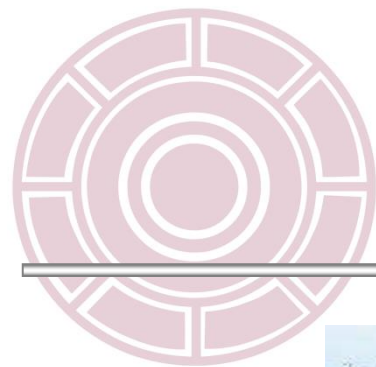


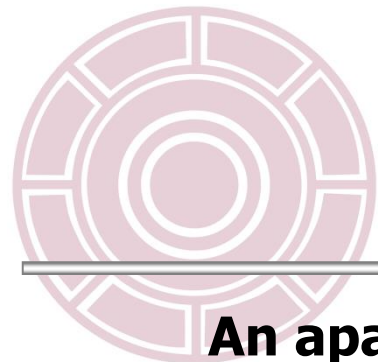
Positive action in housing for women





Verein Frauenwohnprojekt [ro*sa] Donaustadt (Association housing project for women)





The case...

An apartment building is designed by a female architect for the specific needs of women. Tenancy contracts in this housing project are provided mainly to women.

Does this constitute discrimination against men or could it be considered as a difference in treatment justified by a legitimate aim in the sense of either the exemption clause (Art 4 para 5 of dir 2004/113/EC) or a legitimate positive measure (Art 6 of dir 204/113/EC) ?

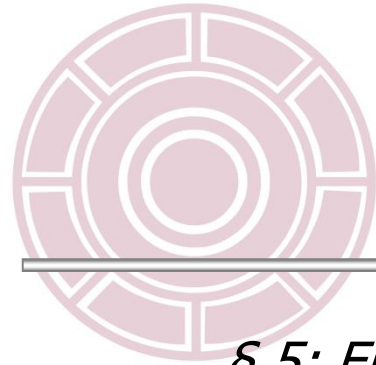
This case has been brought before the Austrian Equal Treatment Commission by a man who argued that he was discriminated against as he was interested to rent one of the flats but did not have access to it as they were rented only to women who were members of the association developing this project.

Statute of the association - purpose of the association



The purpose of the association is:

- (1) development and construction of a housing project for women on the basis of the democratic cooperation of all involved parties*
- (2) the co-habitation of women of different generations, cultures, with different family statuses and different sexual orientation*
- (3) the revival of the quarter around the housing project with a focus on special needs and interests of women*
- (4) scientific supervision of the development and creation of specific female living conditions in consideration of social and ecological principles*
- (5) creating space for discussing about projects for women*
- (6) an exchange of views and networking with other women projects and supporting them*



Statute of the association - membership

§ 5: Erwerb der Mitfrauenschaft

Mitfrauen des Vereins können alle physischen Personen weiblichen Geschlechts werden

§ 5 Only women can become members of the association.

The association has the right to propose tenants to the house building company who rents the flats.

-> Only members of the association will have access to 75% of the tenancy agreements.



Decision of the Austrian Equal Treatment Commission

The Austrian Equal Treatment Commission applied both the exemption clause and the provision on positive measures in its reasoning and decided that the housing project serves various legitimate aims and thus can be justified.

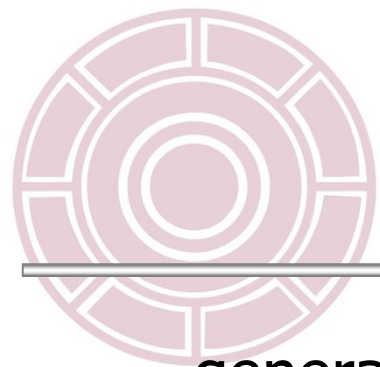
The Austrian Ombud for Equal Treatment identifies a need for more detailed discussion and analysis: Both the exemption clause and the possibility to introduce positive measures ask for a thorough check of the various legal prerequisites of such measures, such as the existence of a legitimate aim, the existence of inequality (in a certain aspect of social life), appropriateness of the measure etc.



Lawfulness of positive action measures

The following key features have emerged from case law:

- The measure has to aim to remove **an existing inequality which must be objectively demonstrated** and the measure has to aim to remove that inequality.
- It must be shown that **the proposed action will actually reduce that inequality** and
- it has to be shown that **the method chosen, and its impact on equal treatment for those that do not benefit from it, are proportionate**, i.e. the method is necessary, appropriate and does not go beyond what is necessary



Differential treatment to achieve greater equality

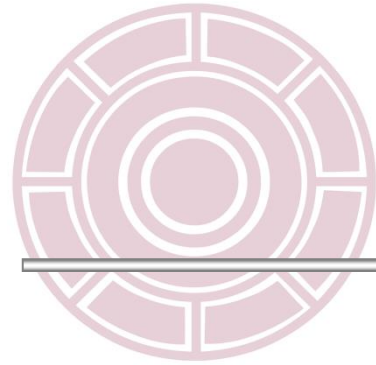
general objectives

- compensating for disadvantages and discrimination - structural discrimination
- taking into account the specific situation of members of disadvantaged groups
- breaking the cycle of disadvantage associated with membership of a particular group
- redressing under-representation in social, economic, cultural and political life



Criteria defining positive action measures

- provable inequality exists
- define a clear and comprehensive goal, which matches with the general objectives of positive action measures (see above)
- the measures have to be suitable and appropriate for reaching the objectives defined, e.g. no “rigid” quota
- the measures are specifically aimed at disadvantaged persons or groups of minorities



Questions

- Which are the informations you would need to find out, if the described housing project is an appropriate positive measure?
- Do similar projects exist in your country ?
- What do you think how they would be considered by the local authorities ?