

Austrian Bar

# Country Report Austria

50th European Presidents' Conference 2022

## 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. These position papers are prepared by experts from among the ranks of the bar association.

During the period between January 2021 and December 2021, ÖRAK had to deal with 171 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 sound position papers prepared by recognised experts are often completely disregarded in the course of the legislative process. Moreover, the regrettable practice persists occasionally that no reviewing procedure is launched. Whenever a bill has considerable impact on citizens, it should undergo thorough scrutiny before being adopted.

## 2022 Act Amending Professional Regulations

Two years after the last comprehensive amendment of the professional regulations for lawyers, the 2022 Act Amending Professional Regulations (BRÄG 2022) enacted further updates and amended the rules governing the exercise of the lawyer's profession. Upon an ÖRAK proposal, the amended law (BRÄG 2022) primarily offers the possibility to suspend the practice of the lawyer's profession on grounds of parenthood.

This suspension on grounds of parenthood is particularly intended to achieve a better reconciliation between work and family life. The suspension on grounds of parenthood is intended to allow mothers and fathers after the birth of a child to remain in the bar's lawyers list without having to bear the financial burden that results from active bar membership. Both, full bar members and junior lawyers' have this option to suspend their professional practice on grounds of parenthood.

These are the main points of the amendment (BRÄG 2022):

- An application for suspension of professional practice can be filed for a maximum of two years.
  - Female lawyers and female junior lawyers can apply for suspension as of the start of the employment restrictions according to § 3 paras. 1 to 3 of the 1979 Maternity Protection Act, or the respective point in time in case of self-employed persons.
  - Fathers can apply for suspension as of the birth of the child.
  - When adopting a minor child or taking a child into gratuitous custody, the application may be filed as of the date of the adoption or the acceptance of the child.
- In the case of female and male junior lawyers, the training lawyer must consent to the suspension of professional practice.
- While professional practice on grounds of parenthood is suspended, bar membership and the registration in the list of junior lawyers remains intact.
- When the suspension on grounds of parenthood ends, the title to practice the lawyer's profession is revived, and junior lawyers can resume their activities as trainee lawyers. This does not require a separate application.
- There is no obligation to maintain professional liability insurance during the period of suspended professional practice on grounds of parenthood.
- The rules of bar associations on contributions may stipulate that no contributions need to be paid to the professional benefit schemes during suspended professional practice on grounds of parenthood. For the period of employment restrictions, or the respective period in case of

self-employed lawyers, Part A of the 2018 Charter may stipulate that these calendar months shall be included in the calculation of a pension, if an application for suspension on grounds of parenthood was filed and therefore no contributions were paid. The Statute shall allow the possibility to buy time-periods for the months of suspension on grounds of parenthood.

- The active right to vote is not affected by the suspended professional practice. However, there is no passive right to vote during the suspension period.
- The rules on membership fees may stipulate that such payments are postponed or waived, in part or in full, during suspended professional practice on grounds of parenthood.

## Professional Secrecy

In addition to independence and absolute loyalty to the client, professional secrecy is an indispensable prerequisite when exercising the legal profession. Every citizen must be able to rely on the fact that the retained lawyer will not use disclosed evidence of any kind against his/her client. Professional secrecy is not only the right and obligation of every lawyer, but primarily the right of every individual citizen. It serves to protect citizens – primarily but also – vis-à-vis government agencies and institutions. Professional secrecy is an indispensable guarantee for effectively ensuring the right to a fair trial. Independent lawyers committed to professional secrecy make sure that our democratic state under the rule of law functions properly. It is only by granting and respecting the professional secrecy of lawyers that legal peace can be maintained and legal certainty can be obtained. However, an increasing number of attempts has been observed for some time, which aim at diluting the professional secrecy of lawyers, as a pillar in the exercise of the legal profession. ÖRAK is firmly opposed to any trend that interferes in the right of citizens to confidential communication with a lawyer.

In cooperation with a partner enterprise from the IT industry, ÖRAK has developed a communication tool, which ensures the confidentiality of the communication between a client and his/her lawyer. The go-live was in February 2022: **context – confidential client communication**. You will find more information at [www.context-services.at](http://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 in proceedings, 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 **legal-aid lawyers were assigned to a total of 18,256 cases** in Austria (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 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 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 exercise of this right. Depending on the case, it comprises a telephone call or a personal counselling interview as well as legal assistance during the examination, if applicable. The telephone number **0800 376 386** is available free of charge 24 hours/7 days so that a lawyer can be contacted without any delay.

In 2020, the Stand-by Legal Counselling Service for Arrested Suspects was restructured in the course of transposing the Directive on legal aid for suspects and accused persons in criminal proceedings as well as the Directive on procedural safeguards for children. Since then, there has been a further clear rise in demand for this service. For example, as total of **3,325 telephone contacts** were made to stand-by lawyers in 2021. Altogether, administrative services were provided for **5,798 stand-by assignments**. The **number of interventions at court proceedings (interventions)** amounted **2,628** cases in 2021. In cooperation with the bars, ÖRAK manages the administrative services for the stand-by assignments, which are quite voluminous, given the above figures on cases. ÖRAK maintains a regular dialogue with the Federal Ministry of Justice in order to ensure the efficient management and the high quality of this service, which is of great importance for 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. Due to COVID-19, there was a clear reduction in the counselling sessions compared to earlier years.

## Monitoring Report

ÖRAK will present a further edition of its Monitoring Report of Austrian Lawyers for the year 2022. The report will especially focus on the COVID-19 measures of the past two years as well as their compatibility with fundamental rights and freedoms.

During the Corona pandemic, lawyers, among other groups of professions that have established their own non-governmental social-security system, were excluded from numerous health services provided by the federal government without being given a reasonable explanation. These services were announced with great media hype, were promised to all citizens, and were financed from tax money. ÖRAK therefore filed an individual complaint to the Constitutional Court.

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. It deals with both, law-making issues as well as the practical implementation in a large number of different procedures.

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

## 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 the rule of law in Austria and of illustrating 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 of the study made in 2018 was exclusively put on Austria’s regime for the rule of law, and the collected indicators were compared to those obtained in 2016.

In order to be able to elaborate on the weak and strong points, ÖRAK addressed the questions – involving a scientific advisory board and the University of Vienna 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
- Fundamental rights and freedoms
- Public order and safety/security
- Industrial locations – legal certainty for legal entities
- Living environment – legal certainty for 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.

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 2022.**

You can download the complete study at [www.rechtsanwaelte.at](http://www.rechtsanwaelte.at) (at: Kammer/Stellungnahmen/Fieberkurve des Rechtsstaates).

## **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** will organise the **Fundamental Rights Day of Austria’s Lawyers** for the third time. It will be held at the Ceremonial Hall of the Vienna University for Economics and Business. It will also be possible to attend the event in virtual form via live stream.

This year, the representatives of different occupations and professions will deal with the topic of **Legislative Action and Legal Protection in a ‘State of Emergency’**. In view of the impact of the COVID-19 pandemic on legislative action and legal protection, the organisers look forward to exciting presentations and lively discussions.

Moreover, in the course of the Fundamental Rights Day the “Marianne Beth Prize” for preserving the rule of law in Austria, launched by ÖRAK, will be awarded for the first time.

On a day-by-day basis, lawyers and junior lawyers make a decisive contribution towards protecting and expanding the rule of law in Austria. This active commitment to the rule of law frequently goes far beyond their professional core competences and also includes law-related activities for the benefit of society as well as achievements for the further development of the legal profession.

ÖRAK has founded the Marianne Beth Prize in order to demonstrate this commitment to the public, to acknowledge it and to create a role model effect. The prize is in memory of Marianne Beth (née von Weisl, 1890 – 1984), who was the first woman registered as a lawyer with the bar association.

The Marianne Beth Prize is intended to acknowledge special efforts by colleagues, which go beyond their professional core competences and were performed for the benefit of society as well as the further development of the profession. A high-level jury decides on the winner of the prize.