



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2007

Country: Austria

National correspondent

First Name - Last Name: **STAWA Georg**

Job title: **Public Prosecutor in the MoJ**

Organisation: **Ministry of Justice**

E-mail: **Georg.stawa@bmj.gv.at**

Phone Number : **+43 1 52152 2280**

1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

8281948

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

	Amount
State level	116273000000
Regional / entity level	

3) Per capita GDP (in €)

31140

4) Average gross annual salary (in €)

40320

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2007

Please indicate the sources for the questions 1 to 4

Q1:

http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerungsstand_jahres-_und_quartalswerte/bevoelkerung_im_jahresdurchschnitt/022309.html

Q2:

https://www.bmf.gv.at/Budget/Budget2006/_start.htm

Q3:

http://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/bruttoinlandsprodukt_und_ha

Q4 (Arbeitnehmerentgelt, monatlich je Arbeitnehmer)x12: http://www.statistik.at/web_de/wcmsprod/groups/zd/c

1. 2. Budgetary data concerning judicial system

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

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

572013000

7) Please specify

Supreme Court: € 11,026.000

Courts: € 560,987.000

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	310000000
Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	34000000
Annual public budget allocated to justice expenses	<input checked="" type="checkbox"/> Yes	38000000
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	53500000
Annual public budget allocated to investments in new (court) buildings	<input type="checkbox"/> Yes	
Annual public budget allocated to training and education	<input type="checkbox"/> Yes	
Other (please specify):	<input type="checkbox"/> Yes	

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

- Yes
 No

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

Increasing salaries

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

- for criminal cases?
 for other than criminal cases?

If yes, are there exceptions? Please specify:

In case of legal aid.

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

614000000

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

976000000

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

177000000

14) If possible, please specify

	the annual public budget allocated to legal aid in criminal cases	the annual public budget allocated to legal aid in other court cases
Amount		

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

Yes

No

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

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

Yes

No

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

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other ministry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parliament	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Judicial Council	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inspection body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

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

You can indicate below:

- any useful comments for interpreting the data mentioned above
- 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

Q16: Not able to be specified

Please indicate the sources for the questions 6, 7, 13 et 16

Federal Financial Law

2. Access to justice

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Legal advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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

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.

In accordance to Art 7 of the legal aid directive (2002/8/EC) also the costs for:

(a) interpretation

(b) translation of the documents required by the court or by the competent authority and presented by the recipient which are necessary for the resolution of the case and

(c) travel costs to be borne by the applicant where the physical presence of the persons concerned with the presentation of the applicant's case is required in court by the law or by the court of that Member State and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

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

Yes

No

If yes, please specify:

Legal aid covers a provisional exemption of court fees (Section 64 (1) Z 1 lit a ZPO).

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

Yes

No

If yes, please specify:

Legal aid covers also enforcement proceedings after a lawsuit (Section 64 (1) ZPO).

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities:

	Number
Total	na
Criminal cases	na
Other than criminal cases	11523

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

- Yes
 No

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

	No	Yes	Amount
for criminal cases?		X	
for other than criminal cases?		X	

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

- Yes
 No

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

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

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

- Yes
 No

Please specify:

Every large insurance company offers legal expense insurance for nearly all kinds of civil claims.

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

	yes	no
criminal cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
other than criminal cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

You can indicate below:

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

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

It is mandatory to submit the special application form (so-called "ZPForm 1"). This form contains a summary of assets (income, property, cash at the bank, property, insurance policies, etc.) and liabilities (maintenance, etc.), personal data and living conditions. As far as possible it should be substantiated by written proof. The form must be submitted by the applicant within four weeks of the date of signature or it loses its validity.

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

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

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

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

Please indicate the sources for the questions 24 and 26

Austrian ICMS

2. 2. Users of the courts and victims

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

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

legal texts (e.g. codes, laws, regulations, etc.)?	<input checked="" type="checkbox"/> yes	www.ris.bka.gv.at
case-law of the higher court/s?	<input checked="" type="checkbox"/> yes	www.ris.bka.gv.at
other documents (for example forms)?	<input checked="" type="checkbox"/> yes	www.justiz.gv.at

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

- Yes
- No

If yes, please specify:

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

- Yes
- No

If yes, please specify:

www.opfer-notruf.at

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

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Victims of terrorism	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Children/Witnesses/Victims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Victims of domestic violence	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ethnic minorities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Disabled persons	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Juvenile offenders	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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

- Yes
 No

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

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

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

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

Furthermore, anybody who claims to have suffered damage deriving from an alleged offence is in principle entitled to claim compensation for this damage within the criminal proceeding.

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

- Yes
 No

If yes, please specify:

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

- Yes
 No

If yes, please specify:

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

- Yes
 No

If yes, please specify:

A person who sustains damage to his or her rights, owing to a crime or an offence that must compulsorily be prosecuted, may associate him- or herself with the criminal proceedings by virtue of his or her claims under private law as a private intervener ("Privatbeteiligter" – para. 47 Code of Criminal Procedure). A private intervener claiming compensation can take over the public prosecution if the public prosecutor refuses to prosecute or uphold the prosecution during criminal proceedings. In case the public prosecutor refuses to initiate pre-trial investigations, the private intervener has to submit an application to a judicial board, the refusal of which cannot be contested. In case the public prosecutor decides to discontinue pre-trial investigations, the private intervener has to submit an application to the Higher Appeal Court . In case the public prosecutor has already filed a bill of indictment, the private intervener has the incontestable right to uphold the prosecution by declaration (para 48 Code of Criminal Procedure).

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

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

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

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

The Public Authority's Liability Act (Amtshaftungsgesetz) provides for liability of the state (and other legal entities) for misconduct of their employees in the exercise of public authority, including court proceedings and court decisions, causing damage to persons or property by excessive length of proceedings, wrongful arrest and/or wrongful condemnation. The liability presupposes both wrongfulness and fault.

In the case of wrongful arrest or wrongful criminal condemnation, compensation can also be obtained according to the Penal Law's Compensation Act (Strafrechtliches Entschädigungsgesetz) without proving fault of the Authorities.

The compensation procedure is laid down in para. 8 ff. Amtshaftungsgesetz and para. 9 ff. Strafrechtliches Entschädigungsgesetz. The injured person may demand – free of costs - of the legal entity against which the claim for damages is to be raised to forward her/him within a three months' term a written statement indicating as to whether it accepts or partially or totally rejects the claim for damages. If the claim is partially or totally rejected, the complaint can still be filed at court.

The exclusive jurisdiction over the claim of the injured person against the legal entity rests in the first instance with the regional court (Landesgericht) in charge of civil matters in whose range of jurisdiction the infringement of law occurred. Compensation is funded by the Public Authority's general budget. The liability is unlimited, indemnity is to

be paid in terms of money only. To make sure that compensation is paid following the concrete circumstances of each individual case, there is no such thing as a daily tariff or a flat compensation sum. The amount of compensation depends solely on the magnitude of damage suffered by the victim and the degree of fault attributable to the Public Authority.

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction with the services delivered by the judiciary system?

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

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

“Spectra 2001” (not published)

„Mystery Shopping“ by agency “marketmind” together with other bodies of the Austrian authorities.

(see <http://www.bka.gv.at/DesktopDefault.aspx?TabID=3758&Alias=BKA&cob=4654> for general and http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf and http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf for details)

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

The chambers of lawyers (ÖRAKT, RAKs) and the Chamber of public notaries are legally empowered to submit to the Judiciary (Ministry of Justice and Courts of Appeal) report their observations concerning the judiciary and legislative processes (Wahrnehmungsberichte zum Gang der Rechtspflege) once a year.

“Image der Justiz in Österreich 2006” (“Image of the Austrian Judiciary 2006”)

42) If yes, please specify:

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Surveys at court level	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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

Yes

No

44) If yes, please specify:

	time limit to respond (yes)	time limit for dealing with the complaint (yes)
Court concerned	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Higher court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Ministry of Justice	<input type="checkbox"/>	<input type="checkbox"/>
High Council of the Judiciary	<input type="checkbox"/>	<input type="checkbox"/>
Other external organisations (e.g. Ombudsman)	<input type="checkbox"/>	<input type="checkbox"/>

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

If a court is dilatory in taking any procedural step, according to section 91 of the Courts Act (§ 91 Gerichtsorganisationsgesetz) any party may submit a request to this court for the superior court to impose an appropriate time limit for the taking of the particular procedural step. If the court takes all procedural steps specified in the request within four weeks of receipt and informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request. Then the superior court has to decide upon the request at stake. According to the case law of the ECHR (see e.g. *Holzinger v. Austria*, appl.no. 23459/94) an application under section 91 of the Courts Act is an effective remedy as its use would reduce the length of proceedings. Furthermore, such an application is necessary to exhaust all domestic remedies before a complaint to the ECHR concerning any unreasonable delay is admissible.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table)

	Total number
First instance courts of general jurisdiction (legal entities)	153
Specialised first instance courts (legal entities)	7
All the courts (geographic locations)	149

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

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

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

Yes

No

If yes, please specify:

48) Number of first instance courts competent for a case concerning:

	Number
a debt collection for small claims	140
a dismissal	16
a robbery	16

Please specify what is meant by small claims in your country (answer only if the definition has changed compared to the previous evaluation round):

Please indicate the sources for the question 45

Database of courts (total number of premises)

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (present the information in full time equivalent and for permanent posts)

1674

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

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

51) Please specify (answer only if the information has changed compared to the previous evaluation round):**52) Number of non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs. Please specify (answer only if the information has changed compared to the previous evaluation round):**

n/a

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

- Yes
 No

If yes, for which type of case(s)?

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

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?**55) Number of non-judge staff who are working in courts (present the information in full time**

equivalent and for permanent posts)

4.735,22

56) If possible, could you distribute this staff according to the 4 following categories:

non-judge staff (Rechtspfleger), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal	<input checked="" type="checkbox"/> Yes	718,41
non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars	<input checked="" type="checkbox"/> Yes	32,77
staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)	<input checked="" type="checkbox"/> Yes	3.901,23
technical staff	<input checked="" type="checkbox"/> Yes	82,81

Please indicate the sources for the questions 49, 50, 52, 53 and 55

SOLL-IST-Vergleich 1. 4. 2006 (Q49)

Verwendungsdatenauswertung 1. 7. 2006 (Q55)

3. 1. 3. Prosecutors**57) Number of public prosecutors (present the information in full time equivalent and for permanent posts)**

218,5

58) Do any other persons have similar duties as public prosecutors? Yes No

If yes, please specify:

The agents of public prosecutor's offices ("Bezirksanwälte") are judicial officers with legal training, and are allowed to act for the public prosecutor's offices under the supervision of a public prosecutor (quite similar to the "Rechtspfleger", but with a lower range of competence and fewer qualification). On July 1st 2006 there have been 148,5 (fte) agents, who are not included in question 43.

59) Number of staff (non prosecutors) attached to the public prosecution service (present the information in full time equivalent and for permanent posts)

166,3

Please indicate the sources for the questions 57 and 59

SOLL-IST-Vergleich 1. 4. 2006 (Q 57)

Verwendungsdatenauswertung 1. 7. 2006 (Q59)

3. 1. 4. Budget and New technologies

60) Who is entrusted with the individual court budget?

	Preparation of the budget	Arbitration and allocation of the budget	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court President	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court administrative director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Head of the court clerk office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

61) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organization scheme with a description of the competencies of the different authorities responsible for the budget process in the court

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

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

	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Word processing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic data base of jurisprudence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic files	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E-mail	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet connection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court management information system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial information system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

64) For the communication between the court and the parties, what are the computer facilities used

within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special Website	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other electronic communication facilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

65) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary (answer only if this information has changed compared with the previous evaluation round)?

- Yes
 No

If yes, please specify the name and the address of this institution:

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

You can indicate below:

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

Please indicate the sources for the questions 62, 63 and 64

MoJ, Dep. Pr5

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and Evaluation

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

- Yes
 No

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

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

Please specify:

e. g. certain kinds of decisions

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

Yes

No

Please specify:

Operational Information System (BIS)

Period test lists (On October 1st of every year)

69) Concerning court activities, have you defined performance indicators?

Yes

No

70) Please select the 4 main performance and quality indicators that are used for a proper functioning of courts.

Incoming cases

Length of proceedings (timeframes)

Closed cases

Pending cases and backlogs

Productivity of judges and court staff

Percentage of cases that are treated by a single sitting judge

The enforcement of penal decisions

Satisfaction of employees of the courts

Satisfaction of clients (regarding the services delivered by the courts)

Judicial and organisational quality of the courts

The costs of the judicial procedures

Other

Please specify:

Cases, which have a certain duration between the decision and the dispatch of the decision

Examination of the ratio of staff to caseload (PAR)

Length of procedures is also calculated

71) Are there performance targets defined for individual judges?

Yes

No

72) Are there performance targets defined at the level of the courts?

Yes

No

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

executive power (for example the Ministry of Justice)

legislative power

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

other

Please specify

There are no specific targets given to the courts.

74) Please specify the main targets applied:

There are no specific targets given to the courts.

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

the High Council of judiciary

the Ministry of Justice

an Inspection authority

- the Supreme Court
- an external audit body
- other?

Other, please specify:

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

- Yes
- No

If yes, please specify:

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

- Yes
- No

78) Is there a system enabling to measure the backlogs and to detect the cases which are not processed within a reasonable timeframe for:

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

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

- Yes
- No

If yes, please specify:

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

- Yes
 No

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

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

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

- Yes
 No

If yes, please specify:

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

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your court monitoring and evaluation system

Please indicate the sources for the the question 70,71, 72 and 76

MoJ, Dep. Pr 3 and Pr 6

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

82) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements) ?

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

Yes

No

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

n/a

84) Please give the following data concerning the number of cases regarding Article 6 of the European Convention on Human Rights (on duration and non-execution), for the year of reference

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	0	2	0	0
Civil proceedings - Article 6§1 (non-execution)	0	0	0	0
Criminal proceedings - Article 6§1 (duration)	0	0	0	0

Please indicate the sources for the questions 82 and 84

MoJ, Dep. Pr 5 and IV 1

4. 2. Timeframes of proceedings

4. 2. 1. General information

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

civil cases?

criminal cases?

administrative cases?

If yes, please specify:

“Einstweilige Verfügung” (“Urgent order”)

The court may issue a preliminary injunction either before or during the litigation. In order to secure money claims, a court may order a preliminary injunction, if there is sufficient reason to believe (a) that the defendant will prevent or endanger the enforcement of the judgment by destroying, hiding or transferring his assets or (b) that the judgment otherwise would have to be enforced in non-EU-countries or countries which have not ratified the Lugano Convention on Jurisdiction and the Enforcement

of Judgments in Civil and Commercial Matters. Possible preliminary injunctions include freezing orders of bank accounts or attachment of the defendant's assets, including real estate. The court may even order third parties not to pay accounts receivable to the defendant. Further, the court could order that physical items are to be held in custody or must be administered.

In order to secure claims other than money claims, preliminary injunctions (including orders to cease and desist) may be issued either under the preconditions described under (b) above, or in order to prevent imminent danger or irretrievable damage to the claimant. Such injunctions are very common in disputes concerning alleged unfair competition.

Preliminary injunctions may also be issued to secure claims pending in foreign court cases, at least as long as the final judgment of the foreign court is expected to be recognised and enforceable in Austria.

86) Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

If yes, please specify (for example if you have introduced a new law on simplified procedures):
Payment orders up to € 30.000.

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

- Yes
- No

If yes, please specify:

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

88) Total number of cases in the first instance courts (litigious and non-litigious); (please complete the table)

	Pending cases on 1 January 2006	Incoming cases	Decisions	Pending cases on 31 December 2006
Total of civil, commercial and administrative law cases (1-7)	208441	966929	969836	205534
1 Civil (and commercial) litigious cases*	37260	113774	110302	40732
2 Civil (and commercial) non-litigious cases*	171181	853155	859534	164802
3 Enforcement cases	311434	1159004	1171894	298544
4 Land registry cases**	12481	677363	674338	15506
5 Business register cases**		215119		
6 Administrative law cases				
7 Other	45191	572197	572789	44599
Total criminal cases (8+9)	28551	86144	87857	26838
8 Criminal cases (severe criminal offences)	6104	26989	26969	6124
9 Misdemeanour cases (minor offences)	22447	59155	60888	20714

89) * The cases mentioned in categories 3 to 5 (enforcement, land registry, business register) are excluded from this total and should be presented separately in the table. The cases mentioned in category 6 (administrative law cases) are also excluded from this total for the countries which have specialised administrative courts or units in the courts of general jurisdiction.

**** if applicable**

Note: for the criminal law cases there may be a problem of classification of cases between severe criminal law cases and misdemeanour cases. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedure). Please indicate if possible what case categories are included under "severe criminal cases" and the cases included under "misdemeanour cases (minor offences)".

Explanation

Line 1: Out from the 110.302 decisions on the merits 41.195 of them had written verdicts.
 Line 2 includes semi-automated pay-orders: 570.457 incoming and 571.445 decided on the merits.
 Line 5: Only incoming cases counted, other values in that line set to keep the logic.
 Line 8: Out from the 26.969 decisions on the merits 21.512 of them had written verdicts.
 Line 9: Out from the 60.888 decisions on the merits 27.780 of them had written verdicts.

A89 - minor offences include cases with pecuniary penalties or prison up to max. 1 year and are dealt by the "District Courts", Severe criminal cases include all other criminal cases, dealt by the "Regional Courts" or Courts of Assize or Juror's Courts both allocated at the "Regional Courts".

90) Total number of cases in the second instance (appeal) courts (litigious and non-litigious); (please complete the table)

	Pending cases on 1 Jan. '06	Incoming cases	Decisions on the merits	Pending cases on 31 Dec. '06
Total of civil, commercial and administrative law cases (1-7)	6253	35391	35410	6234
1 Civil (and commercial) litigious cases*				

2 Civil (and commercial) non-litigious cases*				
3 Enforcement cases				
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases				
7 Other				
Total criminal cases (8+9)	1123	9399	9509	1013
8 Criminal cases (Severe criminal offences)	541	6726	6728	539
9 Misdemeanour cases (minor offences)	582	2673	2781	474

91) Total number of cases in the highest instance courts (litigious and non-litigious); (please complete the table)

	Pending cases on 1 Jan. '06	Incoming cases	Decisions on the merits	Pending cases on 31 Dec. '06
Total of civil, commercial and administrative law cases (1-7)	871	2914	2947	838
1 Civil (and commercial) litigious cases*				
2 Civil (and commercial) non-litigious cases*				
3 Enforcement cases				
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases				
7 Other				
Total criminal cases (8+9)	181	719	721	179
8 Criminal cases (Severe criminal offences)				
9 Misdemeanour cases (minor offences)				

92) Number of divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts (complete the table)

	Pending cases on 1 Jan. '06	Incoming cases	Decisions	Pending cases on 31 Jan. '06
Divorce cases	3482	7537	7677	3342
Employment dismissal cases				
Robbery cases			680*	
Intentional homicide case			59*	

93) Average length of proceedings (from the date of lodging of court proceedings)

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance	2nd instance	Total procedure
Divorce cases		2,69	6,1 months		
Employment dismissal cases			5,9 months		

Robbery cases					
Intentional homicide					

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

Figures in Q93 are taken from the average length (median) of procedures in civil general and civil labour categories in months.

95) How is the length of proceedings calculated for the four case categories? (please give a description of the calculation method)

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

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

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

Please specify:

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

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

The public prosecutor has to refrain from requesting a concrete term of sentence.

However, he has the right to plea with regard to the sentence, thus meaning inter alia he can refer to the mitigating and aggravating grounds to be applied or if a sentence under probation is admissible or not.

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

97) Does the 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.

98) Functions of the public prosecutor in relation to criminal cases – please complete this table:

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	616304 case		179287 pers			77118 case

You can indicate below:

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

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

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

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

Q92 - robbery and homicides figures include only convicted persons

Please indicate the sources for the questions 92 to 94 and question 98

MoJ

Question 98: Betriebliches Informationssystem der Justiz, Darstellung der Staatsanwaltschaftlichen Behörden (StaBIS Justiz) 2006 (Information System of the Judiciary concerning Public Prosecutors' Authorities)

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recrutement, nomination and promotion

99) How are judges recruited?

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

If other, please specify:

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

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

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

- Yes
- No

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

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

102) Which procedures and criteria are used for promoting judges? (please specify).

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

103) How are prosecutors recruited?

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

If other, please specify:

Basically it has to be mentioned that "only judges or prosecutors can be appointed as prosecutors". They have to meet the requirements for being appointed as a professional judge. See question 99!

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

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

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

- Yes
- No

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

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

106) Which procedures and criteria are used for promoting prosecutors (please specify)

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

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

- Yes
 No

Are there exceptions? Please specify:

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

- Yes
 No

Are there exceptions? Please specify:

109) If no, what is the length of the mandate?

Is it renewable?

for judges

yes, please
specify the
length

for prosecutors

yes, please
specify the
length

You can indicate below:

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

5. 1. 2. Training

110) Nature of the training of judges.

Is it compulsory?

- Initial training
 General in-service training

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

111) Frequency of the training of judges:

	Annual	Regular	Occasional
Initial training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
General in-service training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for specialised judicial functions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for management functions of the court	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for the use of computer facilities in the court	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

112) Nature of the training of prosecutors.

Is it compulsory?

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

113) Frequency of the training of prosecutors:

	Annual	Regular	Occasional
Initial training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
General in-service training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Specialised in-service training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for management functions of the prosecution services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for the use of computer facilities in the public prosecution service	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

You can indicate below:

- any useful comments for interpreting the data mentioned above
- comments regarding the attention given to the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that 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. In case of extensive amendments of law some training activities are compulsory.

5. 2. Practice of the profession

5. 2. 1. Salaries

114) Salaries of judges and prosecutors (complete the table)

	Gross annual salary (euro)	Net annual salary (euro)
First instance professional judge at the beginning of his/her career	43393	
Judge of the Supreme Court or the Highest Appellate Court	105251,30	
Public prosecutor at the beginning of his/her career	46072,60	
Public prosecutor of the Supreme Court or the Highest Appellate Instance	105251,30	

115) Do judges and public prosecutors have additional benefits?

	Judges	Prosecutors
Reduced taxation	<input type="checkbox"/>	<input type="checkbox"/>
Special pension	<input type="checkbox"/>	<input type="checkbox"/>
Housing	<input type="checkbox"/>	<input type="checkbox"/>
Other financial benefit	<input type="checkbox"/>	<input type="checkbox"/>

116) If other financial benefit, please specify:

117) Can judges combine their work with any of the following other professions?

	Yes with remuneration	Yes without remuneration	No
Teaching	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Research and publication	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arbitrator	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consultant	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural function	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other function			

	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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118) If other function, please specify:

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

119) Can prosecutors combine their work with any of the following other professions?

	Yes with remuneration	Yes without remuneration	No
Teaching	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Research and publication	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arbitrator	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consultant	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cultural function	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other function	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

120) If other function, please specify:

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

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

- Yes
 No

If yes, please specify:

Please indicate the source for the question 114

§ 66 RDG (First instance professional judge)
Average of R3 § 66 RDG (Judge of the Supreme Court)
§ 42 GehG (Public prosecutor at the beginning of his/her career)
Average of St 3 § 42 GehG (Public prosecutor of the Supreme Court)

5. 2. 2. Disciplinary procedures

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

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

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

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

Judges: A disciplinary body consisting of judges

Prosecutors: An independent authority (disciplinary commission)

124) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of disciplinary proceedings initiated

	Judges	Prosecutors
Total number (1+2+3+4)	22	0
1. Breach of professional ethics	19	0
2. Criminal offence	1	0
3. Professional inadequacy	2	0
4. Other	0	0

125) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of sanctions pronounced

	Judges	Prosecutors
Total number (total 1 to 9)	26	0
1. Reprimand	6	0
2. Suspension	0	0
3. Withdrawal of cases	3	0
4. Fine	0	0
5. Temporary reduction of salary	2	0
6. Degradation of post	0	0
7. Transfer to another geographical (court) location	0	0
8. Dismissal	0	0
9. Other	15	0

You can indicate below:

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

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

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

126) Total number of lawyers practising in your country

6956

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

- Yes
 No

128) Number of legal advisors?

129) Do lawyers have a monopoly of representation:

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

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

Monopoly (Yes/No) If no, possible representation by (Yes/No)

Civil cases*

No. only in proceedings before district courts (Bezirksgerichte) when the litigation value exceeds € 4,000 or before the higher courts, in appeal cases and before the Civil Supreme Courts representation by a lawyer is mandatory.

Member of family Yes, see fn 1)

Trade Union Yes, see fn 1)

NGO Yes, see fn 1)

Other Yes, see fn 1) e.g. the party itself, each person able to represent him-/herself, the Economic Chamber, the Labour Chamber, Verein für Konsumenteninformation (Consumer Protection Association).

Criminal cases*

Defendant No.

Member of family Yes, see fn 1)

Trade Union No.

NGO No.

Other

Yes, in qualified criminal cases listed in § 61 StPO (Code of Criminal Procedure) only by defence counsels (Verteidiger) (e.g. lawyers, persons else authorised by law to represent in criminal proceedings, persons registered in the Verteidigerliste (register of defence counsels) or university professors for criminal and criminal procedural law), in other cases also the defendant him-/herself, a power holder (Machthaber) or a legal representative.

Victim No.

Member of family Yes, see fn 1)

Trade Union No.

NGO Yes, see fn 1) e.g. by Opferschutzeinrichtungen (victim protection associations), defence counsels or other capable persons.

Other Yes, see fn 1)

Administrative cases*

No.

Member of family Yes, see fn 1)

Trade Union No.

NGO Yes, see fn 1)

Other Yes, see fn 1)

FN 1) The extent to which representation is reserved to lawyers respectively other persons/entities governed by the respective procedural law and other relevant laws.

130) Is the lawyer profession organised through:

a national Bar?

a regional Bar?

a local Bar?

Please specify:

The Austrian Bar based in Vienna is the umbrella association of the nine regional Bar Associations in Austria, one established in each province in Austria. The Austrian Bar as well as the regional Bar Associations are self-governing public bodies. The Austrian Bar is responsible to represent the Austrian bar at large. The regional Bar Associations are responsible for the representation of the lawyers registered with them and the bar as far as only their own sphere is concerned, the registration of lawyers and disciplinary control and sanction.

In the report for 2004 Austria is missing in the list of member states with a combination of a national bar association and regional and/or local bar associations.

Please indicate the source for the question 126

Austrian Bar, Statistic from the Österreichische Rechtsanwaltskammertag (Austrian Bar) of 31 December 2006 (available at www.rechtsanwaelte.at).

This figure includes 4986 lawyers registered in the list of Austrian lawyers, 71 lawyers registered in the list of established European lawyers and 1899 trainee lawyers registered by December 2006. It does neither include "solicitors" as defined in the Explanatory Note (i.e. lawyers who have no competence to represent users in courts) nor "legal advisors" as such professions/types of service providers do not exist in Austria. The number of practicing lawyers without solicitors, legal advisors or trainees thus amounts to 5057 in the year 2006. For the reason set out above the number included in the previous Report based on data of 2004 in this column for Austria was wrong (the correct number for 2004 would have been 4736).

6. 1. 2. Training

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

Yes

No

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

- Yes
 No

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

- Yes
 No

If yes, please specify:

Comment Q132: Although not explicitly provided lawyers are obliged to continuing professional training as they have to meet high quality standards for the provision of legal services according to professional law at large and the very strict liability regime provided by Austrian Civil law.

Comment Q133: Lawyers can, however, indicate in the lawyers' directory fields of activity, in which they prefer to be active.

Comment Q135: The fees are freely negotiable between client and lawyer in Austria. Common is the agreement on e.g. fees according to hourly rates, lump-sum agreements, caps or according to the Rechtsanwaltsstarifgesetz (RATG, lawyers' tariff act). The latter is a federal law providing fee schedules, which are needed as basis for the courts decision on the procedural fees the losing party has to reimburse to the winning party. Please note that not the lawyer but the winning party is entitled to ask for the reimbursement of the fees.

6. 1. 3. Fees

134) Can users establish easily what the lawyers' fees will be?

- Yes
 No

135) Are lawyers fees:

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

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

136) Have quality standards been formulated for lawyers?

- Yes
 No

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

- the Bar association?
- the legislature?
- other?

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

The bar association: RL-BA (Richtlinien zur Ausübung des Rechtsanwaltsberufs, für die Überwachung der Pflichten des Rechtsanwalts und für die Ausbildung der Rechtsanwaltsanwärter), CCBE-Code of Conduct.

The legislature: RAO (Rechtsanwaltsordnung), EIRAG (Europäisches und Internationales Rechtsanwaltsgesetz), DSt (Disziplinarstatut), ABGB (Allgemeines Bürgerliches Gesetzbuch)

Austrian and European professional law (RAO, EIRAG, DSt, RL-BA, CCBE-Code of Conduct) and civil law (ABGB) provide for high quality standards for lawyers – in particular:

- 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 his/her firm with diligence and caution
- obligation to use acknowledged secure e-signatures
- supervision, disciplinary proceedings and sanction by the competent Bar Association when a lawyer does not comply with his/her duties
- possibility for clients to complain about the performance of lawyers
- increased liability according to civil law

138) Is it possible to complain about :

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

Please specify:

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

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

139) Which authority is responsible for disciplinary procedures:

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

Please specify:

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

140) Disciplinary proceedings and sanctions against lawyers:

Disciplinary proceedings initiated

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

141) Disciplinary proceedings and sanctions against lawyers:

Sanctions pronounced

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

You can indicate below:

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

Q140 and Q 141 data n/a

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

142) If appropriate, please specify, by type of cases, the organisation of judicial mediation:

	Possibility of private mediation or court annexed mediation	Private mediator	Public authority	Judge	Prosecutor
Civil and commercial cases	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family law cases (ex. Divorce)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative cases	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment dismissals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Criminal cases	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

Yes

No

If yes, please specify:

No. There is no provision for the granting of legal aid. In family matters, the Federal Ministry for Health, Family and Youth Affairs can make a contribution, depending on the family's income (see Section 4 (1) of the directives to enhance mediation = Richtlinien zur Förderung der Mediation, see

<http://www.bmgfj.gv.at/cms/site/attachments/4/6/1/CH0465/CMS1173177339846/richtlinien.pdf>).

144) Can you provide information about the number of accredited mediators?

Yes

No

If yes, please provide the number of mediators:

3500

145) Can you provide information about the total number of judicial mediation procedures concerning:

civil cases?

yes,
number:

family cases?

yes,
number:

administrative cases?

yes,
number:

employment dismissals?	<input type="checkbox"/> yes, number:	
criminal cases?	<input checked="" type="checkbox"/> yes, number:	44959

Please indicate the source for the question 145

Criminal cases (Diversion): http://www.justiz.gv.at/_cms_upload/_docs/diversion_vergleich_2005_2006.pdf

7. 1. 2. Other forms of alternative dispute resolution**146) Can you give information concerning other forms of alternative dispute resolution (e.g. Arbitration, conciliation)? Please specify:**

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

You can indicate below:

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

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

147) Number of enforcement agents

363,9

148) Are enforcement agents:

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

Please specify their status:

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

- Yes
- No

150) Is the profession of enforcement agent organised by?

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

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

- Yes
- No

152) Are enforcement fees:

regulated by law?

freely negotiated?

Please indicate the source for the question 147

Verwendungsdatenauswertung 1. 7. 2006

8. 1. 2. Supervision

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

Yes

No

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

a professional body?

the judge?

the Ministry of Justice?

the prosecutor?

other?

Please specify:

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

155) Have quality standards been formulated for enforcement agents?

Yes

No

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

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

156) Do you have a specific mechanism for executing court decisions rendered against public authorities, including for monitoring the execution?

- Yes
 No

If yes, please specify:

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.

Please indicate the sources for the questions 155 and 156

Q 156: Article 15 of the law on enforcement proceedings (§ 15 Exekutionsordnung)

8. 1. 3. Complaints and sanctions

157) What are the main complaints of users concerning the enforcement procedure? (please indicate a maximum of 3)

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

Please specify:

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

Yes

No

If yes, please specify:

The Reform of Law Enforcement ("FEX-project"), see

[http://www.coe.int/T/E/Legal_Affairs/Legal_co-](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_Justice/Efficiency_of_Justice/Austria%20E.asp#TopOfPage)

[operation/Operation_of_Justice/Efficiency_of_Justice/Austria%20E.asp#TopOfPage](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_Justice/Efficiency_of_Justice/Austria%20E.asp#TopOfPage)

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

for civil cases?

for administrative cases?

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

between 1 and 5 days

between 6 and 10 days

between 11 and 30 days

more

Please specify:

161) Disciplinary proceedings initiated against enforcement agents:

Breach of professional ethics

yes,
number: 1

Professional inadequacy

yes,
number:

Criminal offence

yes,
number: 3

Other

yes,
number:

162) Sanctions pronounced against enforcement agents:

Reprimand	<input checked="" type="checkbox"/> yes, number:	3
Suspension	<input checked="" type="checkbox"/> yes, number:	1
Dismissal	<input type="checkbox"/> yes, number:	
Fine	<input type="checkbox"/> yes, number:	
Other	<input type="checkbox"/> yes, number:	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- 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 above are corresponding to the year 2006 (initiation as well as sanctions) and include only disciplinary proceedings but not any other disciplinary measure.

Please indicate the sources for the questions 157 and 160

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

- Yes
 No

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

A "court of enforcement" ("Vollzugsgericht", court dealing with criminal matters in first instance in the area enforcing the prison sentence) is established.

As a rule, such decisions are taken by a single judge. However, a court composed of three judges is competent with regard to decisions concerning parole unless the judgment to be enforced was rendered by a single judge or the decision merely affects the issuing of instructions, the appointment of a probation officer, or the release after having served the full term of the sentence (in these cases also such decisions are taken by single judges).

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

- Yes

No

If yes, please specify:

You can indicate below:

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

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

165) Do you have notaries in your country? If no, go to question 170.

- Yes
 No

166) Is the status of notaries:

- | | | |
|---|---|-----|
| a private one (without control from public authorities)? | <input type="checkbox"/> yes,
number: | |
| a status of private worker ruled by the public authorities? | <input checked="" type="checkbox"/> yes,
number: | 478 |
| a public one? | <input type="checkbox"/> yes,
number: | |
| other? | <input type="checkbox"/> yes,
number and
specify: | |

167) Do notaries have duties:

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

Please specify:

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

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

Please indicacte the source for the question 166

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

9. 1. 2. Supervision

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

Yes

No

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

a professional body?

the judge?

the Ministry of Justice?

the prosecutor?

other?

Please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above

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

10. Functioning of justice

10. 1. Foreseen reforms

10. 1. 1. Reforms

170) Can you provide information on the current debate in your country regarding the functioning of justice? Are there reforms foreseen? (for example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc). If yes, please specify.

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