

Österreichischer Rechtsanwaltskammertag

Country Report Austria

47th European Presidents' Conference 2019

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 2017 and August 2018, ÖRAK had to deal with 138 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.

During the year under review ÖRAK paid special attention to the government's program for the period 2017 to 2022 in connection with the legislative process, and ÖRAK published its proposals for improvement concerning the new legislative term.

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

Services for Citizens

In 2017 Austrian lawyers provided gratuitous services to about 40,000 citizens, either by counselling or representing them. The services include, 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 2017 legal-aid lawyers were assigned to a total **20,864 cases** in Austria (14,479 criminal cases / 5,915 civil cases / 141 cases before the Constitutional Court / 267 cases before the Supreme Administrative Court / 62 before administrative courts). The value of the services provided under legal aid amounted to more than **41 million euros** in 2017.

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

A person becomes an "arrested 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 to 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 Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ, formerly: 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.

At present, 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 and up to the decision imposing pre-trial detention for the first time. 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 via the hotline in the different regions of Austria, if there is any such need.

In 2018 a total of **1,236 contacts** were established via the arrest hotline. This high demand illustrates that the stand-by legal counselling service has become established as an important institution. The presence of a lawyer provides suspects with access to a lawyer in legally difficult situations, on the one hand, while, on the other hand, the presence of a lawyer ensures a well-structured and efficient investigation procedure. In consequence, this eases the work load on courts and authorities. With this successful project, ÖRAK, in cooperation with the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ), provides an essential contribution to Austria's law and order regime.

In 2019 the stand-by legal counselling service will also play an important role in the transposition of the Directive on legal aid and the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings. ÖRAK is engaged in an ongoing dialogue with the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) concerning a possible expansion of this service.

Initial Legal Advice

The "initial legal advice" service has been in operation for a considerable period of time. In 2017 more than 18,000 persons seeking legal advice received gratuitous counselling services from about 1,300 lawyers.

Monitoring Report 2017/18

ÖRAK presented the 44th Monitoring Report of Austrian Lawyers for the year 2017/18 on 10 December 2018.

ÖRAK publishes this annual report in compliance with ÖRAK's 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.

Temperature Curve of the Rule of Law

The Temperature Curve of the Rule of Law is an ÖRAK project which serves the objective of measuring the level of rule of law in Austria and to illustrate its development. For the purpose of this study, the term "rule of law" describes the level of functionality and justice of a country and must therefore be understood in the broadest meaning of the term.

The first edition of the study “Temperature Curve of the Rule of Law” was published in 2016 and compared Austria, Germany and Slovenia. The purpose was to identify in a first step the strong and the weak points of Austria in a comparison to two countries that have a similar legal regime. On this basis, the focus was exclusively put on Austria’s regime for the rule of law for the study made in 2018, and the current indicators were compared to those established in 2016.

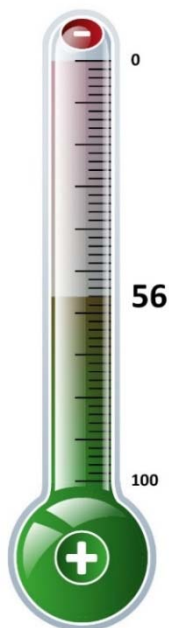
In order to be able to elaborate on the weak and strong points, ÖRAK addressed the questions – involving a scientific advisory board in the discussions – on what basis which factors and indicators can be “measured” and compared. As a result, the following eleven clusters were obtained:

- Quality and stability of governmental structures
- Quality in law-making
- Fighting corruption
- Basic and fundamental rights
- Public order and safety/security
- Industrial location – legal certainty of legal entities
- Living environment – legal certainty of physical persons
- Civil jurisdiction
- Criminal jurisdiction
- Administrative procedures and administrative jurisdiction
- Citizen-oriented government

Three indicators were developed for each of these eleven clusters. In addition, ÖRAK conducted a survey among Austria’s lawyers to determine those clusters which – in the view of lawyers – are of particular significance for the rule of law. You will find detailed information on the results obtained for the various clusters either in the study or, in summary form, in the ÖRAK Monitoring Report 2017/18.

The Temperature Curve of the Rule of Law ultimately obtained a value of 56 for the year 2018, which is basically a positive trend. The value for the year 2018 is slowly moving towards the mark 100 (maximum improvement). So, the “temperature” is going down.

Veränderung 2016–2018



With the Temperature Curve of the Rule of Law, ÖRAK pursues the objective of disclosing the development of the rule of law in Austria in a transparent manner as well as providing the initial impetus whenever there is need for improvement.

ÖRAK will present the next edition of the study in 2020, which will be a comparison of the years 2016, 2018 and 2020.

You can download the complete study at www.rechtsanwaelte.at at Kammer/Stellungnahmen/Fieberkurve des Rechtsstaates (Chamber / Position Papers / Temperature Curve of the Rule of Law).