



DIE ÖSTERREICHISCHEN
RECHTSANWÄLTE

Austrian Bar

Country Report Austria

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Legislation in Austria

One important task of the Austrian Bar (ÖRAK) is to express an opinion on the many bills and other drafts for legal regulations. These position papers are prepared by experts from among the ranks of the bar association.

During the period January 2022 to December 2022, ÖRAK had to deal with 147 bills and draft regulations. The position papers submitted by ÖRAK on the various bills are an important contribution to law-making, which is highly appreciated by the parties involved in the legislative process as well as the general public.

It is regrettable and difficult to understand from a factual perspective that in the next steps of the legislative process, no further attention is often paid to the profound position papers prepared by recognised experts. Moreover, it still happens that stakeholders are not involved in reviewing procedures. Whenever a bill has considerable impact on citizens, it should undergo thorough scrutiny before being adopted.

New Rules Concerning Professional Regulations

An ongoing exercise of the ÖRAK working groups and task forces is to prepare proposals updating and amending the professional regulations. The ÖRAK proposal contained in the 2022 Act Amending Professional Regulations (BRÄG 2022) primarily relates to the option that lawyers can suspend their activities on grounds of parenting. The suspension on grounds of parenting is primarily intended to further reconcile the compatibility of family and working life. The suspension of activities on grounds of parenting is meant to allow mothers and fathers to continue featuring on the bar's lawyers list without having to bear the financial burden resulting from being listed as an active lawyer. Both lawyers and junior lawyers have the option to suspend their professional practice on grounds of parenting. The application to suspend activities on grounds of parenting can be filed for a maximum of two years. During this period, the persons in question continue to be members of their bar association; yet, certain obligations are waived, for example that lawyers must have insurance coverage, which is required by § 21a of the Lawyers' Act (RAO). Moreover, as the title to exercise the profession is suspended, they receive no assignments based on § 45 and § 45a of the Lawyers' Act (RAO), referring mainly to legal aid. The regional bar associations can rule on a full or partial release from the payment of membership contributions to the bar association as well as contributions to the pension scheme.

The professional regulations were also amended concerning the possibility to recognise virtual events as professional development activities (CPD). As live events have more significance and are more effective, virtual professional development activities are limited to twelve half-days. Moreover, in negotiations with the Bank and Insurance Division of the Federal Economic Chamber Austria, the terms and conditions applying to escrow accounts of lawyers and companies of lawyers, which are included in the professional regulations, were adapted to the current situation.

Professional Secrecy

The professional secrecy of lawyers is the indispensable prerequisite for ensuring the right to a fair trial. Independent lawyers committed to professional secrecy guarantee the functioning of a democratic state governed by the rule of law. It is only when the professional secrecy of lawyers is guaranteed and respected that legal peace is maintained and legal certainty is achieved. However, in recent times, an increasing number of attempts have been noticed which aim at diluting the professional secrecy of lawyers, which is a pillar in the exercise of the legal profession.

In cooperation with partner companies from the IT industry, ÖRAK developed a communication tool in order to ensure the confidentiality of the communication between lawyers and their clients. Since spring 2022 the tool (**context – confidential client communication**) has been in operation. You find more information at www.context-services.at.

Services for Citizens

In 2021 Austrian lawyers provided gratuitous services to about 28,000 citizens, either by counselling or representing them. The services include, amongst others, legal-aid services, the “stand-by legal counselling service for arrested suspects” (*Rechtsanwaltlicher Bereitschaftsdienst für festgenommene Beschuldigte*) as well as the gratuitous “initial legal advice” (*Erste Anwaltliche Auskunft*). By providing these services, Austrian lawyers live up to their self-imposed claim of making an essential contribution to law and order in Austria.

Legal Aid

In 2021 **lawyers were assigned to a total of 18,256 cases** in Austria **as legal-aid lawyers** (13,141 criminal cases / 4,580 civil cases / 177 cases before the Constitutional Court / 358 cases before the Supreme Administrative Court). The **value of these legal-aid services** amounted to more than **€ 32 million** in 2021.

Stand-by Legal Counselling Service for Arrested Suspects – Arrest Hotline

A person becomes a “suspect” in criminal proceedings when suspected of having committed a punishable offence, on account of certain specific facts, and when investigations are conducted concerning that person, or constraint is exercised against him/her. In keeping with § 49 number 2 of the Code of Criminal Procedure (StPO) that person has the right to retain a lawyer. As early as 2008, ÖRAK launched a stand-by service for arrested suspects, the so-called “Arrest Hotline”, together with the Federal Ministry of Justice (BMJ), in order to facilitate the exercise of this right. Depending on the case, the service comprises a counselling interview either by telephone or in person as well legal assistance during the examination, if required. The telephone number **0800 376 386** is available free of charge 24 hours/day and 7 days/week so that a lawyer can be contacted without delay.

In 2020 the Stand-by Legal Counselling Service for Arrested Suspects was re-organised in the course of transposing the Directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings as well as the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Since that date, recourse to this service has once again expanded tremendously.

In one single year, namely 2022, there were 3,024 on-site interventions and 3,043 telephone interventions that were forwarded via the stand-by counselling service hotline. The enormous importance of the stand-by legal counselling service is illustrated by the tremendous demand and the fact that telephone and on-site interventions have reached almost an equal level in the meantime.

Together with the regional bar associations, ÖRAK is responsible for managing the stand-by service, which is a considerable task in view of the large number of cases. ÖRAK is engaged in an ongoing dialogue with the Federal Ministry of Justice (BMJ) in order to ensure high quality as well as efficiency when handling this service, which is of considerable significance in a state under the rule of law.

Initial Legal Advice

The “Initial Legal Advice” service has been in operation for a considerable period of time. In 2021 more than 7,000 persons seeking legal advice received gratuitous counselling services from about 650 lawyers.

As the Federal Minister of Justice has failed to enact the necessary update of rates for legal services, which has been outstanding for almost two years, the “Initial Legal Advice” service was suspended in protest. Citizens seeking legal advice were referred to the courts.

Update of Rates for Legal Services

In 2016, the rates for legal services were updated for the last time. In the meantime, the loss in value amounts to more than 25%, as a result of the inflation since that time.

§ 25 of the Rates for Legal Services Act (RATG) stipulates that the Federal Minister of Justice has to determine by decree what surcharge has to be added to the fixed rates indicated in the rate scheme as remuneration due to lawyers, as well as to the amounts listed in § 23a of the Rates for Legal Services Act (RATG), if and

whenever this appears to be necessary in order to ensure that lawyers earn an income that is adequate and commensurate with the changed economic conditions. A change in economic conditions can be assumed whenever the consumer price index rises by 10%. As early as April 2021, when the 10% threshold was exceeded, ÖRAK applied to the Federal Minister of Justice for a determination of a surcharge in keeping with § 25 of the Rates for Legal Services Act (RATG). In spite of several reminders, the application has remained unprocessed to date.

The winning parties in civil proceedings suffer most from the loss in value that has occurred. § 41 of the Code of Civil Procedure stipulates that the successful party has a claim against the losing party to receive a refund of the litigation costs. The amount of this refund depends on the Rates for Legal Services Act (RATG), even though a different fee arrangement (e.g. hourly rates) may have been entered with the retained lawyer. The winning party will receive an adequate refund only if the rates fixed in the RATG act are adequate. As the rates for legal services have not been updated so far – in spite of the factual loss in value that has risen to more than 20% in the meantime – an adequate refund of the costs incurred is no longer obtained. This situation – namely that there is no complete refund of costs even when successful in litigation – keeps citizens as well as companies from taking legal action, which is a serious deficit in legal protection and a barrier to the access to law.

Monitoring Report

In 2023, for the first time, ÖRAK will present an electronic version of its Monitoring Report of Austrian Lawyers.

ÖRAK publishes this annual report in compliance with ÖRAK's statutory obligation to monitor the administration of justice in Austria. The purpose is to correct any misconduct by authorities by presenting various observations and recommending improvements. With this report ÖRAK makes an essential contribution towards illustrating and remedying any misconduct by judicial authorities, administrative entities or the legislator. The report deals both with law-making issues as well as the practical implementation of a large number of different procedures.

The ÖRAK monitoring reports can be found at www.rechtsanwaelte.at (at: Kammer/Stellungnahmen/Wahrnehmungsbericht).

Fundamental Rights Day 2022 of Austria's Lawyers and Marianne Beth Prize

On 27 June 2022, ÖRAK and the Vienna University of Economics and Business organised the Fundamental Rights Day of Austria's Lawyers for the third time. Representatives of different occupations and professions dealt with the topic of legislative action and legal protection in a "state of emergency". The impact of the COVID-19 pandemic on legislative processes and legal protection led to exciting presentations and lively discussions.

Moreover, the "**Marianne Beth Prize**" for preserving the rule of law in Austria, launched by ÖRAK, was awarded for the first time in the course of the Fundamental Rights Day.

The Marianne Beth Prize was founded in order to honour fellow lawyers who contribute to the further development of the legal professions and engage to work actively for the benefit of society, which frequently goes far beyond their professional core competences. A high-level jury decides on the winner of the prize. Dr. Helene Klar, Vienna, was the first lawyer to receive the Marianne Beth Prize.

Seizing and Analysing Data and Data Carriers

In the course of a press conference on the topic "Seizing and Analysing Data and Data Carriers – Deficits and Reform Proposals" held on 21 November 2022, ÖRAK presented a catalogue of reform proposals which will bring a state under the rule of law up to the digital age in connection with the seizure of communication tools. The demands raised by the bar association are based on an expert opinion commissioned by the Institute for the Legal Profession of the University of Vienna, which deals in great detail with the current legal situation, the deficits in a state under the rule of law and a concrete proposal for legislative action.

The main problem of today's legal situation is that seizures refer to individual objects and thus may also be performed separate from house searches. At present, there are only very low-threshold requirements for such actions. This can be explained by the fact that currently investigative authorities have competences for seizures that date back to the times before "Big Data", smart phones and modern information technology.

On the basis of the expert opinion prepared by the experts of the University of Vienna, ÖRAK calls for a comprehensive reform:

- raising the requirements for the seizure of communication tools by introducing specific provisions, in line with the current arrangements for the surveillance of messages
- enacting clear rules on how to deal with chance discoveries
- transparency vis-à-vis accused persons in connection with seizures
- shortening the periods for analysing seized objects by introducing binding time frames
- limiting the examination of files by co-defendants – in line with the legal situation applying to victims, private parties in criminal proceedings and private parties acting as prosecutors – to the extent that their interests are not affected
- recognising the right of accused persons to object when a person subject to professional confidentiality pleads confidentiality.

In a next step, ÖRAK will set up a group of experts for these issues and engage in further discussions of its reform proposals with additional stakeholders.