

Consultative Council of European Prosecutors (CCPE)

Role of the Public Prosecution Service outside the field of Criminal Justice

Austrian reply to the questionnaire part II by Ernst Eugen FABRIZY

5./ Does the public prosecution service have a separate internal organisation when it acts outside the field of criminal justice? Please specify.

Since the Austrian public prosecutor has little competences outside the field of criminal justice, no separate internal organisation exists for this task.

6./ Which powers does the public prosecution service enjoy when acting outside the field of criminal justice?

a./ Is it vested with specific authority or does it enjoy the same powers as the other party(ies) to the trial?

Since the public prosecutor is petitioner at a civil court when he acts outside the field of criminal justice, he has the same powers as the other parties in the process and is not vested with a specific authority.

b./ Are there specific rules governing the exercise of these functions? What is the basis of such rules (the law, custom or practice)?

The power of the public prosecutor to take legal action for nullity of marriage is regulated in the Law of Matrimony, the power to apply for official declaration of death in the Law of Declaration of Death.

c./ Does it enjoy other rights and duties? Please specify.

No.

7./ Regarding the role of the public prosecution service outside the fields of criminal justice:

a./ has the European Court of Human Rights taken decisions or handed down judgements on the matter in respect of your country? If so, please indicate the number of the application and the date of the decision or judgement.

No case is known.

b./ in your country, has the constitutional court or another court with the authority to rule on the constitutionality of laws, taken decisions or handed down judgements on the compatibility of such a role with the constitution or the basic law? If so, please indicate the references of such decisions and their main thrust.

No case is known.

8./ Amongst the competences of the public prosecution service acting outside the system of criminal justice which are, in your view, the most important for the reinforcement of rule of law and protection of human rights?

The competence to take legal action for nullity of marriages is the only legal mean for fighting the misuse of the institution of matrimony for illegal immigration.