the commission of the action was made possible or substantially facilitated by the fact that management personnel, within the meaning of the law, had failed to take the necessary and reasonable measures to prevent such actions.

Penalties apply against discrimination on all grounds.

## **3.2 Material scope**

### **3.2.1 Employment, self-employment and occupation**

In Liechtenstein, national legislation does not apply to all sectors of private and public employment, self-employment and occupation, including contract work, military service and the holding of statutory office, for the five grounds.

Discrimination on the ground of disability is explicitly covered in national legislation, which applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service and the holding of statutory office. Article 10(1) of the AEPD states that people with disabilities may not be discriminated

against as employees in the public and private sectors or at any other workplace, either directly or indirectly.

Besides these explicit anti-discrimination provisions in the AEPD, no specific anti-discrimination law exists, except for gender, which is not covered by this report. For other grounds of discrimination, judicial interpretation is required to confirm whether the rather general anti-discrimination provisions in the Constitution, in international treaties and in national law are sufficient to protect against discrimination. As far as the authors are aware, there has been no case law providing further anti-discrimination definitions.

Directive 2000/43/EC has not been transposed at all (except for Annex XVIII) to EEC law and therefore to national law in Liechtenstein. In the latest *ECRI Report on Liechtenstein* for 2018,<sup>55</sup> ECRI reiterates its recommendation that Liechtenstein should ratify Protocol No. 12 to the European Convention on Human Rights.

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, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, on the ground of disability, in both the 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. Some exceptions to this general rule are set out, however, 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 attributes. 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), covers 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 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 sets out a guarantee of equal opportunities for women and men (Article 4(2)(f)), as well as providing for 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 provisions in the Constitution are sufficient to protect against discrimination.

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

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<sup>55</sup> *ECRI Report on Liechtenstein* (15 May 2018), available at: <https://www.llv.li/files/aaa/lie-5th-ecri-country-report-en.pdf>.

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

In Liechtenstein, national legislation explicitly prohibits discrimination on the ground of disability in connection with an employment relationship in either the private or public sector (explicit anti-discrimination provisions in the AEPD, Article 10).

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).<sup>56</sup> The equivalent ruling is also stated in Article 54 of the National Old Age and Widow's/Widower's Pension Act.<sup>57</sup>

The laws and articles mentioned above refer to regulations regarding the avoidance of discrimination in the area of employment and working conditions, including with regard to 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. As grounds for discrimination, race and religion are not covered by any specific law.

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

### **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 prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The AEPD (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 AEPD, the Act on Vocational Training (AVT, Article 1c)<sup>58</sup> 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. The AVT is silent about any other ground of discrimination, as are other laws.

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

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<sup>56</sup> *Ehegesetz (EheG)*, LGBI. 1974 No. 20, available at: <https://www.gesetze.li/konso/pdf/1974020000?version=9>.

<sup>57</sup> *Gesetz über die Alters- und Hinterlassenenversicherung (AHVG)*, LGBI. 1952, No. 29, available at: <https://www.gesetze.li/konso/pdf/1952029000?version=51>.

<sup>58</sup> *Berufsbildungsgesetz (BBG)*, LGBI. 2008, No. 103, available at: <https://www.gesetze.li/konso/pdf/2008103000?version=4>.



### **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 prohibits discrimination as regards membership of and involvement in workers' or employers' organisations, as formulated in the directives for the ground of disability for both private and public sector employment.

Article 10(1) of the Act on Equality of People with Disabilities (AEPD) prohibits discrimination in the above-mentioned areas. Other grounds are not covered by the AEPD or by any other legislation.

No specific case law regarding this topic is 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 in social protection, including social security and healthcare, as formulated in the Racial Equality Directive. Liechtenstein provides social security services to all individuals, with equal treatment.

The Constitution 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 punishment'. Article 31 notes that 'all Liechtenstein citizens shall be equal before the law'. Through international treaties such as the ECHR, this equality rule is extended to non-nationals, with the exception of political rights, especially voting rights.

With regard to the special rights arising from a marriage (e.g. social security and pension insurance), the Act on Civil Union for Same-Sex Couples states that the same rules apply to same-sex couples as to heterosexual married couples regarding social security and occupational pensions (Article 30). Therefore, the Act on Civil Union for Same-Sex Couples grants the same benefits to registered same-sex couples as to married heterosexual couples and prohibits discrimination in general in the respective areas.

Discrimination in the context of social protection (e.g. social security or healthcare) is not explicitly listed in the AEPD. All areas of the lives of people with disabilities are covered by Article 2 of the AEPD, so social protection falls under the anti-discrimination provisions of the act.

#### **a) Article 3.3 exception (Directive 2000/78)**

Payments of various kinds are made under state schemes or similar arrangements, including state social security or social protection schemes, which refer to the exceptions in Article 3.3 of the Employment Equality Directive. The authors know of no problems at a national level based on these exceptions.

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

In accordance with the Racial Equality Directive, national legislation does not prohibit discrimination in social advantages. However, it can be assumed, on the basis of the anti-discrimination provisions of the Constitution, that discrimination is prohibited on the grounds of disability, age and sexual orientation. Judicial interpretation is necessary here.

Liechtenstein makes available a wide range of benefits to groups of persons with lower incomes. In particular, a tax reduction for families,<sup>59</sup> childbirth grants, extra monthly pay for children, discounts for access to public buses and other facilities for young and old people have all been implemented, as well as many other benefits. Support in this regard is not interpreted as discriminating against others. These benefits are provided to all people or to people with special characteristics, including those of age or income, but no discrimination is made on grounds such as disability, sexual orientation, race and ethnicity, or religion and belief. Discrimination is not explicitly prohibited with regard to the provision of these social benefits.

The National Old Age and Widow's/Widower's Pension Act (NOWP) covers aspects of the old age pension with reference to the Act on Disability Insurance (ADI).<sup>60</sup> This may be understood to mean that discrimination on the ground of disability with regard to social advantages is prohibited by national law, although judicial interpretation is required.

The Act on Civil Union for Same-Sex Couples states in Article 30 that the same rules apply to same-sex couples as to heterosexual married couples regarding occupational pensions. 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 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 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'. To the best knowledge of the authors, the Constitution has never been interpreted in relation to educational discrimination by a court.

There are non-discrimination provisions in connection with occupational training (in primary and secondary education) in Liechtenstein: Article 10(1) of the AEPD states that discrimination on grounds of disability is prohibited as regards access to occupational training. The term 'occupational training' can be interpreted to cover education for people with disabilities in Liechtenstein but, to the authors' knowledge, no such interpretation has been made by the courts up to now.

When drafting new laws or revising existing laws, the Liechtenstein Government takes into account the provisions of Protocol No. 12 of the European Convention on Human Rights and the UNESCO Convention against Discrimination in Education, in accordance with the Education Integration Concept 2011-2013.<sup>61</sup> The focus of this concept, which was the most recent specific project in this area, was on integration with anti-

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<sup>59</sup> In this context, the definition of family is linked to persons who have their own children, children who have been adopted, stepchildren and foster children (§ 186 of the Common Civil Code). The Common Civil Code does not provide any specific rule regarding same-sex families in this context. On the basis of Article 25 of the Act on Civil Union for Same-Sex Couples, persons living in a registered partnership are not admitted for adoption or reproductive procedures. For additional information about privileges, see Article 24 of the Family Allowance Act (*Familienzulagengesetz, FZG*), available at: <https://www.gesetze.li/konso/1986028000>.

<sup>60</sup> *Invalidenversicherung (IVG)*, LGBI. 1959 No. 5, available at: <https://www.gesetze.li/konso/pdf/1960005000?version=39>.

<sup>61</sup> Liechtenstein, Act on the Convention on the Recognition of Higher Education, University Diplomas and Academic Degrees in the States of the European Region, available at: <https://www.gesetze.li/konso/1994059000>.  
Integration concept of the Liechtenstein Government (*Integrationskonzept der Regierung Liechtenstein*), 2010, available at: <http://www.integration.li/CFDOCS/cms/cmsout/index.cfm?u=1&GroupID=220&MandID=1&meID=156>.

discrimination measures on grounds of gender, origin and race. Disability was not a focus.

No anti-discrimination case law regarding patterns of segregation or education involving migrants is known to the authors, nor are any major policies aiming to address discrimination against migrants in education. There is no Roma community in Liechtenstein.

a) Pupils with disabilities

In Liechtenstein, the general approach to education for pupils with disabilities does not give rise to 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 customised to their specific needs. The main regulations are laid down in 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 in integrating children and young people with disabilities into regular schools. The rules of the Act on School Education and the Act on Teachers contain the relevant regulations.<sup>62</sup>
- 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 contribute to the disability-related costs, provided they are not covered by insurance and other benefits. The law is silent about any rules determining when the State will cover such costs.

Based on these general duties to take the specific needs of pupils with disabilities into account in their education, Article 1c of the Act on Vocational Training (AVT)<sup>63</sup> 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 (basic education and training) should be considered on the basis of Article 16 of the AVT, with the possibility of shortening or extending the training period. These are the two issues that are explicitly covered by the AVT.

The priority for the legal framework is to include disabled children within mainstream education. However, in practice, many children and young people with disabilities – especially those with intellectual impairments – attend the Special Education Centre. There, they have the opportunity to attend a Special Education Day School (*Sonderpädagogische Tagesschule*), which gives them individual tuition and prepares them for the world of work. 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, at weekends and during holidays. If possible, children are integrated into the regular schools, in which case assistance is provided by professionals.

In 2017/18, 62 out of 144 pupils with disabilities in Liechtenstein had been taught and supported at the Special Education Day School (43 %). Approximately 47 % of all pupils with disabilities are integrated into the mainstream school system in Liechtenstein, and the rest (approximately 10 %) are taught in special needs schools abroad. After the

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<sup>62</sup> *Schulgesetz*, LGBL. 1972 No. 7, available at: <https://www.gesetze.li/konso/pdf/1972007000?version=8>; Act on Teachers (*Lehrerdienstgesetz*), LGBL. 2004 No. 92, available at: <https://www.gesetze.li/konso/pdf/2004092000?version=18>.

<sup>63</sup> *Berufsbildungsgesetz* (BBG), LGBL. 2008, No. 103, available at: <https://www.gesetze.li/konso/pdf/2008103000?version=4>.

mandatory school years, there is only a partial integration of pupils with disabilities into the post-compulsory school system.

b) Trends and patterns regarding Roma pupils

No cases or patterns of segregation and discrimination in schools (whether legal or societal) regarding Roma pupils and people with disabilities are known to the authors. There are no specific problems that need to be addressed concerning Roma or other minorities. A Roma minority does not exist in Liechtenstein.

In addition, no major policies aiming to address discrimination against such persons in education are known to the authors.

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

In Liechtenstein, national legislation prohibits discrimination in access to and the supply of goods and services, as formulated in the Racial Equality Directive.

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 its practical application, this regulation focuses on services offered or provided in general to the public, which cannot be refused to people in individual cases with reference to one of the grounds listed above.

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, in Article 2(1), covers access to and the supply of goods and services. The act aims to guarantee equal participation by people with disabilities in the daily life of society. However, the AEPD does not include a specific provision to explicitly prohibit discrimination against people with disability regarding access to and the supply of goods and services. Article 2(2) covers some exceptions from the general non-discrimination regulations in Article 2(1). In particular, privately offered goods and services – other than 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.<sup>64</sup>

Article 9 of the Act on Health Insurance<sup>65</sup> states that equal treatment must be ensured regarding access to and the supply of goods and services, and that discrimination on the ground of age is not allowed. To capture differences in treatment relating to social insurance on the grounds of age and disability, one has to distinguish between obligatory and voluntary insurance. According to Article 9 of the Act on Health Insurance,<sup>66</sup> insurance companies must offer the obligatory benefits without consideration of the age

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<sup>64</sup> Where such a service was offered in a building open to the public, the anti-discrimination prohibitions of the AEPD would apply.

<sup>65</sup> *Gesetz über die Krankenversicherung, KVG*, LGBl. 1971, No. 50, available at: <https://www.gesetze.li/konso/pdf/1971050000?version=17>.

<sup>66</sup> Act on Health Insurance (*Gesetz über die Krankenversicherung, KVG*); LGBl. 1971, No. 50, available at: <https://www.gesetze.li/konso/pdf/1971050000?version=32>.

and health of the applicant. For insurance benefits beyond 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).

There is no case law known to the authors on this matter.

a) Distinction between goods and services available publicly or privately

In Liechtenstein, national law distinguishes between goods and services that are available to the public (e.g. in shops, restaurants, banks) and those that are only available privately (e.g. limited to members of a private association).

Article 2 of the AEPD states that all areas of life of people with disabilities are equally affected by the non-discrimination legislation. 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 as being for people with disabilities. No such exception is made in terms of goods and services offered by public authorities.

Article 283 of the Criminal Code provides that it is a criminal offence to refuse a service that is offered 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 3 of the Act on Occupational Pensions<sup>67</sup> (AOP) allows for differential treatment of employees in cases of disability. It releases employers from the obligation to provide an occupational pension to an individual employee if that employee is two-thirds disabled. Thus, unequal treatment is possible on the ground of disability. Nevertheless, Article 34 of the AOP grants the employee the right to participate in the occupational pension scheme on his or her own behalf, but without the employer being obliged to contribute. People with a degree of disability of more than 60 % and who attain 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 Pension). The degree of disability, on the other hand, is defined and stated under the disability insurance.

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

In Liechtenstein, national legislation does not prohibit discrimination in the area of housing as formulated in the Racial Equality Directive. There are no similar regulations that provide protection on the grounds of race and ethnic origin.

The 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 (Article 22 AEPD) as well as recognised organisations for people with disabilities (Article 31), before formal approval for construction work is granted in accordance with Article 1. Private housing units with more than six apartments must be accessible to people with disabilities, and Article 14 of the AEPD states that residential buildings may only be subsidised if they may be adapted to provide accessibility (if they are not already accessible). Thus, the AEPD ensures accessibility, but contains 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. The AEPD prohibitions do not come into force for such buildings, as they

<sup>67</sup> Gesetz über die betriebliche Personalvorsorge des Staates, SBPVG, LGBI. 2013, No. 329, available at: <https://www.gesetze.li/konso/pdf/2013329000?version=3>.

only stipulate an obligation for buildings with six flats or more to be accessible by people with disabilities. If the owner of such a building refuses to rent out a flat to a person with disability and if, in a legal case, the property owner can prove that other reasons had been relevant and the disability was not the sole ground, this would probably not count as discrimination. To the knowledge of the authors, no case law exists in Liechtenstein regarding this issue. Furthermore, in such a situation, the legally defined measures for adaptations to buildings to make them accessible for people with disabilities do not apply.

Based on the integration concept of the Liechtenstein Government,<sup>68</sup> migrants are not treated differently under anti-discrimination legislation in the field of housing. They have equal access to housing. There are no patterns of segregation in social housing known to the authors, and no major anti-discrimination case law involving migrants in the field of housing is known to the authors.

a) Trends and patterns regarding housing segregation for Roma

In Liechtenstein, there are no trends and/or 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.

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<sup>68</sup> Integration concept (*Integrationskonzept*), 2010; available at: <http://www.integration.li/CFDOCS/cms/admin/download.cfm?FileID=723&GroupID=220>.

## 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, in the case of unequal treatment on the grounds of a characteristic related to a disability, there shall be no discrimination where the characteristic concerned constitutes a genuine and determining occupational qualification by reason of the nature of the particular occupational activities concerned or the context in which they are carried out, and where the objective is legitimate and the requirement proportionate.

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,<sup>69</sup> there is no specific legislation dealing with discrimination against people in the case of employers with an ethos based on religion or belief. Like several other international treaties, the ECHR is relevant to Constitutional Court decisions and thus can have an effect on decisions regarding discrimination.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Liechtenstein, there are specific provisions relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination. The Catholic Church still enjoys a special status in comparison with other religious communities. Article 37 of the Constitution states that freedom of faith and conscience is guaranteed for everyone. The same article goes on to state that the Roman Catholic Church is the national church and, as such, enjoys the full protection of the state. Other denominations shall be guaranteed the exercise of their profession and the holding of their worship within the bounds of morality and public order. The ongoing Government's ongoing efforts to establish a plan for 'disentangling' the state and the church are proving a challenge.<sup>70</sup> Following a visit to Liechtenstein in September 2017, the European Commission against Racism and Intolerance (ECRI) drew up a report in which it welcomed the efforts made to separate church and state and the adoption by Parliament of the necessary legislation. While 9 of the country's 11 communities have reached an agreement with the Roman Catholic Church, the reform has not yet been successfully completed. ECRI recalls that differential treatment of religious minorities, in particular with regard to their legal recognition and funding, may constitute discrimination on the grounds of religion and thus a violation of Articles 9 and 14 of the ECHR.

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<sup>69</sup> European Convention on Human Rights (*Europäische Menschenrechtskonvention*), LGBI. 1982 No. 60/1.

<sup>70</sup> Latest statement of the Government regarding 'disentangling the state and the church', (*Trennung von Staat und Kirche*), 06.04.2016; available at: <http://www.landtag.li/kleineanfragen.aspx?nid=4350&auswahl=4350>; Press statement, 24.05.2018; available at: <https://www.vaterland.li/liechtenstein/politik/ereignisse-fordern-zum-handeln-auf/art169,330929>.



There are no specific provisions or case law on this subject. Judicial interpretation is required in order to determine the extent to which the rather general provisions in the Constitution and in international treaties, e.g. the ECHR, are applicable.

- Religious institutions affecting employment in state-funded entities

In Liechtenstein, religious institutions are permitted to select people on the basis of their religion to be hired or dismissed 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.

As far as the authors are aware, there has been no case law so far on the potentially discriminatory selection of teachers of religion.

#### **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 relating to difference of treatment based on nationality.

The 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 number of annually available 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 (by the end of June 2018, 33.9 % of the total population were foreigners with resident permits).<sup>71</sup> Following this agreement, the Liechtenstein Government has differentiated between persons of Swiss and EEA nationality and persons of third countries when applying different procedures and quotas. This also applies to integration requirements, in cases of family reunion, for instance. However, there is no discrimination between permanent residents with respect to specific nationalities. Specific regulations for persons with EEA and Swiss nationality are laid

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<sup>71</sup> Annual population report, Central Statistical Office; available at: <https://www.liv.li/inhalt/1124/amtsstellen/bevolkerungsstatistik>.



down in the Act on Free Movement of EEA Persons and Swiss citizens.<sup>72</sup> In respect of persons with third country nationality, the Act on Foreigners (AF) regulates residency rights.<sup>73</sup>

In Liechtenstein, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law, although 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 shall be punished by imprisonment.

Furthermore, the Constitution of Liechtenstein, the Act on Free Movement of EEA Persons and Swiss citizens<sup>74</sup> and the Act on Foreigners include specific regulations regarding nationality, but no anti-discrimination provisions.

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

There is no specific national anti-discrimination law which defines 'nationality' and 'racial or ethnic origin' or explains the relationship between these terms. Uniquely, however, 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, nationality or ethnic origin will be punishable by imprisonment.

Therefore, judicial interpretation is needed in this regard.

#### **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 granted unlawfully, 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 may assume that such benefits are lawful. Thus, for instance, it is likely that the granting of benefits for extra holiday leave only to 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 AOP, benefit claims under a company pension scheme must be treated equally in respect of registered partnerships and married persons, in accordance the Act on Civil Union for Same-Sex Couples (ACUSSC).<sup>75</sup> Thus, the ACUSSC does not include a specific anti-discrimination clause on the ground of sexual orientation in general. The Act regulates the establishment, effects and dissolution of registered partnerships of same-sex couples.

b) Benefits for employees with opposite-sex partners

In Liechtenstein, it would most likely constitute unlawful discrimination if an employer were only to provide company pension benefits to those employees with opposite-sex

<sup>72</sup> Act on Free Movement of EEA Persons and Swiss citizens (*Gesetz über die Freizügigkeit für EWR- und Schweizer Staatsangehörige, PFZG*), LGBI. 2009, No. 348, available at: <https://www.gesetze.li/konso/pdf/2009348000?version=7>.

<sup>73</sup> Act on Foreigners (*Gesetz über die Ausländer, Ausländergesetz; AuG*), LGBI. 2008, No. 311, available at: <https://www.gesetze.li/konso/pdf/2008311000?version=11>.

<sup>74</sup> This act forms part of Liechtenstein's national legislation.

<sup>75</sup> *Gesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare, Partnerschaftsgesetz, PartG*; LGBI. 2011, No. 350, available at: <https://www.gesetze.li/konso/pdf/2011350000?version=2>.

partners. Under Article 30 of the ACUSSC, the company pension benefits acquired during the term of a registered partnership are, in cases where such partnerships are terminated, divided in accordance with the provisions of the law governing divorce and occupational pension plans (Article 89b of the Marriage Act).

Hence, benefits cannot be restricted 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 specific issues, such as the Act on the Pension Scheme for Public Servants (APPS, Article 3a)<sup>76</sup> or the National Old Age and Widow's/Widower's Pension Act (NOWP, Article 54bis), which entered into force after the enactment of the ACUSSC.

Judicial interpretation would be required to determine whether or not differential treatment is lawful. No case law exists on this subject so far.

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

In Liechtenstein, there are no exceptions in relation to disability and health and safety as allowed for under Article 7(2) of the Employment Equality Directive.

#### **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 for specific exceptions in regulating direct discrimination on the ground of age.

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

##### **a) Justification of direct discrimination on the ground of age**

In Liechtenstein, national law does not provide for justifications for direct discrimination on the ground of age.

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.

However, there was no case law on this issue during 2018 (nor in previous years) known to the authors.

##### **b) Permitted differences of treatment based on age**

In Liechtenstein, national law neither explicitly permits nor prohibits differential 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 ground of age, some specific age-related regulations exist, for example:

- the special protection of children (the Act on Children and Youth (ACY), as well as the regulation on Special Provisions for the Protection of Young Employees);<sup>77</sup>
- 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;

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<sup>76</sup> Act on the Pension Scheme for Public Servants (*Gesetz über die betriebliche Personalvorsorge des Staates, SBPVG*), LGBL. 2013, No. 329, available at: <https://www.gesetze.li/konso/pdf/2013329000?version=2>.

<sup>77</sup> 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, available at: <https://www.gesetze.li/konso/pdf/2005067000?version=3>.

- the Act on Foreigners (Article 13e) states that an application for residency and a 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, as outlined in Article 41 of the Act on Foreigners.
- c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Liechtenstein, national law allows occupational pension schemes to set ages for admission to the scheme or entitlement to benefits, taking up the opportunity provided by Article 6(2).

The AOP 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;
- Their annual salary is at least two thirds of the maximum pension from the occupational pension fund;
- in the case of old age pensions: a minimum age of 23 years if the employment is not limited in time (i.e. under a temporary contract);
- 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, and for persons with caring responsibilities to ensure their protection.

Positive measures are frequently taken to support younger and older people with regard to their opportunities in the labour market. Such conditions are found in the provisions on the protection of young employees in a regulation (*Verordnung*) under the Act on Employment (Regulation on Special Provisions for the Protection of Young Employees, LGBI. 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 may be made, however. 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 Counselling<sup>78</sup> 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.<sup>79</sup> 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.

Article 29(5) of the Common Civil Code grants people a right to take up to three care days in the event of the illness or an accident of a family member in a common household. This provision is a general rule and does not provide help for people in work who are also carers for family members on a regular basis, as is mostly needed by people with disabilities. In such circumstances, Liechtenstein law grants residents a care

<sup>78</sup> Office of Vocational Training and Career Counselling (Amt für Berufsbildung und Berufsberatung, ABB): <http://www.llv.li/#/1757>.

<sup>79</sup> Office of Education (Schulamt): <http://www.llv.li/#/11631/schulamt>.

and nursing allowance if they have health-related care and nursing needs (presumably for longer than three months) or if they require substantial third-party assistance in everyday life that incurs costs.

This allowance is intended exclusively for the remuneration of the third parties or institutions providing the services and is regulated by law.<sup>80</sup>

There is no case law known to the authors on this subject.

#### **4.7.3 Minimum and maximum age requirements**

In Liechtenstein, there are exceptions that permit minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training. Article 56 of the Decree on the Organisation of the Police states that, in general, a candidate for the police must not be older than 35 years. Besides this exception, minimum and maximum age requirements are not regulated by legislation as long as the employment does not constitute child labour.

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

#### **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 pensions.

The state-imposed and generally applicable pensionable retirement age is 65 for women as well as for men (Article 36 NOWP).

If an individual wish to continue working, their pension can be deferred. According to Article 74 of NOWP, it is possible to work until the maximum age of 70.

On the other hand, it is also possible to draw the pension a maximum of four years in advance by accepting fixed reductions in the monthly payable amount (Article 73 NOWP) or to defer the pension for a maximum of five years (ending at the age of 70) and receive a higher pension afterwards. Thus, according to Articles 73 and 74 of NOWP, an individual can collect the state pension (as a certain share of the full pension amount) and still work.

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

##### **b) Occupational pension schemes**

In Liechtenstein, there is a normal age at which 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 AOP and corresponds to the above-mentioned pension age for state pension. In accordance with 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 their pension in advance. By law, early retirement can take place four years before a person reaches the legally defined pension age. Occupational

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<sup>80</sup> *Verordnung über das Betreuungs- und Pflegegeld für die häusliche Betreuung (Betreuungs- und Pflegegeldverordnung; BPGV)*, LGBl 2009 No. 313; available at: <https://www.gesetze.li/konso/pdf/2009313000?version=2>.

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. In such cases, the consequence of early retirement is that the pension is paid at a reduced rate.

For individuals who wish to continue working, the payments from such occupational pension schemes can be deferred; because of the longer working and pension-contribution period, the future pension payments increase. An individual can collect a pension and still work.

The authors know of no specific case law regarding the directive requirements on unlawful discrimination.

#### c) State imposed mandatory retirement ages

In Liechtenstein, there is a state-imposed mandatory retirement age(s).

The state-imposed retirement-age is 65 for all sectors, regardless of gender. It is possible, however, for a person to draw a pension up to four years earlier (Article 73 NOWP) or to extend their working time up to the age of 70 (Article 74 NOWP) in either the public or private sector. In both cases, the decision whether to do so is generally up to the employee. In order to continue working, however, the employee needs their employer to support their decision. Within the last five years there has been a political discussion on changing the age of retirement for economic and demographic reasons.<sup>81</sup> This discussion is still on-going and has focused primarily on the state pension fund.<sup>82</sup> European developments in this area might influence relevant national regulation in the future.

The authors know of no specific case law in this area.

#### d) Retirement ages imposed by employers

In Liechtenstein, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally. The law makes no differentiation between pension age and retirement age.

The retirement age is defined by Article 8 of the AOP. Employers, both public and private, have the right to set specific retirement ages for their particular company pension schemes, offering early retirement with payment deductions etc. as a voluntary – and therefore positive – option for the employee. Nevertheless, the minimum and maximum retirement ages must be in line with the age set out by law.

The authors know of no specific case law in this regard.

#### e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining retirement age or any other age.

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<sup>81</sup> Interviews with H.S.H. Prince Hans-Adam II: 2013, available at: <http://www.vaterland.li/index.cfm?ressort=home&source=lv&id=21429>; and 2018: <http://www.vaterland.li/liechtenstein/politik/fuerst-hans-adam-ii-mit-leserbrief-zu-pensionsalter;art169,316652>.

<sup>82</sup> 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](http://www.llv.li/files/srk/pdf-llv-rk_stellungnahme_PV_Freie%20Liste.pdf). Article in local daily newspaper, 01/2013: <http://www.vaterland.li/index.cfm?ressort=liechtenstein&source=lv&id=21429>.

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 continue working (by prolonging their pension age from 65 to 70), there is no legally binding condition on the employer to allow this. The relevant provisions apply to all workers, irrespective of their age.

The law on work in industry, trade and commerce<sup>83</sup> (Labour Code, LGBl. 1967.006) only provides for exceptions with regard to age for young people, pregnant women and breastfeeding mothers. Thus, these exceptions are not applicable to all workers irrespective of 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 mandatory 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 people for very specific reasons, meaning that national legislature can, in certain cases, provide for differences of treatment based on age, which will not, therefore, be treated as discrimination. Liechtenstein's anti-discrimination legislation does not define discrimination on the ground of age, and there are no relevant provisions regarding this. Differential treatment based on age is not prohibited by law in some specific areas. 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 maximum age when hiring employees.

There is no national legislation regulating age discrimination or requiring 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, the documented and practical treatment of age limits in employment in Liechtenstein complies with CJEU case law (e.g. regarding the Liechtenstein police requirements profile<sup>84</sup> – see case C-229/08 Wolf [2010] ECR I-00001) and is 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.

Liechtenstein's anti-discrimination legislation does not explicitly define discrimination on the grounds of age. Nevertheless, Article 46 of the CCC<sup>85</sup> defines redundancy due to reasons based on personal attributes (age would be defined as a personal attribute in judicial interpretation)<sup>86</sup> as improper and therefore against the law. The law is silent about seniority as a ground for redundancy, but it can be assumed that seniority would

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<sup>83</sup> *Gesetz betreffend die Arbeit in Industrie und Gewerbe (Arbeiterschutzgesetz)*, LGBl. 1964 No.4; available at: <https://www.gesetze.li/konso/pdf/1946004000?version=8>.

<sup>84</sup> <http://www.landespolizei.li/Polizeiiberuf.aspx>.

<sup>85</sup> Common Civil Code (*Allgemeine Bürgerlich Gesetzbuch*), available at: <https://www.gesetze.li/konso/pdf/1003001000?version=19>.

<sup>86</sup> Public statement of a Liechtenstein law firm, available at: <http://www.wanger.net/schuldrecht/items/wann-ist-eine-kuendigung-des-arbeitsvertrags-missbraeuchlich.html>.

also count as a personal attribute and would therefore be interpreted as a ground for redundancy which is protected by the law.

b) Age taken into account for redundancy compensation

In Liechtenstein, national law provides compensation for redundancy. Such compensation is not affected by the age of the worker.

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 (as noted above, 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 special regulations listed below include exceptions that seek to rely on Article 2(5) of the Directive:

- the Act on Children and Youth (ACY);
- the regulation on Special Provisions for the Protection of Young Employees;
- the Decree on the Organisation of the Police;<sup>87</sup>
- the Act on Foreigners;
- the Act of National Old Age and Widow's/Widower's Pension.

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 in national law.

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<sup>87</sup> Decree on the Organisation of the Police (*Verordnung über den Dienstbetrieb und die Organisation der Landespolizei, PolDOV*), LGBI. 2000, No. 195, available at: <https://www.gesetze.li/konso/pdf/2000195000?version=6>.

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

### **a) Scope for positive action measures**

In Liechtenstein, positive action is permitted under national law in respect of disability. Essentially, only the AEPD, in implementing Directive 2000/78, states that positive action is permissible and does not constitute discrimination. Article 4, on positive measures, 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 can be described as soft law, and Liechtenstein does not have any kind of quotas. Article 19 of the AEPD covers integration programmes for people with disabilities in education, employment, accommodation, transport, culture and sport, and Article 20 covers pilot projects for people's integration into working life. Other grounds are not covered in the AEPD.

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 set out in the law as a legal commitment. Nevertheless, some measures have been implemented. These have mainly been communication campaigns, including campaigns in relation to foreigners and 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 supported by mandating private associations with such tasks.

The Association for Human Rights (Verein für Menschenrechte, VMR) is tasked, *inter alia*, with raising public awareness of human rights and combating all forms of discrimination, in particular racial discrimination, by increasing public awareness through information and education and using the press and other media.

### **b) Quotas in employment for people with disabilities**

In Liechtenstein, national law does not provide for quotas for people with disabilities in employment.

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 those on vocational training, integration and housing. Article 20 states that pilot projects on the integration of people with disabilities into the work environment may be supported by society.



## 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 (as ordinary courts) are the appropriate authority to decide upon complaints against discrimination on the ground of disability. Claims are adjudicated under the Code of Civil Procedure (CCP).<sup>88</sup>
- 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 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 a Liechtenstein court (the Constitutional Court) on the basis of Section II - A, Article 15(2c) of the Constitutional Court Act.<sup>89</sup>

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 Articles 594 to 616 of the CCP. In 2005, the Act on Mediation in Civil Law Cases (AMCLC)<sup>90</sup> entered into force. This law defines mediation and mediators, as well as their rights and duties. Details concerning the necessary qualifications of a mediator are stated in the regulation to the Act on Mediation in Civil Law Cases.<sup>91</sup> However, mandatory mediation in particular legal cases has not yet been introduced. If this were to be implemented, it might open the way to people being able to make 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 likely to be 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 who 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.

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<sup>88</sup> Gesetz über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten, Zivilprozessordnung, ZPO; LGBl. 1912 No. 9/1; available at: <https://www.gesetze.li/konso/pdf/1912009001?version=18>.

<sup>89</sup> Constitutional Court Act, available at: <https://www.gesetze.li/konso/pdf/2004032000?version=8>.

<sup>90</sup> Gesetz über die Mediation in Zivilrechtssachen, Zivilrechts-Mediations-Gesetz, ZMG, LGBl. 2005 No. 31; available at: <https://www.gesetze.li/konso/pdf/2005031000?version=1>.

<sup>91</sup> Verordnung zum Gesetz über die Mediation in Zivilrechtssachen, Zivilrechts-Mediations-Verordnung, ZMV; LGBl. 2005, No. 71; available at: <https://www.gesetze.li/konso/pdf/2005071000?version=2>.

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 nature of the specific court case.

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

c) Number of discrimination cases brought to justice

There are no available statistics on the number of cases related to discrimination that have been brought to justice.

Discrimination law cases prosecuted by the national courts are not generally open to the public. Whether the case and the judgment are made public depends on the court's decision. The main criteria for a court decision to be published or not are the interests 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 the national courts. As stated under paragraph (c) above, no specific statistics on discrimination cases are made public, and no statistics from published decisions are available to the 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 and trade unions are entitled to act on behalf of victims of discrimination if they have been mandated by the victim as a representative.

Article 25 of the AEPD states that court trials must be carried out according to the Code of Civil Procedure (CCP), with the exception of the provision regarding 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). The representative may be a lawyer, but the CCP, in 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.

The author knows of no discrimination case law where this right was exercised in 2018.

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Liechtenstein, associations, organisations and trade unions are entitled to act in support of victims of discrimination under certain criteria.

The AEPD is silent about any regulation of associations entitled to act in support of victims of discrimination joining ongoing proceedings. The Code of Civil Procedure (CCP) states in Articles 11 and 17 and the subsequent articles<sup>92</sup> that the admission of a third party to participate or intervene in a case makes the individual a party to the judicial proceedings. With the consent of the parties involved in the case, the third party, as intervener, can even take the place of the party for whom he/she intervened.

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<sup>92</sup> Code of Civil Procedure (*Gesetz über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten, Zivilprozessordnung, ZPO*), LGBL. 1912 No. 9/1, available at: <https://www.gesetze.li/konso/pdf/1912009001?version=18>.

c) Actio popularis

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

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

In addition, according to the Act on the Constitutional Court (ACC),<sup>93</sup> the Constitutional Court decides on the compatibility of laws and regulations (*Verordnung*) with the Constitution and international treaties. As far as regulations are concerned, 100 or more individuals who are entitled to vote can demand a review of a provision by the Constitutional Court (Article 20 ACC) within one month of the publication of the regulation concerned. 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. As regards 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, the Government, municipalities, administrative bodies or the constitutional court itself, depending on the case.

d) Class action

In Liechtenstein, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim under a class action for claims arising from the same event.

Although class action is possible under Liechtenstein law, the authors know of no case regarding discrimination, regardless of the ground. There are no specific provisions regarding class action in the sense of specific proceedings filed by an association on behalf of a group of identifiable individuals affected by the same discrimination. Referring to Articles 11 and 25 of the CCP, it is generally possible to have joint claimants (*Streitgenossen*), with or without a legal representative, in case law. However, certain conditions must 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, with jurisdiction allocated to the court for each individual claimant.

In this context, 'joint claimants' means that several persons may be taken to court jointly or take someone else to court jointly, where the subject matter of the litigation is a set of essentially similar claims or obligations. The law contains no details regarding opt-in or opt-out models.

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<sup>93</sup> Act on the Constitutional Court (*Gesetz über den Staatsgerichtshof, StGHG*), LGBI. 2004, No. 32, available at: <https://www.gesetze.li/konso/pdf/2004032000?version=5>.

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

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

In Liechtenstein, national law requires a shift of the burden of proof from the complainant to the respondent.

This is valid in cases of direct and indirect discrimination as well as harassment on grounds of disability only. Article 26 of the AEPD, on burden of proof, states that:

- When a person claims to be discriminated against according to Arts. 5 to 10, this person shall make this claim credible.
- With reference to direct discrimination, it is obligatory for 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.
- When citing a reference to harassment as well as indirect discrimination, it is obligatory for 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. No case law was published regarding or in relation to this issue in 2018.

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

In Liechtenstein, there are legal measures of protection against victimisation only for the ground of disability.

The AEPD states that any adverse consequence in reaction to a complaint or similar proceedings regarding 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) 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 may be punished by imprisonment up to two years. The law is silent about any possibility of a fine in addition to the imprisonment.

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 may be punished by imprisonment up to two years.

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 any indication of multiple discrimination, must, in particular, be taken into account (Article 23(3)). In cases where there has been 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.

Damages cannot be claimed for grounds other than disability, given the assumptions made by this report.

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 exists in this regard, 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 for those who 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 in accordance with 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)<sup>94</sup> was set up by the Government in accordance with Article 22 of the AEPD after the act entered into force in 2007.

As successor to the Office of Equal Opportunities (Stabsstelle für Chancengleichheit), which was created under Article 22 of the AEWM, the **Association for Human Rights in Liechtenstein** (Verein für Menschenrechte, VMR)<sup>95</sup> was founded by 26 non-governmental organisations on 10 December 2016 as the independent national human rights institution in Liechtenstein. The former Office of Equal Opportunities was dissolved, and its responsibilities were integrated into the new association.<sup>96</sup> The status of this 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*, VMLG).<sup>97</sup> This act entered into force on 1 January 2017, and the association became operational from that day. The Ombudsman's Office of Children and Young Persons, as provided for by the Act on Children and Youth (ACY), continues to exist within the new Association for Human Rights in Liechtenstein, and pursues specific tasks to protect children and adolescents. The following information on the Association for Human Rights therefore also covers the Ombudsman's Office of Children and Young Persons.

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;
- 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.

People from over 100 different countries live in Liechtenstein. Thus, the Liechtenstein population contains a great diversity in linguistic, cultural and ethnic terms. In order to

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<sup>94</sup> Office for the Equality of Persons with Disabilities: <http://www.lbv.li/Buero-Gleichstellung.php>.

<sup>95</sup> Association for Human Rights in Liechtenstein: <https://www.menschenrechte.li/category/ueber-uns/>.

<sup>96</sup> As Directive 2000/43 has not been transposed in Liechtenstein, the body has not been officially designated in accordance with Article 13.

<sup>97</sup> Act 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/konso/pdf/2016504000?version=1>.

ensure continued co-existence on the basis of common fundamental values and the rule of law, the governmental Office of Social Services<sup>98</sup> promotes measures that:

- contribute to intercultural tolerance in Liechtenstein;
- improve mutual understanding and respect;
- provide advice, support and information for migrants; and
- 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 were 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.

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

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

The Association for Human Rights in Liechtenstein is politically independent and denominationally neutral, in accordance with Article 3 of the Act on the Association for Human Rights in Liechtenstein (LGBI. 2016 No. 504). It acts on its own initiative, without any commitment to fulfil any requirements or instructions from the Government or from other authorities or interest groups. In a spirit of plurality, the association involves all civil society forces in the promotion and protection of human rights.

The Association for Human Rights is financed by funds from the state (the budget awarded is approximately EUR 300 000 per annum (CHF 350 000), membership fees and donations.

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 Liechtenstein Association of Persons with Disabilities, a non-governmental body. The office is politically independent and denominationally neutral. It acts on its own initiative, without any commitment to fulfil any requirements or instructions from the Government or from other authorities. In a spirit of plurality, the office involves all civil society forces in the promotion of integration and equality for 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. The Office for the Equality of Persons with Disabilities is financed by funds from the state.

c) Institutional architecture

The legal status and tasks of the **Association for Human Rights in Liechtenstein** were established according to the Paris Principles of the United Nations. 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. It has a mandate as the national human rights institution and as the Ombudsman's Office of Children and

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<sup>98</sup> <https://www.llv.li/#/117687/chancengleichheit>.

Young People. Its most important characteristics are its independence (in its financing, its human resources and its legal basis), its sufficient resources and its broad mandate for the protection of human rights.

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 insofar 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 and focused mandate in relation to the integration and equality of persons with disabilities. It is a very active and well-known institution, promoting the integration and equality of people with disabilities in all areas of life in Liechtenstein. The office focuses on public relations work to raise public awareness and on developing and implementing projects in cooperation with public and private organisations for people with disabilities. The office is often contacted by private individuals seeking advice in relation to non-discrimination regarding 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 Act on the Association for Human Rights in Liechtenstein. Further details are set out in the articles of the association.<sup>99</sup> The organisation's 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.

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 according to their expertise in international law and human rights. The aim was to strike a balance between their practical experience and knowledge of the situation in Liechtenstein and their professional expertise and international experience.

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

- state contributions;
- membership fees;
- private donations; and
- income from their own services.

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<sup>99</sup> Statutes of the Association for Human Rights in Liechtenstein, available at: <https://www.menschenrechte.li/wp-content/uploads/2017/09/Statuten-VMR-definitiv.pdf>.



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 must 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** operates in accordance with Article 22 of the Act on Equality of People with Disabilities.<sup>100</sup> The office is part of the Liechtenstein Association of Persons with Disabilities, a private self-help organisation. The general assembly is the meeting of the association's members and its supreme organ. 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, special collections within the association and 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 appropriate infrastructure and financing. These factors allow for a considerable degree of independence vis-à-vis the Government, as the association is only answerable to its members.<sup>101</sup> The board members are 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.

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 would have its own section in the national budget and the power to decide on the use of its own financial resources.

The **Office for the Equality of Persons with Disabilities** acts independently. Whether assistance can be provided or not depends on the office's 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

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<sup>100</sup> Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz, BGIG; available at: <https://www.gesetze.li/konso/pdf/1999096000?version=5>.

<sup>101</sup> 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.

The **Association for Human Rights in Liechtenstein** has a broad mandate in promoting and acting for 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 violations against them. Thus, there is no detailed regulation in the law. Nevertheless, the Association for Human Rights in Liechtenstein does not have a mandate to deal with integration agreements for migrants in Liechtenstein.<sup>102</sup>

The association decided to focus on five grounds in the period from 2017 to 2019. These are: disability rights, women's rights and equality between women and men, children's rights, foreigners' rights and social discrimination. As far as the authors are aware, the Association for Human Rights in Liechtenstein has never dealt with discrimination on the basis of sexual orientation. In late September 2018, the Government organised a national conference to evaluate the impact of ratifying the Convention on the Rights of Persons with Disabilities (CRPD). In the view of the VMR, there is nothing to prevent the signing and ratification of the CRPD, especially since the Convention can provide important impulses for the shaping of Liechtenstein policy on disabled people and the treatment of people with mental illnesses.

In 2018 the VMR prepared a situation analysis on equality between men and women. The analysis listed various recommendations to improve the current situation, for example the introduction of internal wage analyses and an official random sample check.

The VMR suggested that, in order to improve the compatibility of work and family life, protection against dismissal for mothers should be extended to one year after their return from maternity leave.

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 fall outside the scope of the institution.

The Liechtenstein Disability Association (Liechtensteiner Behindertenverband, LBV) commissioned a study with the support of the Office for the Equality of Persons with Disabilities regarding the situation of disabled persons in Liechtenstein. The study concluded that there was insufficient analysis and statistical data available regarding persons with disabilities in Liechtenstein to make any validated statement on their situation.

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

i) Independent assistance to victims

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

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. It provides general information to victims of discrimination, advises them about the legal situation and their options and refers them to the relevant institutions.

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<sup>102</sup> 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.

Politically controversial issues have been discussed and raised with the relevant government department. As a contact and information centre, the Association for Human Rights in Liechtenstein brings together knowledge and acts as a one-stop point of contact for those affected. Since the office was established, it has used its competences in an independent way.

No competence-related budget exists within the association, so there are no specific resources allocated for assistance to victims except for the ombudsman office for children and young people.

The **Office for the Equality of Persons with Disabilities** is run by the Liechtenstein Association of Persons with Disabilities (LBV), which was established as a private association under Articles 246 et seq. of the Personal and Company Act of 20 January 1926. The office provides general information about discrimination based on disability and refers individual cases to the Association for Human Rights in Liechtenstein or any other relevant institution (for example, the Office of Aid for Victims of Criminal Offences).

The office has no specific mandate to assist people with disabilities who have faced discrimination based on the ground of disability in financial or legal matters.

No particular financial budget or staff are allocated to 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, although it is supposed to act independently (Article 9(1) AAVCO). It advises victims for free and supports them 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 it assists with each year. In 2018, no court trials involving the Office of Aid for Victims of Criminal Offences were made public and therefore made known to the authors.

## ii) Independent surveys and reports

The **Association for Human Rights in Liechtenstein** states in its statutes<sup>103</sup> 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 and publish independent surveys, reports and studies.

Based on the 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 main report<sup>104</sup> in this regard is the Situation and rights of people with disabilities in Liechtenstein, published in 2018.<sup>105</sup>

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<sup>103</sup> Statutes of the Association for Human Rights in Liechtenstein, available at: <https://www.menschenrechte.li/wp-content/uploads/2017/09/Statuten-VMR-definitiv.pdf>.

<sup>104</sup> Additional reports related to this topic include: Gender Situation Analysis (2018), available at: <https://www.menschenrechte.li/wp-content/uploads/2018/03/Situationsanalyse-Gender-OEFFENTLICH.pdf>; and Statement on wage inequality in Liechtenstein (2018), available at <https://www.menschenrechte.li/lohnungleichheit-in-liechtenstein/>.

<sup>105</sup> <https://www.menschenrechte.li/rechte-von-menschen-mit-behinderungen/>.

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

The Office for the Equality of Persons with Disabilities also commissions surveys and reports from independent third parties with the necessary competence and experience, mainly because the office itself has limited resources. In addition to this, the office reports periodically to the Government on developments in the integration and equality of people with disabilities and on the impact of the actions and projects undertaken, as required by law. Furthermore, the association responds to consultations on new laws relevant to people with disabilities, having been officially invited to participate by the Government.

No reports were published in 2018.

iii) Recommendations

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

The **Association for Human Rights in Liechtenstein** states in its statutes<sup>106</sup> that it can recommend suitable measures to authorities in order to change the law, and it may offer opinions in the course of legislative hearings. This includes giving information about the legal situation and offering suggestions for improvement – for example, with regard to situations in private companies or by conducting workshops.

In the assessment of the authors, the association effectively exercises its ability to give recommendations on discrimination issues.

In 2018, the association published its *Gender Situation Analysis*, and the only recommendations made by the association dealt with gender issues.

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 by means of public relations work to raise public awareness and promote dialogue between employers and employees, and through mediation on discrimination issues. The office provides a platform for promoting social dialogue and promotes cooperation with public and private institutions.

From the authors' perspective, the Office for the Equality of Persons with Disabilities effectively exercises its duty to report periodically to the Government on developments in the integration and equality of people with disabilities and on the impact of the actions and projects undertaken.

iv) Other competences

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<sup>106</sup> Statutes of the Association for Human Rights in Liechtenstein, available at: <https://www.menschenrechte.li/wp-content/uploads/2017/09/Statuten-VMR-definitiv.pdf>.

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

- supporting victims of human rights violations;
- informing the public about the human rights situation in Liechtenstein;
- carrying out investigations and recommending appropriate measures to public authorities and private individuals;
- delivering opinions on draft laws and regulations and on the ratification of international conventions insofar as they are relevant to human rights;
- promoting dialogue between national and international bodies with human rights mandates;
- acting as an independent ombudsman for children and adolescents in accordance with Article 96(2) of the Children and Youth Act.

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;
- to promote social dialogue between employers and employees with a view to promoting the implementation of the principle of equal treatment;
- to promote dialogue with non-governmental organisations involved in combating discrimination;
- to ensure cooperation with public and private institutions.

g) Legal standing of the designated body/bodies

The **Association for Human Rights in Liechtenstein** has legal standing to:

- bring discrimination complaints on behalf of identified victims to court;
- bring discrimination complaints on behalf of non-identified victims to court;
- bring discrimination complaints *ex officio* to court;
- intervene in legal cases concerning discrimination, including in the capacity of *amicus curiae*.

The Association for Human Rights in Liechtenstein 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, who can be represented by an external lawyer contracted by the association. The legal basis for the association is set out in Article 5 of the Act on the Association for Human Rights in Liechtenstein (LGBI. 2016 No. 504).

No relevant case law is known to the authors.

h) Quasi-judicial competences

In Liechtenstein, the relevant 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

In Liechtenstein, the bodies do not register the number of complaints of discrimination that are made and/or the decisions regarding these complaints (by ground, field, type of discrimination, etc.). These data are not available to the public.

j) Stakeholder engagement

In Liechtenstein, the designated bodies engage with stakeholders as part of implementing their mandate.

The **Association for Human Rights in Liechtenstein** is able to engage with national and international human rights bodies in accordance with Article 4 of the Act on the Association for Human Rights in Liechtenstein. It is a non-profit association under personal and company law. Its activities must comply with its 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 or organisations and individuals as long as it is in the context of human rights matters.

The **Office for the Equality of Persons with Disabilities** may engage with the following bodies:

- public and private institutions;
- local government bodies;
- business entities and employers;
- NGOs insofar as they are engaged in combating 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.

k) 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.

## 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.

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.

- 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)

Through its agencies, the Government promotes dialogue with non-governmental organisations in the field of human rights. This takes place in the form of regular exchanges (including through an integration group of people with disabilities) or concrete projects to improve the human rights situation (such as situation analyses of the equality of women in Liechtenstein), in which the various parties take part.

The Liechtenstein Association of Persons with Disabilities gives assistance to people with disabilities in many ways. Much of the public information work is done via the Liechtenstein daily newspapers. Information on websites is important as well, and the association runs its own website. Links to various websites related to one or another aspect of disability may be found at <http://www.lbv.li/Links-FL.php#>.

The Liechtenstein Employees' Association<sup>107</sup> provides information and support for both members and non-members. However, the 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. Currently, the authors know of no specific project or platform whereby the Government stays in regular dialogue with the organisation.

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

- 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 AEPO).

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<sup>107</sup> Liechtenstein Employees' Association (ArbeitnehmerInnenverband, LANV). See: <http://www.lanv.li>.

To a large extent, the state leaves negotiations between the employees' association and the employers to the social partners themselves. State interventions are restricted mainly to the monitoring of the relevant laws. The SAVE foundation, which was founded in December 2007, is jointly supported 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*).<sup>108</sup>

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 while being 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. differential treatment of nationals and foreigners, and of EEA-nationals, Swiss nationals and third country nationals), religion (referring to the privileged status of the Catholic Church), age, race and ethnic origin.

As regards different gender identities and sexual orientation, the registered partnership has been equated with marriage in many respects through the Act on Civil Union for Same-Sex Couples, which came into force in 2011. However, there is no legal equality in the field of adoption and reproductive medicine. Furthermore, there are issues regarding missing legal provisions in the area of intersexuality and the recognition of a 'third sex' in Liechtenstein.

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<sup>108</sup> SAVE. <http://www.zpk.li/>.



## 9 COORDINATION AT NATIONAL LEVEL

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

- The Ministry of Society;<sup>109</sup>
- The Ministry for Home Affairs, Education and Environment;<sup>110</sup>
- The Ministry for Foreign Affairs, Justice and Culture.<sup>111</sup>

The ministries are involved in different aspects of discrimination. The Ministry for Social Affairs is responsible for the implementation of the AEWM and, since 2016, also responsible for the Office of Integration and Equal Treatment. Thus, the Ministry for Social Affairs is the leading ministry within the Government concerning discrimination.

The Ministry for Foreign Affairs, Justice and Culture is in charge of Liechtenstein's commitment to the further development and improved application of international law and, in particular, human rights. The Ministry for Home Affairs, Education and Environment has responsibility for public safety, civil protection, political rights, state and municipal citizenship, civil status and the law on foreigners.

The Ministry of Society is responsible for the social policy of Liechtenstein.<sup>112</sup> One of the main tasks of the Ministry of Society is to provide social assistance and social insurance, which cover the grounds of age, disability and gender. Other grounds are not explicitly mentioned in the corresponding laws. Thus, no regulation exists to state that issues of sexual orientation, for example, come within its remit. The Ministry mainly coordinates the social security systems in Liechtenstein, such as old-age and survivors' insurance, health insurance and maternity allowances. One focus is on old-age policy and securing the financial capacity of the AHV.

Cooperation between the different ministries is quite close since, according to the Constitution, the Government is collegiate, and decisions are taken collectively.

Finally, the independent national Association for Human Rights in Liechtenstein promotes human rights in areas that mainly affect the weakest groups in Liechtenstein society (people with disabilities, children, single mothers, asylum seekers, undocumented foreigners, etc.) and coordinates activities with respect to equal opportunities. Additionally, it is tasked with the implementation of an interdepartmental anti-discrimination policy.<sup>113</sup>

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<sup>109</sup> Ministry of Society; available at: <https://www.regierung.li/ministerien/ministerium-fuer-gesellschaft/>.

<sup>110</sup> Ministry for Home Affairs, Education and Environment; available at: <https://www.regierung.li/ministerien/ministerium-fuer-inneres-bildung-und-umwelt/>.

<sup>111</sup> Ministry for Foreign Affairs, Justice and Culture; available at: <https://www.regierung.li/ministerien/ministerium-fuer-aeusseres-justiz-und-kultur>.

<sup>112</sup> The Ministry was newly created when the Government took office in 2013 and has taken over responsibilities from three previously existing ministries: Social Affairs, Health and Family and Equal Opportunities.

<sup>113</sup> Government report for consultation: <http://www.llv.li/files/srk/vnb-scq.pdf>.  
Government bill (2016) for submission to the Parliament:  
<http://bua.gmq.biz/BuA/default.aspx?year=2016&nr=57&content=449861478&erweitert=true>.

## 10 CURRENT BEST PRACTICES

Under the **Liechtenstein Initiative**, the Government launched a domestic government commission in 2018. Its mandate is to draw up a catalogue of measures for the global financial sector to combat modern slavery and human trafficking. The Commission's work focuses on the detection of illegal financial flows and on responsible investment and credit practices.<sup>114</sup>

On 20 March 2018, the Government of Liechtenstein set up the **Integration Strategy** working group, whose objective, over the following two years, was to identify the problems that arise for people with a migration background in socially relevant areas of life, and how these can be resolved. To this end, the working group will draw up corresponding recommendations, with the involvement of the relevant ministries and authorities.<sup>115</sup>

Liechtenstein set up a **triple T programme for refugees**, based on the educational philosophy, 'We train the trainers' trainer', to support refugees 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 useful knowledge for their initial orientation in society, especially with regard to the basic structures of coexistence and everyday life. This is of central importance for integration in society and for an easier entry into the world of work.

More and more older people want to spend their retirement at home. However, only a few can afford round-the-clock care by local nursing staff. For this reason, more and more so-called **care migrants** are being hired: caregivers from Eastern Europe who are willing to work 22 to 24 hours a day for relatively little money. The associated problem of social justice was addressed in a broad campaign by the VMR in 2018, the aim of which was to provide suggestions for a better structure of home care and care allowance.<sup>116</sup>

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<sup>114</sup> Government statement; available at: [https://www.regierung.li/media/medienarchiv/H04-2018-09-24\\_Statement\\_UK\\_side-event\\_on\\_MS\\_Final.pdf?t=636885818832277467](https://www.regierung.li/media/medienarchiv/H04-2018-09-24_Statement_UK_side-event_on_MS_Final.pdf?t=636885818832277467).

<sup>115</sup> Sustainable Development Goals – Liechtenstein; available at: <https://www.vlgst.li/mitgliedschaft/voraussetzungen> or <https://sustainabledevelopment.un.org/memberstates/liechtenstein>.

<sup>116</sup> Association for Human Rights; available at: <https://www.menschenrechte.li/>.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives**

Directive 2000/43/EC has not been transposed completely in national law (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 (now 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. However, regulations with regard to disability have been transposed from the directive into national law.

### **11.2 Other issues of concern**

In 2018, the Principality of Liechtenstein was reviewed for the third time by the UN Human Rights Council. The questions and recommendations of the participating UN representatives focused, among other topics, on the ratification of the CRPD. Nearly half of the statements made on this subject recommended that Liechtenstein ratify the Convention. In its statement regarding the recommendations for a speedy ratification of the CRPD, Liechtenstein rejected them for the present time. As justification, the Government stated that a process is planned, in cooperation with various organisations and civil society, to clarify in detail the anticipated effects of ratification. A final decision on ratification will be taken on the basis of the outcome of this process.

The CRPD includes claims to self-determination, freedom from discrimination and equal participation in society, enshrining them in a legally binding manner and linking them with enforcement instruments. According to the Convention, individual autonomy and social inclusion are indissolubly linked, and they must always be considered together in the practical implementation of commitments. Thus, challenges are envisaged for Liechtenstein regarding the extent of adjustments to the structure of social welfare and in the provision of adequate financial resources, including those required to fund more social assistance services and outpatient services in support of people with disabilities in everyday life.

A relevant education structure is in place to integrate children with disabilities into regular schools. In practice, however, many young people with disabilities attend the Special Education Centre, especially those with intellectual impairment. According to some DPOs, the inclusion effort should be expanded in order to integrate children with disabilities in regular schools in a much more comprehensive way. In the area of tertiary education, no measures or policies at a state level are in place.

Furthermore, statistical data and information are lacking for Liechtenstein. One recommendation is therefore to conduct statistical research to help understand the situation of young people with disabilities and to support them in an effective and useful way.

Additional focus from the Government may be given to specific employment schemes and to political support to encourage private sector employers to put more effort into integrating unemployed persons with disabilities (e.g. state contributions to social security payments, financial promotion of employment and setting up internships).

## **12 LATEST DEVELOPMENTS IN 2018**

### **12.1 Legislative amendments**

There were no relevant legislative amendments in Liechtenstein in 2018.

### **12.2 Case law**

In 2018 there was 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.

## 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:** 31 December 2018

**Title of the Law: Act on Equality of People with Disabilities** (Gesetz über die Gleichstellung von Menschen mit Behinderungen; Behindertengleichstellungsgesetz)  
Abbreviation: AEPD/BGIG  
Date of adoption: 25.10.2006  
Latest relevant amendments: LGBl. 2016, no. 273  
Entry into force: 01.01.2007  
Web link: <https://www.gesetze.li/konso/pdf/2006243000?version=4>  
Grounds covered: disability  
Civil/administrative/criminal law: civil/administrative law  
Material scope: all sectors  
Principal content: equality of people with disabilities; prohibition of discrimination; support for people with disabilities; reasonable accommodation for persons with disability; pilot projects for integration into work environment

**Title of the law: Act on Disability Insurance** (Invalidenversicherung)  
Abbreviation: IVG  
Date of adoption: 23.12.1959  
Latest relevant amendments: LGBl. 2018 Nr. 345  
Entry into force: 04.02.1960  
Web link: <https://www.gesetze.li/konso/pdf/1960005000?version=39>  
Grounds covered: disability  
Civil/administrative/criminal law: civil/administrative law  
Material scope: insurance; goods; assistance; employment  
Principal content: financial support for people with disabilities; direct and indirect assistance to improve living and working conditions; support of care homes and sheltered workshops

**Title of the law: Act on Civil Union for Same-Sex Couples** (Gesetz vom 16 März 2011 über die eingetragene Partnerschaft gleichgeschlechtlicher Paare)  
Abbreviation: ACUSSC/PartG  
Date of adoption: 16.03.2011  
Latest relevant amendments: LGBl. 2016, no. 348  
Entry into force: 01.09.2011  
Web link: <https://www.gesetze.li/konso/pdf/2011350000?version=2>  
Grounds protected: sexual orientation  
Civil/administrative/criminal law: civil law  
Material scope: same-sex registered partnership  
Principal content: official Recognition of same-sex partnership/same-sex couples

**Title of the Law: Common Civil Code (Allgemeines Bürgerliches Gesetzbuch)**  
Abbreviation: CCC/ABGB  
Date of adoption: 01.06.1812  
Latest relevant amendments: LGBl. 2018 Nr. 15  
Entry into force: 18.12.1812  
Web link: <https://www.gesetze.li/chrono/pdf/1003001000>  
Grounds covered: nationality, pregnancy  
Civil/administrative/criminal law: civil law  
Material scope: general  
Principal content: civil rights

**Title of the Law: Criminal Code (Strafgesetzbuch)**

Abbreviation: StGB

Date of adoption: 24.06.1987

Latest relevant amendments: LGBl. 2018 Nr. 311

Entry into force: 22.10.1988 (announcement)

Web link: <https://www.gesetze.li/konso/1988.037>

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

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 relevant amendments: LGBl. 2018 Nr. 391

Entry into force: 15.12.2008

Web link: <https://www.gesetze.li/konso/pdf/2008311000?version=12>

Grounds covered: integration (nationality, race, ethnic origin)

Civil/administrative/criminal law: civil law

Material scope: regulation regarding foreigners in Liechtenstein

Principal content: specific regulation in context to nationality

**Title of the law: Constitution of the Principality of Liechtenstein** (Verfassung des Fürstentums Liechtenstein)

Abbreviation: LC

Date of adoption: 5.10.1921

Latest relevant amendments: LGBl. 2018, no. 470

Entry into force: 5.10.1921

Web link: <https://www.gesetze.li/konso/pdf/1921015000?version=6>

Grounds covered: national origin

Civil/administrative/criminal law: all

Material scope: regulation equal treatment of all Liechtenstein citizens

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: 04.11.2016

Latest relevant amendments: -

Entry into force: 01.01.2017

Web link: <https://www.gesetze.li/konso/pdf/2016504000?version=1>

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

<p><b>Title of the law: Act on Equality between Women and Men</b> (Gesetz über die Gleichstellung von Frau und Mann)</p> <p>Abbreviation: GLG (AEWM)</p> <p>Date of adoption: 10.03.1999</p> <p>Latest relevant amendments: LGBl. 2016 no. 505</p> <p>Entry into force: 01.01.2017</p> <p>Web link: <a href="https://www.gesetze.li/konso/pdf/1999096000?version=5">https://www.gesetze.li/konso/pdf/1999096000?version=5</a></p> <p>Grounds covered: equal treatment of men and women</p> <p>Civil/administrative/criminal law: civil law</p> <p>Material scope: equal treatment of men and women</p> <p>Principal content: equal treatment of men and women</p>
<p><b>Title of the law: Act on the National Old Age and Widow's /Widower's Pension</b> (Gesetz über die Alters- und Hinterlassenenversicherung)</p> <p>Abbreviation: AHVG</p> <p>Date of adoption: 14.12.1952</p> <p>Latest relevant amendments: LGBl. 2018 no. 344</p> <p>Entry into force: 15.12.1952</p> <p>Web link: <a href="https://www.gesetze.li/konso/pdf/1952029000?version=51">https://www.gesetze.li/konso/pdf/1952029000?version=51</a></p> <p>Grounds covered: age, disability</p> <p>Civil/administrative/criminal law: civil law</p> <p>Material scope: social protection, social advantages</p> <p>Principal content: pension insurance</p>
<p><b>Title of the law: Children and Youth Act</b> (<i>Kinder- und Jugendgesetzes</i>)</p> <p>Date of adoption: 10.12.2008</p> <p>Latest relevant amendments: LGBl. 2018 no. 340</p> <p>Entry into force: 01.02.2009</p> <p>Web link: <a href="https://www.gesetze.li/konso/pdf/2009029000?version=6">https://www.gesetze.li/konso/pdf/2009029000?version=6</a></p> <p>Grounds covered: age, disability</p> <p>Civil/administrative/criminal law: civil law</p> <p>Material scope: education</p> <p>Principal content: education</p>
<p><b>Title of the law: Act on Employment of Public Officials</b> (<i>Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz; StPG</i>)</p> <p>Abbreviation: AEPO (StPG)</p> <p>Date of adoption: 19.10.2005</p> <p>Latest relevant amendments: LGBl. 2018 no. 319</p> <p>Entry into force: 01.01.2006</p> <p>Web link: <a href="https://www.gesetze.li/konso/pdf/2008144000?version=8">https://www.gesetze.li/konso/pdf/2008144000?version=8</a></p> <p>Grounds covered: gender</p> <p>Civil/administrative/criminal law: civil law</p> <p>Material scope: dismissal</p> <p>Principal content: deployment</p>

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Liechtenstein  
**Date:** 31 December 2018

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	23 November 1978 <sup>117</sup>	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 <sup>118</sup>	Not ratified	N/A	N/A	N/A
International Covenant on Civil and Political Rights (CCPR)	16 December 1966 <sup>119</sup>	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

<sup>117</sup> European Convention on Human Rights (Europäische Menschenrechtskonvention), LGBl. 1982 No. 60/1), available at: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1982060001&queltigdate=02032016>.

<sup>118</sup> Source: <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=7&DF=26/10/2008&CL=ENG>.

<sup>119</sup> International Covenant on Civil and Political Rights (Internationaler Pakt vom 16 Dezember 1966 über bürgerliche und politische Rechte), LGBl. 1999 No. 58, available at: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1999058000&queltigdate=02032016>.



<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Framework Convention for the Protection of National Minorities	No signature. Direct Ratification <sup>120</sup>	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

<sup>120</sup> Framework Convention for the Protection of National Minorities (Rahmenübereinkommen vom 1. Februar 1995 zum Schutz nationaler Minderheiten), LGBl. 1998 No. 10, available at: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lqblid=1998010000&queltiqdate=02032016>.

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
International Covenant on Economic, Social and Cultural Rights (CESRC)	No signature. Direct Ratification	10. December 1998 <sup>121</sup>	No derogations.	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination (CERD)	No signature. Direct Ratification	1 March 2000 <sup>122</sup>	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

<sup>121</sup> International Covenant on Economic, Social and Cultural Rights (Internationaler Pakt vom 16. Dezember 1966 über wirtschaftliche, soziale und kulturelle Rechte), LGBl. 1999 No. 57, available at: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbld=1999057000&gueltigdate=02032016>.

<sup>122</sup> Convention on the Elimination of All Forms of Racial Discrimination (Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung), LGBl. 2000 No. 80, available at: <https://www.gesetze.li/lilexprod/lgsystpage2.jsp?formname=showlaw&lgbld=2000080000&gueltigdate=02032016>.

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
					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
ILO Convention No. 111 on Discrimination	Not Signed. Liechtenstein is not an ILO member state	N/A	N/A	N/A	N/A
Convention on the Rights of the Child (CRC)	30 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	Yes	Yes

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
			<p>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 Liechtenstein legislation according to which Liechtenstein nationality is granted under certain conditions.'</p>		
Convention on the Rights of Persons with Disabilities (CRPD)	Not Signed	N/A	N/A	N/A	N/A
Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	12 September 1990	2 December 1990	<p>Declaration on Art. 22 para. 1</p> <p>The Principality of Liechtenstein recognizes the competence of the Committee against Torture to receive and examine communications from or on behalf of individuals under its jurisdiction who claim to be victims of a violation of the Convention by</p>	Yes	Yes

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
			Liechtenstein.		

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