

INITIATIVE FOR A
NON-DISCRIMINATORY EDUCATION SYSTEM

Discrimination in the Austrian education system

Annual report 2017



IDB

INITIATIVE FÜR EIN
DISKRIMINIERUNGSFREIES
BILDUNGSWESEN

INITIATIVE FOR A
NON-DISCRIMINATORY
EDUCATION SYSTEM

Discrimination in the Austrian education system

Annual report 2017

LEGAL NOTICE

Disclosure pursuant to § 25 of the Media Act

EDITOR

IDB – Initiative for a Non-discriminatory Education System

ZVR NO.

421303680

office@diskriminierungsfrei.at

ADDRESS

Große Sperlgasse 8/1/19
1020 Vienna, Austria

DONATIONS ACCOUNT

IBAN: AT18 2011 1837 4803 2500

BIC: GIBAATWWXXX

Acknowledgments!

We would like to thank the Austrian Youth Association “Bundesjugendvertretung (BJV)”, with which we already jointly held the 2017 press conference, and who have drafted a foreword to this report, emphasizing the importance of this topic. We would also like to thank the student union representing all educational science students at the University of Vienna (IG BiWi), who have also contributed a foreword.

We were especially privileged having the opportunity to introduce our cause to the Office of the Federal President and its staff, most notably MinR Mag. Rauchensteiner, expressing their support and appreciation for the Initiative for a Non-discriminatory Education System (IDB).

On behalf of ALL, we would especially like to thank Dr Murat Batur – among the many volunteer supporters – for working on the layout of our annual report, as well as Fuat Karakurt for developing the IDB-Report It!-app for IDB. A huge thank you again to all!

In 2017/2018, we were also able to gain the support of ZARA – Civil Courage and Anti-Racism Work, which assisted us with our cases, as well as of Romano Centro, the Lower Austrian Anti-Discrimination Agency and the Black Woman Community. Thank you for the excellent cooperation!

We would also like to extend our gratitude to “jedesK!ND – das Bildungsnetzwerk” for their valuable contribution to our report, pointing out potential solutions. We are similarly indebted to Alexia Weiss, whose chapter on antisemitism in schools offers valuable insights into this issue.

A special thank you is also due to Emil Bannani, the regional school representative for (higher) vocational education (BMHS) of Vienna who, despite being in the middle of his A level exams, took the time to give us an interview.

We are also immensely indebted to all teachers, having contributed by acts of civil courage to bring the Austrian education system one step closer to being free from prejudice and discrimination. We are proud to share that in 2017 we were able to document our first cases of civil courage in the context of discrimination in the education system.

Last but not least, but perhaps most importantly, we would like to extend our utmost gratitude to all those, who dared to share their experiences of discrimination in the Austrian education system with us. By taking this brave step, they have contributed substantially to the creation of an education system, which promotes equal opportunities for all!

Thank you! IDB-Report It!

Table of contents

1 Foreword

1.1	Foreword by the Federal Youth Association (BJV)	06
1.2	Foreword by the Student Council for Educational Sciences, University of Vienna (IG BiWi)	07
1.3	Foreword by IDB Chairwoman Dr.in Sonia Zaafrani	11
1.4	Foreword by IDB Vice Chairman Persy-Lowis Bulayumi	12
1.5	Foreword by IDB Honorary Ambassador Jenny Simanowitz	14

2 Statistics

2.1	Increase of discrimination compared to the previous year	16
2.2	Groups affected by discrimination in the education system	17
2.3	Grounds of discrimination in the education system	17
2.3.1	Visibility of religious affiliation	18
2.4	Gender specific statistics	18
2.4.1	Gender of those being discriminated against	18
2.4.2	Gender of those discriminating against	19
2.5	Educational institutions in which discrimination took place	19
2.6	Cases of discrimination by federal states	20
2.7	Civil courage in the context of discrimination	20

3 Selected cases (ranked by frequency of occurrence)

3.1	Discrimination on the basis of islamophobia	21
3.2	Discrimination on the basis of ethnicity	26
3.2.1	Discrimination on the basis of antiziganism	33
3.3	Discrimination on the basis of a disability	33
3.4	Discrimination on the basis of sexism	35
3.5	Discrimination on the basis of antisemitism	38
3.6	Discrimination on the basis of homophobia	39
3.7	Examples of civil courage	40

4	Media reports on cases of discrimination in the education system	
4.1	“Lejla speaks German without any accent”	42
4.2	Report on the scandal of the <i>Aktionsgemeinschaft Jus</i> in May 2017	43
4.3	#reichenhetze	44
5	From problems to solutions	
5.1	10-Point Plan for the establishment of a non-discriminatory education system	48
5.2	Article by the Association “jedesK!ND”: Every child deserves non-discriminatory education	49
5.3	Expert interview with BMHS regional school representative for Vienna Emil Bannani	56
5.4	Role Model Germany – Practical guide on reducing discrimination in schools	59
6	Parliamentary statement, legal opinion and court decision on discrimination in the education system	
6.1	IDB statement on the Federal Law, which is supposed to amend the School Organisation Act, the School Education Act and the Compulsory Schooling Act 1985	63
6.2	Legal opinion, commissioned by the Styrian Chamber of Labour on the permissibility of a headscarf ban for staff of the Styrian Vocational Training Institute	65
6.3	Final judgement – Discrimination on the basis of islamophobia	67
7	Legal bases in Austria	
7.1	The UN Convention on the Rights of the Child	75
7.2	Federal Constitutional Act on the Rights of Children	78
7.3	Federal Law of Non-discrimination and Equal treatment	80
7.4	Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), of constitutional rank in Austria	80
7.5	Decision of the European Court of Human Rights (ultimate decision) from 1 March 1979	81
8	Bibliography	82
9	Glossary	83

1 Foreword

1.1 Foreword by the Federal Youth Association (BJV)

Diversity is omnipresent in the lives of children and adolescents and should be viewed as a natural component of the society we live in. In order to harness this diversity, it must be actively shaped. This requires measures and campaigns, which promote equality, support integration and foster anti-discrimination. The contribution of the Initiative for a Non-discriminatory Education System (IDB) in uncovering shortcomings within the Austrian education system, particularly by creating awareness around this topic is therefore all the more important.

As the body responsible for representing the interests of all children and adolescents in Austria, the fight against all forms of discrimination is a matter of particular importance to us. Society as a whole should endeavour to bring about equality, thereby guaranteeing equal opportunities for all, irrespective of one's skin colour or religious views. Education clearly plays a key role in this context, especially when it comes to dealing with diversity and the creation of an inclusive society.

The number of reported cases of discrimination in schools is increasing year by year. This is not only alarming but also obviously calls for measures. Schools are places where the foundation for children's personal future development is laid, since they spend a large amount of their time there. It is thus all the more important that they are guaranteed a safe surrounding, in which they can flourish free from any form of discrimination. Those in power must therefore set the right parameters and raise awareness to ensure that diversity is dealt with responsibly. A responsible way of handling diversity means to acknowledge that each child is unique in every respect and that a modern education system cannot be based on social selection. It is about learning to live and work with diversity and to actively promote equal opportunities. Diversity poses challenges but also provides opportunities for everyone alike, at all levels of daily life within a society. However, particularly in the education system, the central focus must be placed on students and their personal development supported in the best possible way. It is therefore pivotal to come together and create an educational pathway for all children and adolescents, which provides for participation, equal opportunities and inclusion.

The more than two-fold increase in discrimination cases recorded in this year's report highlights the need for an initiative, such as the one pursued by the Initiative for a Non-discriminatory Education System. It must be of concern for all of us to not only recognise this problem but also to raise awareness about racism and discrimination at school as well as providing support to those affected, not leaving them alone without any help.

Deraï Al Nuaimi

President of the Austrian Youth Association (BJV)

1.2 Foreword by the Student Council for Educational Sciences, University of Vienna (IG BiWi)

Discriminatory ideologies, such as racism and sexism, are deceitful and malevolent. They do not only show a certain lack of sensitivity on the part of the perpetrators, but multiply and self-perpetuate themselves almost automatically. Discriminatory ideologies are self-fulfilling prophecies. This is particularly visible in the cultural arena. When Justin Siemens's film *Dear White People* came out in the form of a series, the film producers and actors were confronted with a wave of condemnation. It is a story, which deals with the discriminatory experiences by People of Colour on an American college campus in a not too fictitious manner. The accusations were as follows: the series was racist towards so-called white people, supposedly representing white people in a caricatured and exaggerated manner. The predominantly white accusers saw themselves confronted with speech, which they perceived as being exaggerated and shocking. Discriminatory ideologies often operate under a guise, in areas often not perceivable by the mainstream. Gayatri Chakravorty Spivak, an Indian-American philosopher famously opined that the subaltern does not speak. By this she of course does not mean that the oppressed and discriminated groups in society cannot speak, but that their voice – which necessarily involves an element of being heard – is not noticed. This is the reality of everyday life in Austria, where tabloid newspapers report on this or that about social groups – from the perspective of a male, white, heterosexual and Christian point of view. So, for instance, tabloids happily report under page seven's "Girl of the Day" about "curvy Dagmar", who likes grooming her wild mane with devotion. In the same vein, we are happily told about the arrogance of Muslim students, who don't want to do any exams during Ramadan. These may be examples on the milder end of the spectrum, which due to their absurdity evoke a sarcastic laugh or head-shaking on the part of some readers, however, day in and day out, Austrian tabloids present an image of certain groups of people making them look like perverse, irrational, violent and dangerous beasts. These images are like a punch in the stomach, feeding into the alienation of fellow human beings, who perhaps dress differently than the main or mainstream, perhaps have a different colour, the wrong genitals or the wrong belief. These images evoked by a white, male, Christian, heterosexual, ... elite create exclusionary boundaries. Boundaries, showing the excluded their limits, making it clear to them that in this society, they will be nothing, and they will always remain outcasts from mainstream society. This has its repercussions: The elite remains among itself, the power to determine is in the hands of those preferring to speak about the mistakes or the supposed otherness of others than facing their own shortcomings and the consequences of the policies of its own gang. It is not a mere coincidence therefore that the discourse around welfare cuts for all – whether affecting all older unemployed persons, all working students, all low-income families, all apprentices, all employees following the introduction of the 60 hour week, or all people suffering from illnesses after cuts to the AUVA – often converges with racist, sexist and

antisemitic discourses. Racist, because the foreigner is taking away our jobs; sexist, because the women must bear children, so that Austrians do not become extinct and domestic work accomplished as cost effectively as possible; antisemitic, as conspiracy theories á la “Soros is redirecting all refugees to Europe” offer convenient explanations for one’s own deliberate failures. Discriminatory ideologies multiply and self-perpetuate themselves, alienate, create boundaries, exclude the marginalised. In light of this, one cannot emphasize enough the importance of initiatives such as those pursued by ZARA (Civil Courage and Anti-Racism Work) and IDB (Initiative for a Non-discriminatory Education System)!

In addition, our education system cannot but discriminate, as this is what it’s meant to do in and on account of the capitalist system within it operates. Various education scientists or sociologists describe this function of the education system as its selection or slightly more euphemistically put its allocation function. Instead of opening up spaces of opportunity for students, presenting the world to them, there is only one central goal from nursery all the way to university, namely to label people: In a society, in which birth does not dictate whether a young girl will be a princess, a young boy a king or both will remain mere peasants or servants, and the assignment of one’s place or role is based on performance, the education system ends up having a decisive role in this process. A person’s performance is thus painstakingly measured for a specific phase of his or her life, embellished with pretty figures, so that cumulatively a certain rank, a possible place assignment results at the end. Pretty soon - no later than with the age of ten – a child faces its first watershed moment. Was the child good enough over the past four years in order to get into secondary school or was it only good enough for new secondary school or perhaps only for the a special needs school? The bad ones in the crop, the good ones in the top. Those that do not perform as good in this measuring institution become (unskilled) workers, while those that do better become ministerial officials. For hundreds of years hardly anything has changed in this process. Education is still inherited. Despite an increase in formal educational attainments (students of the coming generation generally having a higher qualification compared to the earlier generations) statistics – for instance the survey on further education 2016/2017, prepared by Statistik Austria – show that academic careers are still largely inherited from the parental home. Almost 60% of all students, whose parents attended a vocational secondary school (BMS), will themselves undertake an apprenticeship or attend a BMS. 57% of all students, whose parents are academics, will themselves become academics. In a world, in which manual labour and mental labour are not remunerated in the same way, this plays an important role. A trained retail saleswoman working full-time earns a gross salary of € 1,500, an ordinary university professor around €4,500 and a member of parliament more than €8,500. The quota of academics in parliament is 50%, the share of woman 34% and the one of persons with migrant backgrounds lies at 3.3%, while the share of those belonging to a German national male fraternity amounts to over 10%.

This show of performance is by no means a fair competition. Half-day schools hand over responsibility to parents, who are themselves overburdened, as they either have to work or the last have heard about calculus, if it all, quite a few years ago. Over 100 million Euros is spent for professional tuition services in Austria. Those who cannot afford tuition for their children fall behind. Even more, instead of promoting multilingualism and positively acknowledging that students, in a country in which predominantly German is spoken, already know another language, speaking a foreign language is perceived as a deficit – at least with regard to certain languages. We rarely speak about French-speaking children of academics, who successfully complete their education at Sacre Coeur. Thus, instead of questioning the monolingual habitus of Austria's educational institutions, the non-German speaking child stands out as the actual problem in this rigid structure. Instead of promoting lessons teaching children their mother tongue and German as a second language, stubborn demands are made that children should first know German. Separation and alienation in the German lessons are the logical consequence of racist educational policies. They will fall behind in the competitive struggle for the assignment of roles in the job market, too.

Heinz-Joachim Heydorn, a German education scientist, has pointed out the entwined contradiction between power and education. Education does not only subordinate and classify within a hierarchical system, but in subordinating and classifying, it also unleashes an emancipatory force. Education does not only teach submission, but also imparts subordinate language capabilities. Especially teachers end up having an impossible but necessary responsibility. Impossible, as they alone cannot eradicate the structural discrimination, but can only create awareness and point out possibilities to cheat the system once in a while. Necessary, as discriminatory ideologies lead to self-fulfilling effects, marginalisation leads to more marginalisation and alienation and a whole society loses if the neighbours are branded as frightening, potential terrorists or if cuts (wrongly) justified by racism and sexism make life unbearable for the 99%, who do not belong to the elite.

Education can play a role in establishing solidarity between people. Provided that there are initiatives, which make sure that the discriminatory effects of the education system do not turn into unchallenged personal-individual practices, legitimatising and giving more impetus to the rigid actions of the structure. How important are thus initiatives, such as those pursued by the IDB, which focus on individual practices and highlight that we as human beings are part of an obsolete structure and that we can only retain our humanity if we push back against these structures.

We therefore wish to thank each and every person, who contributed to this annual report and helped to create awareness for the need for solidarity.

Michael Doblmaier

On behalf of IG BiWi

1.3 Foreword by IDB Chairwoman Dr.in Sonia Zaafrani

A lot has happened in 2017. IDB's first press conference, titled "Black on White – how tied up are education and discrimination" was a complete success and for the first time the topic of discrimination in the Austrian education system has received media attention in Austria. Dr. Harald Walser, spokesperson for education in the Green party and himself a former teacher and secondary school principal joined us on stage, as well as Julia Herr in her role as Chair of the Austrian Youth Association, the legal representative body for all adolescents in Austria. By inviting personalities from both student and teaching circles to jointly hold a press conference, the IDB was sending out a clear signal.

Working together with teachers and students conforms to IDB's self-conception, advocating for a non-discriminatory education for all. While it is primarily students and adolescents who are affected by discriminatory experiences, teachers come a close second, and are equally affected by discrimination in their professional environment. This can happen through colleagues or their superiors, as discrimination always requires a relationship of dependence on the one side and power and/or an abuse of power on the other.

What the IDB definitely does not want is to declare some groups as "scapegoats", as is unfortunately done by some actors within politics but also within teaching circles. What is important for us is to dedicate ourselves to the cause on the one hand, and on the other to give a voice to those who do not have any at the moment, are not heard or even declared as "scapegoats". From our point of view, this type of debate leads to a dead-end, existing prejudices are bolstered, and students discriminated against on the basis of certain characteristics or attributions, despite from a purely legal perspective any form of discrimination in the education system is prohibited.

Another pivotal aspect from a legal point of view is the state's neutrality towards all its citizens. Persons working on behalf of the government have an obligation to treat everybody equally, NOT to discriminate against them, so that they – applying this within the context of the education system – can be impartial towards all students and can treat them accordingly, too. This report clearly reveals the extent to which some teaching staff is prejudiced towards certain students and how they do not treat them in a neutral manner. Lastly, these discriminatory acts committed by teachers against their students are also expressions of violations of their duty of religious and ideological neutrality which all teachers are bound by to ensure an equal treatment of all students.

What we desperately need, from our point of view, is a different approach to the debate, even when it comes to the topic of violence at schools. If we view this issue holistically, we come to the conclusion that adolescents are not just perpetrators, but also victims. The discrimination of often underage students by their own teachers is a form of violence itself.

If we manage to break the myth that teachers are infallible, the same way we have been able to dispel this myth with regard to doctors – we can finally turn our attention to the actual issues at stake and look together for the right solutions. The sad reality is that racism, sexism, antisemitism, islamophobia, homophobia as well as ableism etc. are taught and learned at school. This shows us that there is a need for a fundamental debate on this issue within society.

However, the above cannot only be learnt, but also unlearned and this is the actual task of the education system and also an important reason why the IDB has set its focus on this area. The education system does not only contain these massive issues, which affect us all, but at the same time holds the solution to these very problems. We have summarised a few of these potential solutions in our 10-Point-Plan.

At this point, I would like to sincerely thank all IDB volunteers, who have in their limited spare time become involved in the initiative for a non-discriminatory education system despite professional and family commitments. I would like to express my profound admiration for them all! Whoever else wishes to contribute to a non-discriminatory education system can do this by either volunteering, or offering financial support in the form of a donation. I would also like to extend my heartfelt gratitude to all donors for their contribution!

And now I would like to give the floor to all children, adolescents and students who, from an early age, had stones laid in their path impacting their school careers, who do not have any equal rights or opportunities, but who despite all the adversities they face, do not (wish to) surrender!

Dr. Sonia Zaafrani

Chair of IDB - Initiative for a Non-discriminatory education system

Dr. Sonia Zaafrani works as a doctor at the Medical University of Vienna. For many years, she has volunteered in the area of inter-religious dialogue and the integration of refugees in Austria.

1.4 Foreword by IDB Vice Chairman Persy-Lowis Bulayumi

This report and the cases it contains, do not serve the purpose of providing for an insight into the daily reality of many Austrians and of people living in Austria. Whoever wishes to get a better picture of their fellow human beings is advised to seek direct dialogue and meet them on an equal footing.

First and foremost, this report is intended to be a learning aid for professionals and decision-makers. It is simultaneously directed at those, who are interested in radical human togetherness.

When hearing the word “learning aid”, I would request readers not to allow them to be pocketed by possible emerging resistance. It would be regrettable if potential allies and partners fail to recognise the resource in their hands, simply on account of intrapersonal conflicts.

While dealing with various facets of discrimination it did not take long for us to realise, given the diverse composition of our team, that not even we are safe from prejudice and that it often controls our thoughts and actions and is noticeable in our speech. That is a realisation we are very grateful for and which has brought us closer to each other as a community. This learning aid is therefore testimony to and an example of true integration representing a sustainable intersectional reconciliation process. For this reason, and because the origin of a sustainable positive social climate lies in a non-discriminatory education system, we would like to reach out to all interested parties in the hope of establishing dialogue.

If we want to talk about the future of Austria, we also have to talk about discrimination.

Most of us have felt aggrieved at least once in their lives. Some more, some less and to some it happens on a daily basis. The extent to which the incident presented to us is consciously identified as an insult is insignificant in this regard. What is important here is whether the trigger has an influence on our world of emotions, our actions and our thoughts, as well as on our self-perception and self-esteem. The feedback we receive about ourselves gets subsequently internalised. It determines our path and makes us the people, who we are today.

A society which is not only concerned with the average wellbeing of all but indeed committed to guarantee a dignified life for each and every person has to take a critical look at the psychological impact of discrimination and/or humiliation. A missing dialogue about the discriminatory tendencies ingrained within our socialisation has to be denounced as gross negligence.

To discriminate against means attacking people's most precious asset, their human dignity, in the most violent manner. By doing so, it is insignificant what the perpetrator perceives or feels.

Discrimination is violence, it is humiliation.

Why do we speak about humiliation in the same breath, when we talk about discrimination? In this context we draw upon the term humiliation, as coined by Univ.-Prof. Prim. Dr. med. Reinhard Haller. Based on his description, we realized that his understanding of humiliation is synonymous with our understanding of discrimination.

A constructive confrontation with the issue of discrimination requires appropriate resources. As Initiative for a Non-discriminatory Education System, it is not in our nature to point fingers. On the contrary, we want to work jointly with all actors to come to a unified understanding of discrimination and to acquire a necessary sensitization for its processes and actions. However, the actors involved should not only be mere conventional professionals. The conventional education system cannot and should not be made solely responsible for socio-educational processes.

Austria urgently requires civil dialogues in the course of which overall societal goals, hence our future is negotiated. Our country is a pioneer in various fields and may indeed act as a positive, future oriented force. Now it is time to take a closer look at those areas, which we have ignored for a long time. To dedicate ourselves to those spots we sometimes feel embarrassed about.

Our wish for the future of Austria:

A togetherness based on solidarity and inclusiveness in which diversity truly has a place

Persy – Lowis Bulayumi

IDB – Vice Chair

1.5 Foreword by IDB Honorary Ambassador Jenny Simanowitz

I was raised in a secular Jewish family in South Africa. My grandparents fled Poland due to the Pogrom. I myself left South Africa because I did not want to live in the apartheid system. I studied English Literature, Theatre Studies and Educational Science at the University of Cape Town and the Trinity College Cambridge.

My work is the result of 30 years of theoretical research and practical experience as a teacher, consultant, actress and seminar instructor.

During the years England, I have worked as a drama therapist in London and as a lecturer for the Peace Studies Department at Bradford University, headed by Adam Curle.

With the help of the British Ministry of Education I founded a school for adolescents with behavioural problems in 1976. The fact that most of the pupils viewed as problematic had a migrant background – West Indies, India and Pakistan – was a motivation for me. Many comprehensive school teachers in major cities such as London could not cope with cultural diversity, and labelled these students as problem cases incapable of learning. Once this discrimination was eliminated, however, most of these students turned out to be intelligent and talented individuals being not only in a position to graduate from school but also to pursue higher education.

For the last 20 years, I have lived in Austria. I held seminars, gave lectures and did performances in German and English. Additionally, I am an author of books, articles and communication cabarets who does performances and works as seminar instructor.

My topics include interpersonal communication in all its facets: our “unspoken” signals, prejudices, sensibilities and sensitivities, our inclination for conflict and our pursuit of harmony. I also deal with discrimination on various levels in our society, such as daily sexism, racism as well as xenophobia in the education system.

As a Jew, I am especially sensitive for prejudices and discrimination against ethnic and religious groups, allegedly not fitting into the dominant culture.

The story of the Jews is predominantly one of migration. They repeatedly found themselves amongst the foreign. My current play “Who’s Afraid of the Jewish Mother?” is a homage to all foreigners who, in times of poverty and discrimination, use their strength to hold their families together and motivate others to be successful in a new and often hostile society.

My motivation to be part of the IDB

I abhor discrimination of any kind, having spent my entire life fighting against it and standing up for human dignity. The current climate in Austria requires vigilance against attacks, insensitivities and discriminatory behaviour at schools. As a first step it is important to

document such incidents. At the same time, intercultural skills and self-awareness have to be a mandatory part of teacher training and their continuing professional development, since it allows them for analysing and questioning own attitude and prejudices.

Jenny Simanowitz

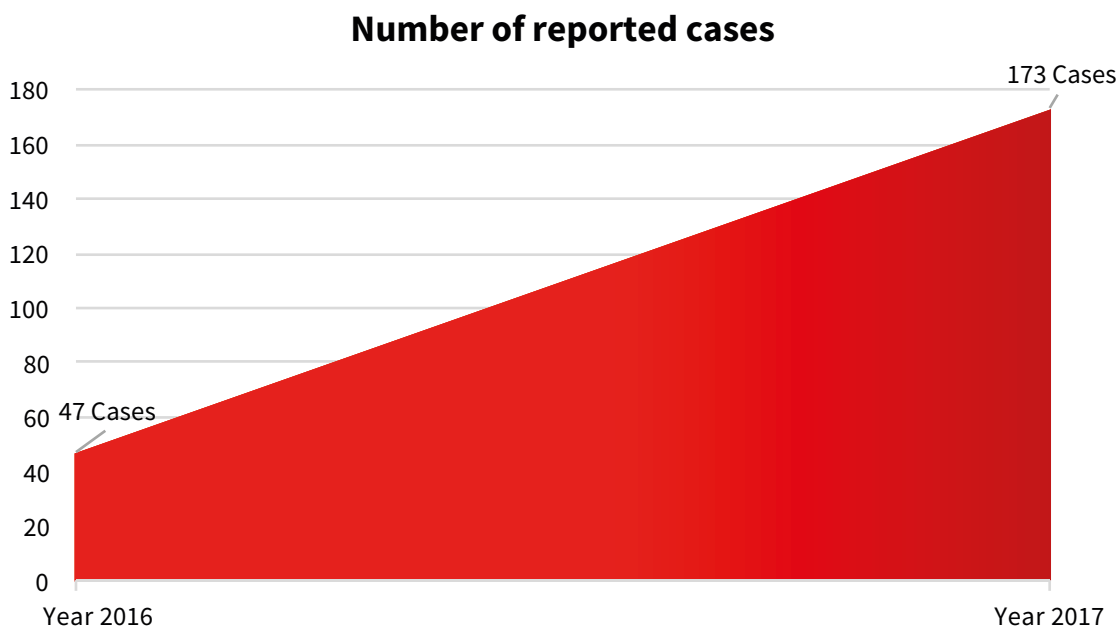
IDB-board member and Honorary Ambassador

2 Statistics

2.1 Increase of discrimination compared to the previous year

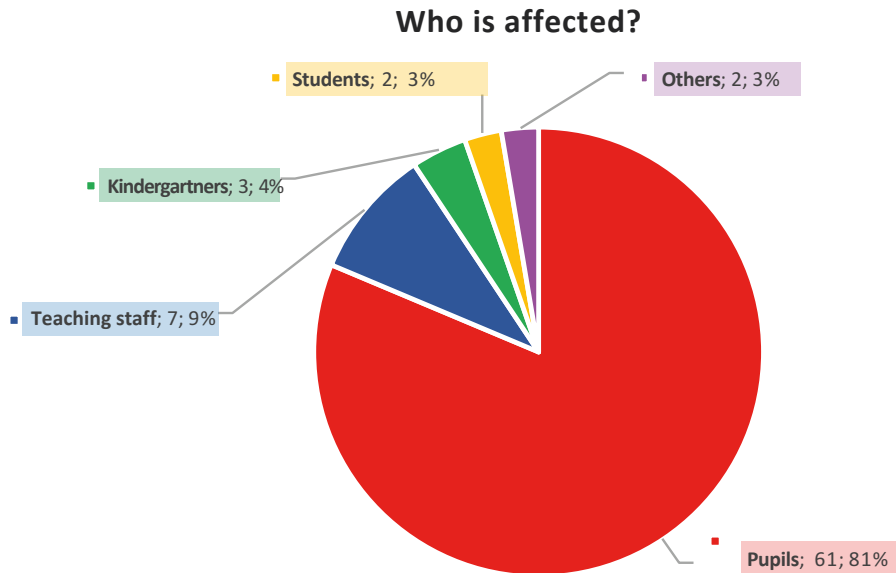
173 cases of discrimination in the education system were reported to the IDB this year. Out of these 173, 93 were kindly referred to us by other institutions like Romano-Centro, the Black Woman Community and ZARA. Contrary to the previous year, the 2017's report also includes cases which have taken place in January and February.

Taking this into account, there has been an increase of 268% compared to 2016's report which has documented 47 cases of discrimination within the education system.

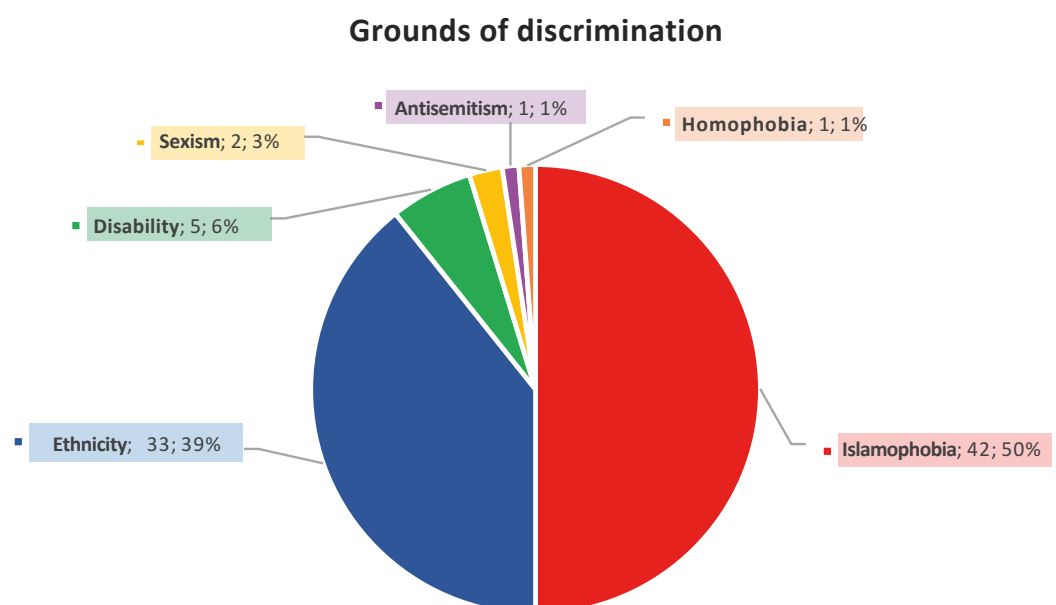


Statistics were developed with regard to those case reports which were reported comprehensively by using our documentation form. The others were considered within the total number of cases reported.

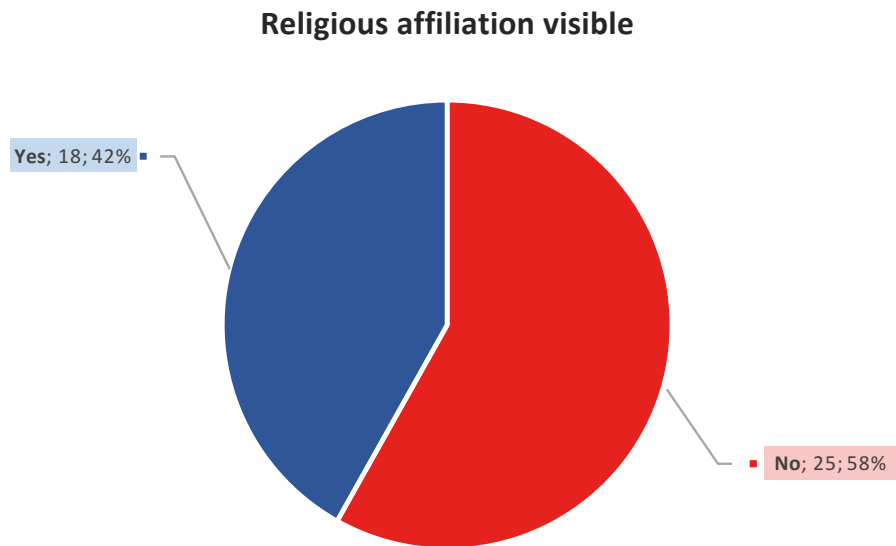
2.2 Groups affected by discrimination in the education system



2.3 Grounds of discrimination in the education system

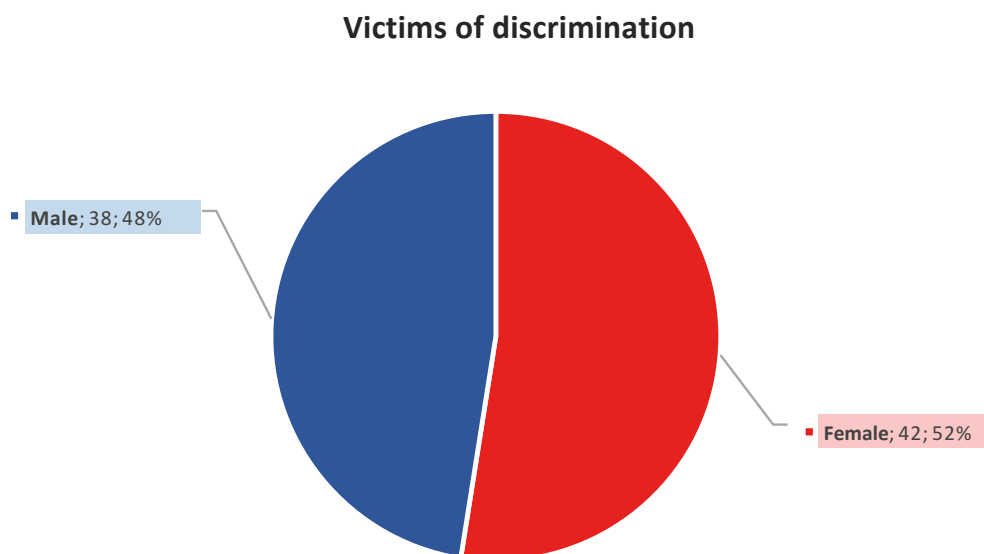


2.3.1 Visibility of religious affiliation

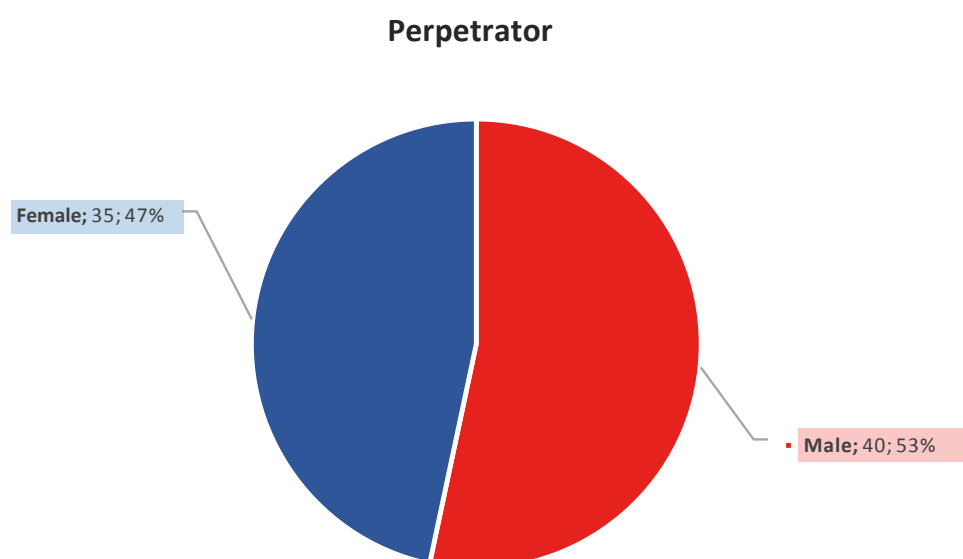


2.4 Gender specific statistics

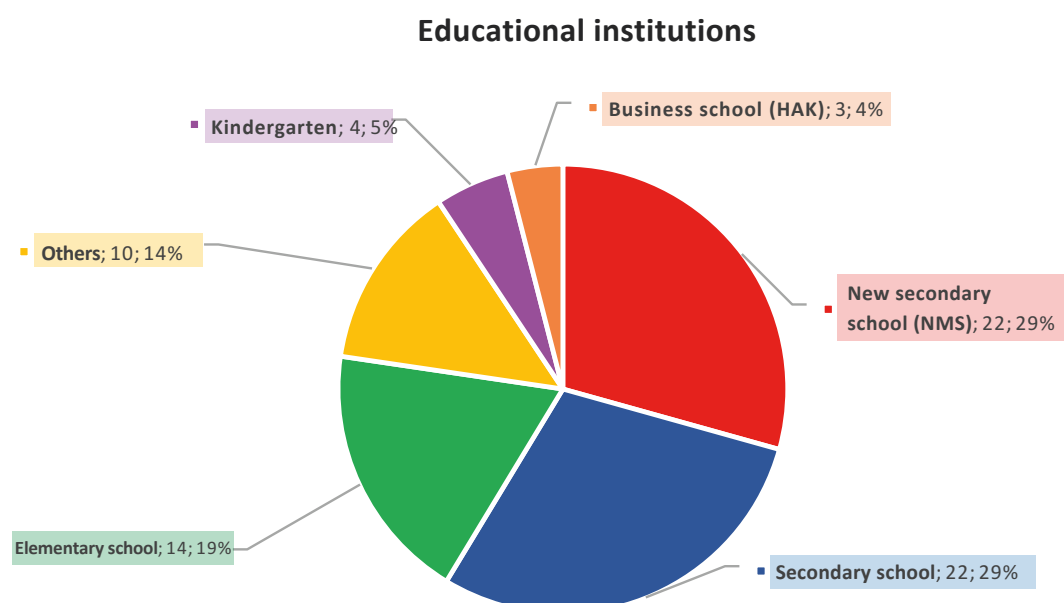
2.4.1 Gender of those being discriminated against



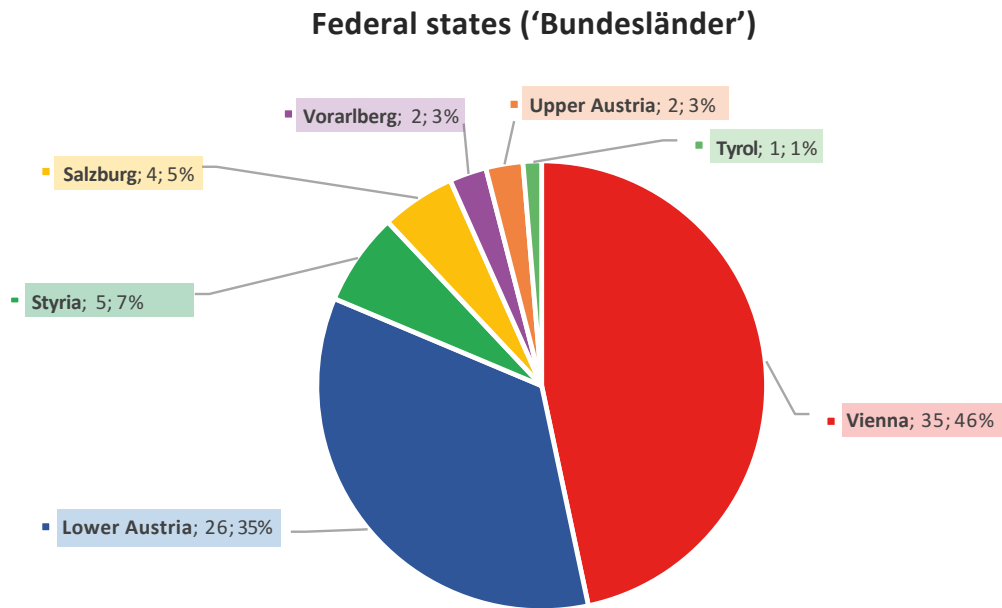
2.4.2 Gender of those discriminating against



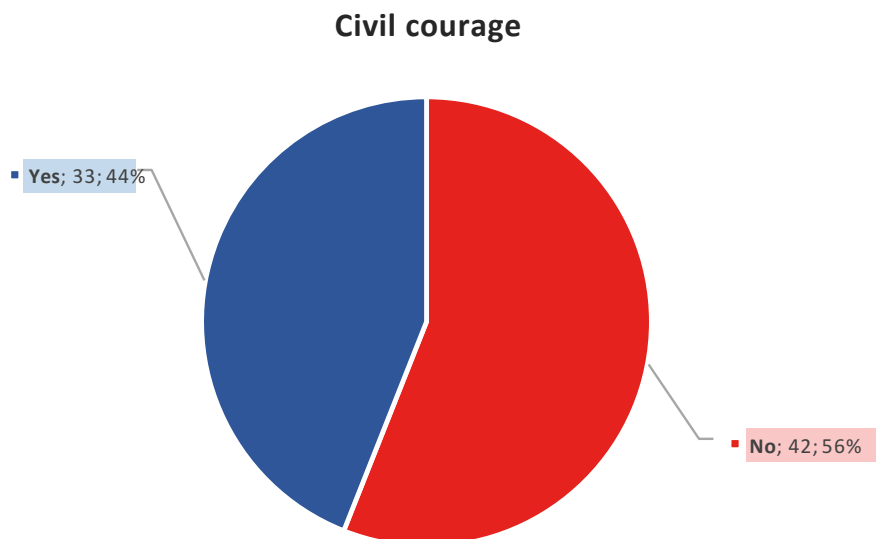
2.5 Educational institutions in which discrimination took place



2.6 Cases of discrimination by federal states ('Bundesländer')



2.7 Civil Courage in the context of discrimination



3 Selected cases (ranked by frequency of occurrence)

3.1 Discrimination on the basis of islamophobia

Even in 2017, a large majority of those affected by discrimination stated that they were discriminated against on the basis of islamophobia. Racism and discrimination are part and parcel of school and university life for many Muslims living in Austria. However, not only school and university students are affected by an increasing islamophobia within society. Infants and teaching personnel are also not protected from discrimination, as the following cases will exemplify.

As the case in last year's report, we will be starting off with an example from a public kindergarten highlighting that nobody is spared by discrimination, not even those still attending nursery.

.....

Case 1: *“At the creche for younger children, a helper refuses to change the diaper of a young Muslim boy because he is circumcised. Her reason: ‘It’s disgusting! They might as well cut it all off!’”*

.....

This case constitutes gross neglect on the part of the caregiver, infringing several rights under the UN Convention on the Rights of the Child, such as the right not to be discriminated against (article 2) and the provision of the best interest of the child (article 3). It amounts to gross misconduct, if employees of a child-care facility abuse their duties and harm children who have been entrusted to them by their parents. Unfortunately, there was no information about possible consequences the helper may have faced. As in many cases, there is a strong possibility that the management may have tried to sweep the issue under the carpet. That is due to the fact that as if the case were reported to the police, not only the assistant herself would have to face consequences, but those running the institution, too, since they are primarily responsible for guaranteeing children's well-being.

The following incident shows the impact discrimination can have on an elementary school level. Here, the principal of a primary school suggested a mother that her daughter would be better off attending a pre-school due to her supposed lack of German. Due to the mother's headscarf (she had recently converted to Islam), it appears to have escaped the principal's attention that both the mother and the daughter were autochthonous Austrians. The assumption about the child's German skills could have been easily avoided by the principal fulfilling her responsibility and without any prejudice reading the documents, filled out by the mother, and observing the child.

.....

Case 2: *“I had a conversation with the principal of the primary school at that time, that my daughter should attend pre-school. I asked her why my daughter should attend pre-school. The principal replied: ‘By doing so, your daughter will have the opportunity to improve her German skills. It would be only for her best.’ Responding, I explained to her that I wear a headscarf because I am a convert, that German is my mother tongue and therefore also the mother tongue of my daughter and that my daughter does not speak any other language apart from German. It’s the height of cheek since became clear that before our already scheduled meeting, she had neither made an effort to observe my daughter nor to read our documents. Apparently, the headscarf had completely clouded her perception.”*

.....

The next three cases illustrate the influence media reports about Muslims have on the individual thoughts and actions of Austrian teachers. Also in Austria, debates about Islamic swimwear erupted particularly in 2016/17, sometimes also referred to as Burkini/Bodykini, a full-body swimming costume. Nevertheless, a female sports teacher from Lower Austria felt encouraged enough by these debates expelling a Muslim female pupil from her swimming lesson, even though an effective instruction has been issued by the Lower Austrian Board of Education. This instruction gives detailed guidance how to proceed in such cases, and that it is possible to participate in swimming lessons while wearing an Islamic swimming costume.¹ In addition, the teacher ridiculed her swimwear as being dirty – an assertion, often made in relation to Burkinis/Bodykinis in newspapers as well as in panel discussions on TV.

.....

Case 3: *“A female student with a headscarf wanted to take part in the mandatory swimming lesson wearing a Burkini. The teacher said: ‘You’re certainly not getting into the clean water in these rags. Wear something appropriate!’”*

.....

In the next example a case is documented which was also discussed at length during public debates, namely using a handshake as a form of greeting. From IDB’s point of view, it is shocking how the teacher has reacted in this case, particularly the wording exemplifying her perception of Muslim students.

.....

.....

¹ http://www.lsr-noe.gv.at/index.php/mehrsprachigkeit-interkulturalitaet-migration-mim.html?file=files/theme_files/downloads/landesbereich/Mehrsprachigkeit_Interkulturalitaet_Migration_APS/MIM/Richtlinien_fuer_den_Schwimmunterricht.PDF. (accessed on 12.October 2018)

Case 4: *“A teacher is scolding a student during the break. He appears frightened and distressed. It turns out that he didn’t want to shake the teacher’s hand during the awarding ceremony following the project week. The teacher perceives this as disrespectful and said: ‘Maybe your god doesn’t want you to shake hands with nonbelievers, but here in Austria, this is what we do!’ The principal asks to see the student in order to speak with him about the incident. The student starts to cry and shows his hands to her. He is suffering from a type of Urticaria (hives) and felt ashamed to give a handshake to his teacher. After figuring this out, the teacher is very upset jumping to conclusions so fast and apologises to the student.”*

.....

It has to be positively considered that the teacher ultimately apologised to the student, after the misunderstanding was cleared up. Irrespective of the student’s skin disease in this context, it is more than alarming that a teacher embarrassed her student in such a way. It is imperative that a teacher does not go beyond the pedagogical framework when dealing with conflicts or uncertainties and that by no means verbal, psychological or any other forms of violence are used. The clarifying role a principal can/ should take is reflected very well in this case. It is essential that principals view themselves as neutral and objective mediators not being biased by taking the teacher’s side – as it is often the case unfortunately – without giving the student a possibility to be heard.

In the third case regarding the influence of media on everyday school life, a media report triggers a discriminatory act by a teacher. After reading about a terrorist attack on her smartphone during class, a female teacher turns to a Muslim student with Syrian background accusing him that the perpetrator was “one of his guys”. The teacher thus accuses the student of being associated with the attacker and holds him jointly responsible.

.....

Case 5: *“A teacher enters the class. While students are noting down their tasks in their notebooks, she looks at her mobile phone and finds out through a news website that there has been another terrorist attack. She looks at a student of Syrian descent and says: ‘Great! One of your guys has blown himself up again. Crazy!’ The student gets angry and screams ‘Muslims don’t do such things.’ A heated debate arose between the teacher and the student. The matter escalates and a teacher from the neighbouring classroom has to intervene. He calms down both his colleague and the student. The student doesn’t go to school the next day as he is still very angry. My students (I teach biology to that class) tell me about this incident. They find it unfair that their fellow student was accused. They all agree that nobody should be blamed simply because people of the same religion or the same country of origin do something horrible. Subsequently, I had a conversation with the student alone.”*

A teacher from the neighbouring class showed civil courage, by intervening and calming the situation down. However, the problem was not solved by this alone. The reaction of the fellow students shows once again that it is not merely the student him or herself, but the whole class that is affected if such racist assertions are made in front of the entire class while being directed at a particular student. The need to discuss the issue triggered by the incident could only be satisfied in the biology lesson. It shows how important it is to “post-process” such incidents with the entire class. The fact that another teacher was empathetic enough to offer such a space during her class has to be emphasised positively. However, unfortunately this is more of an exception than the norm in the cases reported to us. As with the vast majority of reported cases, the teacher did not face any consequences for her actions.

Similarly, the teacher in the next case did not had to face any consequences for her discriminatory and degrading actions being unworthy of a teacher. This time, the racist attitude of a teacher did not only affect a class of Muslim students attending religious education, but also their religion teacher, as well the class of the discriminating teacher witnessing the entire incident. Due to her rank as a civil servant and her political position her obvious misconduct was not sanctioned.

.....

Case 6: *“An Islamic religion teacher is holding a lesson. A colleague is looking for an empty classroom, as she wishes to study separately with a small group of students. Without knocking, she enters the classroom, where an Islamic religious education lesson is being held. She does not greet anyone and leaves the room. The colleague follows her, as he wants to know if he can be of any help. She subsequently shows him the middle finger in front of students. The students and the colleague are shocked. He reports the incident to his inspector, who in turn gets in touch with the school’s principal. As she is tenured staff and active in local politics, she faces no further consequences.”*

.....

Apart from the educational mandate, teachers also have the duty and role to empower their students – to get the most out of them, to motivate them to set ambitious goals in their life and also to pursue them. It is in the interest of the students, the society and politics that teachers recognise and awaken the student’s potential and that they are encouraged and supported in discovering their own strengths. Many teachers are not aware of the fatal consequences their statements can have on the academic and future professional success of children and adolescents. Even though there are many positive examples of dedicated teachers out there, there are unfortunately just as many negative ones, as shown by the next case.

.....

Case 7: *“Students of a pre-vocational school have to look for some work experience. A student would like to see what it’s like working at a flower shop. The supervising teacher tells her that she better remove her headscarf, otherwise she would not have any chance of finding work. She is upset and calls her former new secondary school teacher, who also wears headscarf. The teacher encourages her and together they find a flower shop, where she can get some work experience. She has mixed reactions from clients, but all in all she is satisfied. The new secondary school teacher tries to contact the principal of the pre-vocational school. He bluntly dismisses her and says that the teacher was merely giving her a realistic insight into the working world.”*

.....

What is interesting in this case is not only the “suggestion” of the teacher to remove the headscarf from the outset, but also the statement and attitude of the principal. As it is so often the case, the principal reacts in a biased manner and takes the teacher’s side, acting contrary to the current legal framework in Austria. The Federal Law of Non-discrimination and Equal treatment² entered into force in 2004. Its compliance is monitored and enforced by the Ombud for Equal Treatment.³ The law provides for protection in employment and occupation against discrimination on the grounds of sex, particularly with reference to one’s family status or to the fact that someone has children, discrimination on the ground of ethnicity, religion or belief, age and sexual orientation.

It is telling, when both teachers and principals ignore Austrian laws – in this case the Federal Law of Non-discrimination and Equal treatment. Instead of encouraging students entrusted to them by educating them about the applicable law and possible ways of seeking remedy through it, they do the very opposite. By presenting discrimination in the working world as the “standard” and/or “reality”, not raising any objections to it and portraying it as acceptable, despite its unlawfulness they reproduce exclusion and discrimination. Regularly, teachers do not motivate their students to choose a path according to their wishes or to try something new. On the contrary, they discourage them from even taking a step. They advise students to give up their goals, predicting in advance that the child will likely fail. In this way many children are already robbed off their career choices and dreams at a young age.

If there are discussions about the fact that only few people with a migrant background are represented in a certain area, this usually follows as logical consequence of the self-fulfilling prophecy of many teachers. A child with a pessimistic attitude no longer believing

.....

² <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>. (accessed on 8.October 2018)

³ <https://www.gleichbehandlungsanwaltschaft.gv.at/ombud-for-equal-treatment>. (accessed on 2.October 2018)

in him or herself and/or in his or her abilities has automatically a lower chance of success.

The last example of discrimination on the ground of islamophobia is a case, exemplifying the many so-called “jokes” teachers make, being anything but amusing for the affected students. It should be self-evident that generally one, but above all teachers, should refrain from making jokes at the expense of someone’s ethnicity, religion, sex, disability or learning disability, the sexual orientation or a student’s appearance. However, this type of behaviour is not unusual in school and university campuses alike.

In the following case, a student wanted to ask her German teacher about something. The latter dismissed her and accused her of having bad breath because she was fasting in Ramadan. It is only after the emotionally hurt and visibly upset girl turned to her school librarian, who confronted the German teacher about the incident, that the latter purportedly showed discernment. However, there was no apology. It happens time and time again that teachers / professors try to package their racist, offensive and derogatory statements in the form of a supposed “joke”. The student in this case had to face the reaction of fellow students laughing at her. This example highlights how teachers can initiate and even support bullying behaviour among students.

.....

Case 8: *“The student comes into the library crying. The school librarian asks her, why she is so upset. She replies: ‘I did not understand something in the German lesson and went to teacher to ask her something. She said that I should go away, because I have really bad breath. She said, ‘if you need to starve for Ramadan, at least spare us the stench.’ Although she didn’t mean it seriously, and I know that, the other children were laughing and now everyone is saying I have bad breath.’ The school librarian tries to seek dialogue with the colleague. The latter is insightful and says ‘It wasn’t meant that way, while saying it, I was laughing anyway but I will take care the next time!’”*

.....

3.2 Discrimination on the basis of ethnicity

Below, readers will find a selection of cases, which were reported to us in this form, apart from the necessary censoring undertaken for data protection reasons. In this context, direct discriminatory effect refers to all experiences having a negative impact on the self-esteem of the affected person. The confrontation gets incorporated as feedback about oneself and manifests itself through the phenomena of instilled inferiority. Direct discriminatory effects directly impact the life of the affected person and have a long lasting influence, both in psychological and economic terms.

Indirect discriminatory effects mean a phenomenon, which can at best be described as form of a co-concern. What this essentially means is that recipients and observers of discriminatory messages and actions do not remain unaffected, simply because they do not show certain characteristics. Especially children do already recognise social norms at the age of two or three, hence already mimicking what they are confronted with at a very young age, without being fully aware of the consequences. Moreover, we as human beings are capable of empathy and feel a wide range of emotions when we suspect wrongdoings of any kind – from slight aversion to psychosomatic pain.

Finally, it can be said that direct discriminatory effects are always contingent on indirect discriminatory effects. The likelihood that a teacher behaves invasively towards a student on the ground of his or her ethnic origins and only exhibits this behaviour towards this one student is very low. The same holds true the word of mouth, which influences our opinion even before we are confronted with the respective reality.

We would like to thank all contributors for their courage knowing that it is not easy to speak out about painful experiences; especially since there are only few role models out there at the moment openly sharing their discriminatory experiences.

.....

Case 9: *“A teacher warns a student, as the latter is disruptive in class. At the second warning, the teacher uses the following words: ‘Be happy that you can sit here and breathe. In your own country, you are not even allowed to go to school!’ The students’ parents are originally from Afghanistan.”*

.....

Case 10: *“Students are chatting with each other in their Turkish mother tongue during the break. The teacher in charge of supervision enters the meeting room after the break and proclaims to his colleagues in a loud voice ‘The scum don’t want to talk in German? Then they should get out of here! None of us understand their monkey speak, who knows if they are insulting us.’”*

.....

Case 11: *“An incident in a classroom: a teacher enters the room, a student screams: ‘Miss, I cannot find my wallet’, the teacher asks: ‘Where did you see it last’, the student replies: ‘It was on my table before I went to the toilet. Now it is gone.’ The teacher: ‘Check X that would be my first tip.’ The female student X is originally from Poland. She is repeatedly confronted by her teachers with the stereotype that thefts are predominantly committed by people from her country of origin.”*

.....

Case 12: “A student cheated during an exam. His mother is subsequently called to the school. She is supposed to have a meeting with the English teacher and the class teacher. However, as the mother cannot speak German very well, a colleague, who also speaks Turkish is requested to take part in the meeting. The English teacher, while standing next to the mother, rejects this with the words: ‘I will only speak German and I want only German to be spoken around me as it is our everyday language.’ The student intervenes and tries to defend his mother: ‘But she cannot speak German’, to which the teacher replies: ‘Yes, I can see that, well then it is high time for her to finally learn it!’ The mother apologises for the fact that she cannot understand everything but is abruptly cut short by the teacher: ‘German, I said!’ The situation escalates, as the student perceives this as a personal attack and starts screaming at the teacher: ‘Watch how you speak to my mother!’ The teacher replies: ‘Your mother should first learn how to speak in the first place!’ The student and the teacher are standing face to face and can only be separated by a colleague passing by and the colleague who had been invited to offer her linguistic support. It is very unpleasant for all those present. The student feels that he and his mother were treated in an unfair way. The English teacher did not recognize her wrong behaviour and did not apologise for it. Moreover, it came to light that another student had cheated. However, in his case, it was not deemed necessary to call his parents. The student is convinced that his teacher is racist and islamophobic, as his mother wears a headscarf. After some time, the student changed school as he felt bullied by his teacher.”

.....

Case 13: “Two students have been arguing for some time at school. During an art lesson, X passes by Y. The latter turns back with his portfolio and shoves X. This leads to a brawl. The children are calmed down. The incident occurs in the second lesson. After the fifth lesson, a father is seen standing in front of the class, looking around. A teacher notices him and asks him if he needs any help. He explains that he is looking for Y. When asked why, the father does not wish to respond. The teacher tells him that he cannot walk around in the school building just like that and accompanies him to the staff room. There, he encounters his son X’s class teacher. In the meantime, its break, and his son is standing next to him. The father says to his son: ‘You don’t need to tolerate such scum. If he’s stupid, give him a punch in the face. That’s what this Tschusch (derogatory term for people from the former Yugoslavia or South-eastern Europe) needs!’ A colleague witnesses this while passing by and reports it to the class teacher, who is retrieving documents about X from the meeting room. The class teacher appears surprised. He goes out and says to the father: ‘I understand you. You are not entirely wrong!’ The colleague is shocked about this statement, as she had actually expected that the class teacher would give the father a warning. She takes this up with him the next day. He tells her not to take everything too serious, ‘when it’s your child, it’s clear that one reacts differently.’”

.....

Case 14: *“A student starts primary school and leaves an impression with her tremendous performances. The class teacher decides fairly quickly that the girl should skip a year due to her scholastic achievements. She speaks with the principal about this. The latter is not pleased and says that the parents of the second-grade children won’t find it acceptable that a Turkish child is suddenly skipping a year. He does not agree. The teacher reports this to the inspector, who says: ‘The girl may be superb at school, but she should stay in her class. Who knows, she might pick up some social skills from her peers. Your boss knows the parents better, listen to him!’”*

.....

Case 15: *“During the final conference before the school closes, grades, negative assessments and possible autumn re-takes in September are discussed. The number of students for the coming year is so low, that in the worst-case scenario some teachers will have to change schools, as there will be no lessons to allocate to them. Two students were affected by negative assessments. An Austrian and an Iranian child. The statement of a colleague regarding this was the following: ‘Let’s let X (Iranian child) fall through the cracks (!), it will be less noticeable with him. Then we can definitely secure another second class.’ This meant that the autumn re-take would be prepared in such a way as that the student cannot pass, allowing for the possibility of another second class and for a teacher to be able to continue teaching at the school. While several colleagues are shocked about this statement, others think it is a very good idea and would not be too noticeable. This gives rise to a heated debate, which ends with a dismissal of the idea. This reveals the ignorance and whims of some teachers and the question remains, how correct certain results are at school.”*

.....

In the above case, courageous teachers were able to prevent a clear abuse of power. The fact that this possibility was even considered just shows why the work undertaken by the IDB is so essential.

.....

Case 16⁴: *“Me, born in Austria and my husband, who is originally from Algeria, but has the Austrian citizenship since 20 years, were told yesterday at the preliminary meeting regarding our daughter’s report, that our daughter X as an extraordinary student with a migrant background should actually not be graded. Her class teacher reported that she had, however, removed this requirement for her. For a moment, I as the mother stared at her and said: ‘Well then, I am relieved...my child is not even being raised bilingually, we*

.....

⁴ According to §4 of the School Education Act assessments have to take place prior to the assignment of the status as “extraordinary students”; see <https://www.jusline.at/gesetz/schug/paragraf/4>. (accessed on 16.October 2018)

are both Austrians and X has been attending school since last September.' It is outrageous that you are treated this way as a real Austrian. How must the others be treated? That is even more depressing for me..."

.....

This is a clear case of misconduct, which was only incidentally uncovered at the end of the year.

.....

Case 17: *"Our client X has been attending a post-qualification training course since autumn 2017. During a history lesson there was a conflict between X and her teacher, during which she had to face serious insults, humiliation and aggressive behaviour by her teacher. The incident left her seriously unsettled and she came home from school completely distraught. The teacher asked her to sit in the front, but she replied that she would like to stay seated in her seat. The teacher told her she has to change seats and she again replied that she does not want to. This goes back and forth several times. The teacher gets very loud, goes to her table, knocks it over and says: 'This is my country, this is not Somalia, go back to your country!' Student X responds by saying: 'If I go to my country, I will not be asking you!' The teacher: 'Ok, then ask Kurz and Strache!' The student says: 'This is not good. I have never seen a teacher behaving like that.' The teacher tells her to leave the class. She does not leave, to which he says: 'I will throw out your things, and will also throw you out of the window, but you are in Austria.' Later, he tells another female student that she should take X' stuff and put it in front of the door. The other student does this. After this, the teacher says something like "your father". All students laugh, but student X did not understand what was said. The teacher places her test on a different table and tells her to take it. She was angry and did not take the test. The teacher said loud: 'You need to learn how to speak, you can't speak German!'. The teacher tells the other students that they will only get their tests if student X leaves the classroom. If she doesn't leave, the others also won't get their tests. After this, all students tell her to leave. The teacher scolds her: 'You are such a dumb student. You need to listen to me, I am the teacher.' Student X replies: 'If a teacher talks to me like this, without any respect, I will not leave.' The teacher loudly says 4-5 times that he will throw her out of the window. Apart from this, he also said: 'You came to Austria and fled your country and now you don't listen to what the teachers say?' The teacher takes the test from X and writes "unsatisfactory" on the test. He calls a social worker. After the telephone call, the teacher tells a student in class to pick up the toppled desk. After half an hour the social worker comes to X and sits next to her in class. Student X is crying. The social worker asks her if she can explain what happened and if she can accompany her to a separate room. Before this the teacher approaches them and says: 'X, today you do not look well, do you have problems at home? Do you have problems with your family?' She does not reply.*

The social worker goes with her to a different room. She gives her a glass of water. Student X is crying a lot. She tells the social worker about what happened and the latter agrees that what the teacher said was not ok. Another teacher and two students enter and say they need the room. The student X and the social worker leave and look for another room, but do not find any. Student X then says that she would like to go home, even though she still has an English lesson. As she is 18 years old, she can go home alone. The social worker asks for the number of the shared accommodation where X lives.”

.....

This incident represents perhaps the gravest form of abuse of power, as the teacher incited the other classmates against the young student and the incident was not reviewed till today (IDB was in contact with the manager of the shared accommodation). Moreover, the teacher was able to induce individual students to commit certain acts. Even the use of raw violence by the teacher (screaming, toppling over the table) is shocking. Generally, his methods evoke an image of psychological warfare and torture. An educator who acts in such a way requires psychological support for clearly being overburdened, but should not work in a classroom.

.....

Case 18: *“I was sitting in class with my head resting on my hands. Thereupon, the teacher cried out: ‘Don’t sit around like this, you N****’. A meeting with the parents had already taken place, but he did not stop doing it.”*

.....

We often use words in our daily language, without paying much attention to the collective and emotional experiences people have had in relation to those very words over many generations. In the present case, however, we must assume that this was a deliberate attempt to hurt the student.

.....

Case 19: *“A music teacher discriminated several students over many years. A girl from Serbia was never allowed to speak, although she spoke perfect German: ‘You do not speak German.’ My foreign sounding name evoked minutes of laughter and others were pronounced incorrectly by purpose. He only lectured about the stupidity of women and the inferiority of all those, who were not Austrian. No music lesson. The worst was the stuttering boy, whose long hair reaching the nape of his neck (his pride and joy – style of that time) was cut off by the teacher, laughing about the boy’s tears for several weeks.”*

.....

Case 20: *“The teacher referred to student X as “N****” and “terrorist” in front the entire class. Regarding his traditional clothes he said that one ‘was able to see his a** well in these kangaroo trousers’. Apart from this he has said the N-word to him many times. Apart from that he is suffering under this teacher, as he always speaks to him in a disrespectful manner (“shut your mouth”).”*

.....

The student responds to the questions on our form as follows:

HOW did fellow students/your surrounding react?

“Most of them also seemed embarrassed but some others laughed along as well.”

HOW did you feel?

“Angry, humiliated, upset, helpless, resigned, mocked, vulnerable, degraded, inferior, disgusted.”

WHAT happened after that?

“The class teacher said, that’s just the way the respective teacher is. I shouldn’t take him too seriously. He was only joking. “

Has this or something similar happened before?

„Yes“.

If yes, how often has it happened?

„Several times“.

Is there anything else you would like to add?

“Mr Mag. X also worked as a teacher at X-gasse. Over there, his racist and discriminatory statements towards black and autistic children were reported to the principal. The latter only said that there was a long list of complaints and that he knew about the problem and had tried to talk to him about it several times.”

3.2.1 Discrimination on the basis of antiziganism⁵

.....

Case 21: *“In a Viennese primary school a female student in the fourth class is repeatedly insulted as “F****Gyp****” by a classmate. In May 2017, she turns to her Roma school mediator, who immediately takes these incidents up with the teacher. The teacher accuses the girl of lying. The Roma school mediator insists that the teacher speaks to the respective student accused of insulting the girl. The classmate admits that he insulted the girl and apologises. The teacher, however, plays down the insults in front of the Roma school mediator and the girl and her family, by saying that she doesn’t really understand why this is an insult. She doesn’t see a need in discussing this topic in class and to tell the students that such remarks are discriminatory insults. Despite the unsatisfactory reaction by the teacher, the situation improves, as no further insults are heard after the discussion with the classmate.”*

.....

Often attempts are made denying the existence of discrimination faced by the victim, on account of one’s own, non-sensitized perception. That is exactly what happened in the aforementioned case.

3.3 Discrimination on the basis of a disability

.....

Case 22: *“My 11 year old son X has been attending school X since the beginning of September 2017. He suffers from ADHD related sensory disorder, vertigo, a disorder of his fine motor skills (e.g. slow writing, standing unsteadily on his legs) and poor concentration. He receives an increased family allowance, as the degree of his disability amounts to 50%. Right from the outset, he was teased because of his disability, as he is slower and clumsier (speech, reaction) and he walks on his tip toes. Classmates, five in total, humiliated him saying that he is dumb, he is only a victim, he is a ballerina, he cannot even walk properly. He doesn’t belong to school, he is stupid like the rest of his whole family, he is a loser, his parents don’t have a title, he is too dumb and clumsy to do anything. Whenever he wanted to say something, he was interrupted, as he needs longer to think and express himself. They humiliated him in front of the entire class, even though he said ‘Stop!’. The class teacher, Ms. Prof. W, was already told verbally during a parent teacher meeting at the end of September 2017 that he was being bullied and she was requested to do something about it. However, she did not take this seriously. He no longer wanted to go to school because they bullied*

.....

⁵ This case was kindly referred to us by Romano Centro.

him. Over months, he brought his lunch back home because they teased and provoked him. At the parent teacher meeting on 30.11.2017, we, both parents told Ms. Prof. W. that our son X needed help and he wasn't doing well, that he is excluded and bullied. We asked her to raise the topic of bullying in class and to educate children about this topic. Nothing happened. There was neither a follow-up to see if the situation had improved nor a notification about whether the topic was discussed.

He was so stressed out that in January after getting a 4 in German, he hit his head against the table and got an abrasion. We were informed about this by the teaching staff and picked him up. He complained about a headache and threw up outside school. He locked himself in his room and cried until he had a breakdown on 08.03.2018. On 10.03.2018, we wrote an e-mail to the regional board (had the same surname as the professor). But till today we have not received a concrete response. We were simply told that the matter would be looked into it and conversations held with the parties concerned, as well as with the parents. On 14./15.03.2018, our son's classmates Y and Z said to our son: 'Something is coming for you; we have every right to it!' He was cornered and didn't receive any help. They put him down because of his grades. On 22.03.2018 we received a call that our son had threatened a teacher. We were called in order to see the principal and were told that our son was a threat for himself and for all persons at the school. He was immediately suspended until 20.04.2018 and an expulsion from school was requested, which was approved by the regional school board. The youth welfare services were also notified alleging that the child's welfare was in jeopardy and there was a risk of imminent danger. No one took us seriously and wanted to hear what we had to say. The principal received us with a foreign-tinged German, even though we believe we have a good command of the local language. We are Austrians with a migrant background, going back three generations. We live here and are well integrated. In our case, no support was offered. The bullying was swept under the carpet and our son was the one to be blamed.

The father of the aforementioned student Y gifted the class a shelf – he insisted on placing it there in the class room. This happened in the week, in which the parent teacher meeting (following the e-mail) was to be held, roughly around on 20.03.2018. We are utterly disappointed. We can't believe that this can happen in Europe, in Austria, in a state governed by the rule of law!? Everything was swept under the table. Till today, no one has apologised to our son, neither the children, nor their parents. We sought legal support from a law firm, which has all the protocols and evidence relating to this case.

My son cannot sleep, he cannot eat and he blames himself for being different. He asks why God has made him this way, so that no one wants to understand him. He is tearful. He wants to be understood by society. He is in fear about his future. He also told the principal that he felt bad for what he had said to the teacher. He had said what he said without the intent to do anything, that he didn't meant it that way, everything was just too much for him. As he

was reading out loud his letter in front of the professors at the meeting, he was laughed at. He is very unstable and does not understand why he did not receive any support from the school. He simply wants to have justice in such situations. He will have to struggle with this for the rest of his life. He feels worthless, humiliated and helpless.“

.....

Cases like these happen, if the discriminatory experiences of those affected are dismissed and the stringently structured hierarchical education system acts in the interest of its representatives in cases of doubt. This case can be categorised as gross negligent. In 2017, three persons whose children with disabilities were suffering problems at school turned to the Lower Austrian Anti-Discrimination Body⁶ for help.

.....

Case 23: *“A student attending the fourth class of a new secondary school in Lower Austria, needed a reading device in order to facilitate him with his reading in class, since his visual performance was merely 30%. The school (principal, teachers) always strove to support the student. During a standard assessment for maths, which was managed by the Federal Institute for Educational Research, Innovation & Development (BIFIE), the student’s request to be allowed to sit on his seat with the reading device was rejected. He had to sit somewhere else. After he opened the envelope with the exam questions, it became clear to him that he could not read the text. His teacher supported him and wanted to copy the questions in a larger format. This was, however, refused by BIFIE staff. The student was excluded from the exam and eventually had to leave the classroom.*

The refusal to let him sit the exam due to his disability was a very discriminatory experience for the student, who had prepared for the exam like everybody else. He requested the Lower Austrian Anti-Discrimination Body to get in touch with the party responsible and to discuss the issue. The Lower Austrian Anti-Discriminatory Body approached the Federal Ministry of Education (BMB) and informed them about the case. The BMB thanked them for the notification and promised them a better process during assessments involving similar cases.”

.....

3.4 Discrimination on the basis of sexism

Sexism has various manifestations and occurs in all areas of life – also within the education system. The most frequently type of sexism in the area of education is gender stereotyping. This is due to the entire education system as both primary school teachers, as well as university professors do work with stereotypes. Almost all school books contain a plethora of gender stereotypes.

.....
⁶ The following case was kindly referred to us by the Lower Austrian Anti-Discrimination Body.

The idea that a certain gender exhibits a particular type of behaviour, has certain attributes and talents is propagated so frequently that it is often no longer questioned. Therefore, still today there are widespread presumptions within society and also among many teachers that “boys are better at science”, while “girls are more linguistically and creatively talented”. Even apparently harmless remarks, made by both male and female teachers in day-to-day school life, such as “can three strong boys help carry the tables and chairs over?” suggest that female students would not be able to do so.

This constant attribution of supposed strengths and weaknesses with regard to various genders, inter alia, also leads to a strong underrepresentation of women^{*7} in certain scientific fields.

Sexist ideologies and comments are thus embedded within the education system for a very long time, which is why they are not even noticed anymore by many. This is why particularly young girls cannot recognise sexist incidents, hence sexism particularly among female students* remains largely unreported, and many cases are therefore not documented. It is all the more important to educate female students* about this topic in order to make them aware about this type of discrimination.

In the following case, a young teacher is confronted by the sexist comments of an older colleague, who dismisses her scientific knowledge as a physics and chemistry teacher on the basis of her sex and additionally ridicules her by listing sexist female clichés.

.....

Case 24: *“A young colleague is deployed at a school, as a physics/chemistry teacher is needed there. An older colleague makes a remark: ‘A young girl? What a shame that the actual disciplines in this world have fallen in the hands of women. The children will surely learn a “lot”, e.g. which nail polish lasts the longest and which consistency is important for a lipstick.’”*

.....

Such remarks are not only a “joke”, but a form of verbal violence and serious humiliation.

Many female scientists* report about various sexist remarks and actions, which they have been and still are subjected to in the course of their academic careers. A potential reason behind such sexist remarks and/or the dismissal of any technical knowledge of female colleagues is possibly the fact that men might feel that their masculinity is under threat. This might be due to the fact that changes in the gender balance were brought about in the last few years by the presence of women* in their field. Sexist remarks serve the purpose of exercising power and pushing female colleagues* out of the workplace, as many men are afraid of a “loss of power”, or even fear being replaced by female scientists.

.....

7 The “*” represents all people perceiving themselves as belonging to the respective gender. This is intended to include all sexes in contrast to the prevailing “two-gender-system”.

Even though, or perhaps because the scientific arena is still such a male dominated field, it is still heavily marked by sexism. From an early age on, many young girls are taught that science is for boys*. When one, however, analyses most campaigns and adverts of scientific organisations or institutions, which for instance wish to make science more attractive for female students*, one realises fairly quickly how they are actually aimed at either exclusively or at least primarily attracting male students*.

It goes so far as that in some schools female students* showing an interest in scientific or technical professions/courses, are partially dissuaded from pursuing these by their teachers. This is why, for instance, many girls* do not have the courage to attend technical secondary schools or schools specialising in chemistry, as they view them as “men’s clubs”, in the same way that male students are less likely to want to undertake training to become a kindergarten teacher, when people around them are constantly talking about “Kindergartentanten” (literal translation: kindergarten aunties, used in the German-speaking area for female kindergarten teachers).

But also when it comes to apprenticeships, a huge difference between sexes can be observed. For instance, the apprenticeship statistics of 2017 prepared by the Austrian Chamber of Commerce showed that almost half of all female apprentices were trained in retail and have chosen careers as office administrator and hairdresser, while their male counterparts mostly opted for technical careers, e.g. in the area of metal and electrical engineering.



Of course, the decision which to pursue should be left to female students*. And if a female student wants to train to become a hairdresser and has a passion for it, there is of course nothing wrong with that. However, one cannot disregard the major influence gender specific socialisation and the propagation of conventional stereotypes in society has on ostensible individual preferences and decisions of children. Particularly worrying is the difference in the “Top 10 apprenticeships” of both sexes, when one considers the

discrepancy in wages between the majority male and female apprenticeships. In this way the gender-specific pay gap begins to widen at a fairly early stage. The career aspirations of most children are not just a product of a natural, fully independent and individual choice, but a decision influenced by society, parents and teachers.

This issue needs to be addressed. Therefore, it is the duty of educational institutions to break conventional stereotypes and implement gender mainstreaming. A particularly vital role is played by teachers in this process, who should be able to inspire students to pursue jobs “uncharacteristic” for their gender and should encourage them to try out new things. It is imperative that they should be able to convey to female students that traditional “female or male professions” no longer exist, that certain talents, strengths, skills and types of intelligence cannot be pinned to a certain gender and to particularly motivate girls* to pursue scientific or technical courses and professions. Students of all genders should be convinced by their teachers that there are absolutely no restrictions on their career choice with regard to their gender, and that they should trust their abilities and pursue their dreams and goals.

3.5 Discrimination on the basis of antisemitism

.....

Case 25: *“A teacher at an upper level secondary school makes a joke in front of the whole class: ‘What is the difference between a Jews and a Turks?’ The class remains silent. He continues: ‘The Jews already have already been through it’. There is a student with Turkish roots in the class. Hearing this, he feels terrified and distraught. He confides this to a religion teacher. The latter reports the incident to the principal. While the principal expresses her outrage, the teacher faces no further consequences and the topics of antisemitism and hatred against Turks are not discussed with the entire class.”*

.....

Antisemitism at schools in Austria? Yes, it exists. It is regularly reported by parents, whose children attend public schools that their classmates have made remarks, which teachers have not responded to adequately enough or that antisemitic graffiti was found on tables or walls. Yet, it is a different story what of these incidents are made public. At the end it is a matter of balancing: Does my child benefit from it or will it be exposed to more harm? But also: Does my child want me to make it public? Physical assaults, such as those in Germany have not been reported for Austria until now. However, there is no official extensive data regarding antisemitic attacks in Austria. The forum against antisemitism prepares an annual report but is dependent on cases being reported to them.

The fact that almost no antisemitic incidents are reported from local educational institutions, however, is easy to explain: In cities such as Salzburg or Innsbruck there are only a few dozen Jews. Austria's biggest Jewish community resides in Vienna. Yet, it is only comprised of barely 8,000 members, roughly a quarter of whom are children and adolescents.

Around three quarters of them attend Jewish schools. There are four Jewish schools in Vienna, ranging from orthodox to Zionist. Two of them the Zwi Perez Chajes school at Prater and the Lauder Chabad school at Augarten go all the way up to secondary school. Moreover, at the Jewish Vocational Education Centre (JBBZ) in Vienna, teacher training can be completed in a protected space.

Out of those children and adolescents, who do not go to Jewish schools, some attend international schools (such as the Lycée français or the Vienna International School). Hence, the number of Jewish children and adolescents studying at public school is hence low. Thus, the low number of reported cases has little to do with non-existent antisemitism but more with the non-presence of Jewish students in the majority of classrooms.

3.6 Discrimination based on homophobia

Despite extensive legal gender mainstreaming and gender equality efforts, the discrimination of queer⁸ individuals remains an acute issue in Austria. According to the study Queer in Vienna which was conducted in 2015 by the Viennese Anti-Discrimination Office for Same-Sex and Transgender Lifestyles (WASSt), as well as the Institute for Higher Studies (HIS), roughly 30% of those questioned have faced discrimination and violence on the basis of their sexual orientation or gender identity in the last twelve months prior to the commencement of the study.⁹ Mirroring our society educational institutions are not spared by homophobia and homophobic violence, too. According to the mentioned study, 34% and/or a third of queer school students, 33% and/or a third of queer apprentices and 22% and/or a fifth of queer university students participating in the study stated that – in the last 12 months prior to the begin of the survey – they have been affected by homophobic violence and discrimination and/or were uncertain about it.¹⁰

That the visibility of the queerness of the victim and consequently the clear 'deviation' from the heterosexual and gender norms in the public sphere is something which is punished by the discrimination shows the case that we have documented in 2017:

⁸ A term originating from the Anglo-Saxon context meaning those persons who are not heterosexual and/or not cis-gender (sex and gender do not correspond with each other).

⁹ See Eberhardt, V., Hofmann, R., Huber, C., Klapeer, C. M., Schönpflug, K. (2015) „Queer in Wien“. Stadt Wien Studie zur Lebenssituation von Lesben, Schwulen, Bisexuellen, Transgender-Personen und Intersexuellen (LGBTIs), <https://www.wien.gv.at/menschen/queer/pdf/studie-queer-in-wien.pdf>, 3 (accessed 23 May 2018).

¹⁰ Eberhardt et al. (2015), 5.

.....

Case 26: *“A lesbian student is expelled from class by her teacher for the duration of the entire lesson, since he believes that she is flaunting her homosexuality through her outward appearance. She has short blue hair and wears a necklace with two venus symbols, which are intertwined with one another (a frequently used symbol for love between two women).”*

.....

Therefore it is not surprising that only a third (31%) of Viennese adolescents have completely come out in their training institution (school, apprenticeship and/or technical college), while the rest have only partially come out or have not come out at all for fear of reprisals.¹¹

The aforementioned case reminds of the study of the EU project Schoolmates, which described how this problematic mindset cannot only result in queer individuals being affected by homo- and transphobia. It can equally affect cis-men and heterosexual cis-women who are mistaken for being queer because their appearance, clothing, interests and personalities do not correspond with gender roles in our society.¹²

Male classmates are usually the most frequent offenders, followed by female classmates and teachers, whereby there is a huge difference between the discriminated genders. On the one hand, queer cis-men face more discrimination by male classmates than queer cis-women. On the other, cis-women face more discrimination from male and female teachers as it was also the case in the incident documented.¹³

3.7 Civil courage in the context of discrimination

The way the environment reacts to discriminatory experiences highly influences the extent to which those discriminated against are able to process their experiences. The trauma can be particularly intense in cases in which the perpetrators are teachers since as they are acting in their capacity as an authority.

Conversely, teachers can also play a pivotal role in/ during interventions. They can have a positive (healing) effect on negative experiences made by students, too. Most importantly, discriminatory experiences impact on the pupil's relation to education, the educational institution and the teachers. To this end, intervening teachers have two

.....

11 Ibid.

12 Biedron, R., Graglia, M., Gualdi, M., Martelli, M., Pietrantoni, L., Wilelm, W. (2008): Bullying in der Schule. Ein Leitfaden für LehrerInnen und Schulpersonal, <https://www.wien.gv.at/menschen/queer/pdf/bullying-schule.pdf>, 5 (accessed 23 May 2018).

13 Eberhardt et al. (2015), 5.

distinct advantages. On the one hand, due to the hierarchy within the school system they can meet teachers unleashing their prejudices on their pupils or lacking sufficient awareness on an equal footing. On the other, they have the extraordinary opportunity to virtually rebuild the broken relationship and/or affected pupils' trust towards the respective educational institution.

.....

Case 27: *“At his birthday, a student brings pastries with meat to class. He wants to share these with his classmates during the English lesson (teaching staff = class teacher). The teaching assistant reacts with the following: ‘Is this meat from the poor animals slaughtered during the festival of sacrifice?’ The child does not understand the question. The teacher continues: ‘No idea, eh? By the way children, these animals have really suffered!’ The classmates subsequently do not want the pastries any more, while the student is embarrassed and sits down again. This incident was reported to me by students during my German lesson. We did a lesson in which we spoke about the meaning behind Islamic slaughtering. Afterwards the children apologised to the birthday child and enjoyed the pastries. I subsequently talked to the other colleague and also reported the incident to the Islamic religion teacher. In that way he could educate Muslim students about the festival of sacrifice so that they are able to explain what exactly happens during the festival and how this is legally regulated in Austria.”*

.....

Case 28: *“It is Ramadan. Some students in class do fasting, but nevertheless take part in the reading night. The senior colleague explains the procedures for the night to her team. The document states that dinner is scheduled early. A colleague in the team inquires whether the plan can be changed so that all children can eat pizza together in the evening. This way the Muslim students can also break their fast with their school mates. In return, the others can have a small snack in the afternoon. The senior colleague opposes this idea and says: ‘It’s their own fault if they really want to fast!’ The other colleagues criticize her and threaten to cancel the whole project. The colleague can no longer disagree, and the schedule is changed in a way that everyone can have pizza together in the evening and no one is left out.”*

.....

4 Media reports on cases of discrimination in the education system

4.1 “Lejla speaks German without any accent”¹⁴

In the beginning of 2018, the Austrian daily newspaper ‘Oberösterreichische Nachrichten’ published an article in its online edition called “Lejla speaks German without any accent”. This article represented a typical case of discrimination based on ethnicity, taking place in elementary school: 6 year old Lejla, born in Austria after her parents fled Bosnia several years ago, was told at the end of the school term that she was dealt with as an ‘extraordinary pupil’ for the whole term. Hence, she did not receive grades in most of the school subjects. This was justified by the assumption that Lejla was not properly speaking German, although she speaks German without any accent – as the article’s title indicates. According to the School Education Act (‘Schulunterrichtsgesetz’), ‘extraordinary pupils’ are considered to be those not having sufficient German skills at the beginning of elementary school, and therefore requiring additional language support. These pupils are only awarded with grades in certain school subjects, too.

As shown in the article, neither the school principal nor the teaching staff deemed it necessary to inform Lejla’s parents about this. Like Lejla, they just heard about it at the end of the school term.

The user comments on the webpage of ‘Oberösterreichische Nachrichten’ show that this is not very unusual:

.....

Comment 1: *“That’s because of the ‘ić’ at the end of the surname. Doesn’t matter if you are already in Austria for three generations. For some, we will always be the ‘Yugos’ (slang term for people from former Yugoslavia), not being able to speak German. This is often the case. Sadly, I had to make these experiences, too.”*

.....

Comment 2: *“I refused to accept this. They tell you that nobody will know about your child being an ‘extraordinary pupil’. But that’s not true. Probably, your child will have worse chances to go to a good school, respectively to the desired one.”*

.....

Comment 3: *“We had to face the same thing. I was just about to start collecting signatures and suddenly he wasn’t an ‘extraordinary pupil’ anymore. Without the school principal’s threat he would still be an ‘extraordinary pupil’. Nobody told us about this at the beginning of elementary school.”*

.....

¹⁴ <http://www.nachrichten.at/oberoesterreich/innviertel/Lejla-6-spricht-akzentfrei-Deutsch-Schulleitung-sieht-das-offenbar-anders;art70,2829893> (accessed on 27.05.2018).

Comment 4: *“Same here! My son only speaks German! German is his mother tongue, because at home we only speak German. But the school principal just put Turkish as mother tongue in his data sheet, although my son doesn’t speak any Turkish. It was a long fight, but finally he received a new certificate. It’s all about money. The more ‘extraordinary pupils’, the more the school gets subsidies. That was in the elementary school in Enns! And the school principal tried the same with a friend of mine.”*

.....

Comment 5: *“We also discovered that our daughter was considered an ‘extraordinary pupil’ receiving the semester certificate. I thought ‘OK, what’s about the her that I don’t know’. More additional support hours, more teachers. That’s why some in the class get labelled as ‘extraordinary pupils’ –children born in Austria, who already went to Kindergarten for three years. That’s how our education system looks like.”*

.....

Comment 6: *“My son had to face the same. One week before he was supposed to receive his certificate, I randomly discovered that he was labelled as an ‘extraordinary pupil’. Even though he is born here in Austria, only speaks German and only has excellent grades in German. I went to the school principal immediately and told her that I totally disagree. And suddenly he was graded in the normal way. For the school it’s only about getting additional support hours.”*

.....

Comment 7: *“Friends had to face the same. In the school admission form they have chosen not to register their child as an ‘extraordinary pupil’. Nevertheless, the school principal just changed it without ever talking to the child before. They justified it with additional subsidies for the school. Besides, the actual German language skills were never evaluated.”*

.....

4.2 Report on the scandal of the ‘Aktionsgemeinschaft Jus’ in May 2017

In May 2017, the investigative newspaper ‘Falter’ received internal chat transcripts from a member of the ‘Aktionsgemeinschaft Jus’ (AG Jus) (Fn.: The ‘Aktionsgemeinschaft’ is the student representation of the conservative ÖVP-Party, accordingly the ‘Aktionsgemeinschaft Jus’ represents the law students). The chat transcript contained numerous anti-Semitic, islamophobic and other racist images, which were exchanged by several dozen AG Jus’ functionaries in WhatsApp-, respectively Facebook-groups.

The whole range of well-known Austrian media started to report on this issue after ‘Falter’ has published a report including several of the respective images. The upcoming student representative elections (‘ÖH-Wahlen’, 16-18 May 2017) were overshadowed by these incidents. The law faculty’s dean commented on it, too. Some of the functionaries

resigned and/ or withdrew their candidacy; others kept their mandate or avoided the public spotlight. Finally, two female candidates transmitted a video message trying to win some votes with – since only men had participated in the as well misogynist chats. Whereas all the mandates of the diploma programme and the doctorate have remained with the AG Jus (5+5) before the elections, around half of them shifted to the ‘VSSTÖ’, the student representation of the social-democratic SPÖ-Party.

Unfortunately, media coverage mainly ignored the islamophobic content of the chat transcripts. That might be due to the fact that ‘Falter’ mentioned the islamophobic content only marginally without publishing the corresponding images, thus getting lost in the shuffle. Though, all content was available on the webpage ‘linksunten’, on which some Muslim law students discovered image materials and screenshots. Subsequently, after approaching all known daily newspapers it was finally possible to convince the online magazine ‘Vice’ of the necessity to report on islamophobic chats, too. It has to be mentioned in this context that, apparently, the Austrian media landscape was hardly interested to report on islamophobic postings.

Whereas mass media did not pay attention to my comment on ‘Vice’, it at least enjoyed popularity in the Muslim community and through my post as well in the law students’ Facebook-group.

Mag. Ahmed Rahman *studied Law at the University of Vienna and currently works as a trainee lawyer.*

4.3 #reichenhetze

In January 2017, hundreds of Austrians with immigration background posted their experience of racism and discrimination on Twitter using the hashtag #reichenhetze (literally translated: agitation against the rich). This was triggered by an interview with the German public broadcaster ARD, in which the Austrian Chancellor Sebastian Kurz compared agitation against rich people with agitation against minorities facing discrimination. In order to draw Chancellor Kurz attention to the unacceptability and asymmetry of his comparison, a Twitter user responded by calling on others to share their own experiences of discrimination and agitation.

As with the article “Lejla speaks German without any accent”, the IDB took this statement as an occasion to select cases of experience of discrimination which were publicly documented on Twitter or Facebook. Altogether, 75 postings related to the issue at stake could be identified on Twitter and Facebook. A selection of those will be presented hereafter:

.....

Comment 1: *“A friend tells you that in school her little sister is referred to as ‘dirty’ due to her skin colour. And then she asks her older sister ‘I wash myself regularly, why do they say that?’”*

.....

Comment 2: *“If people call you ‘Tschusch’ (derogatory term for people from the former Yugoslavia or South-eastern Europe) because of the slightest disagreement....from kindergarten and elementary school up to secondary school, from the football club to the Austrian Armed Forces...your own classmates, the sports club and the company remind you in an autochthonous and collectivist manner that you don’t belong to them actually, you either break or you become a fighter. I chose the latter.”*

.....

Comment 3: *“In the fourth class, my class teacher recommended me to change to the ‘Hauptschule’ (school of lower secondary education), although I was the best pupil in class, having only top marks. Her justification: ‘Why should he take a German child’s place in secondary school?!’”*

.....

Comment 4: *“I have a friend from Russia. A guy from her school teased her by telling her that Russians shit on the floor in their own houses. Answering to her question where the hell he knows this from, he told her ‘My grandpa said that Russians do shit on the floor.’”*

.....

Comment 5: *“Every time the atmosphere in the classroom got a bit turbulent, my biology teacher said: ‘You behave like the n***** in Congo.’ Once, somebody asked him why he has problems with foreigners. He replied: ‘Because there are no effective means against them.’”*

.....

Comment 6: *“After my very first day in Kindergarten, I asked my mother about the meaning of the term ‘Tschusch’ (derogatory term for people from the former Yugoslavia or South-eastern Europe). The other kids have been making fun of me the whole day due to my ‘strange’ name, calling me a ‘Tschusch’. That’s one of my first memories.”*

.....

Comment 7: *“In upper secondary school’s first day, two classes got merged. Reading my surname on the names list on the classrooms’ door one classmate said: ‘Look, a Jew!’”*

.....

Comment 8: *“Third year in elementary school: My teacher didn’t allow me to be the ‘Schneewittchen’ (from the fairytale ‘Snow White and the Seven Dwarfs’) in the school play, because it would not fit my skin colour.”*

.....

Comment 9: *“My little sister is dyslexic, but in school she was just always the ‘Yugo-kid’, most of the time not speaking at all.”*

.....

Comment 10: *“At the very first day in my new school, we played. A teacher asked the classmate two meters next to me for my name. He: ‘That’s Zarko’ (totally mispronounced). Responding to the teacher’s subsequent question about my origin, the classmate said: ‘No idea. From the bazaar at Mexico Plaza, most probably.’”*

.....

Comment 11: *“Making no secret of that, my teacher in elementary school was convinced that in German class, no foreigner was able to get a grade better than 3 (grades ranging from 1 – best grade – to 5). That’s why I have never been to secondary school.”*

.....

Comment 12: *“There was a pupil telling my brother, that Hitler should treat us Yugoslavs in the same way, the Jews were treated. There were no consequences at all, since the pupil’s parents were somehow important for the school.”*

.....

Comment 13: *“A grandma told her grandchild not to sit next to a ‘foreigner’s child’ in class – but next to an Austrian one – in order to prevent him from forgetting his German.”*

.....

Comment 14: *“My little cousin has learning difficulties. His teacher asked him: ‘Why are you so stupid, Asians are supposed to be smart, aren’t they?’”*

.....

Comment 15: *“No, I cannot award your daughter with a 1. That would be unfair to her classmates with German mother tongue.’ After that statement, my mother didn’t want to go to parent’s evening again.”*

.....

Comment 16: *“Teacher to one of her coloured pupils: ‘Such a nice, German name! But such a face!’”*

.....

Comment 17: *“When I ran for school representative in 2005 (I was the only one with so-called ‘migration background’) other pupils started to hang posters with the slogan ‘The Tschusch must not become school representative!’, in the school building. Really unpleasant.”*

.....

Comment 18: *“Schoolmates called me ‘Serbian pig,’ but their parents tried to tell us that they are not racist, since they have ‘Bimbo-friends’ (Bimbo: very derogatory term for people of colour, linked to colonial past and slavery), too.”*

.....

Comment 19: *“A friend has worked as an educator at a crèche for a while. In this context, she was asked by the elementary school pupils there, if she doesn’t like them, too. Their elementary school teacher has said that she (the teacher) doesn’t like them because they are Turkish.”*

.....

Comment 20: *“When we were in elementary school, Niki didn’t want to sit next to me. Asked for the reason, he told the teacher that ‘she’s different (he had just listened to me, talking to my mother in Polish) and her mother takes my father’s job away.’ We were six years old, back then.”*

.....

Comment 21: *“My dad is from Russia. When I was a child somebody told me that I won’t make it, because there’s ‘Slavic blood’ in my veins.”*

.....

5 From problems to solutions

5.1 10-Point Plan for the establishment of a non-discriminatory education system

The following plan has been established independently by the members of the Initiative for a Non-discriminatory Education System. It does not claim to be complete and aims to highlight what we consider to be the most important key points.

1. Data collection: carrying out studies on the experience of discrimination of pupils at public schools in Austria. Likewise evaluation, how many teachers and how many directors have a migration background and/or are members of religious communities as well as individuals without confession.
2. Establishment of an independent reporting and complaint mechanism for pupils who are affected by discrimination. For the time being, very few incidents are reported within the school because pupils fear for their success at school.
3. Introduction of anti-discrimination officers at each school. These should be the first contact persons.
4. Integration of topic blocks on intercultural competence in workshops from the elementary school.
5. Diversification of the teaching staff: targeted admission of teachers with migration background and/or of members from religious minorities in Austria as well as persons without confession. Possible: Introduction of a quota similar to the women's quota.
6. Diversification of the headmasters: targeted appointment of teachers with migration background and/or of members from religious minorities in Austria as well as appointment persons without a commitment to headmasters.
7. Introduction of standardized student surveys for the evaluation of the teachers' behaviour as a quality assurance measure as in the universities. For the sake of transparency, the results of the evaluations should be transmitted to the respective regional school board and, on request, also made available to the public. The school with the best results should receive special honours and sponsorship awards and should be considered as a role model of success for other schools.
8. Compulsory training and further education on the subject of DaF/DaZ (German as a foreign and second language), intercultural competence and sensitivity to discrimination for kindergarten pedagogues and teaching staff.
9. In case of questions and ambiguities about Islam or suspicion of radicalization of Mus-

lim pupils, the obligatory involvement of Muslim theologians. In the ideal case, the Islamic religion teachers within the school shall have advisory functions.

- 10.** Incorporation of articles 28, 29 and 30 of the UN Convention on the Rights of the Child into the Federal Constitutional Act about the Rights of Children. In addition, the school education law shall be reformed according to the model of the Bremen State School Law (Bremer Landesschulgesetz) which provides for disciplinary measures with appropriate pedagogical accompaniment “in cases of violation of the dignity of girls, women, homosexuals and of cultural, ethnic and religious groups’ (§ 47, 3).”

5.2 Article by the Association “jedesK!ND”: Every child deserves non-discriminatory education

And what does education need to be able to be non-discriminatory for every child? Focus on potential and strengths as well as appreciation instead of humiliation in school lessons, says the association “jedesK!ND”.¹⁵

The dilemma begins at the level of definition: What is “non-discriminatory education”? The word “discrimination” originally comes from Latin. There, “discriminare” means “to distinguish, to separate”. With this – quite neutral – meaning, the term was transferred into the German language. Only in the late 20th century the negative evaluation in the sense of “disadvantage someone, degrade someone and downgrade someone” was added. What happens to children and teenagers, who feel belittled, segregated?

In any case, in the education sector, this situation does not provide these young people to learn successfully. Discrimination deeply shames, it creates fear, and fear blocks learning. It prevents the children from learning about the acquisition to be empowered by education to have a self-determined life and to be able to experience their own self-efficacy.

Self-determination and self-efficacy require self-confidence – more precisely: to be aware of oneself and one’s strengths and to differentiate these from those of others as well as to be able to perceive and appreciate the strengths of others. In the current school system, we are drilled to direct our perception to mistakes, deficits, weaknesses and the deviation from a (self-defined) norm. We look first through the deficit lens and forget that there is

15 Preliminary remark: The following article is partly an excerpt from the publication „Wertschätzen statt Beschämen“ (appreciation instead of humiliation) which the association „jedesK!ND - das Bildungsnetzwerk“ published in autumn 2017. The complete publication can be downloaded free of charge from www.jedeskind.org under „Projects“. The concepts of „focus on potential“ and „consistent focus on difference“ described in the book were developed by Dr. Günter Lueger from the Vienna Institute for Potential-Focused Pedagogy (www.pf-paedagogik.org). They were developed by him within the framework of several years of scientific research developed and are in practice in various fields applicable (www.potenzialfokus.at).

also a potential-focused lens there.¹⁶ This allows us to discover the positive parts of the whole and to recognize that each child – regardless of origin and social stratification – has particular strengths.

“Why can’t you do it like everyone else?”

As parents and educators we all too often wear the deficit lens. We concentrate on the non-success, the deviation from the norm, and pulpit our children and pupils with reproaches: “Why hasn’t that been finished long ago? That’s so easy!” or “That way you’ll never get anywhere!” or “Why can’t you do it like everyone else / be like everyone else?”

This deficit lens with its unconscious and often not reflected orientation on generalized other (the currently valid, unquestioned standard) acts like a machine that destroys potentials and strengths, which focuses on the negative, humiliates children and devaluates their personality.

In contrast, the focus on potential (Günter Lueger, Institute for Potential-Focused Pedagogy) has a different approach: potentials are achieved much easier by looking at what is working. This requires a consciously difference-oriented world view in which both sides – success and failure, being and otherness – are seen for a complete perception of performance and strengths. The potential-focused view also always includes the question: “Couldn’t it also be different? (An example of this can be found in the box “A pleading for the view to success”).

Potential and strength-oriented communication

For school practice in the classroom, in discussions with colleagues and in meetings, not only the way of perception but also the communication on which it is based is relevant. The perception with the respective lens used in each case influences the “inside” of the individuals and the information processing. This has direct consequences for the type of cooperation, the quality and the basic character of communication. A discussion about a mistake which just happened, or a weakness which shows up in a schoolchild, an otherness, forces the teacher involved or the parents to talk about what must NOT happen or what must NOT be. What is important for learning and development, however, is what has to be different in concrete terms (or what can only be seen from a different perspective) in order to be successful.

Emotional effects of deficit focusing on learning

To hear again and again what was not successful, where weaknesses still need to be eliminated, what does not fit in one’s own person, must inevitably frustrate and impair the learning. Learning means that new neuronal connections are formed in the cerebral

16 Lueger, G. (2014) Die Potenzialfokussierte Schule.

cortex. These neuronal connections are strongly influenced by messenger substances from the emotional centre in the limbic system. Negative emotions act as a brake on the formation of new neuronal connections. If the frustration or fear is strong, the thinking drives with the brakes on. Conversely, positive emotions support the learning. This does not necessarily lead to storms of enthusiasm. It is enough to focus on and talk about what is successful, about what is strong, while at the same time accepting being different. That causes appreciation and acknowledgment - and not as undifferentiated praise, but as a completely concrete statement over something, which succeeds.

Even with massive performance problems of pupils, there are always small positive developments. Even if a test goes really wrong, there are parts of this test where the performance was comparatively better. Addressing these and asking the pupil what was different doing the better part release positive energy.

To prevent possible misunderstandings: It is not a question here of teachers and parents not praising their children enough or not looking at things positively. This certainly does not refer to fine speeches or prescribed positive thinking in the sense of The glass is half full or ignoring differences. It is a matter of consistently focusing on differences¹⁷ in order to recognize and use smaller and larger positive developments so that success can expand, so that strengths are strengthened and appreciated.

Appreciation instead of humiliation

To be in one's own strength is the best requirement for a successful education that is free of humiliation and discrimination. And every child is entitled to this. It goes without saying that the mere mediation and distribution of fact-focused educational content and knowledge according to the principle of the watering can is not conducive. Strengths-Treasure-Hunt and appreciation instead of humiliation instead of tunnel-looking fulfillment of a (outdated) canon of subjects and a one-sided catalogue of norms should be the basis for a good education (policy) that promotes self-efficacy.

Apropos humiliation: Do you still remember when you went to school? Were there perhaps once situations in which you would have preferred to sink into the earth, because a teacher had said something to you that would literally give you the "blush of shame" in your face? Or were you ridiculed in front of the whole class and didn't want to go to school anymore? Or did you get unexplained abdominal pain when hours with a certain teacher were on the plan?

When school makes you sick

Humiliation in school was not only an issue at "their" time and a widely accepted disciplinary

17 cf. Lueger 2014.

measure. To this day, nothing in principle has changed. Children and teenagers are still being humiliated by teachers (and vice versa!). Physiologically speaking, the acute public reaction is similar to a panic attack: the face turns red, pulse and blood pressure rise, a defensive or flight impulse becomes noticeable. In this state, one is mentally anything but receptive and able to learn. If something like this happens regularly, the fear of humiliation becomes a permanent condition – possibly accompanied by physical symptoms such as headaches, nausea, vomiting or diarrhea. These are indeed unfavourable conditions for successful learning and the acquisition of education.

The best protection against humiliation is a healthy self-confidence. Its development begins very early in the family home. Children who experience their parents as appreciative and benevolent and are taught by them that they are okay the way they are can develop a good sense of self-esteem. Children who do not experience this at home lack this protection. They internalize a kind of internal judge already in their first years of life and are much more prone to humiliation. Teachers can support the development of a healthy self-esteem in children by acting respectfully and communicating attentively – both in praise and criticism.

A further protection against humiliation lies in sensitization and raising awareness among pedagogues. It can be assumed that the vast majority of teachers are not intentionally humiliating. They simply lack awareness and attentiveness, especially with regard to the language used. The thoughtless use of certain words and expressions leads to attributions and exposures that are not at all (or rarely) intentional. Conclusion: There is no need for new didactics, but for a new perspective – and an improved relationship between pupils and pedagogues.

A pleading for a view to success

A teacher from a Viennese hot spot school with an age-group-spanning learning concept accompanied a pupil over several years and reports on his development:

“First class, first day at school. Children and parents, full of anticipation of learning, populate the classroom. A boy – let’s call him Nino – with a worriedly frowned forehead immediately strikes me. What’s going on?’ I ask myself. Why does Nino feel visibly uncomfortable? I have to take a closer look at this,’ I decide - and do it in the next few weeks. Nino consistently refuses to learn, to exert himself, to persevere.

I quickly notice that Nino has problems with spatial orientation and seriality (which points to dyslexia), but also that he is interested in plants and animals and knows a lot about them. I am faced with a mystery. It is solved by an apprenticeship to the biotope in the former kindergarten of Nino. His former kindergarten teacher recognizes him immediately

and informs me – without lowering her voice – in front of the children: ‘Well, Nino, I’ve never seen such a clumsy child before. He always stumbles over the same tree trunks and simply doesn’t learn to watch out better’.

Now I realize what’s going on: For Nino’s self-esteem it’s probably easier to cope, than to be regarded as lazy as a clumsy fool. To measure him by his enthusiasm for and knowledge of biology instead of focusing me on his clumsiness is very good for our pupil-teacher relationship. In the course of time, Nino develops a healthy self-esteem, great empathy and above-average social competence.

Today Nino studies biology and has many friends. With three of them he shares a flat, with one he wins for the second time the Austrian band competition for young musicians. His former teacher says: ‘I am grateful, that I was allowed to redirect Nino’s self-defeating fixation to his weaknesses, by helping him to recognize his strengths, to be pleased and proud of them.’

What is humiliation? How does it come about?

Here, three aspects are essential: First of all, the performance and behaviour of pupils are in dynamic development. This does not run linearly. There is always an up and down. This also makes it impossible for pupils to always be constantly good or constantly bad. Those who humiliate are usually not aware of this mechanism.

Secondly, we never see the whole at once, but always perceive only a part of the respective reality. Thereby, we follow our inner map, through which we construct our view of the world and with the help of which we unconsciously decide what we perceive and what we focus on.

When humiliating, the part which is not working well at the moment is focused on. This part is presented in the presence of others as an incompetence and as permanently belonging to the individual. This brings us to the third aspect: in connection with humiliation, the social effect is needed before others.

This principle is also the solution at the same time. The social effect before others can be used to put the focus on the positive – on what already succeeds – and to talk about it appreciatively before the others. The unsuccessful is not cut off, but integrated as a requirement for success¹⁸.

Constituent elements of humiliation: unconscious behaviour, selective perception, social impact

18 cf. Lueger 2014.

Recommended literature for those particularly interested:

- » Baer, U., Frick-Baer, G. (2008). Vom Schämen und Beschämtwerden. Weinheim: Beltz.
- » Haas, D. (2013) Das Phänomen Scham. Impulse für einen lebensförderlichen Umgang mit Scham im Kontext von Schule und Unterricht. Stuttgart: Kohlhammer.
- » Hafeneger, B. (2013) Beschimpfen, bloßstellen, erniedrigen. Frankfurt am Main: Brandes und Apsel.
- » Herz, B., Müller, C. (2014) „Angst, Beschämung, Isolation für die Lehrerfortbildung?“, in Sozial Extra 3/2014, p. 39–42.
- » Lueger, G. (2014¹) Die Potenzialfokussierte Schule. Wien: On Demand Publishing.
- » Lueger, G., Wurzlner, A. (2015¹) Die Praxis der Potenzialfokussierten Pädagogik in Schulen. Wien.
- » Lueger, G./Krämer, J. (2016¹) Potenzialfokussierte Pädagogik im Kindergarten und Hort. Wien
- » Marks, S. (2011) „Die Scham der Schüler begleiten, ihnen überflüssige Scham ersparen“, in Religionspädagogische Hefte: Berufsbildende Schulen 2011, p. 25–27.
- » Marks, S. (2005) „Von der Beschämung zur Anerkennung“, in bildung & wissenschaft, Oktober 2005, p. 6–13.
- » Schulze, H., Witek, K. (2014) „Beschämung statt Bildung?“, in Sozial Extra 3/2014, p. 50–53.
- » Schweer, M. (Hrsg.) (2008²) Lehrer-Schüler-Interaktion – Inhaltsfelder, Forschungsperspektiven und methodische Zugänge. Wiesbaden: Springer.
- » Wertenbruch, M., Röttger-Rössler, B. (2011) „Emotionsethnologische Untersuchungen zu Scham und Beschämung in der Schule“, in Zeitschrift für Erziehungswissenschaft 14/2011, p. 241–257.
- » Wildt, B. (2011) „Schule der Beschämung und der Scham“, in Zeitschrift für Psychodrama und Soziometrie 10/2011, p. 57–68.

About jedesK!nd

“jedesK!ND – das Bildungsnetzwerk” is a platform, independent from any political party, based in Vienna/Austria. It aims at promoting a school that supports each child in its uniqueness and joy of development. The common vision is a school community in which

children, parents, pedagogues and principals value each other and cooperate with each other, too. Members of “jedesK!ND” are in addition to pedagogues and educational scientists, committed parents and individuals interested in education. An overview of current initiatives and practical work by “jedesK!ND”, such as the “Strengths-Treasure-Hunt”, can be found at www.jedeskind.org under “Projects”. Going further, the association provides special workshops for pedagogues to the topic “appreciation instead of humiliation”.

Contact detail: **office@jedeskind.org**

5.3 Expert interview with BMHS regional school representative for Vienna Emil Bannani

IDB: Please tell us about your career and your current tasks!

I have completed the commercial school and the advanced training course and I am active in the pupil representation. At the beginning, I was a school speaker and then I found my way into the over-school representation because I wanted to contribute my commitment and my expertise on the state and federal level. Politically, I was active in the regional school representation as a regional school speaker - and I still am!

Why are you involved in the student representation?

It all started with my friends: I noticed that many of my friends had problems at school – be it in terms of grades or social environment. You have to do something for yourself and your community! If only one child, no matter what origin, skin colour or social status, drops out of school, I can't be satisfied with that! And there it does not matter what the child has done, but what you have to do to solve the problem and to give the child a good future. And that still drives me to this day and will always drive me when it comes to this matter!

You left the student union and accused it of discrimination. Can you tell us more about it?

For example, someone with Jewish roots was a financial officer in the student union. There were people who said: "You are a money Jew" or "You are our regional school representative-Jew". The student union also discriminated against individuals who were politically different than the current federal government. In terms of educational policy, it actually helps to promote racist politics in schools, because it ignores social political issues. Because the student union set the mandates, it also affects their work in the regional school representative and federal school representative. A regional school representative or federal school representative should represent the interests of ALL pupils, and also include all interests into its work.

Who contacts the regional school representative?

Probably ten people have contacted me this year. But if I take the number of unreported cases from the IDB report or from other initiatives such as ZARA, so 50 cases and then compare how many pupils actually report, it's really heavy! That's just not the hundred percent. And one has to ask him/herself whether something goes wrong. It's not just a matter of the regional school representative being a committee, which only represents pupils. It is also a platform, a kind of interface between school partners. It is also about supporting initiatives such as the IDB which is good for us as pupils, but all that was not done.

Where and how should the interests of the pupils ideally be represented?

Initiatives such as the IDB can help very well. Although it is not a legally anchored mechanism, it can of course offer help. In order for a regional school representative or federal school representative to work really well and efficiently for the pupils now, it needs a direct election and the detachment from pupils' organizations. It has to deal with topics such as the ones taken up by the IDB! And there it is not about being afraid whether one defends the headscarf or not, but for example about: "Is it child protection or is it not child protection?" If not us, who should do it then for us?!

Have those affected by discrimination in the education system contacted you?

Yes! That is also a reason why I resigned. Because I was simply so shocked by what was going on in some schools and how it was hushed up. Even from the representatives of the pupils; you have to think about that! Someone from my surrounding is blond and has green eyes, but when the teacher found out that he was going to Islam lessons, she suddenly really exposed him in front of the class! Or teachers expose someone at school because they're poor and can't go on a class trip; they were just completely exposed in front of the class! There were also physical assaults. Or standing back, for example, when a schoolgirl is singled out. These are things where I say, I am glad that I listened to such cases and then tried to do something about them.

Do you see any differences in discrimination in Austria?

Yes, there are geographical and sociological differences! There are districts where you can hear that there are many more problems. There are teachers who tell me: "Actually I am not interested in the social status of the pupils – if that's why they are not successful, they had luck!" Yes, and now of course one can say: "It is only one teacher one who said that, or these are two teachers!" But the fact that one teacher says this and then goes to the class, well this is bad! This is really problematic! And this influences also the children, because the teachers these days not only teach, but also educate.

If the following is claimed: "Discrimination occurs especially there where there is little diversity" - can you agree or not?

I can already say that where there is more diversity, there is less racism because the pupils learn to accept each other. I also believe that in childhood it is best to reduce these friction surfaces; this is best done in schools.

What do you suggest to those affected, how should they best proceed?

First of all, I advise them not to give up hope, they are not alone! And there are initiatives like the IDB which documents such cases. One can contact us or the school authorities, the state school inspectors, the school psychology in the city school board, the Federal

Ministry and the Ombud for Equal Treatment. In the future, there will also be an education lawyer's office and an ombudsman's office in the Ministry of Education, where you can go to. And above all, I advise those affected not to deal with it on their own! If you really seek help, you will find it! The only important thing then is to accept it. It is important to be able to live with it and to accept that something like this happened and to show civil courage when it happens to someone else.

What is important for you to say at the end?

As long as we don't solve the problem of discrimination at schools, we won't really make much progress and we won't be able to tap the full potential of our pupils! It is not enough to say: "I promote talents – for example, German classes". I can speak German so well, but as long as I feel discriminated against and not at home, I won't be using my full potential! I think it will be important in the future to bring these issues more into the forefront, and I am glad that the policy has now recognized this topic and has really made it a subject of discussion!

Emil Bannani, (21) *is elected regional school representative for the BMHS ((higher) vocational education) in Vienna.*

The regional school representative Vienna *is the legally elected representative of the 225,000 Viennese pupils. The federal school representative acts on federal level.*

5.4 Role Model Germany – Practical guide on reducing discrimination in schools

The *practical guide to reduce discrimination in schools*¹⁹ (Antidiscrimination Office of the Federal Government 2018) provides options for action at four levels in order to raise awareness and reduce discrimination and disadvantage in schools. These four levels of action, which are based on each other, include identification and recognition of discrimination, prevention and intervention in the event of discrimination and ultimately, the institutionalisation of measures. In the following, the four levels of action are discussed in more detail using the guideline.

Level 1: Identifying and detecting discrimination

In order to combat discrimination in schools, it needed to be detected beforehand. This can be done through methods such as “interviews, analysis of existing rules and routines, surveys of statistical inequalities [and] analysis of teaching materials and content”.²⁰

In order to get an overall picture of the groups of people with different experiences of discrimination, it is advisable to conduct anonymous surveys at different levels, e.g. pupils and their parents as well as teachers and other employees of the institution. On the one hand, the results of these surveys serve to make different experiences of discrimination visible and. On the other, they can be thermalized within the framework of project days, in order to enable a broad sensitization.

In order to detect structural discrimination, the investigation of internal school routines and rules is recommended. For example, class tests can be anonymised or corrected by two teachers in order to avoid deviations and unconscious discrimination on the basis of previous knowledge about the origin of the pupils as far as possible. In Germany, schools collect sociodemographic data on pupils and teachers at regular intervals. Here, the composition of the committees and the unequal distribution of unrepresented groups of people discussed and measures can be reflected upon.

Last but not least, for the first level, the guide recommends the analysis of teaching materials and content, involving pupils, in order to identify together which stereotypical and thus disadvantageous images of particular groups of people are included in teaching materials.²¹

¹⁹ Antidiscrimination Office of the Federal Government (Ed.) (2018): Recognizing and Avoiding Discrimination in Schools. Practical guide to reduce discrimination in schools. Zarbock GmbH & Co. KG. FRANKFURT AM MAIN: Frankfurt am Main: [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Literatur_Bildung/Leitfaden_Diskriminierung_an_Schulen_\(antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Literatur_Education/Guidelines_at_Schools_\)recognize_u_avoid.pdf?__blob=publicationFile&v=4](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Literatur_Bildung/Leitfaden_Diskriminierung_an_Schulen_(antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Literatur_Education/Guidelines_at_Schools_)recognize_u_avoid.pdf?__blob=publicationFile&v=4) (accessed 27 May 2018).

²⁰ *ibid.* p. 17.

²¹ *ibid.* p.17-18.

Level 2: Prevention of discrimination

Following the analysis and detection of risks to discrimination, prevention measures may be set. Preventive measures include: “Strengthening of the affected persons, training of teaching staff, training for pupils”.²² In addition to empowering those affected, the relevant training of teaching staff is particularly useful through anti-bias, diversity trainings and anti-discrimination workshops. Through such further trainings, teachers become aware of discriminatory practices which are reflected, for example, in the awarding of marks or transitional assessments. In addition to teacher trainings, trainings for pupils are also of high relevance, so that they can also recognize and name discrimination. Further prevention measures can be found in the guideline on pages 22-24.²³

Level 3: Intervention in case of discrimination

“Guidelines on how to deal with and intervene in cases of discrimination” should be developed by schools and embedded in school regulations. They should include procedures which are comprehensible for all actors, “rules for dealing with those affected, appointment of conciliators / conflict controllers, nomination of contact persons, identification of possible courses of action, development [and] mediation/arbitration”.²⁴

In order for people to be taken seriously in their consternation, it is essential to ensure rules for dealing with them. If discrimination occurs, it can be very helpful to have conciliators at the level of the pupils who are known by name to pupils, parents, teachers and other school staff. In addition, there should also be adult contact persons who, for example, act as anti-discrimination officers or mediators and who also provide information over external complaint bodies. School guidelines provide those affected with precise information on opportunities for action in case of discrimination.

Schools should also have transparent complaint procedures (and documentation) with different complaint levels, so that the affected individuals can decide for themselves at which level the complaint should be dealt with and which individual they want to contact. In addition to the complaint procedure and the documentation, sanctions can be imposed which are based on the respective state school laws. The Bremen State School Law (Bremer Landesschulgesetz) provides “in cases of violation of the dignity of girls, women, homosexuals and of cultural, ethnic and religious groups’ (Section 47 Paragraph 3)”²⁵ for disciplinary measures with appropriate pedagogical accompaniment.²⁶

22 *ibid.* p. 20.

23 *ibid.* pp. 20-21.

24 *ibid.* p. 25.

25 *ibid.* p. 26.

26 *ibid.* pp. 25-26.

Level 4: Institutionalization of anti-discrimination measures

Institutionalization is part of the sustainable anchoring of anti-discrimination measures, because this is the only way that prevention and intervention measures function effectively on an ongoing basis. This includes the school management defining a holistic anti-discrimination concept for the school, which should include the following aspects: “Prohibitions of discrimination and consequences, equal opportunities and compensation obligations, school organizational obligations, information and consultation rights of pupils and parents, guidelines for non-discriminatory assessment methods and teaching materials, anchoring anti-discrimination and diversity as a cross-cutting issue, anti-discrimination representatives and committees”.²⁷

The prohibition of discrimination should be addressed to all actors, with the forms of discrimination being named and the consequences clearly identified. The basis of such a concept for anti-discrimination should include a “principle of equality”²⁸ of all actors, whereby attention should also be paid to compensatory measures such as quotas, e.g. for parents’ representatives, from a proportion of 10% foreign pupils. The practical guide to compulsory anti-discrimination training for pupils and teachers is part of the school organizational obligation. The concept of anti-discrimination for schools should establish information and consultation rights for all participants. For institutionalization it is important to have guidelines which enable non-discriminatory grading and also orientation for the design of non-discriminatory teaching materials. As a preventive measure, these should be anchored as a cross-cutting issue by appropriate provisions.

In order to ensure lasting protection against discrimination, it makes sense to have an anti-discrimination representative and to set up appropriate committees which directly link up with existing individuals and offices at the respective school.

In addition to the four opportunities for action, the practical guide provides many examples, tips and recommendations for further reading. The following table provides an overview of the four levels of action in form of a checklist:

²⁷ *ibid.* p. 28.

²⁸ *ibid.* p. 28.

Level	Measures
1. Identify and detect discrimination	<ul style="list-style-type: none"> » Survey of parents, pupils and teachers about experiences of discrimination » Investigation of rules and routines » Survey of statistical inequalities » Analysis of teaching materials and contents
2. Prevention of discrimination	<ul style="list-style-type: none"> » Strengthening of affected individuals in introductory workshops » Trainings of teachers on the topic discrimination » Trainings for pupils » Provision of comprehensive information on the topic discrimination » Provide advisory services » Promoting diversity » Revision of the school regulation: development of mission statement and policies » Promoting participation
3. Intervention in case of discrimination	<ul style="list-style-type: none"> » Rules for dealing with affected individuals » Appointment of arbitrators for disputes/conflict slots » Naming of contact individuals in the school » Presenting opportunities for action » Development of a complaints procedure » Mediation/Arbitration
4. Institutionalization of anti-discrimination measures	<ul style="list-style-type: none"> » Prohibitions of discrimination and consequences » Principle of equality and compensation obligations » Organizational obligations of the school » Information and consultation rights of pupils and parents » Guidelines for non-discriminatory assessment methods and teaching materials » Anchoring anti-discrimination and diversity as a cross-cutting topic » Anti-discrimination representative and committees

Table 1: Checklist anti-discrimination concept (*ibid.* p.31)

6 Parliamentary statement, legal opinion and court decision on discrimination in the education system

6.1 IDB statement on the Federal Law, which is supposed to amend the School Organisation Act, the School Education Act and the Compulsory Schooling Act 1985

67/SN-29/ME XXVI GP - Opinion on draft (electrical version notified)

To the Federal Ministry of Education, Science and Research
p.a.begutachtung@bmbwf.gv.at

IDB, Initiative for a non-discriminatory education system
Große Sperlgasse 8/1/19 1020 Vienna ZVR 421303680
www.diskriminierungsfrei.at
office@diskriminierungsfrei.at

Vienna, 17 April 2018

The initiative for a non-discriminatory education system is a non-profit and independent association that documents experiences of discrimination in the entire education system, from kindergarten to school to university. The IDB documents all seven reasons of discrimination of the EU, with a focus on institutional discrimination. There is a lot to say about this draft law, but we will limit ourselves to the 3 most important aspects from our point of view:

1. Is the achievement of the self-imposed objectives realistic or probable with the present draft law?
2. Does this draft law contain passages or mechanisms which have or could have a discriminatory effect?
3. Does the present draft law correspond to the gold standard of science and does it take into account the doctrines applicable at the Austrian universities (DAF/DAZ)?

In the following, all three points will be dealt with continuously: After studying the relevant literature, we come to the conclusion that it is very unlikely or unrealistic that the objectives set can be achieved with the measures presented, but rather that the opposite will occur. We already know that there is a statistically significant correlation between attending preschool or being classified as an extraordinary pupil and leaving school prematurely, which correlates with the length of the school career. It is to be expected that the downgrading will have a de facto negative effect on the educational biography. It cannot be ruled out that this negative correlation may also be related to the fact that the classification as an extraordinary pupil was made arbitrarily or abusively, irrespective of the actual knowledge of German. Here we as IDB see great potential for abuse and discrimination, as we are already repeatedly informed of cases in which pupils speaking exclusively German have been classified as extraordinary pupils, e.g. because they have a non-German surname, a darker skin colour or non-Christian religious affiliation. Without having corresponding standardised test series for all pupils or without correspondingly effective control mechanisms, we do not believe that the potential for discrimination of this measure, the definition of German competence as a criterion for school maturity, can be ruled out. Finally, taking a look at the present draft law from the point of view of evidence-based science and refer to the statement of the researchers and teachers of the field of German as a second language of the Universities of Graz, Innsbruck, Salzburg and Vienna on the educational programme 2017²⁹, these experts also partly speak of institutional discrimination in connection with the present draft law. As the IDB is for non-discriminatory education for EVERYONE, in our view, for the time being, we cannot issue a positive statement.

For the Board of the IDB

Dr. Sonia Zaafrani, Persy Lowis Bulayumi, Jenny Simanowitz

29 Statement by researchers and lecturers in the field of German as a second language of the Universities of Graz, Innsbruck, Salzburg and Vienna on the educational programme 2017 to 2022 of the Austrian Federal Government: <https://www.univie.ac.at/germanistik/wp-content/uploads/2018/02/-daz-stellungnahme-bildungsprogramm-20180206.pdf> (accessed 27 May 2018).

6.2 Legal opinion, commissioned by the Styrian Chamber of Labour on the permissibility of a headscarf ban for staff of the Styrian Vocational Training Institute

In 2017, there was an important legal opinion and a final court decision on discrimination in education. Both individuals who were discriminated against in the education sector were visible Muslim women. They not only documented their cases via the IDB, but also took legal action independently. This step requires a great deal of courage, and as the IDB we are pleased that both parties involved won their cases. The legal opinion or the court decision is of central importance because it is also relevant to many other individuals affected and also applies to them.

The first case concerns the case of the Styrian Vocational Training Institute, which has internally issued a headscarf ban. A German teacher who is herself a visible Muslim was affected by this regulation and threatened with dismissal. The *Styrian Chamber of Labour* then commissioned a legal opinion to clarify the question of the admissibility of such a headscarf ban. We would like to take this opportunity to thank the *Styrian Chamber of Labour* for its approval of the publication and Prof. Dr. Reissner for making the legal opinion available to us. The complete legal opinion on the admissibility of a headscarf ban for employees of the Styrian Vocational Training Institute can be found on the IDB homepage at www.diskriminierungsfrei.at. Subsequently, we publish the summary of the legal opinion.

The second case is also exciting and instructive at the same time. In preparation for her upcoming university entrance examination for admission to the college for nursery education (Bildungsanstalt für Kindergartenpädagogik), a young woman visited a history course at an adult education institute. The lecturer is secondary school teacher and lecturer at a university. In his teaching units he repeatedly made mainly islamophobic, but also sexist statements. The affected person first tried to talk to the lecturer but since this failed, she contacted directly the director of the institute and also the Ombud for Equal Treatment for advice. As several course participants were present as witnesses and the institute management did not want to be associated with discrimination, the teacher was dismissed. The teacher, in turn, sued the respective person for damage to his reputation and credit. Meanwhile a legally binding judgement is available. The whole judgement in anonymous form can also be found on the IDB homepage www.diskriminierungsfrei.at.

This judgement is also interesting because the plaintiff partly puts forward the same kind of argumentation as we know it from some school teachers, namely *didactic principles of irritation and provocation* as well as *criticism of religion*.

The defendant argued that the statements made were discriminatory against her, that she felt hurt not only in her religious feelings but also in her dignity by these statements. Due to the hostile environment caused by this, she then stayed away from the lessons. The competent court considered the statements made by the teachers not only as disparagement of religious teachings, but also as harassment and ruled a fine against the plaintiff.

Below are some quotes for which the teacher and lecturer was condemned: “How sick must a human brain be in order to have divine ideas?”, “For me Islam is an oppressive religion”, “Anti-Semitism have always existed in all Arab-Muslim countries”, “What do they say about a man named Mohamed. He grew up in the Arabian Peninsula, where there have also been some Christians. From there he intercepted some things, allegedly revelations and has had a tense attitude.”, “Especially within the Muslim context, when you work with Muslims, it is always a difficult matter. This is not a new experience for me, but an ancient one. That’s why I got used to it, to put things where they belong.” In addition, the defendant has described herself as self-determined person in the lesson, the plaintiff did not take these statement seriously and then said that he wouldn’t believe her.

From the point of view of the IDB, it would be desirable if the findings of this judgment would be implemented into the education system throughout Austria. It is not reasonable for pupils that they would have to sue their own teachers in order to have their rights, as in the above-mentioned case. It is the task of the school supervision, to intervene here accordingly and to prevent discrimination and injuries of dignity by teachers.

6.3 Final judgement – Discrimination on the basis of islamophobia



REPUBLIC AUSTRIA

Regional Court for Civil Matters Vienna

On behalf of the Republic of Austria

The Regional Court for Civil Matters Vienna as appeal court recognizes by Mag. xxxxxx

as chairman as well as

Mag. xxxxxx and Dr. xxxxxx as further judges in the case of the applicant MMMag. xxxxxx , Dr. xxxxxx, Vienna, represented by Mag. sxxxxx, attorney-at-law in Vienna, against the defendant xxxxxx, Vienna, represented by Dr. xxxxxx , attorney at law in Vienna, for omission (EUR 8,720.--) and payment EUR 960.--, following appeal by the defendant (appeal interest EUR 8,720.--) against the decision of the district court Meidling dated 28 April 2017, xxxxxx , pursuant to Section 480 Paragraph 1 Austrian Civil Procedure Law in non-public session rightly so:

The appeal is partially upheld and the judgment appealed, which is uncontested with regard to the rejection of the request for performance remains unaffected, in its part granting the claim (item 2. and 3. of the sentence) amended to such an extent that it has to be read as a whole:

"1. The claim that the defendant is guilty of paying the applicant EUR 960.-- including 4 % interest rate since 01 September 2015, is dismissed.

The claim that the defendant is guilty of omitting from now on to assert to third parties that the plaintiff degrades Islam, its teachings or its symbols is dismissed.

The defendant is guilty of revoking as untrue to xxxxxx GmbH the statement that the plaintiff had repeatedly pointed to the defendant on the subject of head scarf worn for religious reasons and spoken of the "ridiculous kippa".

On the other hand, the plaintiff's claim that the defendant is still guilty of having made subsequent statements to xxxxxx GmbH which the plaintiff is alleged to have made, is dismissed as untrue in the form in which it was torn from its overall context:

"How sick must a human brain be in order to have divine ideas?

the plaintiff would have explicitly denied the defendant to be self-determined.

The plaintiff would have said to the defendant in a four-eye-conversation that he especially had negative experiences with Muslims in his courses again and again, especially with regard to criticism of religion.

The plaintiff had told the defendant several times that she should not "come along with her lovely nature", that she herself was a problem for the course and that she could/should go.

The defendant is guilty of revoking as untrue to the Austrian Ombud for Equal Treatment the statement that the plaintiff had said that doctors at the Austrian General Hospital would not carry out circumcisions, that there was a professional group of "circumcisers" and that religion constituted an encroachment on sexuality.

On the other hand, the claim that the defendant is further guilty to have made towards the Austrian Ombud for Equal Treatment the following statements, which the plaintiff is alleged to have made, as untrue in the form in which it was taken out of its overall context, to revoke, is dismissed:

"For me Islam is an oppressive religion."

"How sick must a human brain be in order to have divine ideas?"

"The Aqsa Mosque must not be entered by non-Muslims, because Muslims are of the opinion that non-Muslims are impure."

"Anti-Semitism is always present in all Arab Muslim countries."

"The Palestine-Israel conflict has always been a religious dispute. Which religion is the better one?"

"What do they say about a man named Mohamed. He grew up in the Arabian Peninsula, where there have also been some Christians. From there he intercepted some things, allegedly revelations and has had a tense attitude."

"Before Erdogan there was a ban on headscarves in public schools. As from Erdogan, Turkey is no longer a secular state, because he included theology in the government".

The defendant would have been able to influence the teaching as a self-determined person. The plaintiff had not taken these statements seriously

and The plaintiff had not taken these statements seriously and had not and then said that he wouldn't believe her.

The defendant would have described herself as self-determined person in the lesson. The plaintiff had not taken these statement seriously and then said that he wouldn't believe her.

"Especially within the Muslim context, when you work with Muslims, it is always a difficult matter. This is not a new experience for me, but an ancient one. That's why I got used to it, to put things where they belong."

"They always pretend to be as knowledgeable and well-read as a great lecturer. I know this phenomenon also from many Muslims and Muslim women."

"Such people like you pose a problem for the course."

The plaintiff is guilty to reimburse the defendant for the legal costs determined at EUR 1,734.09 within 14 days.

The plaintiff is guilty to reimburse the defendant for the costs of the appeal proceedings, determined with EUR 1,916.39 within 14 days to be replaced.

The value of the subject of the decision exceeds a total of EUR 5,000, but not EUR 30,000.

The appeal is not admissible (Section 502 Paragraph 1 Austrian Civil Procedure Law).

With the claim filed on 28 October 2015, the plaintiff requested to oblige the defendant to pay EUR 960.-- (valued at EUR 8,720.-- in total) to refrain from asserting to third parties that the plaintiff disparages Islam, its doctrine or its symbols and to revoke various more detailed statements, as can be seen in the award, against xxxx GmbH on the one hand and against the Austrian Ombud for Equal Treatment on the other hand. In this connection, he argued that the defendant had made libellous accusations against him against the management of xxxx GmbH, which were damaging to credit and employment, but which did not correspond to the truth. In particular, he had been accused by the defendant of disparaging Islam and its teachings and symbols. Due to these untrue allegations, the management of xxxxx immediately prohibited him from continuing the course he had held and the remaining agreed remuneration of EUR960.- - was no longer paid to him. Also for autumn 2015, the plaintiff had not received any more teaching assignments. After the plaintiff had requested the defendant to submit a declaration to cease and desist, the defendant filed a complaint with the Austrian Ombud for Equal Treatment, in which he repeated and even expanded his allegations. She had known

the untruth of her statements. In a letter dated 23 September 2015, the Ombud for Equal Treatment in Vienna requested the plaintiff to submit a written statement with regard to a possible violation of the Equal Treatment Act. The plaintiff never made the statements in the action or his statements were deliberately taken out of context by the defendant.

The defendant denied and submitted that the plaintiff

had actually made the statements to her that she had accused him of being discriminatory within the meaning of the Equal Treatment Act. She had been a participant in a course led by the plaintiff and had felt violated not only in her religious feelings but also in her dignity by his statements. Due to the hostile environment caused by this, she then stayed away from the lessons. By establishing contact with both xxxxx and the Austrian Ombud for Equal Treatment, she had attempted to remedy the situation. The remarks of the plaintiff had fulfilled the facts of the annoyance in accordance with Section 21 Equal Treatment Act, why she makes her claims pursuant to Section 26 Paragraph 11 in connection with Section 21 Equal Treatment Act judicially valid. Their procedure was justified, why no authorization came to the complaint request. The plaintiff made the statements specified in the claim on the course days on 11 and 12 July 2015.

After the lessons on 12 July 2015, the defendant asked the plaintiff for a personal interview in which he again made similar (more detailed) statements which the defendant regarded as inappropriate and undesirable. The choice of words was insulting to her. Before the podium, the plaintiff had degraded Islam and also denied the defendant's self-determination, ridiculed her headscarf and further insulted and degraded her in a four-eyed conversation. The Austrian Ombud for Equal Treatment was not an authority but was set up to advise and support individuals who felt discriminated against.

The defendant could not be accused of using them. In the judgment under appeal, the court of first instance dismissed the application for payment in its entirety but granted the application for injunctive relief and revocation and also obliged the defendant to reimburse the costs of the proceedings on a pro rata basis. It determined on pages 4 to 8 of the judgment and considered legally (in summary) that the defendant had not only endangered the economic reputation of the plaintiff, i.e. his credit, acquisition or advancement, through its statements to the head of xxxxx, Dr. xxxxx, but had also damaged it, even if its conduct had not been the direct trigger for his dismissal. It does not change the fact that she did not wish to do so or did not know it, as negligence is sufficient for liability under Section 1330 Paragraph 2 Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB). The statements complained of were never to be assessed in isolation, but always only in their overall context. By her statements she had harmed the plaintiff vis-à-vis the head of xxxxx and the Austrian Ombud for Equal Treatment, by tearing

his statements out of their context. In particular, by notifying the head of xxxxx, she had endangered the economically significant relationships of the plaintiff, who was now no longer allowed to teach at xxxxx. It was also not excluded that word would spread in these circles and that he would not find or only very difficult an employment in his subject. As she had only interpreted some of the plaintiff's statements or had only interpreted them with shaking her head on account of the conduct of, for example, her neighbour in her seat, and had nevertheless transmitted this to the head of xxxxx in a clearly formulated form, she was in any case at fault for the necessary claim for revocation in accordance with the second sentence of Paragraph 2 and would in any event have had to recognize the untruth on account of the fact that she had only reproduced the statement in extracts and not in its overall context. However, the dismissal of the plaintiff by the head of xxxxx could not be attributed to her, since other incidents had also played a role in this. If the defendant had forwarded the quotations that the plaintiff had actually made to her completely and not out of context to the director of xxxxx, no damage would have been caused, especially as it had been the task of the lecturer to bring contradictory literature on various religions closer to the course participants. The defendant had violated Section 1330 Paragraph 2 Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) by also ripping out of context those quotations which the plaintiff had actually said.

The defendant's appeal against the appellant's part of this judgment is directed against the ground of appeal of the incorrect legal assessment with the application to amend the contested judgment in the entirely unacceptable sense, alternatively an application for annulment is filed.

The plaintiff requests to dismiss this appeal.

The appeal is partially justified.

According to the settled case-law, an assertion is untrue if its objective core does not correspond to the reality; the inaccuracy may also result from the incompleteness of the facts disclosed if this creates an incorrect impression (reference numbers 6 Ob 106/14b; 6 Ob 295/03f; 6 Ob 250/06t). In case of an incomplete statement it depends on whether the facts of the case are so distorted by the omission of circumstances that the statement is suitable to mislead its addressees in an important point (legal proposition RIS-Justiz RS0031963).

With regard to the request for revocation, the appellant correctly asserts that, according to the determined facts, the plaintiff actually made the majority of the statements mentioned by the defendant to the head of xxxxx and the Austrian Ombud for Equal Treatment, which is also admitted in the response to the appeal.

To the extent that the court of first instance assumes that the defendant took these statements of the plaintiff out of context and thereby caused these statements to appear in a false light, thereby damaging the plaintiff's economic reputation, this is not comprehensible on the basis of the determined facts. The nature and form of the presentation of the plaintiff's statements by the defendant to the head of xxxxx, Dr. xxxxxxxx, as well as to the Ombud for Equal Treatment in Vienna were not determined in detail, although the plaintiff's concrete submission in this regard was also lacking in the proceedings of the first instance.

The same applies to the alleged context in which the plaintiff is alleged to have made the statements. Only at 2 points of the findings, namely with regard to the points 3.3. (the plaintiff would have explicitly denied the defendant to be self-determined) and 3.5. (the plaintiff would have told the defendant several times that she should not come along "with her lovely nature" that she herself would be a problem for the course and could/should go), numbered in this way by the first court, does such a context of the plaintiff's statements sound. With regard to award point 3.3, the court of first instance determined that the plaintiff had made the relevant statement in connection with the discussion of the question of free will. At the same time, it states that the plaintiff interpreted this in such a way that, if someone is sensitive as the defendant in the course and accused him of such things, this would call their self-determination into question. From this it follows, however, that the plaintiff definitely referred this to the defendant personally and that the previously described connection with a philosophical debate is again relativized. It is therefore not discernible here either that the defendant would have taken the plaintiff's statement out of the context when presenting it.

With regard to point 3.5, the court of first instance determined that the plaintiff's statement in question was a reaction to the defendant's conduct in the course, which had already been problematic vis-à-vis the other course participants, whereby the defendant referred all statements to itself. However, from the determined facts no connection of the statement of the plaintiff with other of his statements or those of other individuals results, but only the motivation of the plaintiff.

Also regarding other expressions of the plaintiff, the first court determined facts on what he wanted to express in each case or from which motivation he said that and what was thereby its opinion. From this, it does not result however yet that the defendant took out the statements out of context.

It can therefore only be assessed in the sense of Section 1330 Paragraph (Allgemeines Bürgerliches Gesetzbuch, ABGB) whether the defendant's assertion against the management of xxxxx and the Austrian Ombud for Equal Treatment that the plaintiff objectively made the each respective statements in this form was correct. This is - as already explained -

in the majority of the points the case, only not with the award points 3.2 so numbered by the first court (the plaintiff would have pointed at the defendant several times regarding the topic headscarf, which is worn for religious reasons, and spoken of the "ridiculous Kippa") and 4.9. (the plaintiff would have said that physicians in the Austrian General Hospital would not accomplish circumcisions, there would be for it an occupational group of the "circumcisers" and that the religion represented an interference into the sexuality), regarding which the first court determined expressly that the plaintiff had not made these expressions in this form. With regard to all other facts cited in the request for revocation, it is certain that the plaintiff made these statements in the presence of the defendant, without being proven that the defendant had taken the plaintiff's statements out of context in their presentation and thus created a false impression at third parties which was detrimental to the plaintiff.

Thus, the reproach against her that she had disseminated untrue facts, with the exception of two facts, namely points 3.2. and 4.9., is unjustified and the request for revocation in this respect is not justified.

With regard to the application for injunctive relief, the appellant also correctly states that no assertion can be derived from the determined facts on her part against xxxxx, the Austrian Ombud for Equal Treatment or other third parties that the plaintiff had degraded Islam, its doctrine or its symbols. In the judgment under appeal, the court of first instance still owes a statement of reasons for this.

The appeal was therefore - with regard to the application for a cease-and-desist order as well as the application for revocation - with the exception of points 3.2. and 4.9. of the award - to be partially followed and the contested judgment was to be amended in a predominantly dismissing sense.

With regard to points 3.2. and 4.9. of the award, it must be stated with regard to the arguments of the appeal that the plaintiff has proved in these points that he did not make these statements in this form and that therefore the presentation of the defendant was incorrect. Reasons why the defendant could have assumed that her indications about statements made by the plaintiff, which the plaintiff never made, could have been correct, are not apparent, so that knowingly incorrect statements by the defendant can be assumed. A justification of the defendant because of a legitimate interest in the communication is therefore not to be seen with regard to this incorrect information (see xxxx in KBB 5th edition, Section 1330 margin number 4 with further references).

Insofar as the appellant thinks with regard to point 4.9. that the mentioning of the Austrian General Hospital is not the relevant core of the statement, she is not to be followed in this respect, especially as she obviously regarded this aspect as essential by reporting on this

alleged statement of the plaintiff.

The statement of claim was therefore to be confirmed in these two respects.

The decision on costs for the first instance proceedings is based on Section 43 Paragraph 1 Austrian Civil Procedure Law (Zivilprozessordnung, ZPO). The request, which did not consist of a cash payment, was valued at a total of EUR 8,720.-- and consists of a total of 18 items, namely the injunction request and the revocation request with a total of 17 facts. The total amount in dispute in the first instance proceedings amounted to EUR 9,680.--. Of it the plaintiff succeeded only with approximately 10% of this desire, so that it has to replace 80% of her process costs as well as 90% of the cash expenditures (for witness fees) for the defendant. This results in the amount of EUR 1,805.95. 10 % of the plaintiff's cash expenses (flat fee and witness fees) are to be reimbursed, which results in EUR 71.86. The balance in favour of the defendant amounts to EUR 1,734.09.

The decision on costs for the appeal proceedings is based on Section 43 Paragraph 1 Austrian Civil Procedure Law (Zivilprozessordnung, ZPO) and Section 50 Austrian Civil Procedure Law (Zivilprozessordnung, ZPO). The appeal interest amounted to EUR 8,720.--, the defendant succeeded with approximately 89% (or 8/9), so that the plaintiff has to replace 78% of her costs and 89% of the flat fee, which results in an amount of EUR 1,916, 39. The amount of the increase pursuant to Section 23a Austrian Attorneys Rate Act (Rechtsanwaltstarifgesetz, RATG) is only EUR 2.10, as the appeal is not a procedural pleading.

The statement in accordance with Section 500 Austrian Civil Procedure Law (Zivilprozessordnung, ZPO) was based on the plaintiff's calculation, against which no objections existed.

Pursuant to Section 502 Paragraph 1 Austrian Civil Procedure Law (Zivilprozessordnung, ZPO) the appeal is not admissible because the legal issues were not to be assessed with a quality as required there.

Regional Court for Civil Matters Vienna 1011 Vienna, Schmerlingplatz 11
Dept. 35, on x. November 2017 Mag. xxxxxxxx

electronic copy in accordance with Section 79 Court Organization Act (Gerichtsorganisationsgesetz, GOG)

7 Legal bases in Austria

7.1 The UN Convention on the Rights of the Child

The United Nations' General Assembly adopted the UN Convention on the Rights of the Child on 20 November 1989. As a result, all children across the world were entitled to rights; like the right to life, to development, to protection and to participation. Austria was among the first countries to sign the Convention. After the approval of the National Council (Austrian Parliament) on 26 June 1992, the Convention was ratified on 6 August 1992. 30 days after the ratification, the UN Convention on the Rights of the Child entered into force in Austria on 5 September 1992, yet with reservations to some articles. These reservations on the articles 13, 15 and 17 were withdrawn by the Austrian Parliament on 7 July 2015. Due to this withdrawal, the UN Convention on the Rights of the Child finally became fully applicable in Austria.

As part of the Universal Declaration of Human Rights, the rights provided for by the UN Convention on the Rights of the Child are considered to be common sense and the basis for political and social action in Austria. The following articles are the most important ones with regard to pupils and education:

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Since 16 February 2011, some of the UN Convention's child rights are enshrined in the Austrian federal constitution (Federal Constitutional Act on the Rights of Children). Despite justified criticism, this legal anchoring implies a massive appreciation of children's rights in Austria, especially with regard to two basic principles of the UN Convention on the Rights of the Child:

- a) The well-being of the child shall be the primary consideration (article 1 Federal Constitutional Act on the Rights of Children)
- b) The involvement and consideration of the child's opinion regarding all matters affecting him/her (article 4 Federal Constitutional Act on the Rights of Children)

7.2 Federal Constitutional Act on the Rights of Children

The National Council has adopted:

Article 1

Each child shall be entitled to the protection and care that is necessary for his/her well-being, to optimal development and self-realisation as well as to the protection of his/her interests with regards to intergenerational equity. The well-being of the child shall be the primary consideration in respect of all measures affecting children that are taken by public and private institutions.

Article 2

- (1) Each child shall be entitled to have personal relations and direct contacts with both parents on a regular basis unless this is detrimental to the well-being of the child.
- (2) Each child that is removed permanently or temporarily from his/her family

surroundings, which are the natural environment for the growth and development of all family members, in particular children, shall be entitled to the special protection and support of the state.

Article 3

Child labour is prohibited. Apart from any exemptions laid down by law, the minimum age for entering the labour market shall not be below the age at which compulsory schooling ends.

Article 4

Each child has the right to adequate involvement and consideration of his/her opinion regarding all matters affecting the child in a manner that is commensurate with his/her age and development.

Article 5

(1) Each child has the right to non-violent education. Physical punishment, the infliction of mental pain, sexual abuse and any other maltreatment is forbidden. Each child has the right to protection against commercial and sexual exploitation.

(2) Each child who is the victim of violence or exploitation has a right to adequate compensation and rehabilitation. Further details are laid down in the applicable laws.

Article 6

Each child with a disability shall be entitled to the level of protection and care that is required for his/her special needs. In accordance with Article 7, para. 1 of the Federal Constitution Act, the equal treatment of children with and without disabilities shall be guaranteed in all spheres of daily life.

Article 7

Any limitation of the rights and entitlements guaranteed in Articles 1, 2, 4 and 6 of this Federal Constitutional Act shall not be permissible unless this is provided for in the law and constitutes a measure that is necessary in a democratic society to uphold national security and safety, public peace and order, the economic well-being of the country, to defend public order and to prevent criminal offences, to protect health or to protect the rights and freedoms of others.

Article 8

The federal government shall be responsible for implementing this Federal Constitutional Act.

7.3 Federal Law of Non-discrimination (Gleichbehandlungsgesetz) EQUAL TREATMENT

Part 3 of the Federal Law of Non-discrimination and Equal treatment ('Equal treatment without distinction due to sex or ethnic origin in other areas') also covers the education system. Nevertheless, according to the Ombud of Equal Treatment, full protection against discrimination (protection against discrimination on the grounds of sex, ethnic origin, religion or belief, disability and sexual orientation) only exists in vocational training schools. With regard to general schools, the Federal Law of Non-discrimination only provides for protection against discrimination on the ground of ethnic origin. Worth mentioning, grounds of discrimination also overlap each other on a regular basis.

7.4 Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), of constitutional rank in Austria

Article 2 - Right to Education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

"The first sentence of Article 2 of the Protocol to the ECHR declares in a deliberate 'negative formulation' that nobody shall be denied the right to education. In particular, this right to education includes the right to access to all the already existing public education institutions. Whereas it does not entail any state obligations concerning the establishment or subsidy of certain school systems, it guarantees the non-discriminatory access to the existing education institutions."

"This guarantee gets supplemented by Article 18 of the Basic Law (StGG, Staatsgrundgesetz), which determines the freedom of everybody, without any interference, to decide upon his/ her occupation and its corresponding vocational training."³⁰

³⁰ Kalb, H., Potz, R., Schinkele B. (2003) Religionsrecht. Wien: Facultas, p.342-343.

7.5 Decision of the European Court of Human Rights – ultimate decision – from 1 March 1979

“Article 10, paragraph 1 of the Convention: Forbidding a teacher to display his moral and religious beliefs at school constitutes an interference with the exercise of his freedom of expression.

Article 10, paragraph 2 of the Convention: in a non-denominational school given the right of the parents to respect for their convictions, such an interference is nevertheless justified for the protection of the rights of others, when the expression of beliefs of the teacher has an offensive character for certain people or is likely to disturb the children.”

Conclusion: It is perfectly valid to sanction respectively dismiss teachers if they behave in an unobjective and derogatory manner towards their pupils.

8 Bibliography

- Antidiskriminierungsstelle des Bundes (Ed.) (2018): Diskriminierung an Schulen erkennen und vermeiden. Praxisleitfaden zum Abbau von Diskriminierung an Schulen. Zarbock GmbH & Co. KG. Frankfurt am Main.
- Lueger, G. (2014): Potenzial-fokussierte Schule. Dr. Günter Lueger. Wien. 1. Edition.

Internet sources:

- Eberhardt, V., Hofmann, R., Huber, C., Klapeer, C. M., Schöpfflug, K. (2015): „Queer in Wien“. Stadt Wien Studie zur Lebenssituation von Lesben, Schwulen, Bisexuellen, Transgender-Personen und Intersexuellen (LGBTIs). <https://www.wien.gv.at/menschen/queer/pdf/studie-queer-in-wien.pdf>, 5 (accessed 23 May 2018).
- Biedroń, R., Graglia, M., Gualdi, M., Martelli, M., Pietrantonio, L., Wilelm, W. (2008): Bullying in der Schule. Ein Leitfaden für LehrerInnen und Schulpersonal. <https://www.wien.gv.at/menschen/queer/pdf/bullying-schule.pdf>, 5 (accessed 23 May 2018).
- <https://www.univie.ac.at/germanistik/wp-content/uploads/2018/02/-dazstellungnahme-bildungsprogramm-20180206.pdf> (accessed 27 May 2018).
- <http://www.nachrichten.at/oberoesterreich/innviertel/Lejla-6-spricht-akzentfrei-Deutsch-Schulleitung-sieht-das-offenbar-anders;art70,2829893> (accessed 29 May 2018)
- http://www.vice.com/de_at/article/jpya3d/warum-interessiert-sich-niemand-fur-die-islamfeindlichen-nachrichten-beim-whatsapp-skandal-der-ag (accessed 29 May 2018)
- http://www.jedeskind.org/?page_id=119 (accessed 29 May 2018)
- <http://www.emrk.at/rechte/ZP/art2-1.htm> (accessed 29 May 2018)
- <http://www.unicef.at/fileadmin/media/Kinderrechte/crcger.pdf> (accessed 29 May 2018)
- http://www.lsr-noe.gv.at/index.php/mehrsprachigkeit-interkulturalitaetmigration-mim.html?file=files/theme_files/downloads/landesbereich/Mehrsprachigkeit_Interkulturalitaet_Migration_APS/MIM/Richtlinien_fuer_den_Schwimmunterricht.PDF (accessed 30 May 2018)

9 Glossar

Age

The term “age” is used in a neutral sense and can be understood both ways, irrespective of any minimum or maximum age.³¹

Disability

Disability is the effect of a (not only) temporary physical, mental or intellectual impairment or an impairment of the senses, which may impede someone from participating in society. For the purpose of this definition, a not necessarily temporary time period constitutes a period of more than six months.³²

Harassment

These cases are covered by the Equal Treatment Act (ETA). The ETA defines this term as follows: harassment occurs when someone’s behaviour violates or aims to violate the human dignity of the person affected, and this behaviour is unwanted, unreasonable and offensive to the person affected and which creates or aims to create an intimidating, hostile, degrading, insulting or humiliating environment for the person affected. Grounds may include: age, religion, worldview, ethnic origin, sexual orientation, gender. According to the Equal Treatment Act “direct discrimination” shall be taken to occur when a person is treated less favourably than another has been or would be treated in a comparable situation, on account of their gender, ethnic affiliation, religion or worldview, age or sexual orientation. In contrast, “indirect discrimination” shall be taken to occur when an apparently neutral provision, criterion or practice can put certain groups of employees at a disadvantage compared to others. Harassment on the ground of one’s disability is covered by the Disability Employment Act.

Examples of harassment, which are not covered by the GIBG, include, for instance: offensive comments, such as “go have a shower, you stink”, accusations, mocking in public – what may be viewed as a harmless joke by some, can be humiliating and hurtful for another person. In order to recognise and pay due regard to the boundaries of another person, mutual recognition and respect must be given.³³

31 <https://www.wien.gv.at/verwaltung/antidiskriminierung/definition/merkmale.html> [accessed on 05.06.2017]

32 *ibid.*

33 <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395> [accessed on 05.06.2017]

Insulting someone pursuant to sec. 115 para 1 of the Penal Code

The law prohibits a person from, either in public or in front of numerous people (a minimum of three people apart from the perpetrator and the person affected)

- Verbally abusing someone,
- Mocking someone
- Physically abusing someone
- Threatening someone with physical abuse.

The offence of insulting someone can result in the imposition of a custodial sentence of up to three months or a fine equivalent to 180 daily fines.

The term libel encompasses, inter alia, expletives and mockery in public (e.g. stupid, idiot, pig). The offence is deemed to have been committed in public if the act was observed by a large number of people. Forums, chats and homepages can always be presumed to fall within the ambit of “public.”³⁴

In principal a “slight” insult within the meaning of sec. 115 of the Penal Code constitutes a so-called offence subject to private prosecution. This means that the perpetrator is only prosecuted at the request of the affected person. The downside to such private prosecutions is that the private prosecutor has to bear the costs of the criminal proceedings in the event the perpetrator is acquitted.³⁵

Ableism

Ableism describes the rejection, discrimination and marginalisation of people with disabilities.

Pursuant to the Federal Disability Equality Act, discrimination shall be taken to occur if people are disadvantaged on the basis of their disability in comparison to other people, for instance, by being treated less favourably, but also through barriers.

Discrimination

... is any form of unreasonable detriment to or unequal treatment of individual persons or groups on the basis of various perceivable (for instance age, ethnic affiliation or disability) and/or not immediately perceivable (such as worldview, religion or sexual orientation) characteristics.³⁶

³⁴ <http://www.help.gv.at/Portal.Node/hlpd/public/content/172/Seite.1720216.html> [accessed on 05.06.2017]

³⁵ <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296> [accessed on 05.06.2017]

³⁶ <http://www.wien.gv.at/verwaltung/antidiskriminierung/definition/> [accessed on 05.06.2017]

Ethnic Affiliation

Materials associated with the Federal Equality Act describe ethnicities as hypothetical collectives, which can be formed through a commitment to that collective or attribution to it and are not based solely on biological or other actual differences. An ethnic affiliation entails a similarity between people, which comes about as a result of their shared skin colour, religion, language, culture or traditions (RV 307 BlgNR 22. GP, 14). Ethnic discrimination occurs when individuals or groups of people that exhibit similarities are viewed as foreign by the respective majority, as the latter do not view them as belonging to their collective due to certain differences leading to a less favourable treatment of these individuals or groups. The underlying idea behind the Viennese anti-discrimination legislation is that ethnic affiliation should not represent a ground for any inappropriate difference in treatment.

Gender Identity

Gender identity signifies the gender, to which an individual ascribes to. With the majority of people, their gender corresponds with their physical sexual characteristics.

If this is not the case, the term “transsexuality” is used. This term describes individuals, whose self-perceived gender does not correspond with their sex. Transgender persons generally strive for an alignment between their physical appearance and their perceived gender: either through clothing, behaviour, make-up, or by choosing a new first name or gender reassignment surgery.

The term “transsexuality” is also commonly used. “Transgender” is often used as an umbrella term for all people, who do not equivocally ascribe to a gender contingent on their physical appearance. The European Court of Human Rights (ECtHR) views discrimination on the basis of gender reassignment as discrimination on the ground of gender.³⁷

Hate Speech

Hate Speech encompasses all expressions, which communicate, disseminate, instigate, promote or justify racism, xenophobia, antisemitism or other forms of hate based on intolerance, including intolerance characterised by aggressive ethnocentrism, as well as discrimination and hostilities towards minorities, migrants and persons with a migrant background. However, it can also be directed against someone’s gender, sexuality, disability or age. Hate speech encompasses all forms of intolerance.

It also manifests itself in the form of denial, which often occurs in relation to the Ho-

37 <https://www.wien.gv.at/verwaltung/antidiskriminierung/definition/merkmale.html>[accessed on 05.06.2017]

locust. This denial includes accusations of lying directed at the victim as well as the disparagement of others on the one hand, and on the other a justification for or glorification of the actual events.³⁸

Islamophobia

„Islamophobia is anti-Muslim racism. As revealed by research on antisemitism, semantic and etymological components of a term do not necessarily allude to its entire meaning or use. This is also the case for research on islamophobia. Today, the term islamophobia is used self-evidently within academia and the public sphere. Criticism against Muslims or the Islamic religion is not to be equated to islamophobia. Islamophobia occurs when a dominant group of people attempts to strive for, cement or expand its power by creating a scapegoat, which may or may not exist, and excludes this “scapegoat” from the resources, rights and definition of the collective “we”. Islamophobia presumes the existence of a static Islamic identity, shrouded in negative connotations and which is projected on the crowd of imaginary Muslims in a sweeping manner. At the same time, Islamophobic images are fluid and transform in different contexts, as Islamophobia says more about Islamophobes than it does about “Islam” or “the Muslims.”³⁹

Mobbing

The term „Mobbing“ describes a type of psychological terror, i.e. a process of systematic exclusion and severe humiliation of another person, by an individual or several persons on a continuing basis, and usually falls under the category of “abuse of power.”⁴⁰

Religion

The materials relating to the Equal Treatment Act state that the legislature has not restricted religion to churches and other recognised religious groups. It can, however, be assumed that a religion requires a confession of belief, guidelines on the way of life and some rituals. Religion encompasses any religious and confessional belief, affiliation with a church or a religious community. Religion questions human society and the individual and attempts to provide answers. Religion also points towards salvation and the path that leads to it (RV 307 B1gNR 22. GP, 15).

³⁸ <http://no-hate-speech.de/de/wissen/> [accessed on 05.06.2017]

³⁹ Farid Hafez (2017): Österreichischer Islamophobie-Bericht 2016. Online unter: http://www.academia.edu/32430475/%C3%96STERREICHISCHER_ISLAMOPHOBIE-BERICHT_2016 [accessed on 05.06.2017]

⁴⁰ <http://mobbingberatung.at/Mobbingdefinitionen/index.html> [accessed on 05.06.2017]

Sexual Orientation

Sexual Orientation describes preferences of sexual partners, i.e. heterosexual, homosexual or bisexual. The prohibition on discrimination hence also protects heterosexuals, for instance in a working environment characterised by homosexuality. It also does not depend on whether or not a person exhibits their sexual preferences. Both preferences and conduct are intended to be covered by the protective provisions.

Incitement Sec. 283 Penal Code

A person commits an offence of incitement if

In front of several people (as of approx. 30), he/she incites to violence or hatred against persons, on the ground of their:

- » Race,
- » Skin colour,
- » Language,
- » Religion or worldview,
- » Nationality,
- » Descent or national / ethnic origins
- » their gender
- » a physical or intellectual disability,
- » their age or
- » their sexual orientation.

A person is also guilty of incitement if he/she insults one of the aforementioned groups in a manner which disparages or degrades that group in the eyes of the public, with the aim of violating the human dignity of those persons. In such a case, courts can impose a custodial sentence of up to two years. If the incitement to violence and/or hatred is directed at the public at large (as of 150 persons) a custodial sentence of up to three years can be imposed. If the incitement results in actual violence, a custodial sentence of a minimum of six months to a maximum of five years can be imposed.

Worldview

Worldview is closely intertwined with the term “religion”, but encompasses all areligious, ideological guides to life and the world, the role of every individual and view of society. Worldviews are comprehensive concepts or images of the universe and the

relationship between humans and the universe. They include views about science, philosophy, politics, economics, ecology, the environment, culture, ethics, morality, parenting and similar topics. Examples of worldviews include atheism, agnosticism, deism, materialism, nihilism or pantheism. It is unclear whether specific political opinions are protected by the prohibition to discriminate. During discussions in the Council of the European Union, it was assumed that political convictions are also covered by the term worldview. However, it has been left to the relevant national legislature to decide on how the term worldview should be defined. In the case of doubt, this is to be determined by national courts and/or the European Court of Justice (ECJ). The prohibition to discriminate does not however cover ideologies and worldviews that are prohibited by law. For instance: National Socialist ideologies cannot be expressed in Austria.



www.diskriminierungsfrei.at