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Version finale

**Answer to the
REVISED SCHEME
FOR
EVALUATING JUDICIAL SYSTEMS
2004 Data**

**Réponse à la
GRILLE REVISEE
POUR
L'ÉVALUATION DES SYSTÈMES JUDICIAIRES
Données 2004**

AUSTRIA/AUTRICHE



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15 September 2005

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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

**adopted by the CEPEJ at its 5th Plenary Meeting (Strasbourg, 15 – 17 June 2005) and
approved by the Committee of Ministers on 7 September 2005
(936th meeting of the Ministers' Deputies)**

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REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

COUNTRY:

National correspondent

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 Position **Judge**
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I. Demographic and economic data
I. A. General information

- | | | | |
|-----------|---|------------------|-------------|
| 1. | Number of inhabitants | 8,206.500 | PR 1 |
| | <i>Source</i> http://www.statistik.at/statistische_uebersichten/deutsch/pdf/k14t_1.pdf | | |
| 2. | Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level | | PR 1 |
| | State level | € 65 000,000.000 | |
| | Regional / entity level | € | |
| | <i>Source</i> http://www.statistik.at/statistische_uebersichten/deutsch/pdf/k03t_1.pdf | | |
| 3. | Per capita GDP | €29.000 | PR 1 |
| | <i>Source</i> http://www.statistik.at/statistische_uebersichten/deutsch/pdf/k00t_4.pdf | | |
| 4. | Average gross annual salary | €38.640 | PR 1 |
| | <i>Source</i> http://www.statistik.at/statistische_uebersichten/deutsch/pdf/k05t_3.pdf ; „(Arbeitnehmerentgelt, monatlich je Arbeitnehmer) x 12“ | | |

I. B. Budgetary data concerning judicial system

- | | | | |
|-----------|--|----------------------|--------------|
| 5. | Total annual budget allocated to all courts | € 541.415.000 | III 1 |
| | <i>Source</i> Bundesfinanzgesetz 2004 | | |

Please specify:

The budget for public prosecution is included in this amount (as it is in the amounts indicated below at question 6).

| |
|--|
| |
|--|

6. Within this budget, can you isolate the following budgets and specify, if appropriate, their amount: III 1

| | Yes | Amount |
|--|-----|---------------|
| ▪ Salaries? | x | € 294.764.000 |
| ▪ IT? | x | € 35.480.000 |
| ▪ Justice expenses borne by the State? | x | € 874.926.000 |

Source *Bundesfinanzgesetz 2004*

7. Annual public budget spent on legal aid € about 24.100.000 III 1

Source *Bundesfinanzgesetz 2004*

8. If possible, please specify: III 1

| | |
|--|---|
| ▪ the annual public budget spent on legal aid in criminal cases | € |
| ▪ the annual public budget spent on legal aid in other court cases | € |

Source

9. Annual public budget spent on prosecution system € III 1

Source

10. Bodies formally responsible for budgets allocated to the courts: III 1

| | Preparation of the budget (Yes/No) | Adoption of the budget (Yes/No) | Management and allocation of the budget among courts (Yes/No) | Evaluation of the use of the budget (Yes/No) |
|----------------------------------|------------------------------------|---------------------------------|---|--|
| Ministry of Justice | yes | no | yes | yes |
| Other ministry. Please specify | yes, federal ministry of finance | no | no | yes, federal ministry of finance |
| Parliament | no | yes | no | yes |
| Supreme Court | yes | no | yes | no |
| Judicial Council | no | no | no | no |
| Courts | yes | no | yes | no |
| Inspection body. Please specify. | no | no | no | yes, court of audit |
| Other. Please specify | no | no | no | no |

You can indicate below:

- any useful comments for interpreting the data mentioned above

- **the characteristics of your budgetary system**

The "Bundesvoranschlag" (BVA, =federal budget) is part of the annual "Bundesfinanzgesetz", wherein Justice expenses as well as Justice proceeds are described in Chapter 30: "Justiz".

Chapter 30 "Justiz" is subdivided into "titles":

Title 300: Federal Ministry of Justice

Title 301: Supreme Court and Supreme Public Prosecutor

Title 302: Judicial Authorities (=Courts and Public Prosecution)

Title 303: Prisons

Title 305: Probation service

Note to questions 7 and 8: Part of the public expenses for legal aid are paid as a flat rate refund to the Austrian Lawyers' Organisation (in 2004 the amount was € 16,100.000) for those cases in which persons granted legal aid need a lawyer whom they cannot pay. Another part (about € 8,000.000) consists in the remuneration of court experts and interpreters paid from public budget for parties granted legal aid. And parties granted legal aid do not have to pay court fees, which lessens the proceeds of the Judicial system (For this part there is no amount available).

II. Access to Justice and to all courts

II. A. Legal aid

11. Does legal aid concern:

18

| | Criminal cases | Other than criminal cases |
|----------------------------------|--------------------------|----------------------------------|
| Representation in court (Yes/No) | Yes | Yes |
| Legal advice (Yes/No) | Yes | Yes |
| Other (Yes/No). Please specify | Yes (fees, costs) | Yes (fees, costs) |

12. Number of legal aid cases:

18

- **total (in 2004)** 24.650
- **criminal cases**
- **other than criminal cases**

Source: total number of cases where lawyers were appointed to provide legal aid services (Wahrnehmungsbericht 2004/2005, ch. VI, para. 1, published by the Austrian Bar Association; see http://www.oerak.at/downloads/wnb_2004_2005.pdf)

13. In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

18

Yes No

14. Does your country have an income and asset test for granting legal aid:

18

No Yes/Amount

- for criminal cases? x (no specified amount)
- for other than criminal cases? x (no specified amount)

15. In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)? 18

Yes No

16. If yes, is the decision taken by: 18

- | | Yes |
|--|-------------------------------------|
| ▪ the court? | <input checked="" type="checkbox"/> |
| ▪ a body external to the court? | <input type="checkbox"/> |
| ▪ a mixed decision-making body (court and external)? | <input type="checkbox"/> |

17. In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction: 18

- | | Yes | No |
|----------------------------------|-------------------------------------|-------------------------------------|
| ▪ for criminal cases? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ▪ for other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If yes, are there exceptions? Please specify:

18. Is there a private system of legal expense insurance for individuals in order to finance legal proceedings to court? 18

No
 Yes Please specify:

Insurance companies offer legal insurance contracts which are to be privately concluded.

19. Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in: 18

- | | Yes | No |
|------------------------------|-------------------------------------|--------------------------|
| ▪ criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system

Legal aid can be granted any natural or legal person regardless of nationality or residence of the applicant. A party without sufficient financial means may apply for legal aid when entering or just before entering into litigation or at any time later as long as the civil proceeding is still pending. The core provisions regarding legal aid are set out in section 63 to 73 Civil Procedure Code (§§ 63 bis 73 Zivilprozessordnung).

It is mandatory to submit the special application form (so-called "ZPForm 1"). This form contains a summary of assets (income, property, cash at the bank, property, insurance policies, etc.) and liabilities

(maintenance, etc.), personal data and living conditions. As far as possible it should be substantiated by written proof. The form must be submitted by the applicant within four weeks of the date of signature or it loses its validity.

It is noteworthy that no strict financial threshold is applied to determine whether an applicant qualifies for legal aid or not. At its discretion the court may grant full legal aid or - according to the financial situation of the applicant regarding the amount of costs to be expected in the future - allow it only partially. It may cover: a provisional exemption of court fees, fees for witnesses, experts and edicts; of costs for guardians and cash expenditure of guardians or lawyers in case of representation by legal aid; and representation by a court official or - if necessary - a lawyer (which is very often the case).

If the court decides to grant legal aid including the assistance of a lawyer, the local lawyers chamber (Länderkammer of the Austrian Bar Association) has to select the next available lawyer among its members. The applicant may however nominate a particular lawyer. Although this request is not binding on the local lawyers' chamber, it will in general accept a well-founded proposal (for example if the lawyer is willing and already familiar with the case).

Legal aid is denied if the claim or defence of the applicant is manifestly unfounded or manifestly not brought in good faith.

As a general rule, any decision on legal aid can be subject to appeal to the court of second instance whose decision becomes final. In legal aid matters an appeal to the Supreme Court (Oberster Gerichtshof) is not available.

II. B. Users of the courts and victims

II. B. 1. Rights of the users and victims

20. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to: **PR 1**

- | | Yes | No |
|--|-------------------------------------|--------------------------|
| ▪ legal texts (e.g. codes, laws, regulations, etc.)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Internet address(es): www.ris.bka.gv.at | | |
| ▪ case-law of the higher court/s? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Internet address(es): www.ris.bka.gv.at | | |
| ▪ other documents (for examples legal forms)? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Internet address(es): www.justiz.gv.at | | |

21. Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding? **I 8**

Yes No

If yes, please specify:

22. Is there a public and free-of-charge specific information system to inform and to help victims of crimes? **III 4**

Yes No
Internet address(es): www.opfernotruf.at

23. Are there special arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons: **II 3**

| | Information mechanism (Yes/No) | Hearing modalities (Yes/No) | Procedural rights (Yes/No) | Other (Yes/No). Please specify |
|------------------------------|--------------------------------|-----------------------------|----------------------------|--------------------------------|
| Victims of rape | Yes | Yes | Yes | Yes |
| Victims of terrorism | Yes | Yes | Yes | Yes |
| Child/Witness/Victim | Yes | Yes | Yes | Yes |
| Victims of domestic violence | Yes | Yes | Yes | Yes |
| Ethnic minorities | Yes | Yes | Ye | Yes |
| Disabled persons | Yes | Yes | Yes | Yes |
| Juvenile offenders | Yes | Yes | Yes | Yes |
| Other | Yes | Yes | Yes | Yes |

Comment:

Other arrangements (specification):
According to a recent amendment of the Code of Criminal Procedures, persons who allegedly were exposed to force or dangerous threat by an intentionally committed offence and certain close relatives to such a person are – under specified conditions, especially if this is necessary for ensuring their rights – entitled to psycho-social and legal accompaniment during the proceedings. This encompasses inter alia legal consultation and representation by a lawyer during the proceedings (during both the pre-trial and the main-trial phase).

24. Does your country have compensation procedure for victims of crimes? II 3

Yes No

25. If yes, does this compensation procedure consist in: II 3

- a public fund?
- a court order?
- private fund?

II 3

26. **If yes, which kind of cases does this procedure concern?**

According to the Crime Victims Act, Austrian citizens, citizens of other EU- or EEA-Member States as well as others who stay legally in Austria or on an Austrian (air)ship at the moment of the crime, are entitled to economic compensation and social benefits (like psychological care) under certain conditions, if they suffered bodily harm caused by an intentionally committed offence for which a sentence of more than six months of imprisonment is provided.
 Furthermore, anybody who claims to have suffered damage deriving from an alleged offence is in principle entitled to claim compensation for this damage within the criminal proceeding.

27. **For victims, are there studies to evaluate the recovery rate of the compensation awarded by courts?** II 3

No
 Yes **Please specify:**

II. B.2. Confidence of citizens in their justice system

28. **Is there a system for compensating users in the following circumstances:** I 6

| | Yes | No |
|------------------------------------|-------------------------------------|--------------------------|
| ▪ excessive length of proceedings? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ wrongful arrest? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ wrongful condemnation? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If yes, please specify (fund, daily tariff):

The Public Authority's Liability Act (Amtshaftungsgesetz) provides for liability of the state (and other legal entities) for misconduct of their employees in the exercise of public authority, including court proceedings and court decisions, causing damage to persons or property by excessive length of proceedings, wrongful arrest and/or wrongful condemnation. The liability presupposes both wrongfulness and fault.
 In the case of wrongful arrest or wrongful criminal condemnation, compensation can also be obtained according to the Penal Law's Compensation Act (Strafrechtliches Entschädigungsgesetz) without proving fault of the Authorities.
 The compensation procedure is laid down in para. 8 ff. Amtshaftungsgesetz and para. 9 ff. Strafrechtliches Entschädigungsgesetz. The injured person may demand – free of costs - of the legal entity against which the claim for damages is to be raised to forward her/him within a three months' term a written statement indicating as to whether it accepts or partially or totally rejects the claim for damages. If the claim is partially or totally rejected, the complaint can still be filed at court.
 The exclusive jurisdiction over the claim of the injured person against the legal entity rests in the first instance with the regional court (Landesgericht) in charge of civil matters in whose range of jurisdiction the infringement of law occurred.
 Compensation is funded by the Public Authority's general budget. The liability is unlimited, indemnity is to be paid in terms of money only. To make sure that compensation is paid following the concrete circumstances of each individual case, there is no such thing as a daily tariff or a flat compensation sum. The amount of compensation depends solely on the magnitude of damage suffered by the victim and the degree of fault attributable to the Public Authority.

29. Does your country have surveys on users or legal professionals (judges, lawyers, officials, etc.) to measure public trust and satisfaction with the services delivered by the judiciary system?

PR 1

Yes No

If possible, please specify their titles, how to find these surveys, etc:

“Spectra 2001” (not published)
 „Mystery Shopping“ by agency “marketmind” together with other bodies of the Austrian authorities. (see <http://www.bka.gv.at/DesktopDefault.aspx?TabID=3758&Alias=BKA&cob=4654> for general and http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf and http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf for details)
 Several minor “ad hoc”-surveys to current topics.

30. If yes, please specify:

PR 1

| | Trough systematic surveys (Yes/No) | Through ad hoc surveys (Yes/No) |
|---------------------------|------------------------------------|---------------------------------|
| Surveys at national level | Yes | Yes |
| Surveys at court level | Yes | Yes |

31. Is there a national or local procedure for making complaints about the performance of the judicial system?

I 8

Yes No

32. If yes, please specify:

I 8

| | Time limit to respond (Yes/No) | Time limit for dealing with the complaint (Yes/No) |
|---|---|--|
| Court concerned | Yes | (Up to) 4 weeks |
| Higher court | Yes | (Up to) 4 weeks |
| Ministry of Justice | - | - |
| High Council of Justice | - | - |
| Other external organisations (e.g. Ombudsman) | Yes (“Volksanwaltschaft”, an Ombudsman-institution) | individually |

Can you give information elements concerning the efficiency of this complaint procedure?

If a court is dilatory in taking any procedural step, according to section 91 of the Courts Act (§ 91 *Gerichtsorganisationsgesetz*) any party may submit a request to this court for the superior court to impose an appropriate time limit for the taking of the particular procedural step. If the court takes all procedural steps specified in the request within four weeks of receipt and informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request. Then the superior court has to decide upon the request at stake.

According to the case law of the ECHR (see e.g. *Holzinger v. Austria*, appl.no. 23459/94) an

application under section 91 of the Courts Act is an effective remedy as its use would reduce the length of proceedings. Furthermore, such an application is necessary to exhaust all domestic remedies before a complaint to the ECHR concerning any unreasonable delay is admissible.

III. Organisation of the court system

III. A. Functioning

33. Total number of courts (administrative structure): PR 6

- first instance courts of general jurisdiction 153 (1.1.2005)

Source *Pr 6*

- specialised first instance courts 7 (1.1.2005)

Source *Pr 6*

Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

On principal every court has to deal with all judicial issues; in the biggest Austrian cities certain courts are specialised, i.e. five in Vienna (civil cases, criminal cases, commercial cases [2 x], employment- and social welfare cases) and two in Graz (criminal cases, remaining cases);

34. Total number of courts (geographic locations) 149 PR 6

Source *Database of courts (total number of premises)*

35. Number of first instance courts competent for a case concerning: PR 6

- a debt collection for small claims 140

Please specify what is meant by small claims in your country:

up to € 10.000,--

- a dismissal 16
- a robbery 16

36. Number of professional judges sitting in courts 1.696,50 PR 6
 (incl. substitution judges (“Ersatzkräfte”), but without substituted judges (“Ersatzfälle”); without Ministry)
 (present the information in full time equivalent and for permanent posts)

Source *SOLL-IST-Vergleich 1. 1. 2004*

37. Number of professional judges sitting in courts on an occasional basis and who are paid as such: PR 6

- gross figure 0
- if possible, in full time equivalent 0

Source

Please specify:

38. Number of non-professional judges (including lay judges) who are not remunerated but who can possibly receive a simple defrayal of costs PR 6
n/a

Source

Please specify:

39. Does your judicial system include trial by jury with the participation of citizens? PR 6

No

Yes For which type of case(s)?

Lay judges are intended by the law for offences, which are threatened with at least five years of imprisonment.

If possible, number of citizens who were involved in such juries for the year 2004?

n/a

40. Number of non-judge staff who are working in courts PR 6
(present the information in full time equivalent and for permanent posts) *4.688,97*

Source *assignment summary 1. 1. 2004*

41. If possible, could you distribute this staff according to the 3 following categories: PR 6

▪ non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars: *n/a*

▪ staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management): *n/a*

▪ technical staff: *n/a*

42. In courts, do you have non-judge staff entrusted with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal (such as German and Austrian Rechtspfleger): PR 6

No

Yes Number of staff *574,13; source: assignment summary 1. 1. 2004*

43. **Number of public prosecutors** 216,00 (without Ministry) PR 6
 (present the information in full time equivalent and for permanent posts)

Source **SOLL-IST-Vergleich 1. 1. 2004**

44. **Do you have persons who have similar duties as public prosecutors?** PR 6

No

Yes **Please specify:**

The agents of public prosecutor's offices ("Bezirksanwälte") are judicial officers with legal training, and are allowed to act for the public prosecutor's offices under the supervision of a public prosecutor (quite similar to the "Rechtspfleger", but with a lower range of competence and fewer qualification). On January 1st 2004 there have been 145,14 (fte) agents, who are not included at question 43.

45. **Is the status of prosecutors:** PR 6

- independent within the judiciary? Yes
- independent from the judiciary ?
- under the authority of the Ministry of Justice?

46. **Number of staff (non prosecutors) attached to the public prosecution service** 171,60 PR 6
 (excluding 145,14 agents of public prosecutor's offices)
 (present the information in full time equivalent and for permanent posts)

Source

47. **Who is entrusted with the individual court budget?** III 1

| | Preparation of the budget (Yes/No) | Arbitration and allocation (Yes/No) | Day to day management of the budget (Yes/No) | Evaluation and control of the use of the budget (Yes/No) |
|--------------------------------|------------------------------------|-------------------------------------|--|--|
| Management Board | | | | |
| Court President | President of the Court of Appeal | President of the Court of Appeal | President of the Court of Appeal | President of the Court of Appeal |
| Court administrative director | | | | |
| Head of the court clerk office | | | | |
| Other. Please specify | Ministry of Justice | Ministry of Justice | Ministry of Justice | Ministry of Justice |

48. In general, do the courts in your country have computer facilities?

PR 1

Yes No

49. What are the computer facilities used within the courts?

PR 5

| Functions | Facilities | 100% of courts | +50% of courts | -50% of courts | - 10 % of courts |
|---|---|----------------|----------------|----------------|------------------|
| Direct assistance to the judge/court clerk | Word processing | x | | | |
| | Electronic data base of jurisprudence | x | | | |
| | Electronic files | | x | | |
| | E-mail | x | | | |
| | Internet connection | x | | | |
| Administration and management | Case registration system | x | | | |
| | Court management information system | x | | | |
| | Financial information system | x | | | |
| Communication between the court and the parties | Electronic forms | x | | | |
| | Special Website | x | | | |
| | Other electronic communication facilities | x | | | |

Source Austrian Federal Ministry of Justice, Legal Informatics Department

50. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

PR 3

No
Yes

Please specify the name and the address of this institution:

Federal Computing Centre of Austria (Bundesrechenzentrum GmbH)
on behalf of
Federal Ministry of Justice of the Republic of Austria
Museumstraße 7
1070 Wien

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system

III. B. Monitoring and evaluation

51. Are the courts required to prepare an annual activity report? PR 6

Yes No

52. Do you have a regular monitoring system of court activities concerning the: PR 6

- | | Yes | No |
|------------------------------|---|--------------------------|
| ▪ number of incoming cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ number of decisions? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ number of postponed cases? | <input checked="" type="checkbox"/> (pending) | <input type="checkbox"/> |
| ▪ length of proceedings? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ other? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Please specify:

e. g. certain kinds of decisions

53. Do you have a regular evaluation system of the performance of the court? PR 6

No

Yes Please specify:

Operational Information System (BIS)
Period test lists (On October 1st of every year)

54. Concerning court activities, have you defined: PR 6

- performance indicators? Yes No

Please specify the 4 main indicators for a proper functioning of justice:

Number of decisions
Number of postponed (pending) cases of a period
Number of cases, which outrun a certain duration
Cases, which have a certain duration between the decision and the dispatch of the decision
Examination of the ratio of staff to caseload (PAR)

- targets? Yes No

Please specify who is responsible for setting the targets:

- | | Yes |
|----------------------|--------------------------|
| - executive power? | <input type="checkbox"/> |
| - legislative power? | <input type="checkbox"/> |
| - judicial power? | <input type="checkbox"/> |
| - other? | <input type="checkbox"/> |

Please specify:

Please specify the main objectives applied:

There are no concrete objectives given to the courts

Source 

55. Which authority is responsible for the evaluation of the performances of the courts:

PR 6

| | Yes |
|--|---|
| <input type="checkbox"/> the High Council of judiciary? |  |
| <input checked="" type="checkbox"/> the Ministry of justice? | X |
| <input checked="" type="checkbox"/> an Inspection body? | X |
| <input type="checkbox"/> the Supreme Court? |  |
| <input type="checkbox"/> an external audit body? |  |
| <input type="checkbox"/> other? |  |

Please specify:

56. Does the evaluation system include quality standards concerning judicial decisions?

PR 6

No  Please specify:

Yes 

Source 

57. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within an acceptable timeframe for:

PR 6

| | Yes | No |
|---|---|---|
| <input checked="" type="checkbox"/> civil cases? | X |  |
| <input checked="" type="checkbox"/> criminal cases? | X |  |
| <input type="checkbox"/> administrative cases? |  |  |

Every case is electronically registered in a database. Important steps of the process get registered, so the status of every cases can be displayed by periodical queries.

58. Do you have a way of analysing queuing time during court procedures?

PR 6

No  Please specify:

Yes 

59. Do you monitor and evaluate the performance of the prosecution services?

PR 6

No 

Yes Please specify:

The monitoring of the performance of the prosecution services is similar to the monitoring of the performance of the courts.

You can indicate below:

- any useful comments for interpreting the data mentioned above

- **the characteristics of your court monitoring and evaluation system**

IV. Fair trial
IV. A. Fundamental principles

60. **Is there in your judicial system:** **PR 1**
- **a right for an interpreter for all those within your jurisdiction who cannot understand or speak the language used in court?**
 Yes No
 - **the right to have reasons given for all prisons sentences?**
 Yes No
 - **for all cases, an effective remedy to a superior jurisdiction?**
 Yes No

61. **Which is the percentage of judgements in first instance criminal cases in which the suspect is not actually present or represented?** **II 2/PR 5**
 n.a. for 2004

Source

62. **Is there a procedure to effectively challenge a judge if a party consider he/she is not impartial?**
- No
 Yes **If possible, number of successful challenges (in a year):** **PR 5**

63. **Please give the following data 2003 and 2004 concerning the number of cases regarding the violation of Article 6 of the European Convention of Human Rights:** **I 9/IV 1**

| | | Cases communicated by the Court | | Cases declared inadmissible by the Court | | Friendly settlements | | Judgements establishing a violation | | Judgements establishing a non violation | |
|----------------------|------------------------|---------------------------------|------|--|------|----------------------|------|-------------------------------------|------|---|------|
| | | 2003 | 2004 | 2003 | 2004 | 2003 | 2004 | 2003 | 2004 | 2003 | 2004 |
| Criminal proceedings | Article 6§1 (equity) | 2 | 1 | 1 | 0 | 2 | 1 | 0 | 0 | 0 | 0 |
| | Article 6§1 (duration) | 3 | 0 | 2 | 0 | 1 | 0 | 2 | 2 | 0 | 0 |
| | Article 6§2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Article 6§3a | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Article 6§3b | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Article 6§3c | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Article 6§3d | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Article 6§3e | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |

| | | | | | | | | | | | |
|-------------------|----------------------------------|---|---|---|---|---|---|---|---|---|---|
| Civil proceedings | Article 6§1 (equity) | 4 | 0 | 0 | 1 | 1 | 2 | 0 | 0 | 0 | 0 |
| | Article 6§1 (duration) | 5 | 0 | 0 | 2 | 0 | 0 | 1 | 3 | 0 | 0 |
| | Article 6§1 (non execution only) | | | | | | | | | | |

Source

| |
|--|
| IV.B. Timeframes of proceedings |
| IV. B. 1. General |

64. Are there specific procedures for urgent matters in: PR 1

- | | | | |
|---|-----------------------|-----|----|
| | | Yes | No |
| ▪ | civil cases? | x | |
| ▪ | criminal cases? | x | |
| ▪ | administrative cases? | -- | |

65. Are there simplified procedures for: PR 1

- | | | | |
|---|----------------------------------|-----|----|
| | | Yes | No |
| ▪ | civil cases (small claims)? | x | |
| ▪ | criminal cases (petty offences)? | x | |
| ▪ | administrative cases? | -- | |

66. Is it possible for a second instance court to send back a case to a first instance court for a new examination? PR 1

Yes No

67. Do courts and lawyers have the possibility to conclude agreements on modalities for processing cases (presentation of files, binding timeframes for lawyers to submit their conclusions and dates of hearings)? I 8

No (only courts have discretion to set specified time limits according to procedural law)
 Yes Please specify:

| |
|---|
| IV. B. 2. Civil and administrative cases |
|---|

68. Total number of civil cases in courts (litigious and not litigious): 4.807.881 PR 3

Please specify the main types of cases:

| | |
|--|------------------------------------|
| District Court: | |
| Civil Cases: (C total) | 723.845 |
| Enforcement proceedings (E total) | 1.187.083 |
| Levy of execution ("Vollzugsaufträge") | 1.601.295 |
| Insolvency | 6.967 (Se 1.808, S,Sa 5.159) |
| Heritage (A) | 82.915 |
| Land registry | 672.814 (Tz: 600.174, aTz: 72.640) |

| | |
|--|-------------------------------------|
| Civil Status without Divorce | 203.960 (P: 127.206, SW: 76.754) |
| Miscellaneous | 202.069 |
| Total: | 4.680.948 |
| Courts 1st Instance: | |
| Civil Cases (Cg total) | 34.013 |
| Labor Cases (Cga total) | 24.232 |
| Social Security Cases (Cgs) | 36.123 |
| Insolvency | 13.993 (Se 10.585, S 3.281, Sa 127) |
| Miscellaneous | 18572 |
| Total: | 126.933 |

Source **annual court statistics**

69. Litigious administrative and civil cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases: PR 3

| | | Civil cases | Administrative cases | Divorce | Employment dismissal |
|-----------------------------|---|---|----------------------|---|----------------------|
| Total number (1st instance) | Incoming cases | 818.213 (161.910 without semi-automated pay-orders) | - | adversarial divorce (Scheidungsverfahren): 7.358; | n.a. |
| | Decisions on the merits | Civil cases (District Courts): 28.683 Civil cases (Courts 1st Instance): 5.383 Labour Cases: 3.041 Social Security Cases: 7.062 | - | n.a. | n.a. |
| | Percentage of decisions subject to appeal in a higher court | Civil cases (District Courts): 29,4 Civil cases (Courts 1st Instance): 66,0 Labour Cases: 34,6 Social Security Cases: 18,0 | - | n.a. | n.a. |
| | Pending cases by 1 January 2005 | Civil cases (District Courts): 125.714 Civil cases (Courts 1st Instance): 17.282 Labour Cases: 8.514 Social Security Cases: 25.596 | - | adversarial divorce (Scheidungsverfahren): 3.349; | n.a. |
| | Percentage of pending cases of more than 3 years | Civil cases (District Courts): 0,8 Civil cases (Courts 1st Instance): 7,5 Labour Cases: 1,8 Social Security Cases: 1,1 | - | adversarial divorce (Scheidungsverfahren): 2,7; | n.a. |
| | Average length (from date of lodging of court decisions) | Civil cases (District Courts): 245 d Civil cases (Courts 1st Instance): 444 d Labour Cases: 246 d Social Security Cases: 288 d | - | n.a. | n.a. |

| | | | | | |
|---------------|------------------------|------|---|------|------|
| proceedings*) | 2nd instance decisions | n.a. | - | n.a. | n.a. |
| | Total procedure | n.a. | - | n.a. | n.a. |

* If you cannot calculate the average length from the date of lodging of court proceedings, how do you calculate length of proceedings?

Where appropriate, please specify the specific procedure as regards divorce:

The "Average length" is given with most recent data for 2003. Should be more or less the same in 2004. A new system of calculating the average length of proceedings is work in progress.

Source annual court statistics; Sonderauswertung Verfahrensdauer 2003

IV. B. 3. Criminal cases

70. Please describe the role and powers of the prosecutor in the criminal procedure:

II 3

| | Yes | No |
|--|-----|----|
| ▪ to conduct or supervise police investigation? ¹ | X | |
| ▪ to conduct investigation? | | X |
| ▪ when necessary, to demand investigation measures from the judge? | X | |
| ▪ to charge? | X | |
| ▪ to present the case in the court? | X | |
| ▪ to propose a sentence to the judge? ² | | X |
| ▪ to appeal? | X | |
| ▪ to supervise enforcement procedure? | X | |
| ▪ to end the case by dropping it without the need for a judicial decision? | X | |
| ▪ to end the case by imposing or negotiating a penalty without a judicial decision? ³ | | X |
| ▪ other significant powers? | | X |

Please specify:

71. Does the prosecutor also have a role in civil and/or administrative cases?

II 3

No

¹ According to the currently applicable law, the public prosecutor has to refrain from conducting investigations personally, but has the right to ask inter alia the police to conduct investigations (and is legally responsible for such police investigations).

However, with the entry into force of the Code of Criminal Procedures Amending Act (Strafprozessreformgesetz) on 1st January 2008, this will change significantly insofar, as the public prosecutor will then have the right to conduct investigations himself.

² The public prosecutor has to refrain from requesting a concrete term of sentence. However, he has the right to plea with regard to the sentence, thus meaning inter alia he can refer to the mitigating and aggravating grounds to be applied or if a sentence under probation is admissible or not.

³ In Austria, the public prosecutor can not impose or negotiate a penalty. However, measures of diversion ("diversionelle Erledigungen"), which are proposed to the suspect by the public prosecutor without a judicial decision, can be regarded as sanctions (but not penalties) and should be mentioned in this context. The suspect is free to accept such a proposal or to reject it (there is no room for negotiations, for example if the suspect would prefer another type of measure of diversion). In the latter case, the proceeding is continued, that means the suspect is indicted.

Yes Please specify:

In certain, exactly defined cases, the public prosecutor has the right to file an action before a civil court to have a marriage declared null and void, inter alia in the case of bigamy or if the marriage was merely or predominantly concluded to obtain the nationality or the family name of one spouse by the other.

Furthermore, the public prosecutor represents the public interest in judicial proceedings, with which a person is declared dead. Inter alia he has the opportunity to give a statement before such a decision and has to request the nullification or the amendment of such a declaration, if a person has been declared dead but still is alive or has died on a different day than the day stated in the declaration of death.

72. Functions of the public prosecutor in relation to criminal cases– please complete this table: II 3

| | | Total number of 1st instance criminal cases |
|--|---|---|
| Received by the public prosecutor | | 631.619 cases |
| Discontinued by the public prosecutor | In general | 126.717 cases |
| | Because the offender could not be identified | n.a. |
| | Due to the lack of an established offence or a specific legal situation | 107.064 cases |
| Concluded by a penalty, imposed or negotiated by the public prosecutor | | ---- (measures of diversion: 32.765 cases) |
| Charged by the public prosecutor before the courts | | 67.002 cases |

Source **Sicherheitsbericht 2004 (could be translated as security report 2004)**

73. Criminal cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases: PR 3

| | | Criminal cases | Robbery cases | Intentional homicides |
|-----------------------------|---|---|---------------|-----------------------|
| Total number (1st instance) | Incoming cases | District Court (U): 62.783 Courts 1st Instance (Ur): 28.369 | 1.184 | 390 |
| | Judicial decisions | District Court (U): 28.444 Courts 1st Instance (Ur,Hv): 23.279 | n.a. | n.a. |
| | Convicted persons | District Court: n.a. Courts 1 st Instance: .n.a. | n.a. | n.a. |
| | Acquitted persons | District Court: n.a. Courts 1 st Instance: n.a. | n.a. | n.a. |
| | Percentage of decisions subject to appeal in a higher court | District Court (U): 7,5 Courts 1st Instance (Ur,Hv): 10,4 | n.a. | n.a. |
| | Pending cases by 1 January 2005 | District Court (U): 23.550 Courts 1st Instance (Ur).7.045 Courts 1st Instance (Hv): 6.295 | n.a. | n.a. |

| | | | | |
|---|--|--|------|------|
| | Percentage of pending cases of more than 3 years | District Court (U): 2,5 Courts 1st Instance (Ur): 2,6 Courts 1st Instance (Hv): 1,7 | n.a. | n.a. |
| Average length*(from the date of official charging) | 1st instance decision | District Court (U): 135 d Courts 1st Instance (Ur): 89 d Courts 1st Instance (Hv): 80 d | n.a. | n.a. |
| | 2nd instance decision | Appeals (Bl) against decisions of District Courts: 54 d Appeals (Bs) against decisions of Courts 1st Instance: 25 d | n.a. | n.a. |
| | Total procedure | | n.a. | n.a. |

* If you cannot calculate the average length from the date of official charging, how do you calculate length of proceedings?

Source [annual court statistics](#)

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning timeframes of proceedings**

“Convicted persons” and “Acquitted persons”: Statistic only counts cases not persons.
 “Ur” = preliminary proceedings, may become “Hv”-cases later.
 “Hv” = “Hauptverfahren”, main trial.

V. Career of judges and prosecutors

V. A. Appointment and training

74. **Are judges initially/at the beginning of their carrier recruited and nominated by:** PR 6

- a body composed of members of the judiciary? Yes
- a body composed of members external to the judiciary?
- a body composed of members of the judiciary and external to the judiciary?

75. **Are prosecutors initially/at the beginning of their carrier recruited and nominated by:** PR 6

- a body composed of members of the prosecution system? Yes
- a body composed of members external to the prosecution system?
- a body composed of members of the prosecution system and external to the prosecution system? (before appointed as a prosecutor the applicant has to pass the education as a judge candidate und should practise as a judge for at least one year)

76. **Is the mandate given for an undetermined period for:** PR 6

- | | | |
|----------------|-------------------------------------|--------------------------|
| | Yes | No |
| ▪ judges? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ prosecutors? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Are there exceptions ? Please specify:

If no, what is the length of the mandate:

Is it renewable?

- of judges?
- of prosecutors?

| | |
|-----|----|
| Yes | No |
| | |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors

77. Nature of the training of judges:

PR 6/III 3

| | Compulsion (Yes/No) | | Frequency (Yes/No) | |
|--|---------------------|-----|--------------------|-----|
| | | | | |
| Initial training | Compulsory | Yes | | |
| | Highly recommended | | | |
| | Optional | | | |
| General in-service training | Compulsory | | Annual | |
| | Highly recommended | Yes | Regular | Yes |
| | Optional | | Occasional | |
| In-service training for specialised functions (e.g. judge for economic or administrative issues) | Compulsory | | Annual | |
| | Highly recommended | | Regular | Yes |
| | Optional | Yes | Occasional | |
| In-service training for specific functions (e.g. head of court) | Compulsory | | Annual | |
| | Highly recommended | | Regular | |
| | Optional | Yes | Occasional | Yes |

78. Nature of the training of prosecutors:

PR 6/III 3

| | Compulsion (Yes/No) | | Frequency (Yes/No) | |
|------------------|---------------------|-----|--------------------|--|
| | | | | |
| Initial training | Compulsory | Yes | | |

| | | | | |
|---------------------------------|--------------------|-----|------------|-----|
| | Highly recommended | | | |
| | Optional | | | |
| General in-service training | Compulsory | | Annual | |
| | Highly recommended | Yes | Regular | Yes |
| | Optional | | Occasional | |
| Specialised in-service training | Compulsory | | Annual | |
| | Highly recommended | | Regular | Yes |
| | Optional | Yes | Occasional | |

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your training system for judges and prosecutors**

In Austria candidates for judges and prosecutors get the same initial training. After education the candidate is free to choose either between a career as a judge or as a prosecutor. The initial training takes about four years and is conducted by judges. All the candidates also get practice at the Public Prosecutions Office. The initial training is compulsory for each candidate. After four years of practice at Court and the Public Prosecutions Office and initial training the candidates are allowed to make the Judge Office Examination (in writing and orally), which is held by examination commissions established at each Court of appeal.

The continuous training is based on a balanced decentralized and centralized judicial training system. After having passed the examination both judges and prosecutors are free to take part in continuing education offered by the presidents of the four courts of appeal, the Public Prosecution Offices, the Judges Association and the Federal Ministry of Justice/Training Unit for Judges and Prosecutors. An annual Training Programme for judges and prosecutors is published as a booklet and distributed to every judge and prosecutor and it also can be found on the homepage of the Federal Ministry of Justice. The general in-service training offered by the judicial authorities mentioned above is taken up by nearly 70% of the judges and prosecutor every year.

In case of extensive amendments of law some training activities are compulsory.

V. B. Practice of the profession

- | | | |
|-----|--|-------------|
| 79. | Gross annual salary of a first instance professional judge at the beginning of his/her career | PR 6 |
| | € 41.301,40 | |
| | <i>Source § 66 RDG</i> | |
| 80. | Gross annual salary of a judge of the Supreme Court or of the highest appellate court | PR 6 |
| | € 100.179,80 | |
| | <i>Source § 66 RDG (average of R3)</i> | |
| 81. | Gross annual salary of a public prosecutor at the beginning of his/her career | PR 6 |
| | € 43.853,60 | |
| | <i>Source § 42 GehG</i> | |
| 82. | Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court | PR 6 |
| | € 100.179,80 | |

Source § 42 GehG (average of St3)

83. Do judges and public prosecutors have additional benefits?

PR 6

| | Judges (Yes/No) | Public prosecutors (Yes/No) |
|---|-----------------|-----------------------------|
| Reduced taxation | No | No |
| Special pension | No | No |
| Housing | No | No |
| Other financial benefit (If yes, please specify) | No | No |

84. Can judges or prosecutors combine their work with any of the following other professions?

PR 6

| | Judges | | | Prosecutors | | |
|---------------------------|-----------------------|--------------------------|----|-----------------------|--------------------------|----|
| | Yes with remuneration | Yes without remuneration | No | Yes with remuneration | Yes without remuneration | No |
| Teaching | X *) | X *) | | X *) | X *) | |
| Research and publication | X *) | X *) | | X *) | X *) | |
| Arbitrator | | | X | | | X |
| Consultant | X *) | X *) | | X *) | X *) | |
| Cultural function | X *) | X *) | | X *) | X *) | |
| Other function to specify | X *) | X *) | | X *) | X *) | |

*) Being judge or prosecutor of course is a main profession, which does not allow to practise another "profession". Under certain assumptions extra activities can be exercised. The judicial function (the function as a prosecutor) must not be affected by the extra activities. If this cannot be guaranteed, it is forbidden to execute an extra activity.

85. Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?

PR 6

No
 Yes Please specify:

V. C. Disciplinary procedures

86. Types of disciplinary proceedings and sanctions against judges and prosecutors: III 4, III 5, PR 7

| | Judges | Prosecutors |
|--|--------|-------------|
| Total number | 37 | 0 |
| Breach of professional ethics (Yes/No) | Yes | No |
| Reasons for If yes, please specify the number | 13 | |

| | | | |
|-------------------------|---|-----------|----|
| disciplinary procedures | Professional inadequacy (Yes/No) If yes, please specify the number | Yes 21 | No |
| | Criminal offence (Yes/No) If yes, please specify the number | Yes 3 | No |
| | Other (Yes/No) If yes, please specify | No | No |
| Types of sanctions | Total number | 16 | 0 |
| | Reprimand (Yes/No) If yes, please specify the number | Yes 9 | No |
| | Suspension (Yes/No) If yes, please specify the number | Yes 2 | No |
| | Dismissal (Yes/No) If yes, please specify the number | Yes 1 | No |
| | Fine (Yes/No) If yes, please specify the number | Yes 4 | No |
| | Other (Yes/No) If yes, please specify | No | No |

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning disciplinary procedures for judges and prosecutors**

Reason for the difference between the data of disciplinary proceedings/sanctions against judges and prosecutors:

This remarkable difference is mainly a result of the fact that there are much more judges than prosecutors (on July, 1st 2004: 1717 judges, 215 prosecutors) in Austria.

Characteristics of the disciplinary procedure for judges:

The Higher Regional Courts (Oberlandesgerichte) function as disciplinary courts (Disziplinargerichte) for all judges below the rank of president and vice-president of a Higher Regional Court. For the latter as well as for all judges on the Supreme Court, the Supreme Court functions as disciplinary court. The disciplinary courts consist exclusively of judges and become active in cases of breach of duty (e.g., violation of official secrecy, acceptance of gifts, and absenteeism). The penalties imposed range from admonition to dismissal. Like other civil servants, judges are dismissed if they are sentenced to more than one year of imprisonment for an intentional crime.

VI. Lawyers

87. Number of lawyers practising in your country

6622

ÖRAK

Source: Statistic from the Austrian Bar Association of 31 December 2004 (available at www.rechtsanwaelte.at).

This number includes 4678 lawyers registered in the list of Austrian lawyers, 58 lawyers registered in the list of established European lawyers and 1886 trainee lawyers registered by December 2004.

88. Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?

ÖRAK

Yes No

89. Do lawyers have a monopoly of representation:

ÖRAK

| | Monopoly (Yes/No) | | If no, possible representation by (Yes/No) | |
|-----------------------|---|---|--|---|
| Civil cases* | No. Representation by a lawyer is required in proceedings before district courts (<i>Bezirksgerichte</i>) when the litigation value exceeds € 4,000 or before the higher courts, in appeal cases and before the Civil Supreme Courts. | | Member of family | *) Yes. The procedural act and applicable law determines areas in which representation is reserved to lawyers and which other persons/entities may represent. |
| | | | Trade Union | No. |
| | | | NGO | Yes, as set out above *) |
| | | | Other | Yes, as set out above *) – e.g. by the Economic Chamber or the Labour Chamber. |
| Criminal cases* | Defendant | No. Representation by a lawyer is required in qualified crime cases listed in § 41 StPO (Code of Criminal Procedure). | Member of family | Yes, as set out above *) – by a power holder (<i>Machthaber</i>) |
| | | | Trade Union | No. |
| | | | NGO | No. |
| | Victim | No. | Other | Yes, as set out above *) – e.g. by persons registered in the <i>Verteidigerliste</i> (register of defence counsel) or a power holder. |
| | | | Member of family | Yes, as set out above *) |
| | | | Trade Union | No. |
| Administrative cases* | No. | | NGO | Yes, as set out above *) – e.g. by <i>Opferschutzeinrichtungen</i> (victim protection associations) |
| | | | Other | Yes, as set out above *) |
| | | | Member of family | Yes, as set out above *) |
| | | | Trade Union | No. |
| | | | Other | Yes, as set out above *) |

- If appropriate, please specify if

- it concerns first instance and appeal.

90. Is the lawyer profession organised through?

Yes

ÖRAK

- a national bar?
- a regional bar?
- a local bar?

Please specify:

The *Österreichische Rechtsanwaltskammertag* (Austrian Bar Association) based in Vienna is the umbrella association of the nine regional Bar Associations in Austria, one established in each province in Austria. The Austrian Bar Association as well as the regional Bar Associations are self-governing public bodies.

91. Is there a specific initial training or examination to enter the profession of lawyer?

ÖRAK

Yes

No

92. Is there a mandatory general system for lawyers requiring continuing professional development?

ÖRAK

Yes No

93. Is the specialisation in some legal fields tied with a specific level of training/ qualification, specific diploma or specific authorisations?

ÖRAK

No
Yes Please specify:

However, lawyers can indicate fields of activity, in which they prefer to be active, in the lawyers' directory.

94. Can users establish easily what the lawyers' fees will be?

ÖRAK

Yes No

95. Are lawyers fees:

- regulated by law?
- regulated by Bar association?
- freely negotiated?

Yes

96. Have quality standards been formulated for lawyers?

ÖRAK

Yes No

97. If yes, who is responsible for formulating these quality standards:

ÖRAK

- the bar association?
- the legislature?

Yes

- other? Please specify:

98. Is it possible to complain about :

ÖRAK

- the performance of lawyers? No Yes Please specify:

The complaint can be directed at the Bar Association where a lawyer is registered or at the Disciplinary Council of this Bar Association.

- the amount of fees? Yes No

99. Disciplinary proceedings and sanctions against lawyers:

ÖRAK

| | Yes /No (If yes, please specify the annual number) | |
|--------------------------------------|---|---|
| Reasons for disciplinary proceedings | Breach of professional ethics | Yes |
| | Professional inadequacy | Yes |
| | Criminal offence | Yes. In addition to criminal proceedings and sanctions. |
| | Other | Yes |
| Type of sanctions | Reprimand | Yes |
| | Suspension | Yes |
| | Removal | Yes |
| | Fine | Yes |
| | Other | |

100. Who is the authority responsible for the disciplinary procedures:

ÖRAK

- a professional body? Yes Please specify:

See below

- the judge?
- the Ministry of justice?
- other? Please specify:

At first instance the *Disziplinarrat* (Disciplinary Council) is the competent authority established at the seat of each Bar Association in Austria where the accused lawyer is registered. Appeals can be lodged against decisions of the Disciplinary Council at the *Oberste Berufungs- und Disziplinarkommission* (OBDK; Appeal commission) consisting of two judges of the Austrian Supreme Court of Justice (OGH) and two judges from the lawyers profession, whereas always a judge of the Supreme Court acts as chairman. The OBDK is a tribunal in terms of Article 6 ECHR.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar

VII. Alternative Dispute Resolution

101. If appropriate, please specify, by type of cases, the organisation of the judicial mediation:

III 5

| | Compulsion (Yes/No) | | Body providing mediation (Yes/No) | | |
|-----------------------|---|---|------------------------------------|------------|------|
| Civil cases | Compulsory stage prior to court proceedings | Yes (special cases concerning neighbours and tenancy cases) | Private mediator | yes | |
| | | | Public or authorised by court body | yes | |
| | | | Court | no | |
| | Compulsory stage in court proceedings | None | Judge | n.a. | |
| | Ordered by judge in certain cases | None | Prosecutor | n.a. | |
| Family cases | Compulsory stage prior to court proceedings | None | Private mediator | n.a. | |
| | | | Public or authorised by court body | n.a. | |
| | | | Court | n.a. | |
| | | Compulsory stage in court proceedings | None | Judge | n.a. |
| | Ordered by judge in certain cases | None | Prosecutor | n.a. | |
| Administrative cases | Compulsory stage prior to court proceedings | n.a. | Private mediator | n.a. | |
| | | | Public or authorised by court body | n.a. | |
| | | | Court | n.a. | |
| | | Compulsory stage in court proceedings | n.a. | Judge | n.a. |
| | | Ordered by judge in certain cases | n.a. | Prosecutor | n.a. |
| Employment dismissals | Compulsory stage prior to court proceedings | None | Private mediator | n.a. | |
| | | | Public or authorised by court body | n.a. | |
| | | | Court | n.a. | |
| | | Compulsory stage in court proceedings | None | Judge | n.a. |
| | Ordered by judge in certain cases | None | Prosecutor | n.a. | |
| | | | Private mediator | n.a. | |

| | | | | |
|----------------|---|------|------------------------------------|------|
| Criminal cases | Compulsory stage prior to court proceedings | n.a. | Public or authorised by court body | n.a. |
| | | | Court | n.a. |
| | Compulsory stage in court proceedings | n.a. | Judge | n.a. |
| | Ordered by judge in certain cases | n.a. | Prosecutor | n.a. |

102. Can you provide information about accredited mediators?

Approx. 3.500

103. Can you provide information about the total number of mediation procedure concerning:

- civil cases? n.a.
- family cases? na.
- administrative cases? -
- employment dismissals? na.
- criminal cases? na.

III 5

Source [redacted]

104. Can you give information concerning other alternative dispute resolution (e.g. Arbitration)? Please specify:

III 5

n.a.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR

Under the title of diversion ("Außergerichtlichen Tatausgleich") 5.238.263,98 Euro have been spent by the public in 2004.

VIII. Enforcement of court decisions
VIII. A. Execution of decisions in civil matters

105. Are enforcement agents:

Yes

PR 1

- judges?
 - bailiff practising as private profession ruled by public authorities?
 - bailiff working in a public institution?
 - other enforcement agents?
- Please specify their status:

106. Number of enforcement agents 369,44 PR 6

Source Assignment summary 1. 1. 2004

107. Is there a specific initial training or examination to enter the profession of enforcement agent? PR 6

Yes No

108. Is the profession of enforcement agent organised by? PR 1

- Yes
- a national body?
- a regional body?
- a local body?

109. Can users establish easily what the fees of the enforcement agents will be? PR 1

Yes No

110. Are enforcement fees: PR 1

- Yes
- regulated by law?
- freely negotiated?

111. Is there a body entrusted with the supervision and the control of the enforcement agents? PR 1

No

Yes Which authority is responsible for the supervision and the control of enforcement agents:

- Yes
- a professional body?
- the judge?
- the Ministry of justice?
- the prosecutor?
- other?

Please specify:

Controlling Units at the four Courts of Appeal (Vienna, Graz, Linz and Innsbruck) are established.

112. Have quality standards been formulated for enforcement agents? PR 1

No

Yes Who is responsible for formulating these quality standards?

The Controlling Units at the four Courts of Appeal (Vienna, Graz, Linz and Innsbruck).

Source

113. What are the main complaints of users concerning the enforcement procedure:

PR 7

| | Yes | No |
|-----------------------------|-----|----|
| ▪ no execution at all? | - | x |
| ▪ lack of information? | - | x |
| ▪ excessive length? | x | - |
| ▪ unlawful practices? | x | - |
| ▪ insufficient supervision? | - | x |
| ▪ excessive cost? | - | x |
| ▪ other? | - | x |

Source

114. Does your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions?

PR 1

No
Yes Please specify:

The Reform of Law Enforcement ("FEX-project"), see http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Efficiency_of_justice/Austria%20E.asp#TopOfPage

115. Is there a system measuring the timeframes of the enforcement of decisions :

PR 1

| | Yes | No |
|-----------------------------|-----|--------------------------|
| ▪ for civil cases? | x | <input type="checkbox"/> |
| ▪ for administrative cases? | - | - |

116. As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

| | Yes |
|---|--------------------------|
| ▪ between 1 and 5 days | x |
| ▪ between 6 and 10 days | <input type="checkbox"/> |
| ▪ between 11 and 30 days | <input type="checkbox"/> |
| ▪ more: please specify <input type="checkbox"/> | <input type="checkbox"/> |

PR 1

Source

117. Disciplinary proceedings and sanctions against enforcement agents:

PR 7

| | Yes /No (If yes, please specify the total number) | |
|--------------------------|--|---|
| Disciplinary proceedings | Breach of professional ethics | |
| | Professional inadequacy | 2 |
| | Criminal offence | 1 |

| | | |
|-----------|------------|---|
| Sanctions | Other | |
| | Reprimand | |
| | Suspension | |
| | Dismissal | 1 |
| | Fine | |
| | Other | 2 |

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your enforcement system of decisions in civil matters**

VIII. B. Enforcement of decisions in criminal matters

118. Is there a judge who has in charge the enforcement of judgments?

II 3

Yes **Please specify his/her functions and activities (e.g. Initiative or control functions):**

A "court of enforcement" ("Vollzugsgericht"; court dealing with criminal matters in first instance in the area enforcing the prison sentence) is established.
 As a rule, such decisions are taken by a single judge. However, a court composed of three judges is competent with regard to decisions concerning parole unless the judgment to be enforced was rendered by a single judge or the decision merely affects the issuing of instructions, the appointment of a probation officer, or the release after having served the full term of the sentence (in these cases also such decisions are taken by single judges).

No **Please specify which authority is entrusted with the enforcement of judgements (e.g prosecutor):**

119. As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

PR 5

No
 Yes **Please specify:**

In 2004 20.051 fines were decided by criminal courts (district courts and regional high courts), 10.678 (53 %) were paid until October 2005.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in criminal matters

IX. Notaries

120. Is the status of notaries:

ÖNK

- a private one?
- a status of private worker ruled by the public authorities?
- a public one?
- other?

Yes Number

Yes

Please specify:

The Austrian civil law notary is appointed by the Federal Minister of Justice; he is entrusted with official functions but practises within the frame work of a liberal profession.

Source

121. Do notaries have duties:

ÖNK

- within the framework of civil procedure?
- in the field of legal advice?
- to authenticate legal deeds?
- other?

Yes No

Yes

Yes

Yes

Yes

If yes, please specify:

To act as Probate Commissioner for winding up estates and in connection with parts of real estate transactions and corporate affairs.

122. Is there a body entrusted with the supervision and the control of the notaries?

ÖNK

No

Yes

Yes Which authority is responsible for the supervision and the control of the notaries:

- a professional body?
- the judge?
- the Ministry of justice?
- the prosecutor?

Yes

Yes

Yes

Yes

▪ other?

Please specify:

You can indicate below:

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your system of notaries*

In addition to the above described activities, notaries provide various legal services within the frame work of real estate transactions and corporate affairs. Under the last amendment to the notary act, authentic instruments can be set up electronically. The notary plays an important role for the e-government. Austrian civil notaries operate the first Austrian electronic archives and have a leading position in this field.

You can indicate below:

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your system of notaries*

123. Please indicate main orientations for reform and concrete measures which could improve the quality and the efficiency of your judicial system:

PR 1

- A new system of calculating the input of personnel needed to handle the judicial workload ("PAR"-project) will be set up.
 - Initiatives to improve the service level of the judiciary have been started; Service Centers at some pilot courts have been established for that reason.