

1. 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 2023 to December 2023, ÖRAK had to deal with 122 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 at all involved in reviewing procedures. Whenever a bill has considerable impact on citizens, it should undergo thorough scrutiny before being adopted.

2. New Rules Concerning Professional Regulations

An ongoing practice of the ÖRAK working groups and task forces is to prepare proposals updating and amending the professional regulations. At present, the completed draft for an amendment of the Professional Regulations and the Disciplinary Code is pending with the Federal Ministry of Justice. The ÖRAK proposal concerning the Disciplinary Code provides for introducing new instruments in relation to penal orders under the Disciplinary Code for lawyers and shorter periods for issuing awards. The regulations are guided by the well-proven provisions of the Austrian Penal Procedure Code (StPO) and take account of the specific features of disciplinary procedures. These measures are intended to considerably lighten the task of the disciplinary councils of the regional bar associations, while maintaining all guarantees afforded in a state under the rule of law and observing the procedural rights of parties charged under the Disciplinary Code.

The ÖRAK assembly of representatives adopted several changes in their guidelines pertaining to their own sphere. For many years, ÖRAK has made major efforts to improve the compatibility of family and working life for lawyers. One step in this direction was to make it possible for lawyers to subsequently pay the difference between the actually paid amount and the standard annual contribution to the insurance company, which would be missing when claiming the reduction of contributions in case of a child's birth, adoption or acceptance into gratuitous care as well as claiming a reduction during a suspended bar membership.

Furthermore, the requirements for obtaining an old-age pension under Statute Part A 2018 now take account of the ECtJ decision dated 15 September 2022, case C-58/21, which means that a person only has to waive bar membership in Austria when applying for an old-age pension according to Statute Part A 2018. So far, a worldwide waiver of bar membership was required to be able to receive old-age pension benefits under Statute Part A 2018.

In addition, an adjustment was made, both in Statute Part A 2018 and Statute Part B 2018, relating to claims for a survivorship annuity. It aims at avoiding hardship cases. In general, Statutes Part A and Part B stipulate that a title to benefits arises only as of the first day of the month following the application. It may sometimes be difficult for widows/widowers or orphans to submit the application during the month of the demise of the insured person. The title will now arise as of the first day of the month following upon the date of the demise, if the application is submitted before the end of the third month after the date of the demise, so as to avoid delays in receiving benefits in these cases. If the application is not submitted within three months, the entitlement to survivorship annuities commences on the first day of the month following the submission of the application.

Company-Law Changes with Impact on Lawyers

The federal law on flexible corporations (Flexible Corporations Act – FlexKapGG, Federal Law Gazette I 2023/179), which entered into force on 01 January 2024, creates a new type of corporate structure, i.e. the so-called flexible corporation (FlexKapG or FlexCo), whereby the

existing law on limited-liability companies and stock companies remains largely unchanged. The law on flexible corporations (FlexCo) is based on the legislation governing limited-liability companies. This law is also applied in all cases where the law on flexible corporations (FlexKapGG) does not contain any specific regulation. Specific regulations can now be found in the following three areas: nominal capital, requirements of form and shareholdings by staff members.

Section 12 of the Flexible Corporations Act (FlexKapGG) is particularly welcomed by lawyers when practicing their profession, as a notarial deed is no longer required for the transfer of company shares. These have been replaced by private deeds (issued by lawyers or notaries) to cover capital increases and share transfers that can now be implemented more swiftly and economically.

3. Professional Secrecy

The professional secrecy of lawyers is an 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, for some time, an increasing number of attempts have been noticed which aim at diluting the professional secrecy of lawyers, which is a pillar for 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.

4. Services for Citizens

In 2022, Austrian lawyers provided gratuitous services to about 32,500 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.

5. Services for Bar Association Members

ÖRAK supports its members by offering lawyers a wide range of services. Especially in the field of Legal Tech, ÖRAK is committed to reacting to challenges of digitalization. For example, ÖRAK designed a tailor-made solution for lawyers to control digital signature processes, which can be used from any location and any terminal device to apply a digital signature to a document in a simple and qualified form.

6. Legal Aid

In 2022, lawyers were assigned as legal-aid lawyers to a total of 18,348 cases in Austria (13,699 criminal cases / 4,087 civil cases / 166 cases before the Constitutional Court / 349 cases before the Supreme Administrative Court, 33 cases before the Regional Administrative Courts, 12 cases before the Federal Administrative Court, 2 cases before the Federal Finance Court). The value of these legal-aid services amounted to almost € 33 million in 2022.

7. 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 2023, for example, there were 3,518 on-site interventions (cut-off date: 10 January 2024) and 3,967 telephone interventions which were conducted via the stand-by 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, given 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 in operating this service, which is of considerable significance in a state under the rule of law.

8. Access to Justice

For years, electronic legal transactions (ERV) with the general courts have been a common practice in Austria. The system runs smoothly and to everybody's satisfaction. In day-to-day work, the system helps to save time and money and facilitates the quick and secure communication between and among all participants. However, an absurd situation prevailed for many years, which was due to a lacuna in the law, namely that electronic submissions to the administrative bodies were only recognized as duly filed during office hours. Pleadings sent at the same time by mail, in turn, enjoyed the privilege of being recognized as submitted on the mailing date, which is in line with § 33 of the General Administrative Procedures Act (AVG).

This situation fostered arbitrary reactions, as every authority was free to determine up to what time it would accept a legal remedy. Last year, the overdue amendment was finally enacted so that submissions filed by mail and in electronic form now have equal standing.

Another urgent concern of ÖRAK is to fully link also the regional administrative courts and the Federal Administrative Court to the ERV system. It is gratifying to note that all supreme courts have been linked to the ERV system since 01 January 2015.

9. Update of Rates for Legal Services

§ 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 to 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).

During the first semester 2023, ÖRAK conducted a series of negotiations with the politically responsible parties in order to convince them of the urgent need to adjust rates and to issue the decree on surcharges according to § 25 of the Rates for Legal Services Act (RATG), which has long been overdue.

ÖRAK was pleased to note that the Federal Ministry of Justice communicated a draft for a decree on surcharges to the President of the National Council, requesting him to seize the Main Committee of the National Council with the task of reaching a consensus. The announcement was made on 27 April 2023 (**Federal Law Gazette II No. 2023/131**).

The decree stipulates a surcharge of **20%** on the fixed rates for the services provided by lawyers, which are listed in the Rates for Legal Services Act (RATG), as well as on the amounts listed in § 23a of the RATG. It entered into force on **01 May 2023**.

In the course of applying for a determination of the surcharge, ÖRAK repeatedly also called for an overhaul of § 25 of the RATG, in line with § 2 of the Reimbursement of Expenses Act and 31a of the Court Fees Act, respectively.

As in the past, the adjustments are made insufficiently and at irregular intervals, which leads to major disadvantages as well as legal uncertainties. This is to the detriment of Austria as venue of litigation and as an industry location. On account of the current arrangements, only the price increases of the past are taken into account (and, by far, not to their full extent). The price increase between adjustments constitutes a burden on every individual lawyer as well as on the people seeking legal assistance, who depend on an adequate refund of their expenses. However, this is not ensured by the adjustment of rates for legal services.

10. Monitoring Report

On 20 December 2023, ÖRAK presented its Digital Monitoring Report during a press conference. Henceforth, the Monitoring Report will only appear in the form of continuously updated website, so that ÖRAK can comply with its statutory obligation throughout the year and in the form of updates, which is to monitor the administration of justice, public administration and legislation. The report can be found at [**www.wahrnehmungsbericht.at**](http://www.wahrnehmungsbericht.at).

11. Seizing and Analysing Data and Data Carriers

During 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 level of 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 detail with the current legal situation, the deficits of a state under the rule of law and a concrete proposal for legislative action.

The main problem of the current 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
- recognizing the right of accused persons to object when a person subject to professional confidentiality pleads confidentiality.

In the meantime, the Constitutional Court decided in its decision of 14 December 2023 (case number G 352/2021) that the seizure of mobile data carriers in criminal proceedings is unconstitutional if conducted without first obtaining judicial authorization. Some of the considerations expressed in the court decision tally with the criticism by ÖRAK, which also drafted several specific proposals for new provisions. The deadline for remedying the situation is 01 January 2025. In view of this date, ÖRAK has called for speedy implementation.