



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2013

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 (if possible on 1 January 2013)

8 451 860

##### 2) Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €) - (If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP).

	Amount
State or federal level	157 799 650 000
Regional / federal entity level (total for all regions / federal entities)	NAP

##### 3) Per capita GDP (in €)

36 430

##### 4) Average gross annual salary (in €)

29 723

##### 5) Exchange rate of national currency (non-Euro zone) to € on 1 January 2013

##### A1. Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

Q1: Statistik Austria: Bevölkerung zum Jahresanfang 2013 <http://statcube.at/superwebguest/login.do?guest=guest&db=debevjahresanf>

Q2: Bundesfinanzgesetz 2012, Artikel I.c nach der 2. Änderung in der Fassung BGBl I/25 vom 12.4.2012

Q3:

[http://www.statistik.at/web\\_de/statistiken/volkswirtschaftliche\\_gesamtrechnungen/bruttoinlandsprodukt\\_und\\_hauptaggregate/jahresdaten/019505.html](http://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/bruttoinlandsprodukt_und_hauptaggregate/jahresdaten/019505.html)

Q4:

[http://www.statistik.at/web\\_de/statistiken/soziales/personen-einkommen/jaehrliche\\_personen\\_einkommen/index.html](http://www.statistik.at/web_de/statistiken/soziales/personen-einkommen/jaehrliche_personen_einkommen/index.html)

#### 1. 1. 2. Budgetary data concerning judicial system

##### 6) Annual approved public budget allocated to the functioning of all courts, in € (if possible without the budget of the public prosecution services and without the budget of legal aid):

TOTAL annual approved budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input checked="" type="checkbox"/> Yes	751 790 000
1. Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	416 840 000
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	35 800 000
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	<input checked="" type="checkbox"/> Yes	103 750 000
4. Annual public budget allocated to court buildings (maintenance, operating costs)	<input checked="" type="checkbox"/> Yes	59 700 000
5. Annual public budget allocated to investments in new (court) buildings	<input checked="" type="checkbox"/> Yes	0
6. Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	2 200 000
7. Other (please specify):	<input checked="" type="checkbox"/> Yes	133 500 000

##### 7) If you cannot separate the budget of the public prosecution services and the budget of legal aid from the budget allocated to all courts, please indicate it clearly. If "other", please specify:

The figures include the public prosecution services "but does not include" ("mail CN 15/5/14) the budget of legal aid (€ 19,0 Mio for legal representation is "not" included).

The presidents of the higher regional court administrate the budget of the public prosecution services.

"Other": Postal services (€ 37,3 Mio), Traineeship (€ 13,9 Mio), office equipment, lump-sum payment for legal representation (€ 19,0 Mio) , travel expenses, other small expenses

##### 8) Are litigants in general 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 to the rule to pay court a tax or fee? Please provide comments on those exceptions:

The duty to pay court fees arises from the starting of the civil procedure at the court, but the proceedings itself are not dependent on the payment of this fee.  
The most important (at least preliminary) exemption from court fees is the attribution of legal aid to the claimant according to the respective provisions of the civil procedure code (Zivilprozessordnung – ZPO, in particular §§ 63 and 64) and §§ 8 and 9 of the court fee act (Gerichtsgebührengesetz - GGG). Detailed information can be derived from the legal aid factsheet on the website of the European Network for Civil and Commercial Matters ([http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_aus\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_aus_en.htm)).  
Other exemptions are laid down in various other provisions as listed in § 10, § 13 and Art. VI Nr. 28 GGG.

### 8.1) Please briefly present the methodology of calculation of courts fees?

Court fees in Austrian proceedings concerning civil and commercial litigation under the civil procedure code (Zivilprozessordnung – ZPO) depend mostly on the value under dispute between the parties of the proceedings. The amount of the fees is laid down in a list or tariff which forms part of our Gerichtsgebührengesetz (GGG). This Act on court fees also specifies the correct way of calculating these costs (in particular the calculation of the assessment basis for the value under dispute).  
According to § 14 GGG the assessment basis for the fees of a given case of litigation is the value under dispute ("Streitwert") according to §§ 54 to 60 of the Jurisdiktionsnorm (JN) determining the basis for the Court's jurisdiction and for the mode of appeal. §§ 15 to 18 GGG contain specific provisions regarding the value under dispute for specific cases - for example for actions concerning properties or special proceedings like renting.  
The court fee according to the "Streitwert" is laid down in fee items (Tarifposten – TP) 1 to 3 of the tariff appended to the GGG (TP 1 for cases of first instance, TP 2 for the second instance and TP 3 for litigation cases before the Supreme Court). If there are more than two parties to the case a percentage is added to these fees according to § 19a GGG. As can be derived from this tariff the charge for a proceeding concerning two parties - e.g. - about a value of 7.000 € is 285 € for the first instance (TP 1 GGG), 518 € for the second instance (TP 2 GGG) and 648 € for the Supreme Court (TP 3 GGG). The court fees for other values can be calculated from the lists respectively.  
In cases where there are several claimants or defendants a surcharge has to be paid according to § 19a GGG (of 10 percent for the third party and 5 percent for any further party to the proceedings).  
As a rule court fees for civil lawsuits in Austria are lump sums which cover all costs of the given instance in the case irrespective of the complexity of the case and the concrete amount of expenditure necessary ("Pauschalgebühren"). The list of fees in the tariff is calculated on the average costs and expenditures to maintain the court and its personnel taking also into account the risk for State liability in such cases under the given value of the dispute and social considerations (to allow effective access to justice also for small claims). In Austria the courts have to be maintained by court fees their costs are not provided for by general taxation.

### 8.2) Please indicate, if possible, the amount of court fees to commence an action for 3000€ debt recovery?

After fee item (Tarifpost) 1 Act on court fees (Gerichtsgebührengesetz – GGG) the court fee would be 155 € for the first instance.

### 9) Annual income of court taxes or fees received by the State (in €)

834 870 000

### 12) Annual approved public budget allocated to legal aid, in €. - If one or several data are not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. (Question modified)

If your system enables to be granted legal aid for cases which are non litigious or not brought to court, please specify:

	Amount (in €)
Total annual approved public budget allocated to legal aid (12.1 + 12.2)	19000000
12.1 Annual public budget allocated to legal aid for cases brought to court	na
12.1.1 in criminal law cases	na
12.1.2 in other than criminal law cases	na
12.2 Annual public budget allocated to legal aid for non litigious cases or cases not brought to court (legal consultation, ADR, etc)	na

Comment :

The sum includes only the lump sum paid to the bar for representation of parties "pro bono". It does not include court fees or fees for translation or experts, which are also covered by legal aid, but not isolated within the budget.

### 13) Total annual approved public budget allocated to the public prosecution services (in €). Please indicate in the "comment" box below any useful information to explain the figures provided .

NA

Comment :

See Nr 7

### 14) Authorities formally responsible for the budgets allocated to the courts (multiple options possible) :

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the 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
High Judicial Council	NAP	NAP	NAP	NAP
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	No	No	Yes	Yes

### 14.1) If any other Ministry and/or inspection body and/or other, please specify (considering question 14):

Ministry of Finance, Federal Chancellery of the Republic of Austria; The President of the Higher regional courts manages and evaluates the budget of the courts

**A.2 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 questions 6, 9, 12 and 13.

Bundesrechnungsabschluss 2012

1. 1. 3. Budgetary data concerning the whole justice system

15) The following data would be useful for information

15.1) (Former question 10) Annual approved public budget allocated to the whole justice system, in € (this global budget does not include only the court system as defined under question 6, but also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.)

.  NA 1276420000

15.2) (Former question 11) Please indicate the budgetary elements that are included in the whole justice system. If "other", please specify in the "comment" box below.

Court (see question 6)	Yes
Legal aid (see question 12)	Yes
Public prosecution services (see question 13)	Yes
Prison system	Yes
Probation services	Yes
Council of the judiciary	NAP
Constitutional court	No
Judicial management body	NAP
State advocacy	NAP
Enforcement services	Yes
Notariat	No
Forensic services	No
Judicial protection of juveniles	No
Functioning of the Ministry of Justice	Yes
Refugees and asylum seekers services	No
Other	No

Comment :

## 2. Access to justice

### 2. 1. Legal aid

#### 2. 1. 1. Principles

#### 16) Does legal aid apply to:

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

#### 17) Does legal aid include the coverage of or the exemption from 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 cannot 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 para 2 CCP the court has to decide on total or partial legal aid on the request of the defendant if the defendant cannot 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 legal aid has to be granted

- during the whole procedure if and as long as the defendant is held in pre trial detention;
- during the entire procedure on the confinement in an institution for mentally abnormal offenders;
- during 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;
- during the trial in front of a jury or of a court of lay assessors;
- during 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/herself 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.

With regard to 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 identified 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 court decision on the obligation on costs reimbursement.

#### 18) Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

- Yes  
 No

If yes, please specify:

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 (§ 68 para 1a of the Austrian Civil Procedure Order).

#### 19) Can legal aid be granted for other costs (different from questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc ? If yes, please specify it in the "comment" box below).

Criminal cases	Other than criminal cases
NAP	Yes

Comment :

As far as civil cases are concerned, according to § 64 of the Austrian Civil Procedure Order (Zivilprozessordnung, ZPO) legal aid may cover not only the (provisional) exemption from court fees but also the exemption from 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.

If the personal presence of the party at a hearing is ordered by the court, their necessary travel expenses are also replaced.

The system differs a lot for Criminal Cases, because there are no costs to bear for the parties, until the court has taken a final decision. In case of an acquittal, the state has to bear all the costs. According to sec. 390 para. 1 CCP there is only one exception from this rule, if a person, different from the Public Prosecutor, i.e. "Privatankläger" holds the accusation and loses the case because of an acquittal. Then the so called Privatankläger (private prosecutor) has to bear the costs. In case of a false accusation, the person who knowingly accused the (acquitted) perpetrator would have to bear the costs of the trial (sec. 390 para. 4).

In case of a conviction – as a general rule – the convicted person has to bear the costs (sec. 389 para. 1). But if there was given a legal aid, normally the costs will be declared as unrecoverable. The procedure is the same as already mentioned in point 17.

Summarising it can be said, that there are no costs in criminal cases which could be granted until the court has taken a final decision which also encompasses a decision on the costs

**20) Number of cases referred to the court for which legal aid has been granted. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

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Please specify in the "comment" box below, when appropriate.

[This question concerns only the annual number of cases for which legal aid has been granted to those referring a case to a court. It does not concern legal advice provided for cases that are not brought before the court.]

	Number
Total	20239
in criminal cases	4136
other than criminal cases	16103

Comment :

**20.1) Number of cases not brought to court (see 12.2 above) for which legal aid has been granted. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

Number of cases
nap

Comment :

**21) In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?**

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Please specify in the "comment" box below.

Accused individuals	Yes
Victims	Yes

Comment :

According to section 61 CCP someone who cannot pay the costs of proceedings, without causing a risk to his/her daily subsistence, will receive legal-aid support upon application. This means that he/she is fully or partly (temporarily) exempt from paying fees and (temporarily) assigned a lawyer free of charge. As a result, socially disadvantaged persons also have access to the law. He/She must pay these costs only to the extent and as soon as his/her financial situation has improved. For further details please see answer to question 17.

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. In cases where these victims do not get upon their request psycho-social or legal assistance during court proceedings according to section 66 para 2 CCP, they may under the conditions mentioned above have the right to receive legal-aid support instead.

**22) If yes, are individuals free to choose their lawyer within the framework of the legal aid system**

Yes

No

**23) Does your country have an income and assets evaluation for granting legal aid to the applicant ? If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.**

-----  
Please provide in the "comment" box below any information to explain the figures provided.

	amount of annual income (if possible for one person) in €	amount of assets in €
for criminal cases	nap	nap
for other than criminal cases?	na	na

Comment :

As far as civil cases are concerned, according to § 63 of the Austrian Civil Procedure Order (Zivilprozessordnung, ZPO) legal aid is granted to a party as a whole or partly, if the costs of the proceeding otherwise would compromise the necessary maintenance.

Legal aid is granted only as the applicant - according to his income, assets and maintenance obligations - is unable to bear (any or part of) the costs of the proceeding without endangering the minimum subsistence level necessary to allow a simple standard of living.

**24) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?**

- Yes  
 No

If yes, please explain the exact criteria for denying legal aid:

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.

**25) In other than criminal cases, is the decision to grant or refuse legal aid taken by:**

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

**26) Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?**

- Yes  
 No

If appropriate, please inform about the current development of such insurances in your country; is it a growing phenomenon?

There are no data available.

**27) Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in:**

criminal cases?	Yes
other than criminal cases?	Yes

**B.1 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 questions 20 and 23:**

**2. 2. Users of the courts and victims**

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

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

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**The websites mentioned could appear in particular on the internet website of the CEPEJ. Please specify in the "comment" box below what documents and information the addresses for "other documents" include:**

legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es):	<input checked="" type="checkbox"/> Yes	www.ris.bka.gv.at
case-law of the higher court/s? Internet address(es):	<input checked="" type="checkbox"/> Yes	www.ris.bka.gv.at
other documents (e.g. downloadable forms, online registration)? Internet address(es):	<input checked="" type="checkbox"/> Yes	www.justiz.gv.at

Comment :



The website "www.justiz.gv.at" provides frequently needed application forms (for example payment orders, execution requests, legal aid, etc.). In addition, the section "Bürgerservice" ("citizens' service") provides simplified information on selected topics of special interest (legal information, service-center, ombudsman, etc.).

**29) Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?**

- Yes  
 No  
 Yes only in some specific situations

If yes only in some specific situations, please specify:

**30) Is there a public and free-of-charge specific information system to inform and to help victims of crime?**

- Yes  
 No

If yes, please specify:

www.opfer-notruf.at

**31) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons. If "other vulnerable person" and/or "other special arrangements", please specify it in the "comment" box below.**

[This question does not concern the police investigation phase of the procedure and does not concern compensation mechanisms for victims of criminal offences, which are addressed under questions 32 to 34.]

	Information mechanism	Special arrangements in court hearings	Other
Victims of sexual violence/rape	Yes	Yes	Yes
Victims of terrorism	Yes	Yes	Yes
Children (witnesses or victims)	Yes	Yes	Yes
Victims of domestic violence	Yes	Yes	Yes
Ethnic minorities	Yes	Yes	Yes
Disabled persons	Yes	Yes	Yes
Juvenile offenders	Yes	Yes	Yes
Other (e.g. victims of human trafficking, forced marriage, sexual mutilation)	Yes	Yes	Yes

Comment :

**31.1) Is it possible for minors to be a party to a judicial proceedings :**

- Yes  
 No

If yes, please specify which procedure can be concerned (civil, criminal, administrative/normal or accelerated procedure) and at which conditions (can children benefit from legal aid, be represented by a lawyer, etc.) :

As far as civil cases are concerned, minors can be a party to judicial proceedings, but have to be represented by their legal guardian. In exceptional cases minors over the age of 14 years can act on their own behalf, e.g. disputes regarding their own income from employment. Nevertheless they can choose to be represented by their legal guardian in those cases too. If there is a conflict of interests between the interests of the minor and its legal guardian (e.g. maintenance disputes), a curator has to be appointed. Legal aid can be granted to minors, which also may cover the costs of a lawyer. Concerning criminal cases minors have the same rights as other (grown up) victims.

**32) Does your country allocate compensation for victims of crime?**

- Yes  
 No

If yes, for which kind of offences

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

**33) If yes, does this compensation consist in:**

- a public fund?  
 damages to be paid by the responsible person (decided by a court decision)?  
 a private fund?

**34) Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?**

- Yes  
 No

If yes, please illustrate with available data concerning the recovery rate, the title of the studies, the frequency of the studies and the coordinating body:

**35) Do public prosecutors have a specific role with respect to the victims (protection and assistance)?**

- Yes  
 No

If yes, please specify:

Section 10 of the CCP obliges the prosecution to take the victim's rights and interests into account 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 emotionally strongly affected, 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.

**36) Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case?**

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**Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a decision by a judge".**

- Yes  
 No

NAP (the public prosecutor cannot decide to discontinue a case on his/her own. A decision by a judge is needed).

If necessary, please specify:

According to sec.195 the court may order the continuation of the investigative proceedings on application of the victim if the law wasn't applied correctly or has been infringed, if significant doubts arise concerning the correctness of facts, on which the decision to discontinue the case was based or if new circumstances or means of evidence are discovered after such a decision. A Senate of three judges decides about such a request (see Sections 190 to 192 and 195 CCP).

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.

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

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

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

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

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.

On cases in which the detention started after the 31st of December 2010 changes in the para. 5 Strafrechtliches Entschädigungsgesetz are applicable and the liability for immaterial damage for detention is limited to a minimum compensation of € 20 and a maximum of € 50 per day

**38) Does your country have surveys aimed at legal professionals and court users to measure their trust and/or satisfaction with the services delivered by the judicial system? (multiple options possible)**

- (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 the parties  
 (Satisfaction) surveys aimed at other court users (e.g. jurors, witnesses, experts, interpreters, representatives of governmental agencies)  
 (Satisfaction) surveys aimed at victims

If possible, please specify their titles, object and websites where they can be consulted:

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

"New justice: Strengthening of trust in the Austrian Justice system 2011" by agency Karmasin Motivforschungs GmbH

"Trust in the Austrian Justice system 2013" by agency Karmasin Motivforschungs GmbH  
 Several minor "ad hoc"-surveys to current topics.

**39) If possible, please specify:**

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

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

- Yes  
 No

**41) Please specify which authority is responsible for dealing with such complaints and inform whether there is or not a time limit to respond and/or a time limit for dealing with the complaint (multiple options possible). Please give information concerning the efficiency of this complaint procedure in the "comment" box below.**

	Time limit to respond (e.g. to acknowledge receipt of the complaint, to provide information on the follow-up to be given to the complainant, etc.)	Time limit for dealing with the complaint
Court concerned	Yes	Yes
Higher court	Yes	Yes
Ministry of Justice	No	No
High Council of the Judiciary	No	No
Other external bodies (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.

**41.1) Please indicate the number of complaints that are upheld and the amount of compensation given to users in 2012 for complaints about the functioning of the judicial system**

The overall sum paid in the year 2012 on the basis of The Public Authority's Liability Act (Amtshaftungsgesetz) in connection with complaints about the functioning of the judicial system (including the penal system) was € 681.746,13 (including costs). There were 427 complaints on the basis of The Public Authority's Liability Act in the year 2012.

On the basis of the Strafrechtliches Entschädigungsgesetz (StEG - Criminal Law Indemnification Act) 175 persons filed an action for compensation – 138 actions were successful, the compensation sum amounted to € 650.230,69.

### 3. Organisation of the court system

#### 3. 1. Functioning

##### 3. 1. 1. Courts

**42) Number of courts considered as legal entities (administrative structures) and geographic locations. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total number
42.1 First instance courts of general jurisdiction (legal entities)	154
42.2 First instance specialised Courts (legal entities)	7
42.3 All the courts (geographic locations) (this includes 1st instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts)	149

**43) Number (legal entities) of first instance specialised courts (or specific judicial order). If data is not available, please indicate NA.**

-----  
**If the situation is not applicable in your country, please indicate NAP.**

	Number
Total (must be the same as the data given under question 42.2)	7
Commercial courts (excluded insolvency courts)	2
Insolvency courts	0
Labour courts	1
Family courts	0
Rent and tenancies courts	0
Enforcement of criminal sanctions courts	2
Fight against terrorism, organised crime and corruption	0
Internet related disputes	0
Administrative courts	0
Insurance and / or social welfare courts	1
Military courts	0
Other specialised 1st instance courts	2

Comment :

Other specialised 1st Instance Courts: 2 civil law courts (in Vienna and Graz); the sum of the numbers in the categories exceeds the total number of specialised courts because the labour and social court in Vienna is one court that is competent for labor and (some) social welfare cases.

**44) Is there a foreseen change in the structure of courts [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:

From January 1st, 2013 to July 1st, 2014 a number of district courts will be merged. The total number of district courts will decline from 141 in 2012 to 115 as of July 1st, 2014. From January 1st, 2014 there will be 11 newly found courts for administrative law in Austria – 9 regional administrative courts set up by the 9 Bundesländer, 1 Federal administrative courts and 1 Federal Tax Court. They work as appellate courts for appeals against decisions of administrative bodies (in general appeals against decisions of a federal authority have to be lodged at the Federal Administrative Court, tax matters at the Federal Tax Court and all others at the regional administrative courts).

**45) Number of first instance courts (geographic locations) competent for the following cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

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

**Please give the definition for small claims and indicate the monetary value of a small claim:**

€ 10000,00

**Please indicate the sources for answering questions 42, 43 and 45:**

Database of courts (total number of premises)

Comment 42.3: If there is more than one court at one location (fe regional court and county court in the same building) they are counted as one court.

##### 3. 1. 2. Judges, court staff

**46) Number of professional judges sitting in courts (if possible on 31 December 2012) (please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Please provide in the "comment" box below any useful comment for interpreting the data above.**

\*\*\*\*\*

**[Please make sure that public prosecutors and their staff are excluded from the following figures (they will be part of questions 55-60). If a distinction between staff attached to judges and staff attached to prosecutors cannot be made, please indicate it clearly.]**

**Please indicate the number of posts that are actually filled at the date of reference and not the theoretical budgetary posts.]**

	Total	Males	Females	NAP
Total number of professional judges (1 + 2 + 3)	1546,61	791,40	755,21	
1. Number of first instance professional judges	1324,59	652,86	671,73	
2. Number of second instance (court of appeal) professional judges	157,12	93,50	63,62	
3. Number of supreme court professional judges	64,90	45,04	19,86	

Comment :

Data in full time equivalent

The numbers differ from the last periods because this year we can more exactly assign the different tasks to the number of full time equivalents - dealing with first and second instance court proceedings on the one hand and the administrative tasks ("on behalf of the president") on the other hand.

1.: First instance judges in fte at regional courts (Landesgericht) and district courts (Bezirksgericht)

2.: Second instance judges in fte at the courts of appeal (Oberlandesgericht) and the regional courts (Landesgericht)

**47) Number of court presidents (professional judges). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total	Males	Females	NAP
Total number of court presidents (1 + 2 + 3)	79,12	48,54	30,58	
1. Number of first instance court presidents	62,91	37,92	24,99	
2. Number of second instance (court of appeal) court presidents	14,73	9,14	5,59	
3. Number of supreme court presidents	1,48	1,48	0	

**48) Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December 2012).**

**Please provide in the "comment" box below any information to explain the answer under question 48.**

Gross figure

NAP

If possible, in full-time equivalent

NAP

Comment :

**49) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December 2012) (e.g. lay judges and "juges consulaires", but not arbitrators and persons sitting in a jury):**

**If such non-professional judges exists in your country, please specify it in the "comment" box below:**

Gross figure

NA

Comment :

**50) 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.

Civil Procedure:

Labour-law cases: Panels of judges comprising in all instances one or more professional judges and one lay judge from the body of employers and one lay judge from the body of employees decide on labour-law cases.

Commercial cases: In the case of commercial cases on which panels of judges (and not a single judge alone) decide, a lay judge from the commercial field participates in the Courts of First and Second Instance (but not in the Supreme Court).

**51) Number of citizens who were involved in such juries for the year of reference:**

NA

**52) Number of non-judge staff who are working in courts for judges (if possible on 31 December 2012) (this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled). If "other non-judge staff", please specify it in the "comment" box below.**

Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)  Yes (among which women) 46 31, 20 (32 55, 62)

1. Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal  Yes (among which women) 76 0,3 2 ( 440 ,7)

2. Non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, court recording, helping to draft the decisions)  Yes (among which women) 1 9,8 3 ( 19, 28)

such as registrars

- 3. Staff in charge of different administrative tasks and of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)  Yes (among which women) 38 17, 71 (27 71, 93)
- 4. Technical staff  Yes (among which women) 3 3,3 4 ( 24, 34)
- 5. Other non-judge staff NAP

Comment :

Management Information System (MIS) 1.1.2013  
 Women total.:3.255,62  
 Women 1.:440,7  
 Women 2.:19,28  
 Women 3.:2771,93  
 Women 4.:24,34  
 It is technically not possible to fill in the numbers for women

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

"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.

**54) Have the courts delegated certain services, which fall within their powers, to private providers (e.g. IT services, training of staff, security, archives, cleaning)?**

- Yes
- No

If yes, please specify:

Security, cleaning, writing, training

**C1 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 have been implemented over the last two years

Comment on Qu 46 and 47: The numbers differ from the last periods because this year we can more exactly assign the different tasks to the number of full time equivalents - dealing with first and second instance court proceedings on the one hand and the administrative tasks ("on behalf of the president") on the other hand. So the number of court presidents differ also from the number of the courts itself although we have on person being appointed as a court president or head of the court we have either less (usually at the level of district courts) or more (at the level of regional courts or courts of appeal) fte fulfilling tasks.

Please indicate the sources for answering questions 46, 47, 48, 49 and 52

3. 1. 3. Public prosecutors and staff

**55) Number of public prosecutors (if possible on 31 December 2012) (please give the information in full-time equivalent and for permanent posts actually filled, for all types of courts – ordinary and specialised jurisdictions). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.**

	Total	Males	Females	NAP
Total number of prosecutors (1 + 2 + 3)	349	178	171	
1. Number of prosecutors at first instance level	305	151	154	
2. Number of prosecutors at second instance (court of appeal) level	31	19	12	
3. Number of prosecutors at supreme court level	13	8	5	

Comment :

Data in full time equivalent

The numbers differ from the last periods because this year we can more exactly assign the different tasks to the number of full time equivalents - dealing with tasks of the prosecution on the one hand and the administrative tasks on the other hand.

**56) Number of heads of prosecution offices. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

-----  
 Please provide in the "comment" box below any useful information for interpreting the data.

| | | | | | |

	Total	Males	Females	NAP
Total number of heads of prosecution offices (1 + 2 + 3)	24,60	16,65	7,95	
1. Number of heads of prosecution offices at first instance level	17,51	10,51	7	
2. Number of heads of prosecution offices at second instance (court of appeal) level	6,49	5,69	0,80	
3. Number of heads of prosecution offices at supreme court level	0,60	0,45	0,15	

Comment :  
Data in full time equivalent

**57) Do other persons have similar duties to public prosecutors?**

- Yes  
 No  
 NA

Number (full-time equivalent)  
151,70

**58) If yes, please specify their title and function:**

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 2013 there have been 151,70 (full time equivalent) agents, who are not included in question 60

**59) If yes, is their number included in the number of public prosecutors that you have indicated under question 55?**

- Yes  
 No

**59.1) Do all prosecution offices have specially trained prosecutors in domestic violence and sexual violence etc.?**

- Yes

**60) Number of staff (non-public prosecutors) attached to the public prosecution service (if possible on 31 December 2012) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).**

Number  NA 381,91  
Among which women  NA 309,35

**C2 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 have been implemented over the last two years

Q 55: Technically it was only possible to fill in natural numbers; Q 55 and 56: The numbers differ from the last periods because this year we can more exactly assign the different tasks to the number of full time equivalents - dealing with tasks of the prosecution on the one hand and the administrative tasks on the other hand.

Please indicate the sources for answering questions 55, 56 and 60.

[3. 1. 4. Management of the court budget](#)

**61) Who is entrusted with responsibilities related to the budget within the court?**

-----  
If "other", please specify it in the "comment" box below.

	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	Yes	Yes
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	Yes	Yes	Yes	Yes

Comment :  
The Presidents of the Higher regional Courts are entrusted with the individual court budget. "other" means the Federal Ministry of Justice

[3. 1. 5. Use of Technologies in courts](#)

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

Word processing	100% of courts
Electronic data base of caselaw	100% of courts
Electronic files	100% of courts
E-mail	100% of courts



Internet connection	100% of courts
---------------------	----------------

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

Case registration system	100% of courts
Court management information system	100% of courts
Financial information system	100% of courts
Videoconferencing	100% of courts

**64) For the electronic communication and exchange of information between the courts and their environment, what are the computer facilities used by the courts ?**

-----  
Si "autres moyens de communication électronique", veuillez le préciser dans la boîte de commentaires ci-dessous.

Electronic web forms	100% of courts
Website	100% of courts
Follow-up of cases online	100% of courts
Electronic registers	100% of courts
Electronic processing of small claims	100% of courts
Electronic processing of undisputed debt recovery	100% of courts
Electronic submission of claims	100% of courts
Videoconferencing	100% of courts
Other electronic communication facilities	100% of courts

Comment :

**65) The use of videoconferencing in the courts (details on question 63).**

-----  
Please indicate in the "comment" box below any clarification on the legal framework and the development of videoconferencing in your country.

65.1 In criminal cases, do courts or prosecution offices use videoconferencing for hearings in the presence of defendants or witnesses or victims?	Yes
65.2 Can such court hearing be held in the police station and/or in the prison?	Yes
65.3 Is there any specific legislation on the conditions for using videoconferencing in the courts / prosecution offices, especially in order to protect the rights of the defence?	Yes
65.4 Is videoconferencing used in other than criminal cases?	Yes

Comment :

Since 2005 the procedural preconditions exist for the use of video conferencing systems in the hearing of witnesses, parties, experts and interpreters in civil proceedings as well as in the hearing of witnesses in criminal proceedings (defendants only in preliminary proceedings).

The video conferencing technology offers judges and prosecutors the possibility to question people that were summoned to the court, which is nearest to their domicile and equipped with a video conferencing system.

As a result, substantial time and cost saving arise because of the substantially shorter journey and judges and prosecutors get a direct impression of the person. By avoiding legal assistance from other courts the duration of proceedings is shortened as well.

For scheduling video conferencing hearings a database for videoconferencing-system reservation was provided to judges and prosecutors via the intranet. The database features the possibility to book the required videoconferencing-systems while automatically informing the person responsible for the video-conference by e-mail.

Since March 2011 any court, prosecution office and penitentiary is equipped with video-conferencing system.

In the year 2012 3330 videoconferencing settings have been held, about 16% with courts from foreign countries.

**C3 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 have been implemented over the last two years

**3. 2. Monitoring and evaluation**

**3. 2. 1. Performance and evaluation**

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

Yes

No

If yes, please indicate 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

**66.1) Does this institution publish statistics on the functioning of each court on the internet:**

Yes

No, only in an intranet website

No

**67) Are individual courts required to prepare an annual activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?**

Yes

No, only in an intranet website

**68) Do you have, within the courts, a regular monitoring system of court activities concerning:**

**The monitoring system aims to assess the day-to-day activity of the courts (namely, what the courts produce) thanks in particular to data collections and statistical analysis (see also questions 80 and 81).**

number of incoming cases?

number of decisions delivered?

number of postponed cases?

length of proceedings (timeframes)?

other?

If other, please specify:

e. g. certain kinds of decisions

**69) Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?**

**The evaluation system refers to the performance of the court systems with prospective concerns, using indicators and targets. The evaluation may be of more qualitative nature (see questions 69-77). It does not refer to the evaluation of the overall (good) functioning of the court (see question 82).**

Yes

No

If yes, please specify:

Operational Information System (BIS)

Periodic check lists (On October 1st of every year)

**70) Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 72)**

Yes

No

**71) Please select the 4 main performance and quality indicators that have been defined:**

incoming cases

length of proceedings (timeframes)

closed cases

pending cases and backlogs

productivity of judges and court staff

percentage of cases that are processed by a single sitting judge

enforcement of penal decisions

satisfaction of court staff

satisfaction of users (regarding the services delivered by the courts)

judicial quality and organisational quality of the courts

costs of the judicial procedures

other:

If 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

**72) Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?**

Yes

No

**73) Who is responsible for setting the targets for each judge?**

executive power (for example the Ministry of Justice)?

legislative power

judicial power (for example a High Judicial Council, Higher Court)

President of the 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 court (if no please skip to question 77)?**

- Yes  
 No

**75) Who is responsible for setting the targets for the courts?:**

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

If other, please specify:

**76) Please specify the main targets applied to the courts:**

**77) Who is responsible for evaluating the performance of the courts (see questions 69 to 76)? (multiple options possible)**

- High Council of judiciary  
 Ministry of Justice  
 Inspection authority  
 Supreme Court  
 External audit body  
 Other

If other, please specify :

**78) Are quality standards determined for the whole judicial system (are there quality systems for the judiciary and/or judicial quality policies)?**

- Yes  
 No

If yes, please specify:

**79) Do you have specialised court staff that is entrusted with these quality standards?**

- Yes  
 No

**80) Do you monitor backlogs and cases that are not processed within a reasonable timeframe for ?**

- in civil law cases  
 in criminal law cases  
 in administrative law cases

**81) Do you monitor waiting time during court procedures?**

- Yes  
 No

If yes, please specify:

**82) Is there a system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan (plan of visits) agreed beforehand?**

-----  
**This question does not concern the specific evaluation of performance indicators.**

- Yes  
 No

Please specify 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 performance of the public prosecution service?**

- Yes  
 No

If yes, please give further details:

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

**C.4 You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your court monitoring and evaluation systems

## 4. Fair trial

### 4. 1. Principles

#### 4. 1. 1. General principles

**84) Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a lawyer)?**

NA

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

- Yes  
 No

Number of successful challenges (in a year):

na

**86) Number of cases regarding Article 6 of the European Convention of Human Rights on duration and non-execution. If data is not available, please indicate 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	1	0
Civil proceedings - Article 6§1 (non-execution)	0	0	1	0
Criminal proceedings - Article 6§1 (duration)	2	0	0	0

**Please indicate the sources:**

**D.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter**

### 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?  
 there is no specific procedure

If yes, please specify:

"Einstweilige Verfügung" ("Urgent order")

Concerning criminal cases sec. 9 CCP states that criminal proceedings in general shall be handled without undue delay (para. 1); according to para. 2 cases of pretrial detention shall be dealt with even more swiftly.

**88) Are there simplified procedures for:**

- civil cases (small disputes)?  
 criminal cases (small offences)?  
 administrative cases?  
 there is no simplified procedure

If yes, please specify:

Payment orders up to € 75.000,-, proceedings under Regulation No. 861/2007 establishing a European Small Claims Procedure

**88.1) For these simplified procedures, may judges deliver an oral judgement with a written order and dispense with a full reasoned judgement?**

- Yes  
 No

**89) Do courts and lawyers have the possibility to conclude agreements on arrangements 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:

#### 4. 2. 2. Case flow management and timeframes of judicial proceedings

**90) Comment:**

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and timeframes of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only if answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling a useful comparison between the systems.

**91) First instance courts: number of other than criminal and criminal law cases.**

Number of other than criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

**Note 1:** cases mentioned in categories 3 to 5 (enforcement, land registry, business register) should be presented separately in the table. Cases mentioned in category 6 (administrative law) should also be separately mentioned for the countries which have specialised administrative courts or separate administrative law procedures or are able to distinguish in another way between administrative law cases and civil law cases.

**Note 2:** check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means: "(pending cases on 1 January 2012 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2012. Vertical consistency of data means that the sum of the individual case categories 1 to 7 should r

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (1+2+3+4+5+6+7)*	504481	3489286	3476472	517295
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	39530	104365	104977	38918
2. General civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	134086	756585	753118	137553
3. Non litigious enforcement cases	263862	1018450	1033529	248783
4. Non litigious land registry cases**	17205	689005	664726	41484
5. Non litigious business registry cases**	na	335857	335857	na
6. Administrative law cases	nap	nap	nap	nap
7. Other cases (e.g. insolvency registry cases)	49798	585024	584265	50557

**92) If courts deal with "civil (and commercial) non-litigious cases", please indicate the case categories included:**

(Se, S, MSch, PSch, P-Vorgänge, Pg-Vorgänge, Ps-Vorgänge, Pu-Vorgänge, SW)

Commence of bankruptcy proceedings

Bankruptcy proceedings

Composition proceedings

Non-litigious proceedings about rent, non profit cooperative association for housing, home ownership

Proceedings about Lease of farm land

Wardship cases in connection with administration of assets, custody and maintenance

Uncontested payment orders

**93) If "other cases", please indicate the case categories included:**

(JV, A, T, G, Uh, Hc, Nc, Ha, Fam, Rv,)

Probate Proceedings

Cases concerning the Administration of justice

Cancellation proceedings and proceedings in connection with [official] declaration of death

authentication of signatures

proceedings to render legal assistance in civil matters for other courts (also international ones)

General civil proceedings, that are not allocated to other categories of cases

some non litigious family matters

**94) Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note:** please check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means that: "(pending cases on 1 January 2012 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2012. Vertical consistency of data means that the sum of the categories 8 and 9 for criminal cases should reflect the total number of criminal cases.

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of criminal cases (8+9)	18512	57668	57957	18223
8. Severe criminal cases	6479	25099	25140	6438
9. Misdemeanour and / or minor criminal cases	12033	32569	32817	11785

**95) To differentiate between misdemeanour / minor offenses and serious offenses and ensure the consistency of the responses between different systems, the CEPEJ invites to classify as misdemeanour / minor all offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, should be classified as severe offenses all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment). If you cannot make such a distinction, please indicate the categories of cases reported in the category "serious offenses" and cases reported in the category "minor offenses":**

The Numbers in Question 94 Section 9 (misdemeanour and/or minor criminal cases) include all offences, which are fined or punished with a prison sentence of up to one year and must not be decided by a jury. In Section 8. are mentioned all other cases.

**96) Comments on questions 90 to 95 (specific situation in your country e.g. NA-answers and the calculation of the total number of other than criminal law cases, differences in horizontal consistency etc.)**

Q 91, Line 5: change in legislation and therefore more obligations for companies to register

General remarks: There is no overall distinction between litigious and non-litigious proceedings in the statistics, so the numbers are sums of certain kinds of proceedings mentioned in the corresponding comments. In the category litigious are counted all proceedings in the categories C, Cg, Cga, Cgs (civil matters, labour and social security cases at first instance courts) which are marked as being litigious in the court register (f.e. from the second court hearing on).

In the category criminal cases are only cases counted which are dealt with by a judge in a court hearing; not counted are cases of preliminary proceedings at the court dealt with by a judge and proceedings dealt with by the public prosecutor.

**97) Second instance courts: total number of cases**

Number of "other than criminal law" cases.

If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (1+2+3+4+5+6+7)	6 284	29 919	30 589	5 614
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	NA	NA	NA	NA
2. General civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NA	NA	NA	NA
3. Non litigious enforcement cases	NA	NA	NA	NA
4. Non litigious land registry cases	NA	NA	NA	NA
5. Non litigious business registry cases	NA	NA	NA	NA
6. Administrative law cases	NAP	NAP	NAP	NAP
7. Other cases (e.g. insolvency registry cases)	NA	NA	NA	NA

**98) Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of criminal cases (8+9)	1667	11972	11958	1681
8. Severe criminal cases	787	7726	7643	870
9. Misdemeanour and/or minor criminal cases	880	4246	4315	811

Comment :

**99) Highest instance courts: total number of cases**

**Number of "other than criminal law" cases:**

If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (1+2+3+4+5+6+7)	693	2483	2249	882
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)	NA	NA	NA	NA
2. General civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	NA	NA	NA	NA
3. Non litigious enforcement cases	NA	NA	NA	NA
4. Non litigious land registry cases**	NA	NA	NA	NA
5. Non litigious business registry cases	NA	NA	NA	NA
6. Administrative law cases	NA	NA	NA	NA
7. Other cases (e.g. insolvency registry cases)	NA	NA	NA	NA

**99.1) At the level of the Higher court, is there a procedure of manifest inadmissibility?**

Yes. If yes, please indicate the number of cases closed by this procedure?

No

Number

**100) Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of criminal cases (8+9)	181	780	789	172
8. Severe criminal cases	NA	NA	NA	NA
9. Misdemeanour and/or minor criminal cases	NA	NA	NA	NA

Comment :

**101) Number of litigious divorce cases, employment dismissal cases, insolvency, robbery cases and intentional homicide cases received and processed by first instance courts. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 January 2012	Incoming cases	Resolved cases	Pending cases on 31 December 2012
Litigious divorce cases	2920	6354	6444	2830
Employment dismissal cases	NA	NA	NA	NA
Insolvency	11557	26152	26344	11365
Robbery cases	14	5893	5828	79
Intentional homicide	11	758	755	14

**102) Average length of proceedings, in days (from the date the application for judicial review is lodged). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

-----  
[The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the

**judgment is made, without taking into account the enforcement procedure.]**

	% of decisions subject to appeal	% pending cases more than 3 years	Average length in 1st instance (in days)	Average length in 2nd instance (in days)	Average length in 3rd instance (in days)	Average total length of the total procedure (in days)
Litigious divorce cases	NA	1,4	161	NA	NA	NA
Employment dismissal cases	NA	NA	158	NA	NA	NA
Insolvency	NA	NA	NA	NA	NA	NA
Robbery cases	NA	NA	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA	NA	NA

**103) Where appropriate, please inform about the specific procedure as regards divorce cases (litigious and non-litigious):**

The procedure of a litigious divorce is almost identical to regular civil proceedings – a decision is only taken about the dissolution of the marriage (not about alimony, child custody etc.). For a non-litigious divorce the couple has to agree on the dissolution of the marriage, but also on all legal consequences and effects of the divorce like alimony for the dependent spouse and the children, the child custody and the division of the joint property and then the court issues an order about the dissolution of the marriage.

**104) How is the length of proceedings calculated for the five case categories? Please give a description of the calculation method.**

The figure mentioned for litigious divorces is showing precisely only this kind of procedure. The figure for Employment dismissal cases is taken from the average length (median) of litigious procedures in civil labour categories as they go along with.

The figures concerning the length of procedure are calculated as follows: Median length in months x 4,33 x 7.

% of pending cases for more than 3 years: pending cases for more than 3 years divided by incoming cases = 1,4%

**105) Role and powers of the public prosecutor in the criminal procedure (multiple options possible):**

- to conduct or supervise police investigation
- to conduct investigations
- when necessary, to request 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 the enforcement procedure
- to discontinue a case without needing a decision by a judge (ensure consistency with question 36!)
- to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision
- other significant powers

If "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 cannot 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.

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

- Yes
- No

If yes, 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.

**106.1) Does the public prosecutor also have a role in insolvency cases?**

- Yes
- No

If yes, please specify:

**107) Case proceedings managed by the public prosecutor**

**Total number of 1st instance criminal cases.**

**If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**



	Received by the public prosecutor	Cases discontinued by the public prosecutor (see 108 below)	Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Cases charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	533610	468578	24410	70962

**107.1) Among cases charged by the public prosecutor before the courts, how many were brought to court under a guilty plea procedure or similar ?**

	Before the court case:	During the court case:
If possible, please distinguish the number of guilty plea procedure:	nap	nap

**108) Total cases which were discontinued by the public prosecutor. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Number
Total cases which were discontinued by the public prosecutor (1+2+3)	468 578
1. Discontinued by the public prosecutor because the offender could not be identified	292 159
2. Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	163 884
3. Discontinued by the public prosecutor for reasons of opportunity	12 535

**109) Do the figures include traffic offence cases?**

- Yes  
 No

**D.2 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**

Q 99.1: At the Highest Instance court one can lodge an ordinary appeal ("ordentliche Revision"), if the second instance court declares it admissible; if the appellant files a complaint although it was declared inadmissible by the second instance court, it is a so called extraordinary appeal ("außerordentliche Revision"); the Highest Court can dismiss this appeal. Of the 2438 lodged appeals 1.348 were extraordinary ones, and 1.090 were dismissed by the Highest court. Q 101: Insolvency includes the categories S and Se at the regional and the district courts  
Q101: Robbery include the cases dealt with under §§ 142, 143, 131(IVm127) StGB (jeweils Hauptdelikt; ohne Versuche)  
Intentional Homicide: §§ 75, 76, 77, 79 StGB (Hauptdelikt; ohne Versuche)  
Concerning Q107 and 108: "Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor" are also included in Q108/2  
"Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation". Remark on Question 107 + Question 108:  
There can be more than one person contained in one case. Concerning Question 109: The courts only deal with damages to property and negligent bodily injuries caused by traffic accidents in civil and criminal proceedings; offences which do not lead to damages or injuries are punished by administrative bodies (like speeding, having worn-out tires, drunkdriving).

**Please indicate the sources for answering questions 91, 94, 97, 98, 99, 100, 101, 102, 107 and 108.**

## 5. Career of judges and public prosecutors

### 5. 1. Recruitment and promotion

#### 5. 1. 1. Recruitment and promotion

##### 110) How are judges recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If "other", please specify:

##### 110.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting judges?

- Yes
- No

If "yes", please specify:

No necessity as the number of female judges already exceeds that of male judges, general nondiscrimination rules apply

##### 111) Authority(ies) in charge: are judges initially/at the beginning of their carrier recruited and nominated by:

[This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former)].

- An authority made up of judges only?
- An authority made up of non-judges only?
- An authority made up of judges and non-judges?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of judges. If there are several authorities, please describe their respective roles:

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

##### 112) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, which authority is competent for the promotion of judges ?

In Austria "promoting" is only possible through the appointment to higher posts like court president or judge of the Supreme Court. Appointment by the Federal President (highest judges) or by the Federal Minister of Justice based upon an approval by an authority composed of judges

##### 112.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting judges?

- Yes
- No

If "yes", please specify:

general nondiscrimination rules apply (in case of equally qualified applicants, the female applicant has to be appointed)

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

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

##### 114) Is there a system of qualitative individual assessment of the judges' activity?

- Yes
- No

If yes, please indicate the frequency

##### 115) Is the status of prosecution services:

- Independent?
- Under the authority of the Minister of justice ?
- Other?

Please specify:

**116) How are public prosecutors recruited?**

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If "other", please specify:

Only judges or prosecutors can be appointed as prosecutors. They have to meet the requirements for being appointed as a professional judge.

**117) Authority(ies) in charge: are public prosecutors initially/at the beginning of their carrier recruited by:**

**[This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).]**

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

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of public prosecutors. If there are several authorities, please describe their respective roles:

See question 116. Applicants have to meet the same requirements and complete the same training periods and exams as judges before they can apply for a post as prosecutor.

**117.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting prosecutors?**

- Yes
- No

If "yes", please specify:

no necessity as the number of female judges already exceeds that of male judges, general nondiscrimination rules apply

**118) Is the same authority formally responsible for the promotion of public prosecutors?**

- Yes
- No

If no, please specify which authority is competent for promoting public 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.

**119) Which procedures and criteria are used for promoting public prosecutors? Please specify:**

See question 116. In the proposal which includes a ranking of the applicants the staff commission has to consider the professional experience, the appropriate application, organizational skills and the appraisals of the applicants.

**119.1) Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting prosecutors?**

- Yes
- No

If "yes", please specify:

general nondiscrimination rules apply (in case of equally qualified applicants, the female applicant has to be appointed)

**120) Is there a system of qualitative individual assessment of the public prosecutors' activity?**

- Yes
- No

**121) Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

-----

**If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify in the "comment" box below**

Yes. If yes, please indicate the compulsory retirement age	65
No	

Comment :

A judge has to be temporary retired if,

- he/she is away sick for more than one year
- he/she does not fulfil the requirements anymore
- he/she becomes a member of an Independent Administrative Tribunal ("Unabhängiger Verwaltungssenat" – UVS)

A judge has to be permanently retired if he/she has a negative review of his/her work for two years straight.

A judge loses his/her job automatically if,

- he/she loses the Austrian citizenship
- he/she gets dismissed as a disciplinary sanction
- he/she is convicted (3 possibilities)
  1. to imprisonment for more than one year
  2. to imprisonment and the not suspended sentence exceeds half a year
  3. because of abuse of authority (in a sexual context)

The compulsory retirement takes place at the end of the calendar year, in which the judge has his/her 65th birthday

**121.1) Can a judge be transferred to another court without his consent:**

- For disciplinary reasons
- For organisational reasons
- For other reasons. Please specify modalities and safeguards

Please specify modalities and safeguards

\* In case of court closures/mergers the transfer has to be regulated by federal law. This has never been necessary so far because affected judges usually apply for other posts in time.

Other reasons: A judge has to be transferred if nonprofessional circumstances (that haven't been inflicted by him-/herself) permanently damage his/her reputation and ability to perform the duties of his/her post to an extent that he/she would not be able to function as a judge at that post anymore. Furthermore in cases of adoption of the judge by another judge of the same district court, adoption of another judge of the same district court by the judge or marriage of judges of the same district court.

**122) If there is a probation period for judges (e.g. before being appointed "for life"), how long is this period? If the situation is not applicable in your country, please indicate NAP.**

	Duration of the probation period (in years)
Yes	
No	X
NAP	

**123) Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

-----  
**If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify in the "comment" box below:**

Yes. If yes, please indicate the compulsory retirement age	X (compulsory retirement age: 65, see comment)
No	

Comment :

A public prosecutor has to be temporary retired if,

- he/she is away sick for more than one year
- he /she does not fulfil the requirements anymore
- he /she becomes a member of an Independent Administrative Tribunal ("Unabhängiger Verwaltungssenat" – UVS)

A public prosecutor has to be permanently retired if he/she has a negative review of his/her work for two years straight.

A public prosecutor loses his/her job automatically if,

- he/she loses the Austrian citizenship
- he/she gets dismissed as a disciplinary sanction
- he/she is convicted (3 possibilities)
  1. to imprisonment for more than one year
  2. to imprisonment and the not suspended sentence exceeds half a year
  3. because of abuse of authority (in a sexual context)

The compulsory retirement takes place at the end of the calendar year, in which the public prosecutor has his/her 65th birthday

**124) Is there a probation period for public prosecutors? If yes, how long is this period? If the situation is not applicable in your country, please indicate NAP.**

	Duration of the probation period (in years)
Yes	
No	X
NAP	

**125) If the mandate for judges is not for an undetermined period (see question 121), what is the length of the mandate (in years)? Is it renewable?**

NAP

**126) If the mandate for public prosecutors is not for an undetermined period (see question 123), what is the length of the mandate (in years)? Is it renewable?**

NAP

**E.1 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 public prosecutors and the main reforms that have been implemented over the last two years

**5. 2. Training****5. 2. 1. Training****127) Training of judges**

Initial training (e.g. attend a judicial school, traineeship in the court)	Compulsory
General in-service training	Optional
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Optional
In-service training for management functions of the court (e.g. court president)	Optional
In-service training for the use of computer facilities in courts	Optional

**128) Frequency of the in-service training of judges:**

General in-service training	Annual / Regular (e.g. every 3 months)
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Annual / Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. court president)	Annual / Regular (e.g. every 3 months)
In-service training for the use of computer facilities in courts	Annual / Regular (e.g. every 3 months)

**129) Training of public prosecutors**

Initial training	Compulsory
General in-service training	Optional
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Optional
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Optional
In-service training for the use of computer facilities in office	Optional

**130) Frequency of the in-service training of public prosecutors**

General in-service training	Annual / Regular (e.g. every 3 months)
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Annual / Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Annual / Regular (e.g. every 3 months)
In-service training for the use of computer facilities in office	Annual / Regular (e.g. every 3 months)

**131) Do you have public training institutions for judges and / or prosecutors? If yes, please indicate the budget of such institution(s) in the "comment" box below.**

-----  
**If your judicial training institutions do not correspond to these criteria, please specify it:**

	Initial training only	Continuous training only	Initial and continuous training	2012 budget of the institution, in €
One institution for judges	No	No	No	No
One institution for prosecutors	No	No	No	No
One single institution for both judges and prosecutors	No	No	No	No

Comment :

**131.1) If there is no initial training for judges and/or prosecutors in such institutions, please indicate briefly how these judges and/or prosecutors are recruited and trained ?****E.2 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 public prosecutors and the main reforms that have 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.

### 5. 3. Practice of the profession

#### 5. 3. 1. Practice of the profession

#### 132) Salaries of judges and public prosecutors.

	Gross annual salary, in €, on 31 December 2012	Net annual salary, in €, on 31 December 2012
First instance professional judge at the beginning of his/her career	49509	31415
Judge of the Supreme Court or the Highest Appellate Court (please indicate the average salary of a judge at this level, and not the salary of the Court President)	119771	71418
Public prosecutor at the beginning of his/her career	52548	32966
Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the salary of the Public prosecutor General)	119771	71418

Comment :

Net annual salary given by official gross/net-calculator at [http://www.bmf.gv.at/service/anwend/steuerberech/bruttonetto/\\_start.htm](http://www.bmf.gv.at/service/anwend/steuerberech/bruttonetto/_start.htm)

#### 133) 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

#### 134) If other financial benefit, please specify:

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

	With remuneration	Without remuneration
Teaching	Yes	Yes
Research and publication	Yes	Yes
Arbitrator	No	No
Consultant	Yes	Yes
Cultural function	Yes	Yes
Political function	Yes	Yes
Other function	Yes	Yes

#### 136) If rules exist in your country (e.g. authorisation needed to perform these activities), please specify. If "other function", please specify.

Q 135: For political functions some restrictions apply (e.g. members of parliament)

Q 135, 136: Being judge 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.

#### 137) Can public prosecutors combine their work with any of the following other functions ?

	With remuneration	Without remuneration
Teaching	Yes	Yes
Research and publication	Yes	Yes
Arbitrator	No	No
Consultant	Yes	Yes
Cultural function	Yes	Yes
Political function	Yes	Yes
Other function	Yes	Yes

#### 138) Please specify existing rules (e.g. authorisation to perform the whole or a part of these activities). If "other function", please specify:

Q137:For political functions some restrictions apply (e.g. members of parliament)

Being prosecutor is a main profession, which does not allow practising another "profession". Under certain assumptions extra activities can be exercised.

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.

**139) Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)?**

- Yes  
 No

If yes, please specify the conditions and possibly the amounts:

**5. 4. Disciplinary procedures**

**5. 4. 1. Disciplinary procedures**

**140) Who has been authorised to initiate disciplinary proceedings against judges (multiple options possible)?**

- Citizens  
 Relevant Court or hierarchical superior  
 High Court / Supreme Court  
 High Judicial Council  
 Disciplinary court or body  
 Ombudsman  
 Parliament  
 Executive power  
 Other  
 This is not possible

If "executive power" and/or "other", please specify:

**141) Who has been authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):**

- Citizens  
 Head of the organisational unit or hierarchical superior public prosecutor  
 Prosecutor General /State public prosecutor  
 Public prosecutorial Council (and Judicial Council)  
 Disciplinary court or body  
 Ombudsman  
 Professional body  
 Executive power  
 Other  
 This is not possible

If "executive power" and/or "other", please specify:

**142) Which authority has disciplinary power on judges? (multiple options possible):**

- Court  
 Higher Court / Supreme Court  
 Judicial Council  
 Disciplinary court or body  
 Ombudsman  
 Parliament  
 Executive power  
 Other

If "executive power" and/or "other", please specify:

**143) Which authority has the disciplinary power on public prosecutors? (multiple options possible):**

- Supreme Court  
 Head of the organisational unit or hierarchical superior public prosecutor  
 Prosecutor General /State public prosecutor  
 Public prosecutorial Council (and Judicial Council)  
 Disciplinary court or body  
 Ombudsman  
 Professional body  
 Executive power  
 Other

If "executive power" and/or "other", please specify:

**144) Number of disciplinary proceedings initiated against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Judges	Public prosecutors
Total number (1+2+3+4)	66	14
1. Breach of professional ethics	54	11
2. Professional inadequacy	9	2
3. Criminal offence	3	1
4. Other	0	0

Comment :

**145) Number of sanctions pronounced in 2012 against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

	Judges	Public prosecutors
Total number (total 1 to 9)	11	0
1. Reprimand	3	0
2. Suspension	1	0
3. Removal of cases	0	0
4. Fine	0	0
5. Temporary reduction of salary	5	0
6. Position downgrade	0	0
7. Transfer to another geographical (court) location	0	0
8. Resignation	0	0
9. Other	2	0

Comment :

"Other" does apply to conviction and the order for costs of the proceedings.

16 disciplinary (judge) cases are pending, partly because of pending penal cases, partly because of other reasons.

3 disciplinary (public prosecutors) cases are pending mainly due to pending penal cases.

### **E.3 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 public prosecutors and the main reforms that have been implemented over the last two years**

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.

### **Please indicate the sources for answering questions 144 and 145**

Annual reports of the public prosecutors office at the appellate court



## 6. Lawyers

### 6. 1. Status of the profession and training

#### 6. 1. 1. Status of the profession and training

#### 146) Total number of lawyers practising in your country.

7861

#### 147) Does this figure include "legal advisors" who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?

- Yes  
 No

#### 148) Number of legal advisors who cannot represent their clients in court:

nap

#### 149) Do lawyers have a monopoly on legal representation in (multiple options are possible):

- Civil cases?  
 Criminal cases - Defendant?  
 Criminal cases - Victim?  
 Administrative cases?  
 There is no monopoly

If there is no monopoly, please specify the organisations or persons that may represent a client before a court (for example a NGO, a family member, a trade union, etc) and for which types of cases:

##### Civil cases:

No general 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.

Victim: By victim protection associations (Opferschutzeinrichtungen) an by other capable persons.

##### Administrative Cases:

No monopoly; only for appeals against decisions of the last instance and for applications and complaints lodged before the constitutional court and the higher administrative court representation by a lawyer is mandatory

Possible representation by Member of family, NGO, e.g. the party itself, each person able to represent him-/herself.

##### In general:

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

#### 150) Is the lawyer profession organised through? (multiple options possible)

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

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

- Yes  
 No

If not, please indicate if there are other specific requirements as regards diplomas or university degrees :

#### 152) Is there a mandatory general system for lawyers requiring in-service professional training?

- Yes  
 No

#### 153) Is the specialisation in some legal fields tied with specific training, levels of qualification, specific diploma or specific authorisations?

- Yes  
 No

If yes, please specify:

**Please indicate the sources for answering questions 146 and 148:**

Source: Statistic from the Austrian Bar (Österreichischer Rechtsanwaltskammertag) of 31st December 2012 (available at [www.rechtsanwaelte.at](http://www.rechtsanwaelte.at)). This figure only includes lawyers registered in the list of Austrian lawyers (5756), lawyers registered in the list of established European lawyers (89) and trainee lawyers (2016) registered by December 2012. It does not include solicitors or legal advisors as such professions/types of service providers do not exist in Austria.

**F1 Comments for interpreting the data mentioned in this chapter:**

Please see comments to answer to question 146. All answers in Chapter 6 are given by the Austrian Bar

## 6. 2. Practising the profession

### 6. 2. 1. Practising the profession

**154) Can court users establish easily what the lawyers' fees will be (i.e. do users have easy access to prior information on the foreseeable amount of fees, is the information transparent and accountable)?**

- Yes  
 No

**155) Are lawyers' fees freely negotiated?**

- Yes  
 No

**156) Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?**

- Yes laws provide rules  
 Yes standards of the bar association provide rules  
 No, neither laws nor bar association standards provide rules

**F2 Useful comments for interpreting the data mentioned in this chapter:**

The fees can be freely negotiated between client and lawyer in Austria. Usually 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. All answers in Chapter 6 are given by the Austrian Bar.

## 6. 3. Quality standards and disciplinary proceedings

### 6. 3. 1. Quality standards and disciplinary proceedings

**157) Have quality standards been determined for lawyers?**

- Yes  
 No

If yes, what are 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 (Rechtsanwaltsordnung), 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' and the trainee lawyers' duties (Richtlinien für die Ausübung des Rechtsanwalts- und des Rechtsanwaltsanwärterberufes und für die Überwachung der Pflichten des Rechtsanwaltes und des Rechtsanwaltsanwärters) and the Directive on the training of trainee lawyers (Richtlinie für die Ausbildung der Rechtsanwaltsanwärter), both 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. These laws and directives 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 when lawyers do not comply with their duties
- possibility for clients to complain about the performance of lawyers
- increased liability according to civil law

**158) If yes, who is responsible for formulating these quality standards:**

- the bar association?  
 the Parliament?  
 other?

If "other", please specify:

**159) Is it possible to file a complaint about :**

- the performance of lawyers?  
 the amount of fees?

Please specify:

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

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

**160) Which authority is responsible for disciplinary procedures?**

- the judge  
 the Ministry of justice  
 a professional authority  
 other

If other, please specify:

At first instance the competent authority is the Disciplinary Council established at the seat of each Bar 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 (see also answer to question 208. 5.).

**161) Disciplinary proceedings initiated against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Number
Total number of disciplinary proceedings initiated (1 + 2 + 3 + 4)	NA
1. Breach of professional ethics	NA
2. Professional inadequacy	NA
3. Criminal offence	NA
4. Other	NA

Comment :

**162) Sanctions pronounced against lawyers.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

	Number
Total number of sanctions (1 + 2 + 3 + 4 + 5)	NA
1. Reprimand	NA
2. Suspension	NA
3. Removal	NA
4. Fine	NA
5. Other (e.g. disbarment)	NA

Comment :

**F3 You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

Q158: If yes, who is responsible for formulating these quality standards:

X the bar association? It is competent for regulations and directives (please see answer to question 157).

X the Parliament? In Austria normally the competent ministry (Federal Ministry of Justice) will draft the quality standards. The draft of the Ministry is then discussed and decided in the Parliament according to the legislative procedure in Austria. The members of the parliament may amend the draft or take an initiative by themselves.

All answers in Chapter 6 are given by the Austrian Bar.

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation and other forms of ADR

**163) Does the judicial system provide for judicial mediation procedures? If no skip to question 168**

**Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).**

- Yes
- No

**163.1) In some fields, does the judicial system provide for mandatory mediation procedures?**

**If there are mandatory mediation procedures, please specify which fields are concerned in the "comment" box below.**

- Before going to court
- Ordered by a judge in the course of a judicial proceeding

If there are mandatory mediation procedures, please specify which fields are concerned:  
The family court can order mediation, if it is in the child best interest. In criminal cases there are no such mandatory provisions for mediation proceedings.

**164) Please specify, by type of cases, the organisation of judicial mediation:**

	Court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Public prosecutor
Civil and commercial cases	No	Yes	No	No	No
Family law cases (ex. divorce)	No	Yes	No	No	No
Administrative cases	No	No	No	No	No
Employment dismissals	No	Yes	No	No	No
Criminal cases	No	No	Yes	Yes	Yes

**165) Is there a possibility to receive legal aid for judicial 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).

**166) Number of accredited or registered mediators who practice judicial mediation:**

2 400

**167) Number of judicial mediation procedures.**

**Please indicate the source in the "comment" box below:**

- Total number of cases (total 1+2+3+4+5)  Yes 6 007
- 1. civil cases NAP
- 2. family cases NAP
- 3. administrative cases NAP
- 4. employment dismissals cases NAP
- 5. criminal cases  Yes 6 007

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

**168) Does the legal system provide for the following ADR :**

**If "other", please specify it in the "comment" box below:**

Mediation other than judicial mediation?	Yes
Arbitration?	Yes
Conciliation?	No
Other alternative dispute resolution?	No

Comment :

Law on Mediation in Civil Matters (Zivilrechts-Mediations-Gesetz); § 204 Criminal Procedure Code – victim-offender-mediation (Tatausgleich); § 107 Abs. 3 Non litigious Procedure Code (Außerstreitgesetz)

**G.1 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**

Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases sec. 204 reads as follows: "Under the requirements of § 198 the public prosecutor may withdraw from prosecuting a punishable act if the legally protected rights of a person might be directly affected by the offence and the accused is prepared to answer for his/her offence and to deal with its causes, if he/she settles possible consequences of an offence in a manner commensurate with the circumstances, especially by remedying the damage caused by the offence, or by contributing otherwise to settle the consequences of the offence, and if he/she assumes obligations, if so required, that document his/her readiness to refrain, in the future, from the kind of conduct that led to the offence.(2) The victim shall be involved in the efforts to settle the punishable act, to the extent that he/she is prepared to do so. It depends on his/her agreement whether a settlement of the punishable act is achieved, unless he/she does not accept it for reasons that do not deserve consideration in the criminal proceedings. However, his/her legitimate interests shall certainly be taken into account (§ 206).(3) The public prosecutor may also ask an expert in conflict resolving to inform the victim and the accused about the possibility of settling the punishable act, as well as in accordance with § 206 and § 207, and to guide them in their efforts to initiate and to support such a settlement (§ 29a of the Probation Service Act). (4) The expert in conflict resolving shall report to the public prosecutor about the settlement negotiations and review their fulfilment. The expert in conflict resolving shall make a final report, once the accused has complied with his/her obligations, at least to the extent that it can be assumed, when taking account of his/her conduct otherwise, that he/she will continue to comply with the agreements, or if it is no longer to be expected that a settlement will be reached

**Please indicate the source for answering question 166:**

About 2.400 mediators are registered in the list of mediators of the federal ministry of justice <http://www.mediatorenliste.justiz.gv.at>

## 8. Enforcement of court decisions

### 8. 1. Execution of decisions in civil matters

#### 8. 1. 1. Functioning

##### 169) Do you have enforcement agents in your judicial system?

- Yes  
 No

##### 170) Number of enforcement agents

340

##### 171) Are enforcement agents (multiple options are possible):

- judges?  
 bailiffs practising as private professionals under the authority (control) of public authorities?  
 bailiff working in a public institution?  
 other enforcement agents?

Please specify their status and powers:

##### 172) Is there a specific initial training or examination to become an enforcement agent?

- Yes  
 No

##### 173) Is the profession of enforcement agents organised by?

- a national body?  
 a regional body?  
 a local body?  
 NAP (the profession is not organised)

##### 174) Are enforcement fees easily established and transparent for the court users?

- Yes  
 No

##### 175) Are enforcement fees freely negotiated?

- Yes  
 No

##### 176) Do laws provide any rules on enforcement fees (including those freely negotiated)?

- Yes  
 No

##### Please indicate the source for answering question 170:

Management Information System MIS January 1st 2013

#### 8. 1. 2. Efficiency of enforcement services

##### 177) Is there a body entrusted with supervising and monitoring the enforcement agents' activity?

- Yes  
 No

##### 178) Which authority is responsible for supervising and monitoring enforcement agents?

- a professional body  
 the judge  
 the Ministry of justice  
 the public prosecutor  
 other

If other, please specify:

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

**179) Have quality standards been determined for enforcement agents?**

- Yes  
 No

If yes, what are the quality criteria used?  
 Controlling Units at the four Courts of Appeal (Vienna, Graz, Linz and Innsbruck).

**180) If yes, who is responsible for establishing these quality standards?**

- a professional body  
 the judge  
 the Ministry of Justice  
 other

If "other", please specify:  
 Controlling Units at the four Courts of Appeal (Vienna, Graz, Linz and Innsbruck).

**181) Is there a specific mechanism for executing court decisions rendered against public authorities, including for supervising such 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.

**182) Is there a system for monitoring how the enforcement procedure is conducted by the enforcement agent?**

- Yes  
 No

If yes, please specify  
 Analysis of several key indicators by steering and controlling units of the courts of appeal

**183) What are the main complaints made by 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

If "other", please specify:  
 Inadequate behavior toward parties (e.g. obligated party)

**184) Has your country prepared or 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>

**185) Is there a system measuring the length of enforcement procedures:**

- for civil cases?  
 for administrative cases?

**186) As regards a decision on debts collection, please estimate the average timeframe to notify the decision to the parties who 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

**187) Number of disciplinary proceedings initiated against enforcement agents.  
 If other, please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

Total number of initiated disciplinary proceedings (1+2+3+4)	<input checked="" type="checkbox"/> number:	0
1. for breach of professional ethics	<input checked="" type="checkbox"/> number:	0
2. for professional inadequacy	<input checked="" type="checkbox"/> number:	0
3. for criminal offence	<input checked="" type="checkbox"/> number:	0
4. Other	<input checked="" type="checkbox"/> number:	0

Comment :

**188) Number of sanctions pronounced against enforcement agents.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings initiated and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

Total number of sanctions (1+2+3+4+5)	<input checked="" type="checkbox"/> number:	1
1. Reprimand	<input checked="" type="checkbox"/> number:	0
2. Suspension	<input checked="" type="checkbox"/> number:	0
3. Dismissal	<input checked="" type="checkbox"/> number:	0
4. Fine	<input checked="" type="checkbox"/> number:	0
5. Other	<input checked="" type="checkbox"/> number:	1

Comment :

loss of official position (according to sec. 27 of the Austrian Criminal Code) due to a final conviction to imprisonment for more than one year on account of a criminal offence (abuse of office)

**H.1 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 have been implemented over the last two years**

The data below include only disciplinary proceedings but not any other disciplinary measures.

**Please indicate the sources for answering questions 186, 187 and 188:**

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**

**189) Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)**

- Judge  
 Public prosecutor  
 Prison and Probation Services  
 Other authority

Please specify his/her functions and duties (initiative or monitoring functions). If "other authority", please specify:

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).

**190) Are the effective recovery rates of fines decided by a criminal court evaluated by studies?**

- Yes  
 No

**191) If yes, what is the recovery rate?**



- 80-100%
- 50-79%
- less than 50%
- cannot be estimated

Please indicate the source for answering this question:

**H.2 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. Functionning

**192) Do you have notaries in your country? If no please skip to question 197.**

- Yes  
 No

**193) Are notaries:**

-----  
**If other, please specify it in the "comment" box below.**

private professionals (without control from public authorities)?	<input checked="" type="checkbox"/> number	492
private professionals under the authority (control) of public authorities?	<input checked="" type="checkbox"/> number	492
public agents?	<input checked="" type="checkbox"/> number	492
other?	<input checked="" type="checkbox"/> number	492

Comment :

mail CN 2/4/14: the numbers of notaries is 492. Austrian notaries fulfil all the different sublines, so all answers checked is correct.

**194) Do notaries have duties (multiple options possible):**

- within the framework of civil procedure?  
 in the field of legal advice?  
 to certify the authenticity of legal deeds and certificates?  
 other?

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

#### 9. 1. 2. Supervision

**195) Is there an authority entrusted with supervising and monitoring the notaries' activity?**

- Yes  
 No

**196) Which authority is responsible for supervising and monitoring notaries:**

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

If other, please specify:

**I.1 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**

All answers given in Chapter 9 derive from the chamber of notaries.

**Please indicate the sources for answering question 193:**

## 10. Court interpreters

### 10. 1. Court interpreters

#### 10. 1. 1. Functioning

##### 197) Is the title of court interpreters protected?

- Yes  
 No

##### 198) Is the function of court interpreters regulated by legal norms?

- Yes  
 No

##### 199) Number of accredited or registered court interpreters:

812

##### 200) Are there binding provisions regarding the quality of court interpretation within judicial proceedings?

- Yes  
 No

If yes, please specify (e.g. having passed a specific exam):

##### 201) Are the courts responsible for selecting court interpreters?

-----

If no, please indicate in the "comment" box below which authority selects court interpreters.

- Yes  for recruitment and/or appointment for a specific term of office  
 Yes  for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings  
 No .

Comment :

##### J.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter:

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.

Since July 2011 at two large Courts (Court for Criminal Law Vienna, Social and Labour Court Vienna) there also work permanently employed interpreters (13 full time equivalents), which are educated Certified Court Interpreters paid on a regular basis (not for their individual performance).

##### Please indicate the sources for answering question 199:

List of Sworn and Certified Court Interpreters, available via the internet: <http://www.sdgliste.justiz.gv.at/>

## 11. Judicial experts

### 11. 1. Judicial experts

#### 11. 1. 1. Judicial experts

**202) In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):**

- "expert witnesses", who are requested by the parties to bring their expertise to support their argumentation,  
 "technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal,  
 "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).

**203) Is the title of judicial experts protected?**

- Yes  
 No

**204) Is the function of judicial experts regulated by legal norms?**

- Yes  
 No

**205) Number of accredited or registered judicial experts (technical experts)**

9193

**206) Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?**

- Yes  
 No

If yes, please specify, in particular the given time to provide a technical report to the judge:  
the time limit to provide the technical report has to be set out by the judge in any particular case

**207) Are the courts responsible for selecting judicial experts?**

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**If no, please specify in the "comments" box below which authority selects judicial experts?**

- Yes  for recruitment and/or appointment for a specific term of office  
Yes  for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings  
No .

Comment :

**You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

In general, the judge (or public prosecutor in preliminary proceedings) is responsible for choosing an judicial expert in a proceeding, who is usually a Certified Court Expert (i.e. "allgemein beeideter und gerichtlich zertifizierter Sachverständiger", "Sworn and Certified Court Expert"), which means that he is registered in the List of Sworn and Certified Court Experts 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 expert is permanently under oath for all proceedings in which he/she takes a part, as opposed to a mere "ad hoc" expert, who is put under oath only in exceptional cases for specific proceedings. A person who applies for a registration in this list has to prove his qualifications. Before adding the applicant to the list, the presidents of the regional courts (who are in charge to administrate the list) have to take advice from committees made up of judges and experts, who assess the candidates' qualifications. With regard to the extension of the registration (recertification) the president of a regional court in which list the expert is included has to verify that the expert's qualifications are still extant. To achieve this, the judicial expert must provide the president of the regional court with a report on his activities and his further training.

**Please indicate the sources for answering question 205:**

List of Sworn and Certified Court Experts, available via the internet: <http://www.sdgliste.justiz.gv.at/>

## 12. Foreseen reforms

### 12. 1. Foreseen reforms

#### 12. 1. 1. Foreseen reforms

**208) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged at this stage. If possible, please observe the following categories:**

**1. (Comprehensive) reform plans**

**2. Budget**

**3. Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings)**

**3.1 Access to justice and legal aid**

**4. High Judicial Council**

**5. Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc.**

**6. Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities**

**6.1 Personal status**

**7. Enforcement of court decisions**

**8. Mediation and other ADR**

**9. Fight against crim**

2. Budget: Effective 1. January 2013 the whole Austrian budget and accounting system has been totally changed by Bundeshaushaltsgesetz 2013, Bundeshaushaltsverordnung 2013 and a lot of related regulations. Changing the structure of the judicial system is not an aim of the reform.

3. Courts...: Small district courts are merged in 2013 in 2014 in three Austrian states to create a more efficient court structure and improve quality of judicial services. Plans for mergers of district courts in the remaining states exist, didn't get the necessary approval of state governments so far, though.

5. Legal professionals: Lawyers: With the end of the year 2013 changes regarding the appeal bodies for lawyers and trainee lawyers are impending. As a consequence of a major reform regarding administrative proceedings in order to establish an administrative court system in Austria (Verwaltungsgerichtsbarkeits-Novelle 2012) the Supreme Appeals and Disciplinary commission (Oberste Berufungs- und Disziplinarkommission - OBDK, see answer to question 160) will be dissolved. From the beginning of 2014 the Supreme Court (Oberster Gerichtshof) will be the appellate body in disciplinary and professional matters (e.g. refusal of entry in the list of lawyers, challenging an election, etc) of lawyers and trainee lawyers. The composition of the senates at the Supreme Court will stay the same - two judges of the Supreme Court and two lawyer judges, whereas always a judge of the Supreme Court acts as chair. For some issues, however, the federal administrative court (Bundesverwaltungsgericht) will be the competent appellate court. Appeals against decisions in other matters related to the Lawyer's Act have to be lodged at the competent administrative court in the respective federal country (Landesverwaltungsgericht) from then on. The establishment of the Landesverwaltungsgerichte (altogether 9 courts as they are established in each federal county in Austria) as appellate courts for such matters instead of a court on federal level was heavily criticised by the Austrian Bar as it endangers the uniformity of jurisprudence and should therefore be revised as soon as possible.

6. Reform regarding civil, criminal and administrative laws...: At the end of 2012 the Ministry of Justice set up a working group composed of experts of the Ministry of Justice, the Public Prosecution Office, a Regional Court and the President of the Highest Court to evaluate the proceeding of the trial in the first instance as well as the appellate system. Several issues have been discussed. In general, the working group agreed that the current system works fine, in particular concerning the investigative proceedings. There are some smaller suggestions to change the system in order to strengthen the position of the defendant and the victim in proceedings. Furthermore a discussion arose concerning the way of the appointment of experts in investigation proceedings. At the moment experts are appointed by the public prosecutor. Their survey is used in the main trial as well. Although an expert has to make an objective survey - taking into account inculpatory and exculpatory circumstances - it is discussed if the way of their appointment could give rise to questions whether the expert is biased.

The political discussion during the next year will show the direction of a reform.

A reform of the intellectual property law, which will enter into force on 1 Jan 2014, foresees the courts in civil matters as instance of appeal against decisions of the patent office. This will lead to higher consistency of rulings in the field of intellectual property.

A modernisation of copyright law is envisaged next year on the occasion of the implementation of the orphan works directive 2012/28/EC.

After a reform of cartel law in 2013, a follow-up is envisaged to further strengthen the transparency of rulings in this field and competition in general.

7. Enforcement of court decisions: Envisaged is a punctual reform of the law of enforcement ("Exekutionsordnung"), including the establishment of the access of lawyers and authorities to a directory of certain pending enforcement proceedings of a debtor.