



DIE ÖSTERREICHISCHEN  
RECHTSANWÄLTE

Österreichischer Rechtsanwaltskammertag

# Country Report Austria

46th European Presidents' Conference 2018

## Legislation in Austria

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

Between September 2016 and August 2017, ÖRAK had to deal with 173 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.

In the summer of the previous year, for example, ÖRAK was one of the first to voice a detailed opinion in the media on the so-called “security package”. This bill envisaged a number of interferences with citizens’ fundamental rights (amongst other things a regulation replacing the provisions on data retention, extended competences for intelligence services, electronic eavesdropping in cars, etc.). The concerns which ÖRAK expressed in two comprehensive position papers were ultimately successful in that the then federal government gave second thoughts to their plans. ÖRAK will monitor the further development of this legislative proposal.

You can find the position papers on the different consultation drafts for legislation on the ÖRAK website at [www.rechtsanwaelte.at](http://www.rechtsanwaelte.at) / Kammer / Stellungnahmen (Chamber / Position Papers).

## Services for Citizens

In 2016 Austrian lawyers provided gratuitous services to more than 40,000 citizens, either by counselling or representing them. This includes, amongst others, 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 2016 legal-aid lawyers were assigned to a total **20,419 cases** in Austria (13,812 criminal cases / 6,205 civil cases / 135 cases before the Constitutional Court / 215 cases before the Supreme Administrative Court / 52 before administrative courts). The value of the services provided under legal aid amounted to more than **40 million euros** in 2016.

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

A person becomes an “arrested suspect/defendant” 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 paragraph (2) of the Code of Criminal Procedure (StPO) that person has the right to retain a lawyer. As early as 2008, ÖRAK established 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 use of this right. Depending on the case, it comprises a telephone call or a personal counselling interview as well legal assistance during the examination, if applicable.

On 01 January 2017 the stand-by legal counselling service was updated in the course of transposing the Directive on the Right of Access to the Lawyer. The telephone number **0800**

**376 386** continues to be available free of charge 24 hours/7 days so that a lawyer can be contacted without delay.

Since 01 January 2017 the following persons can resort to the stand-by legal counselling service:

- Suspects who were arrested in keeping with the provisions of the Code of Criminal Procedure (StPO), or who were summoned for an immediate examination
- Suspects who were arrested in Austria because their extradition was requested under the Extradition and Judicial Assistance Act (ARHG) or because their surrender is requested under the Federal Law of Judicial Cooperation in Criminal Matters with Member State of the European Union (EU-JZG)
- Suspects who were arrested on the basis of a European Arrest Warrant issued by an Austrian judicial authority

A lawyer can be contacted as early as for the first examination as well as upon commitment to prison up to the decision imposing pre-trial detention for the first time. The first call and the first counselling over the telephone are gratuitous. As a matter of principle, all further services are fee-based, and an hourly rate of 120 euros, plus value-added tax (USt) is charged. In the event that the court grants the services of a legal-aid lawyer for the criminal proceedings, this fee is not claimed from the suspect for the time being.

In cooperation with the nine regional bar associations, ÖRAK prepares continuously updated lists which help to operate the arrest hotline. These lists give the names of lawyers who can be contacted in the different regions of Austria, if there is any such need. Every day a maximum of 18 lawyers assigned to stand-by duty throughout Austria take the incoming calls on the arrest hotline.

In 2017 a total of **1,422 contacts** were established via the arrest hotline. Compared to the year before (409 contacts), this is a tripling of the demand. With this arrest hotline the ÖRAK, in cooperation with the Federal Ministry of Justice (BMJ), provides an essential contribution to Austria's rule of law.

### **Initial Legal Advice**

The "Initial Legal Advice" service has been in operation for a considerable period of time. In 2016 more than 17,000 persons seeking legal advice received gratuitous counselling services from more than 1,200 lawyers.

### **Monitoring Report 2016/17**

ÖRAK presented the 43<sup>rd</sup> Monitoring Report of Austrian Lawyers for the year 2016/17 on 11 May 2017.

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

The ÖRAK Monitoring Report can be found at [www.rechtsanwaelte.at](http://www.rechtsanwaelte.at).

### **Outlook**

Elections to the National Council were held in Austria in the autumn of 2017. A new federal government came into office in December and presented its government program which included several proposals by the bar association. ÖRAK will closely monitor the measures planned for this new legislative period and report about them in due course.

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