



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2009

Country: Austria

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

8336549

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	147682000000
Regional / entity level	

3) Per capita GDP (in €)

33810

4) Average gross annual salary (in €)

43200

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2009

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

Q1:

http://www.statistik.at/web_de/static/ergebnisse_im_ueberblick_jahresdurchschnittsbevoelkerung_031331.xls

Q2:

https://www.bmf.gv.at/Budget/Budget20072008/_start.htm

Q3:

http://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/bruttoinlandsprodukt_und_hauptaggregate/jahresdaten/019505.html

Q4 (Arbeitnehmerentgelt, monatlich je Arbeitnehmer)x12:

http://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/bruttoinlandsprodukt_und_hauptaggregate/jahresdaten/index.html

1. 2. Budgetary data concerning judicial system

1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

6) Total annual approved budget allocated to all courts (in €)

667930000

7) Please specify

Supreme Court: € 13,098.000

Courts: € 662,894.000

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned or indicate NA (not available) in case that the information cannot be supplied

Please provide comments to explain the data provided under question 8:

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	332940000
Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	28400000
Annual public budget allocated to justice expenses	<input checked="" type="checkbox"/> Yes	258790000
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	47800000
Annual public budget allocated to investments in new (court) buildings		NA
Annual public budget allocated to training and education		NA
Other (please specify):		NA

Comment :

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?

Yes

No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years:

Increasing salaries

10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- for criminal cases?
 for other than criminal cases?

If yes, are there exceptions? Please specify:

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in Euros)

741000000

12) Total annual approved budget allocated to the whole justice system (in €)

Please provide information concerning the budgetary elements that included in the whole justice system budget:

. Amount 1172000000

Comment :

13) Total annual approved public budget allocated to legal aid (in €)

Please provide comments to explain the figure provided under question 13:

. Amount 18400000

Comment :

14) If possible, please specify (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Annual public budget allocated to legal aid in criminal law cases	Annual public budget allocated to legal aid in non criminal law cases
Amount	NA	NA

Comment :

15) Is the public budget allocated to legal aid included in the court budget ?

- Yes
 No

16) Total annual approved public budget allocated to the public prosecution system (in €)

Please provide comments to explain the figure provided under question 16:

. Amount

Comment :

The separate amount of the annual public budget allocated to the public prosecution system is not available.

17) Is the budget allocated to the public prosecution included in the court budget?

- Yes
 No

18) Authorities formally responsible for the budget allocated to the courts:

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	Yes	No	Yes	Yes
Other ministry	Yes	No	No	No
Parliament	Yes	Yes	No	No
Supreme Court	No	No	Yes	Yes
Judicial Council	No	No	No	No
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	No	No	Yes	Yes

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

The Presidents of the Higher regional courts manage and evaluate the budget of the courts.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Please indicate the sources for answering the questions 6, 8, 11, 12, 13, 14 and 16.

Federal Financial Law.

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes
Other	Yes	Yes

21) If other, please specify (in regards to question 20):

22) Does legal aid foresee the covering or the exoneration of court fees?

Yes

No

If yes, please specify:

As far as civil cases are concerned, according to § 64 of the Austrian Civil Procedure Order (Zivilprozessordnung, ZPO) legal aid may cover a provisional exemption from court fees, fees for witnesses, experts, interpreters and guardians, costs of the necessary announcements and the cash expenditure of guardians or lawyers, representation by a court official or – if necessary – a lawyer.

In criminal cases:

According to sec 391 par 1 CCP the enforcement of the court's decision on costs has to take into account the ability of the convicted person to bear the costs for the daily life for him/herself and the family as well as the obligation of compensation in regard of the offence. The court may, if the costs can not be enforced because of an impecunious defendant, declare the costs unrecoverable. If the court assumes that in the future the costs will be recoverable but for the time being they are not, the economic capacity of the person concerned has to be re-examined after a certain period. The statute for limitation to recover the costs is five years after the final decision in the proceeding. If the court decides that the convicted person has to bear the costs of the proceeding and further on he or she is not able to pay the costs the authorities, responsible to recover costs, may prolong the payment deadline, allow to pay instalments, or to abate the costs.

In principle every person who retains a defence lawyer or another representative has to bear the costs him or herself even if the lawyer was appointed ex officio (sec 393 par 1 of CCP).

According to sec 61 par 2 CCP the court has to decide on total or partial legal aid on the request of the defendant if the defendant can not bear the total costs for the defence lawyer without impairment of his/her own or his/her family's maintenance which enables him/her to a simple lifestyle and if it is necessary in the interest of justice in particular in the interest of an adequate defence. In any case the necessity for legal aid is given if the defendant is held in pre trial detention;

during the entire procedure on the confinement in an institution for mentally abnormal offenders;

at the trial on the confinement in an institution for addicted offenders in need of curing and on the confinement in an institution for dangerous subsequent offender;

at the trial in front of a jury or of a court of lay assessors;

at the trial in front of a single judge if the sentence which may be imposed is more than three years of deprivation of liberty;

during the appeal procedure against a verdict of a court of jury or a court of lay assessors, in case the European Court for Human Rights has determined a violation of the European Convention on Human Rights or an additional Protocol to it for conducting the request for the reopening of the procedure and for the trial in public;

if the defendant is blind, deaf, mute or otherwise handicapped or is not able to conduct the defense by him/her self because he/she can do not understand the language at court,

for the appeal procedure,

if the factual and legal position is difficult.

Where in any case the defendant needs a defense lawyer, the court has to decide on legal aid ex officio even if the defendant does not request for it but further requirements to provide legal aid are given.

In regard of the decision on legal aid the court has to examine the defendant's economic capacity to bear the costs for a defense lawyer. The economic capacity is determined by the maintenance which enables the defendant and his/her family to a simple lifestyle, and can be indentified at the bases of the minimum living wage which may not be garnished given by sec 5 of the act on garnishment of wages and the appropriate maintenance which is higher than the minimum living wage. In particular the income and other assets on the one hand and the number of persons who are entitled to maintenance on the other hand determine the threshold for the courts decision on the obligation on costs reimbursement.

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

Yes

No

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
--	--------

Total	NA
in criminal cases	NA
Other than criminal cases	13831

Comment :

If legal aid is granted in the main proceeding, the same also applies to the enforcement proceeding. The requirements for granting legal aid has only to be examined again, if the enforcement proceeding will be opened one year after the main proceeding has closed (§ 68a of the Austrian Civil Procedure Order).

25) 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?

- Yes
 No

26) Does your country have an income and asset test for granting legal aid:

	Yes	Amount in €
for criminal cases	Yes	NA
for other than criminal cases?	Yes	NA

Comment :

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

- Yes
 No

Please provide comments to explain the answer under question 27:

Granting legal aid depends not only on the income and on the financial situation of the party; in fact, it is possible to refuse legal aid if the claim or defence of the applicant is manifestly unfounded or not brought in good faith. Moreover, the court must withdraw legal aid, if it is established that the initial conditions under which legal aid was granted have ceased to apply (e.g. there are changes in the party's circumstances or the claim proves to be unfoundedly manifested or not brought in good faith) or there is proof that the conditions for granting legal aid were not met even at the time when legal aid was granted. In the latter case the party must pay back the amounts received.

28) If yes, is the decision for granting or refusing legal aid taken by:

- the court?
 an authority external to the court?
 a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

- Yes
 No

Please specify:

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

	Yes (the decision has an impact on who bears the legal costs)
criminal cases?	Yes
other than criminal cases?	Yes

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Legal aid can be granted any natural 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 §§ 63 to 73 of the Austrian Civil Procedure Order (Zivilprozessordnung, ZPO).

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).

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.

Please indicate the sources for answering the questions 24 and 26

MoJ

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

31) 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:

- legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es): Yes www.ris.bka.gv.at
- case-law of the higher court/s? Internet address(es): Yes www.ris.bka.gv.at
- other documents (for examples forms)? Internet address(es): Yes www.justiz.gv.at

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

- Yes
- No

If yes, please specify:

33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

- Yes
- No

If yes, please specify:

www.opfer-notruf.at

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	Yes	Yes	Yes	Yes
Victims of terrorism	Yes	Yes	Yes	Yes
Children/Witnesses/Victims	Yes	Yes	Yes	Yes
Victims of domestic violence	Yes	Yes	Yes	Yes
Ethnic minorities	Yes	Yes	Yes	Yes
Disabled persons	Yes	Yes	Yes	Yes
Juvenile offenders	Yes	Yes	Yes	Yes
Other	Yes	Yes	Yes	Yes

Comment :

35) Does your country have a compensation procedure for victims of crimes?

- Yes
- No

36) If yes, does this compensation procedure consist in:

- a public fund?
- a court decision?
- a private fund?

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

According to the Crime Victims Act ("Verbrechensopfergesetz"), 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.

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

- Yes
- No

If yes, please specify:

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

- Yes
 No

If yes, please specify:

Section 10 of the CCP obliges the prosecution to care on the victim's rights and interests and to inform them about their rights including the legal possibilities to get compensation. Furthermore victims are to be informed about the release of the alleged perpetrator from prison or pre-trial detention. Victims who are strongly affected emotionally, which include, persons who, by means of a criminal offence, might have been exposed to violence, dangerous threat or infringement of their sexual integrity, have a special standing in the proceedings which has to be respected by the prosecuting bodies ex officio. They are entitled to assistance during the proceedings which shall be granted upon request if and to the extent that psychosocial and legal assistance during the proceedings is required in order to make the stresses and strains of the proceedings bearable for the victim and to guarantee that he or she can exercise his or her procedural rights. Relatives of a victim, who died because of a criminal offence, have the same rights. Victims should be informed about their essential rights and the prerequisites for assistance during proceedings at the latest prior to their first interrogation.

In particular in applying measures of diversion (payment of a sum of money, probationary period with or without certain obligations, community service, victim-offender-mediation) the public prosecutor has to take into account the needs and interests of the victim and, in particular, to include compensation of the victim into the arrangement designed to discontinue proceedings under certain conditions and with the consent of the suspect.

39) Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?

- Yes
 No

If yes, please specify:

According to sec 66 CCP victims – independent of their position as civil claimants – have the right to be represented (sec 73), to inspect the file (sec 68), to be informed about the topic of the proceeding and their essential rights prior to their questioning (sec 70 para. 1), to be informed about the ongoing of the case (sec 25 para. 3, 177 para. 5, 194, 195 para. 3, 206 and 208 para. 3), to receive translation aid, for which section 56 applies correspondingly, to participate in the adversary hearing of witnesses and accused (sec 165), in the fact findings (section 127 para. 2) and in the reconstruction of the criminal act (section 150 para. 1), to be present during the main proceeding, to question the accused, the witnesses and experts and to be heard concerning their claims, to request the proceeding of a case terminated by the office of public prosecution (section 195 para. 1).

According to sec 67 CCP victims have the right to claim reimbursement for the damage caused by the criminal act or compensation for the impairment of their legally protected interests. The extent of the damage or the impairment has to be established ex officio as far as this can be done on the basis of the results of the criminal proceeding or with the help of additional simple investigations. If for the assessment of a bodily injury or damage to the health of a person an expert is appointed, he/she also has to be requested to establish the periods of pain.

In particular victims have the right to request that a proceeding which has been discontinued by the public prosecutor should be carried on. A Senate of three judges decides about such a request (see Sections 190 to 192 and 195 CCP).

2. 2. Confidence of citizens in their justice system

40) Is there a system for compensating users in the following circumstances:

- excessive length of proceedings?
 non execution of court decisions?
 wrongful arrest?
 wrongful condemnation?

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.

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or

satisfaction (with the services delivered by the judiciary system)?

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

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

„Key-Findings regarding the setup of Service Centers“ by agency “marketmind“ together with other bodies of the Austrian authorities.

Several minor “ad hoc“-surveys to current topics.

42) If possible, please specify:

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	Yes	Yes
Surveys at court level	Yes	Yes

43) Is there a national or local procedure for making complaints about the functioning (for example the treatment of a case by a judge or the duration of a proceeding) of the judicial system?

- Yes
 No

44) If yes, please specify:

Please give elements of information concerning the efficiency of this complaint procedure:

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	Yes	Yes
Higher court	Yes	Yes
Ministry of Justice	No	No
High Council of the Judiciary	No	No
Other external organisations (e.g. Ombudsman)	Yes	Yes

Comment :

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.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation.

	Total number
First instance courts of general jurisdiction	154
Specialised first instance Courts (legal entities)	7
All the Courts (geographic locations) * (this includes Supreme Courts and/or High Courts)	149

46) 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).

47) Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?

Yes

No

If yes, please specify:

48) Number of first instance courts competent for a case concerning (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
a debt collection for small claims	141
a dismissal	16
a robbery	16

Please specify what is meant by small claims in your country (answer only if the definition has been changed since the previous evaluation cycle):

Please indicate the sources for answering the questions 45 and 48:

Database of courts (total number of premises)

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (please give the information in full time equivalent and for permanent posts; if there is no data please indicate this with NA)

Please provide comments to explain the answer under question 49:

Number 1657,50

Comment :

Incl. substitution judges ("Ersatzkräfte"), but without substituted judges ("Ersatzfälle"); without Ministry

50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:

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

51) Please provide comments to explain the answer under question 50:

52) Is there in the legal system non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs? (Please indicate NA if no figures are available).

Please provide comments to explain the answer under question 52:

	Yes	Number
Do you have non-professional judges?		

Comment :

53) Does your judicial system include trial by jury with the participation of citizens?

- Yes
 No

If 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.

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

NAP

55) Number of non-judge staff who are working in courts (in full time equivalent and for permanent posts). Please indicate NA if no figures are available.

Please provide comments to explain the answer under question 55:

Number . 4637,87

Comment :

56) If possible, could you distribute this staff according to the 4 following categories. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

- non-judge staff (Rechtspfleger or similar bodies), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal Yes
- 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 Yes
- 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) Yes
- technical staff Yes

Comment :

As it is technically not possible to fill in the fields above, the numbers are:

non-judge staff (Rechtspfleger): 745,17

non-judge staff whose task is to assist the judges: 31,31

staff in charge of different administrative tasks as well as of the management of the courts: 3795,35

technical staff: 66,04

57) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and functions:

"Rechtspfleger" are judicial officers with a special training and special qualifications, who are assigned the handling of certain first-instance transactions under civil law. They are bound to the instructions of the judge responsible for the case according to the distribution of court business, who may also reserve the handling of the legal case to themselves at any time and at any stage. "Rechtspfleger" may only issue court orders. The judges themselves may grant appeals against these orders, but there is also the legal remedy of requiring submission of the case to a judge.

The scope of competences of "Rechtspfleger" comprises, inter alia, default actions, confirming the legal effect and enforceability of rulings by judges in their field of work, decisions on applications for legal aid in court-clerk proceedings and performing official acts on the basis of a request for judicial assistance by a domestic court or a domestic authority.

"Rechtspfleger" have a particularly comprehensive workload in forced-collection proceedings and in personal bankruptcy cases. In addition, they maintain the land register and the trade register. Other areas of responsibility are probate and custody proceedings (non-litigious matters).

Only court officers are admitted to the training as "Rechtspfleger". They must have passed the secondary-school leaving examination (Matura), or the career examination for civil servants. They must also have worked in a court office for two years and passed the court-office examination and the special-service examination. The training lasts three years.

3. 1. 3. Prosecutors**58) Number of public prosecutors (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).**

Number . 318,5

Comment :

59) Do any other persons have similar duties as public prosecutors?

- Yes
 No

If 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 July 1st 2008 there have been 144,28 (fte) agents (155 permanent posts), who are not included in question 58.

60) Number of staff (non prosecutors) attached to the public prosecution service (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Please provide comments to explain the answer under question 60:

Number 271,2

Comment :

3. 1. 4. Court budget and new technologies

61) Who is entrusted with the individual court budget?

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	No	No	No
Court President	No	No	No	No
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	Yes	No	Yes	Yes

62) You can indicate below:

- any useful comments for interpreting the data mentioned above

- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process in the court

The Presidents of the Higher regional Courts are entrusted with the individual court budget.

63) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Word processing	Yes	No	No	No
Electronic data base of jurisprudence	Yes	No	No	No
Electronic files	Yes	No	No	No
E-mail	Yes	No	No	No
Internet connection	Yes	No	No	No

64) For administration and management, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	Yes	No	No	No
Court management information system	Yes	No	No	No
Financial information system	Yes	No	No	No

65) For the communication between the court and the parties, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	Yes	No	No	No
Special Website	Yes	No	No	No
Other electronic communication facilities	Yes	No	No	No

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

Yes

No

If 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 in this chapter

- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and evaluation

67) Are the courts required to prepare an annual activity report?

- Yes
 No

68) Do you have a regular monitoring system of court activities concerning the

- number of incoming cases?
 number of decisions?
 number of postponed cases?
 length of proceedings (timeframes)?
 other?

Please specify:

e. g. certain kinds of decisions

69) Do you have a regular system to evaluate the performance of each court?

- Yes
 No

Please specify:

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

70) Concerning court activities, have you defined performance indicators (if no, go to question 72)?

- Yes
 No

71) Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:

- incoming cases
 length of proceedings (timeframes)
 closed cases
 pending cases and backlogs
 productivity of judges and court staff
 percentage of cases that are treated by a single sitting judge
 enforcement of penal decisions
 satisfaction of employees of the courts
 satisfaction of clients (regarding the services delivered by the courts)
 judicial quality and organisational quality of the courts
 costs of the judicial procedures
 other:

Please specify:

Cases, which have a certain duration between the decision and the dispatch of the decision
 Examination of the ratio of staff to caseload (PAR)
 Length of procedures is also calculated in some branches.

72) Are there performance targets defined for individual judges (if no go to question 74) ?

- Yes
 No

73) Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
 legislative power
 judicial power (for example a High Judicial Council or a Higher Court)
 other

If other, please specify:

There are no specific targets given to the courts.

74) Are there performance targets defined at the level of the courts (if no go to question 77)?

- Yes

No

75) Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

76) Please specify the main targets applied

77) Which authority is responsible for the evaluation of the performances of the courts:

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, Please specify:

78) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

- Yes
- No

If yes, please specify:

79) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

- Yes
- No

80) Is there a system which measures the backlogs and which detects the cases not processed within a reasonable timeframe for:

- civil cases?
- criminal cases?
- administrative cases?

81) Do you have a way of analysing waiting time during court procedures?

- Yes
- No

If yes, please specify:

82) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

- Yes
- No

Please specify (including an indication of the frequency of the evaluation):

Annual audit plan with regular audits every 4 to 7 years.

83) Is there a system for monitoring and evaluating the functioning of the prosecution services?

- Yes
- No

If 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 in this chapter
- the characteristics of your court monitoring and evaluation system

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

84) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements)? If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

NA

85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

Yes

No

If possible, number of successful challenges (in a year):

86) Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference. If there is no data available, please indicate it (NA).

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	0	0	0	0
Civil proceedings - Article 6§1 (non-execution)	0	0	0	0
Criminal proceedings - Article 6§1 (duration)	1	3	0	0

4. 2. Timeframes of proceedings

4. 2. 1. General information

87) Are there specific procedures for urgent matters as regards:

civil cases?

criminal cases?

administrative cases?

Please specify:

"Einstweilige Verfügung" ("Urgent order")

88) Are there simplified procedures for:

civil cases (small claims)?

criminal cases (petty offences)?

administrative cases?

Please specify (for example if you have introduced a new law on simplified procedures):

Payment orders up to € 75.000.

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

Yes

No

If yes, please specify:

Only courts have discretion to set specified time limits according to procedural law.

4. 2. 2. Penal, civil and administrative law cases

90) Total number of cases in the first instance courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non litigious)*	538.893	3.625.816	3.635.938	528.771
1 Civil (and commercial) litigious cases*	39.975	110.497	111.245	39.227
2 Civil (and commercial) non-litigious cases*	149.964	827.066	822.941	154.089
3 Enforcement cases	288.528	1.117.035	1.133.016	272.547
4 Land registry cases**	14.838	690.225	689.516	15.547
5 Business register cases**	0	241.658	241.658	0
6 Administrative law cases	NAP	NAP	NAP	NAP
7 Other	45.588	639.335	637.562	47.361
Total criminal cases (8+9)	26.131	59.812	65.538	20.405

8 Criminal cases (severe criminal offences)	6.277	24.782	24.630	6.429
9 Misdemeanour and / or minor offences cases	19.854	35.030	40.908	13.976

91) Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases - definition of misdemeanour cases, minor offences and severe criminal cases):

Line 1: Out from the 111.245 decisions on the merits 40.402 of them had written verdicts.
 Line 2 includes semi-automated pay-orders: 516.561 incoming and 522.953 decided on the merits.
 Line 5: Only incoming cases counted; other values in that line set to keep the vertical consistency.
 Line 8: Out from the 24.630 decisions on the merits 20.496 of them had written verdicts.
 Line 9: Out from the 40.908 decisions on the merits 23.192 of them had written verdicts.

92) Total number of cases in the second instance (appeal) courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations).

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 91.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases and possibly the existence of appeal rates for some case categories):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non-litigious)*	6.317	34.251	33.777	6.791
1 Civil (and commercial) litigious cases*	NA	NA	NA	NA
2 Civil (and commercial) non-litigious cases*	NA	NA	NA	NA
3 Enforcement cases	NA	NA	NA	NA
4 Land registry cases**	NA	NA	NA	NA
5 Business register cases**	NA	NA	NA	NA
6 Administrative law cases	NAP	NAP	NAP	NAP
7 Other	NA	NA	NA	NA
Total criminal cases (8+9)	1.022	11.628	11.173	1.477
8 Criminal cases (Severe criminal offences)	526	8.943	8.404	1.065
9 Misdemeanour and/or minor offences cases	496	2.685	2.769	412

Comment :

93) Total number of cases in the highest instance courts (litigious and non-litigious): please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 88.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and on possible limitations to the appeal to the highest instance court):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases* (litigious and non-litigious)	852	2857	2882	827
1 Civil (and commercial) litigious cases*	NA	NA	NA	NA
2 Civil (and commercial) non-litigious cases*	NA	NA	NA	NA
3 Enforcement cases	NA	NA	NA	NA
4 Land registry cases**	NA	NA	NA	NA
5 Business register cases**	NA	NA	NA	NA
6 Administrative law cases	NAP	NAP	NAP	NAP
7 Other	NA	NA	NA	NA
Total criminal cases (8+9)	207	942	936	213
8 Criminal cases (severe criminal offences)	NA	NA	NA	NA
9 Misdemeanour cases (minor offences)	NA	NA	NA	NA

Comment :

94) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts: please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table

with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Jan. '08
Litigious divorce cases*	3.324	7.325	7.374	3.275
Employment dismissal cases*	NA	NA	NA	NA
Robbery cases	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA

95) Average length of proceeding (from the date of lodging of court proceedings) in days, number of pending cases more than 3 years and percentage of cases subject to appeal: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 92:

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance (average length)	2d instance (average length)	Total procedure (average total length)
Litigious divorce cases*	NA	2,8	6	NA	NA
Employment dismissal cases*	NA	NA	5,7	NA	NA
Robbery cases	NA	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA	NA

Comment :

Figures in Q95 are taken from the average length (median) of procedures in civil general and civil labour categories in months.

96) Where appropriate, please specify the specific procedure as regards (litigious and non-litigious) divorce:

97) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

Average length (median) of procedures from filing to final close.

98) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- to conduct or supervise police investigation
- to conduct investigation
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to end the case by dropping it without the need for a judicial decision
- to end the case by imposing or negotiating a penalty without a judicial decision
- other significant powers

Please specify:

With the entry into force of the Code of Criminal Procedures Amending Act (Strafprozessreformgesetz) on 1st January 2008 the public prosecutor has got the right to conduct investigations himself.

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.

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.

99) Does the prosecutor also have a role in civil and/or administrative cases?

- Yes
- No

Please specify:

Only in few, 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.

100) Functions of the public prosecutor in relation to criminal cases – please complete this table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 100 and indicate in particular if the data given include traffic offences:

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	604.928	350.792	156.163	10.059	38.208	71.684

Comment :

1st column: any case received concerning known or unknown offenders and non-crime related cases;

3rd column: the number shown includes the lack of an established offence or measures of "Diversion", i.e. sanctions proposed to the subject without a judicial decision (which constitute sanctions but no penalties/sentences).

Remark: There can be more than one person contained in one case.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

Please indicate the sources for answering the questions 90 to 95 and 100:

Betriebliches Informationssystem der Justiz, Darstellung der Staatsanwaltschaftlichen Behörden (StaBIS Justiz) 2008 (Information System of the Judiciary concerning Public Prosecutors' Authorities).

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recruitment, nomination and promotion

101) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

102) Are judges initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of judges only?
- An authority composed of non-judges only?
- An authority composed of judges and non-judges?

103) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, please specify which authority is competent for the promotion of judges:

Appointment by the Federal President (highest judges) or by the Federal Minister of Justice based upon an approval by an authority composed of judges.

104) Which procedures and criteria are used for promoting judges? Please specify.

Public announcement and request for a proposal of qualified judges given by an authority composed of judges.

105) How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

Basically it has to be mentioned that "only judges or prosecutors can be appointed as prosecutors". They have to meet the requirements for being appointed as a professional judge. See question 101!

106) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of prosecutors only?
- An authority composed of non-prosecutors only?
- An authority composed of prosecutors and non-prosecutors?

107) Is the same authority formally responsible for the promotion of prosecutors?

- Yes
- No

If no, please specify which authority is competent for promoting prosecutors:

In Austria "promoting" means exclusively the appointment to higher posts like the chief of a public prosecution, a General Advocate or a prosecutor of second instance. The Federal President appoints public prosecutors upon proposal by the staff commission. However, for most established (lower) public prosecutor posts he has delegated the right of appointment to the Federal Minister of Justice.

108) Which procedures and criteria are used for promoting prosecutors? Please specify:

See question 105. In the proposal which includes a ranking of the applicants the staff commission has to consider the professional experience, the appropriate application, the ability of personnel management, organizational skills and the appraisals of the applicants.

109) Is the mandate given for an undetermined period for judges?

- Yes
- No

Are there exceptions? Please specify:

110) Is there a probation period for judges? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for judges	No	

111) Is the mandate given for an undetermined period for prosecutors?

- Yes
 No

Are there exceptions? Please specify:

112) Is there a probation period for prosecutors? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for prosecutors	No	

113) If the mandate for judges/prosecutors is not for an undetermined period, what is the length of the mandate? Is it renewable?**Please specify the length**

- for judges? Yes
for prosecutors? Yes

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

5. 1. 2. Training

114) Nature of the training of judges. Is it compulsory?

- Initial training
 General in-service training
 In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
 In-service training for management functions of the court (e.g. court president)
 In-service training for the use of computer facilities in the court)

115) Frequency of the training of judges

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	No	Yes	No
In-service training for management functions of the court (e.g. court president)	No	Yes	No
In-service training for the use of computer facilities in the court	No	Yes	No

116) Nature of the training of prosecutors. Is it compulsory?

- Initial training
 General in-service training
 Specialised in-service training (specialised public prosecutor)
 In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
 In-service training for the use of computer facilities in the public prosecution service)

117) Frequency of the training of prosecutors

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
Specialised in-service training (specialised public prosecutor)	No	Yes	No
In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)	No	Yes	No
In-service training for			

the use of computer facilities in the public prosecution service)	No	Yes	No
---	----	-----	----

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
 the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

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 more than 70% of the judges and prosecutor every year.

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

5. 2. Practice of the profession

5. 2. 1. Salaries

118) Salaries of judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 118:

	Gross annual salary (€)	Net annual salary (€)
First instance professional judge at the beginning of his/her career	45.612	
Judge of the Supreme Court or the Highest Appellate Court	110.632,90	
Public prosecutor at the beginning of his/her career	48.427,40	
Public prosecutor of the Supreme Court or the Highest Appellate Instance	110.632,90	

Comment :

119) Do judges and public prosecutors have additional benefits?

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	No	No
Housing	No	No
Other financial benefit	No	No

120) If other financial benefit, please specify:

121) Can judges combine their work with any of the following other functions ?

	Yes with remuneration	Yes without remuneration	No
Teaching	Yes	No	No
Research and publication	Yes	No	No
Arbitrator	Yes	No	No
Consultant	Yes	No	No
Cultural function	Yes	No	No
Other function	Yes	No	No

122) If other function, please specify:

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

123) Can prosecutors combine their work with any of the following other functions ?

	Yes	No	No
Teaching	Yes	No	No
Research and publication	Yes	No	No
Arbitrator	No	No	Yes

Consultant	Yes	No	No
Cultural function	Yes	No	No
Other function	Yes	No	No

124) If other function, please specify:

Being judge or prosecutor of course is a main profession, which does not allow practising 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.

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

- Yes
 No

If yes, please specify:

Please indicate the source for answering the question 118

§ 66 RStDG, § 190 RStDG

5. 2. 2. Disciplinary procedures

126) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

Judges: A disciplinary body consisting of judges can initiate disciplinary proceedings against a judge after a reporting of an offence made by the judge himself or by another person.

Prosecutors: The senior public prosecution office can initiate disciplinary proceedings against a prosecutor, if the superior of the prosecutor informs the office about a suspicion upon a disciplinary offence.

127) Which authority has the disciplinary power on judges and prosecutors? Please specify:

Judges and Prosecutors: A disciplinary body consisting of judges

Prosecutors: An independent authority (disciplinary commission).

128) Number of disciplinary proceedings initiated against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 128:

	Judges	Prosecutors
Total number (1+2+3+4)	47	1
1. Breach of professional ethics	34	0
2. Professional inadequacy	9	0
3. Criminal offence	4	1
4. Other	0	0

Comment :

129) Number of sanctions pronounced against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 129

	Judges	Prosecutors
Total number (total 1 to 9)	58	0
1. Reprimand	3	0
2. Suspension	0	0
3. Withdrawal of cases	37	0
4. Fine	0	0
5. Temporary reduction of salary	3	0
6. Degradation of post	0	0
7. Transfer to another geographical (court) location	0	0
8. Dismissal	0	0
9. Other	15	0

Comment :

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 in Austria.

Characteristics of the disciplinary procedure for judges and prosecutors:

Disciplinary courts (Disziplinargerichte) established at the Courts of Appeal (Oberlandesgerichte) are on duty for all judges below the rank of president and vice-president of a Court of Appeal and all prosecutors below the rank of the head of the senior public prosecution office and his deputy. For the latter as well as for all judges of the Supreme Court and the public prosecutors at 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 and prosecutors are dismissed if they are sentenced to more than one year of imprisonment for an intentional crime.

In 2008 the disciplinary procedure for prosecutors was adopted to the disciplinary procedure for judges.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

130) Total number of lawyers practising in your country. If there is no data available, please indicate it (NA).

7229

Source: Statistic from the Austrian Bar (Österreichischer Rechtsanwaltskammertag) of 31 December 2008 (available at www.rechtsanwaelte.at). This figure only includes lawyers registered in the list of Austrian lawyers (5272), lawyers registered in the list of established European lawyers (87) and trainee lawyers (1870) registered by December 2008. It does not include solicitors or legal advisors as such professions/types of service providers do not exist in Austria.

131) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court? If no go to question 133.

- Yes
 No
 Not applicable

132) Number of legal advisors. If there is no data available, please indicate it (NA)

NAP

133) Do lawyers have a monopoly of representation in (multiple options are possible):

- Civil cases*?
 Criminal cases - Defendant*?
 Criminal cases - Victim*?
 Administrative cases*?

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases:

Civil cases:

No monopoly; only in proceedings before district courts (Bezirksgerichte) when the litigation value exceeds € 5000 or before the higher courts, in appeal cases and before the Civil Supreme Courts representation by a lawyer is mandatory.

Possible representation by Member of family, Trade Union, NGO, e.g. the party itself, each person able to represent him-/herself, the Economic Chamber, the Labour Chamber, Consumer Protection Association (Verein für Konsumenteninformation).

Criminal cases:

No monopoly; Possible representation by Member of family, in qualified criminal cases listed in Art 61 Code of Criminal Procedure (Strafprozessordnung) only by defence counsels (Verteidiger; i.a. lawyers, other persons authorised by law to represent in criminal proceedings or university professors for criminal and criminal procedural law); in other cases also the defendant him-/herself or a legal representative. By victim protection associations (Opferschutzeinrichtungen).

In general:

The extent to which persons/entities may represent in such matters is governed by the respective procedural law and other relevant laws.

134) Is the lawyer profession organised through?

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

Please specify:

The Austrian Bar 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 as well as the regional Bar Associations are self-governing public bodies. The Austrian Bar is responsible to represent the Austrian bar at large. The regional Bar Associations are responsible for the representation of the lawyers registered with them and the bar as far as only their own sphere is concerned, the registration of lawyers and disciplinary supervision and sanction.

Please indicate the source for answering the questions 130 and 132:

Austrian Bar.

6. 1. 2. Training

135) Is there a specific initial training and/or examination to enter the profession of lawyer?

- Yes
 No

136) Is there a mandatory general system for lawyers requiring continuing professional training?

Yes No**137) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?** Yes No

If yes, please specify:

Comment to Q 136:

Continuing professional training is mandatory for lawyers in Austria according to Art 10 para 6 Lawyers Act (Rechtsanwaltsordnung). There is however no continuing training regime in place. The law leaves it open to each lawyer how to comply with his/her continuing training duty.

Specification to Q 137:

Lawyers can, however, indicate themselves fields of specialisation in the lawyers' directory.

6. 1. 3. Fees

138) Can users establish easily what the lawyers' fees will be? Yes No

Please provide comments to explain the answer under question 138

139) Are lawyers fees regulated by law? regulated by Bar association? freely negotiated?

Please provide comments to explain the answer under question 139:

The fees can be freely negotiated between client and lawyer in Austria. Usually for instance hourly rates, lump-sum agreements, caps or fees according to the lawyers' tariff act (Rechtsanwaltstarifgesetz) are agreed. The latter is a federal law providing fee schedules, which are necessary as basis for the courts decision on the procedural fees the losing party has to reimburse to the winning party. Please note that not the lawyer but the winning party is entitled to ask for the reimbursement of the fees.

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

140) Have quality standards been formulated for lawyers? Yes No**141) If yes, who is responsible for formulating these quality standards:** the bar association? the legislature? other?

Please specify (including a description of the quality criteria used):

Austrian and European professional law provides for high quality standards for lawyers. The relevant provisions can be found in the Lawyers Act, the European and International Lawyers Act (Europäisches und Internationales Rechtsanwaltsgesetz) and the Disciplinary Act (Disziplinarstatut), all of which are federal laws, the Directives on the exercise of the lawyers' profession and for the supervision of the lawyers' duties (Richtlinien für die Ausübung des Rechtsanwaltsberufs und für die Überwachung der Pflichten des Rechtsanwaltes) and the Directive on the training of trainee lawyers (Richtlinie für die Ausbildung der Rechtsanwaltsanwärter), which are both state law regulations enacted by the Assembly of Delegates (Vertreterversammlung) of the Austrian Bar within its powers delegated by the Lawyers Act and the CCBE Code of Conduct. They provide in particular the following quality standards:

- profound academic and professional education and training, which is required in order to become a lawyer (4 years of academic and 5 years of professional training, participation in training seminars and bar exam)
- obligation to continuing training
- obligation to professional secrecy, integrity and independence
- prevention of conflicts of interest
- duty to represent the clients interests with eagerness, loyalty and diligence
- prohibition of using means not complying with the law, integrity and custom
- obligatory professional indemnity insurance
- obligation to pay clients funds/money into separate bank accounts
- obligation to manage their firms with diligence and caution
- obligation to use acknowledged secure e-signatures
- supervision, disciplinary proceedings and sanction by the competent Bar Association when lawyers do not comply with their duties
- possibility for clients to complain about the performance of lawyers
- increased liability according to civil law

142) Is it possible to complain about

- the performance of lawyers?
- the amount of fees?

Please specify:

A complaint about the performance of lawyers can be directed at the competent Bar Association (where the respective lawyer is registered) or the Disciplinary Council (Disziplinarrat) of this Bar Association.

A complaint about the amount of fees can be directed at the Board of the competent Bar Association.

143) Which authority is responsible for disciplinary procedures

- the judge?
- the Ministry of justice?
- a professional authority or other?

Please specify:

At first instance the Disciplinary Council is the competent authority established at the seat of each Bar Association in Austria where the accused lawyer is registered. Appeals against decisions of the Disciplinary Council can be lodged at the Supreme Appeals and Disciplinary commission (Oberste Berufungs- und Disziplinarkommission), which decides in senates consisting of two judges of the Supreme Court (Oberster Gerichtshof) and two lawyer judges, whereas always a judge of the Supreme Court acts as chair. The Supreme Appeals and Disciplinary commission is a tribunal in terms of Article 6 ECHR.

144) Disciplinary proceedings initiated against lawyers: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 141:

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number	NA	NA	NA	NA

Comment :

145) Sanctions pronounced against lawyers : please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 145:

	Reprimand	Suspension	Removal	Fine	Other
Annual number	NA	NA	NA	NA	NA

Comment :

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

146) Does the legal system provide for mediation procedures? If no go to question 151

- Yes
 No

147) If applicable, please specify, by type of cases, the organisation of mediation

	Possibility for private mediation proposed by the judge or court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Prosecutor
Civil and commercial cases	Yes	Yes	No	No	No
Family law cases (ex. Divorce)	Yes	Yes	No	No	No
Administrative cases	Yes	Yes	No	No	No
Employment dismissals	Yes	Yes	No	No	No
Criminal cases	Yes	No	Yes	No	No

148) Is there a possibility to receive legal aid for mediation procedures?

- Yes
 No

If yes, please specify:

Though there is no possibility to receive legal aid for mediation procedures, the Federal Ministry of Economics, Family and Youth grants benefit for mediation in family matters, depending on the family's income. The current tariff rates can be found under <http://www.bmwfj.gv.at/Familie/TrennungUndScheidung/Documents/TARIFTABELLE.pdf>; see also Section 4 (1) of the directives to enhance mediation (Richtlinie zur Förderung der Mediation).

149) Number of accredited mediators. If there is no data available, please indicate it (NA)

3400

150) Please Indicate the total number of judicial mediation procedures per case category. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

civil cases?	NA
family cases?	NA
administrative cases?	NAP
employment dismissals?	NA
criminal cases?	NA

Please indicate the source for answering the question 150:

Law on Mediation in Civil Matters (Zivilrechts-Mediations-Gesetz); § 204 Criminal Procedure Code – victim-offender-mediation (Tatausgleich)

7. 1. 2. Other forms of alternative dispute resolution

151) Can you give information concerning other forms of alternative dispute resolution (e.g. arbitration, conciliation)? Please specify:

- A. Arbitration tribunals
 B. Conciliation board procedures for disputes relating to accommodation
 C. Mediation in civil law cases (especially in family law)
 D. Conciliation board for telecommunications matters
 E. Local authority mediation offices
 F. Arbitration tribunals and conciliation centres of the lawyers' associations

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

152) Do you have in your system enforcement agents (judicial officers)? If no go to question 154

- Yes
 No

153) Number of enforcement agents. If there is no data available, please indicate it (NA).

356

154) Are enforcement agents (multiple options are possible):

- judges?
 bailiff practising as private profession ruled by public authorities?
 bailiff working in a public institution?
 other enforcement agents?

Please specify their status and powers:

155) Is there a specific initial training or examination to enter the profession of enforcement agent?

- Yes
 No
 Not applicable

156) Is the profession of enforcement agent organised by?

- a national body?
 a regional body?
 a local body?
 not applicable

157) Can users establish easily what the fees of the enforcement agents will be?

- Yes
 No
 Not applicable

158) Are enforcement fees:

- regulated by law?
 freely negotiated?
 not applicable

Please indicate the source for answering the question 153:

The correct number in Q153 is 356,15 but is not accepted!

Verwendungsdatenauswertung 1. 7. 2008

8. 1. 2. Supervision

159) Is there a body entrusted with the supervision and the control of the enforcement agents?

- Yes
 No
 Not applicable

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

- 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.

161) Have quality standards been formulated for enforcement agents?

- Yes
 No
 Not applicable

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

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

162) Is there a specific mechanism for executing court decisions rendered against public authorities, including the follow up to this execution?

- Yes
 No

if yes, please specify

As a rule, execution of court decisions rendered against public authorities follows the same procedure as any other execution.
 However, a specific provision states that property that is indispensable for public duties is exempt from any execution of monetary claims against a public authority. It is up to the decision of the administrative authorities whether any property is indispensable for public duties or not.

163) Is there a system for monitoring the execution?

- Yes
 No

If yes, please specify

8. 1. 3. Complaints and sanctions

164) What are the main complaints of users concerning the enforcement procedure? Please indicate a maximum of 3.

- no execution at all?
 non execution of court decisions against public authorities?
 lack of information?
 excessive length?
 unlawful practices?
 insufficient supervision?
 excessive cost?
 other?

Please specify:

165) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

- Yes
 No

If yes, please specify:

The Reform of Law Enforcement ("FEX-project"), see
<http://www.coe.int/T/dghl/cooperation/cepej/events/EDCJ/Cristal/ProjetAustria2005.pdf>

166) Is there a system measuring the timeframes of the enforcement of decisions :

- for civil cases?
 for administrative cases?

167) 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 sits:

- between 1 and 5 days
 between 6 and 10 days
 between 11 and 30 days
 more

If more, please specify

168) Number of disciplinary proceedings initiated against enforcement agents. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of disciplinary proceedings	<input checked="" type="checkbox"/> number:	2
for breach of professional ethics	<input checked="" type="checkbox"/> number:	0
for professional inadequacy	<input checked="" type="checkbox"/> yes, number:	1
for criminal offence	<input checked="" type="checkbox"/> number:	1
Other	<input checked="" type="checkbox"/> number:	0

169) Number of sanctions pronounced against enforcement agents. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of sanctions	<input checked="" type="checkbox"/> number:	2
Reprimand	<input type="checkbox"/> number:	
Suspension	<input type="checkbox"/> number:	
Dismissal	<input type="checkbox"/> number:	
Fine	<input checked="" type="checkbox"/> number:	2
Other	<input type="checkbox"/> number:	

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

The data above include only disciplinary proceedings but not any other disciplinary measure.

Please indicate the source for answering the questions 167, 168 and 169:

All disciplinary proceedings are recorded in an own register for disciplinary proceedings. This register is administrated by the Federal Ministry of Justice.

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

170) Is there a judge who is in charge of the enforcement of judgments?

- Yes
 No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

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).

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

- Yes
 No

If yes, please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

172) Do you have notaries in your country? If no go to question 177

- Yes
 No

173) Is the status of notaries (if the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations):

a private one (without control from public authorities)?	<input type="checkbox"/> number	
a status of private worker ruled by the public authorities?	<input checked="" type="checkbox"/> number	490
a public one?	<input type="checkbox"/> number	
other?	<input type="checkbox"/> number	

Comment :

174) Do notaries have duties:

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

Please specify:

In addition to the above described activities, notaries provide various legal services within the frame work of real estate transactions and corporate affairs. Under a further 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.

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

Please indicate the source for answering the question 173

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.

9. 1. 2. Supervision

175) Is there an authority entrusted with the supervision and the control of the notaries?

- Yes
 No

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

- a professional body?
 the judge?
 the Ministry of justice?
 the prosecutor?
 other?
 not applicable

Please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

10. Court interpreters

10. 1. function

10. 1. 1. Statute

177) Is the title of court interpreter protected?

- Yes
 No

178) Is the function of court interpreter regulated?

- Yes
 No

179) Number of certified court interpreters. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations

820

180) Are there binding provisions regarding the quality of court interpreting in judicial proceedings?

- Yes
 No

If yes, please specify:

181) Are the courts responsible for the selection of court interpreters?

- Yes
 No

Please provide comments to explain the answers to question 178 (in particular, if no, which authority selects court interpreters?) :

In general, the judge (or public prosecutor in preliminary proceedings) is responsible for choosing an Interpreter in a proceeding, who is usually a Certified Court Interpreter (i.e. "allgemein beeideter und gerichtlich zertifizierter Dolmetscher", "Sworn and Certified Court Interpreter"), which means that he is registered in the List of Court Interpreters because of his specific knowledge. The swearing in and certification are part of a judicial administrative procedure applying strict selection criteria. "Sworn" means that the interpreter is permanently under oath for all proceedings in which he/she takes a part, as opposed to a mere "ad hoc" interpreter, who is put under oath only in exceptional cases for specific proceedings.

The Federal Law on Sworn and Certified Court Experts and Interpreters (SDG) amended the requirements for registration in this List to the extent that applicants must prove professional experience for several years as interpreters and/or translators. In addition, knowledge of the principles of Austrian legal and court procedures and of those of the country where the chosen language is the official language, as well as extensive knowledge of the legal and commercial terminology of law and commerce both in German and the foreign language is required.

The Application for Registration in the List of Sworn and Certified Court Interpreters must be submitted to the president of the court of first instance in the district of the applicant's regular residence or place of professional activity ('centre of economic interests'). In the course of the registration proceedings the certifying authority will charge a commission with preparing an expert opinion on whether qualifications are fulfilled.

11. Functioning of justice

11. 1. Foreseen reforms

11. 1. 1. Reforms

182) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? For example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc. Please specify:

- From 2008 on the new law on criminal procedure is effective: The preliminary procedure is now led by the public prosecutor (instead of the investigational judge) working closer with the police, judges competence is limited to guarantee fundamental (human) rights.
- As a follow up a reform of the main criminal procedure will be started.
- A new system of calculating the input of personnel needed to handle the judicial workload ("PAR"-project) has been done.
- Initiatives to improve the quality and service level of the judiciary will be continued; Service Centres at some pilot courts have been established successfully.