



THE AUSTRIAN JUDICIAL SYSTEM

Institutions – Agencies – Services

Vienna, January 2009

THE AUSTRIAN JUDICIAL SYSTEM

Institutions – Agencies – Services

Vienna, January 2009

Publisher's information: Federal Ministry of Justice

Department Pr 3 – External Relations

Museumstrasse 7

A-1070 Vienna, Austria

Translated into English: Liese Katschinka, Vienna

Please send your editorial comments to: gabriele.bajons@bmj.gv.at or georg.stawa@bmj.gv.at



FOREWORD

Dear Reader,

“A well-functioning judicial system is the visiting card of a state based on the rule of law.” This sentence is the guiding principle of my work as Minister of Justice.

A well-functioning judicial system is guaranteed through the meticulous work of those active within it, but providing information to the citizens is also an indispensable part of our responsibilities. The citizens should be able to find their way through the institutions of the domestic judicial system and have the feeling that their access to the law is as simple and barrier-free as possible. It is in this spirit that I am pleased to present this brochure, which provides essential information on the facilities and services of the Austrian judicial system.

The rule of law and legal certainty are valuable assets which tell us a lot about the democratic maturity of a state.

The fact that the Republic of Austria has both to a high degree is not least due to the commitment and dedication of all those working within the judicial system. Let me take this opportunity to express my thanks and recognition to them all.

May this brochure be of service to all citizens, helping to further increase their confidence in our judicial system.

Yours sincerely,

Claudia Bandion-Ortner
Federal Minister of Justice

Table of Contents:

1.	The Republic of Austria	7
2.	Austria's Judicial System	8
3.	Institutions	9
3.1	The Judiciary	9
3.2	Public-Law Courts	15
3.3	Arbitral Tribunals	16
3.4	The Penitentiary System	16
3.5	The Federal Ministry of Justice	19
3.6	The Federal Cartel Attorney	21
4.	The Legal Professions	22
4.1.	Working for the Judiciary System	22
4.2.	General Remarks	22
4.3.	Legal Training	24
4.4.	Studying Law	24
4.5.	Practical Court Work	25
4.6.	Judges	25
4.7.	Public Prosecutors	27
4.8.	Lawyers	28
4.9.	Notaries	29
4.10.	Rechtspfleger	31
4.11.	Promoting Women	32
5.	Judicial Services	33
5.1.	Court Cases	33
5.2.	Quality and Acceptance of Court Decisions	33
5.3.	Length of Proceedings	34
5.4.	IT Use in the Judicial System	34
5.5.	The Land Register	35
5.6.	The Commercial Register	38
6.	Budget	40
6.1.	Expenses and Cost Coverage	40
6.2.	Budget Responsibility (Budget Performance)	40
7.	Services for Austria's Citizens	42
7.1.	Access to the Judiciary System for Socially Disadvantaged Persons	42
7.2.	Judicial Ombudsoffices	42
8.	International Cooperation	43
9.	Sources	44



1. The Republic of Austria

The Republic of Austria is a federal state consisting of the nine federal provinces of Vienna, Lower Austria, Upper Austria, Salzburg, Tyrol, Vorarlberg, Carinthia, Styria and Burgenland. The form of government is that of a parliamentary democracy. Austria covers a territory of 83,358.3 km². About 8.3 million people live in Austria (2008). The gross domestic product in 2007 amounted to EUR 272.77 billion (32,800 per inhabitant).



2. Austria's Judicial System

Next to the legislative and the administrative branches, the judiciary is considered to be the third pillar in a country under the rule of law. The Federal Constitution Act assigns the judiciary exclusively under federal responsibilities. The federal provinces are therefore not allowed to set up any courts. The judicial system is separate from the administrative system on all levels. Austria's judicial system comprises ordinary courts, the departments of public prosecution, the prisons (institutions for the enforcement of sentences, as well as court prisons) and the facilities of the probationary system.

The courts are state institutions which decide on civil-law claims and penal-law charges in a formal procedure. They are set up by force of law and run by judges, who are independent, cannot be removed or transferred from office, who are impartial and only bound to the legal system.

Public prosecutor's offices are special bodies that are separate from the courts. In particular, they safeguard the public interest in the administration of penal justice by heading the preliminary proceedings, the indictment and acting for the prosecution in criminal proceedings.

Prisons are responsible for the enforcement of sentences. The facilities of the probationary services are also part of the judicial system. They take care of persons with conditional sentences and prisoners released on probation. These tasks have been mainly transferred to private associations, which, nevertheless, are under the supervision of the Federal Ministry of Justice.

The Federal Minister of Justice is at the top of the judicial administration. The Federal Ministry of Justice is her competence. The Federal Minister of Justice is one of the supreme administrative bodies of the federal state and a member of the Federal Government. She is in charge of the political management, the coordination and the supreme control over the government department and all associated service units.



3. Institutions

3.1. The Judiciary

3.1.1. Tasks

It is the task of courts and public prosecutors to enhance legal certainty and the satisfaction with the legal system in Austria. They perform these duties with impartiality, fairness and on a high level of quality.

A reasonable length of court proceedings and the conformity of court decisions with the law are of central significance to the protection afforded by the legal system. This requires an effective organization that can handle its tasks efficiently, a balanced distribution of the work load among the decision-makers and maintaining the high rate of cost coverage, based on service revenues.

Austrian courts are primarily responsible for civil-law cases (such as legal disputes over contractual claims, claims for damages, property litigation), labor and social law matters, non-litigious matters (such as inheritance cases, custody arrangements, maintenance claims of minor children), execution matters, bankruptcy and debt recomposition cases, as well as penal matters. Keeping the land register and the commercial register, which are very important for Austria's quality as a business location, are also a responsibility of the courts.

3.1.2. Principles

3.1.2.1. The right to a trial before a legal judge

The Austrian Federal Constitution Act (Article 83 (2)) grants the individual citizen the right to a trial before a legal judge. In addition to the subject-matter and local criteria (such as a defendant's domicile), the law determines which of the 166 Austrian courts has jurisdiction over a specific matter. At every competent court, the objective and material criteria of the so-called distribution of court business determines the assignment of cases to the individual judges. A panel of judges always establishes the distribution of court business one year in advance. This process excludes any third-party influence on the selection of a judge responsible for a specific case.

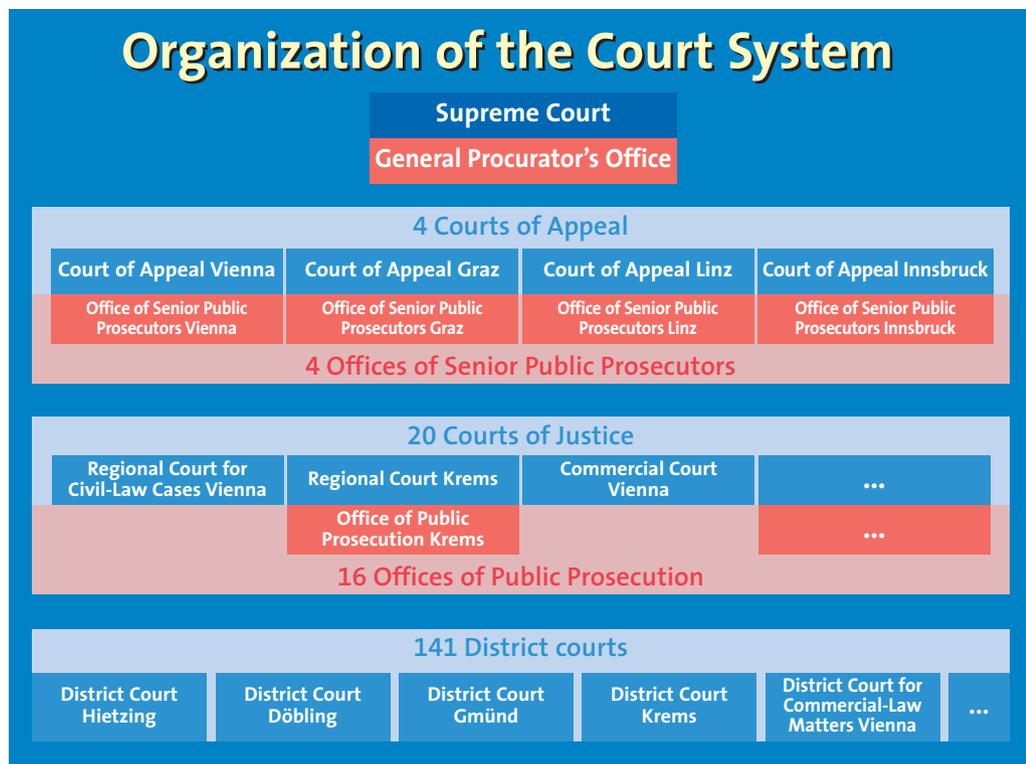
3.1.2.2. Court decisions may be contested in appellate proceedings

The ordinary courts are organized on several levels. In the exercise of his/her judicial office, a judge is independent, free from any instructions and only bound to the legal system in his/her decisions. Our laws make sure that everybody can trust the courts. As a matter of principle, every court decision may be contested. The legal remedies are various types of appeal (ordinary appeal, recourse or nullity appeal/complaint), for example.

3. Institutions

The respective higher court generally decides on legal remedies. In civil-law cases a further appeal against the ruling of the appellate court is possible to the Supreme Court in certain circumstances. In penal-law matters there is generally only a two-tier procedure. Whenever all legal remedies are entered, a case may take up considerably more time, which, though, must be accepted in the interest of a correct court decision. In addition to decisions by professional judges, Austria's federal constitution also provides that citizens participate in the administration of justice. In penal proceedings, lay judges rule on cases carrying a maximum punishment of more than five years. Lay juries are responsible for offences that carry a life sentence or a minimum prison term of five years and a maximum prison term of more than ten years (e.g. murder), as well as for political offences (e.g. punishable acts under the law banning National Socialist activities). In civil-law cases lay judges can be found in labor and social-law matters, as well as in commercial-law disputes. Together with professional judges they form panels that take joint decisions.

3.1.3. Courts and public prosecution - structure and organization



The ordinary courts are organized on four levels.

At present (01 January 2007), 141 district courts, 20 regional courts, four courts of appeal and the Supreme Court are responsible for adjudicating legal cases.



3. Institutions

16 offices of public prosecution, four offices of senior public prosecutors and the General Procurator's Office take care of public interests. 28 prisons are in charge of enforcing court sentences.

3.1.4. The district courts

The district courts are the first instance to decide civil-law cases with a maximum amount in dispute of EUR 10,000, as well as to rule on certain types of cases (irrespective of the amount in dispute, mainly family and rent-law cases). In addition, the district courts rule on penal-law matters in case of offences carrying merely a fine or a maximum prison term of one year (e.g. negligent physical injury, theft).

3.1.5. Regional courts (first-instance courts)

The regional courts (first-instance courts) are responsible for a first-instance ruling on all legal matters that are not reserved to district courts. In addition, they are responsible as second-instance courts to rule on appeals against district-court decisions.

3.1.6. Courts of Appeal (second-instance courts)

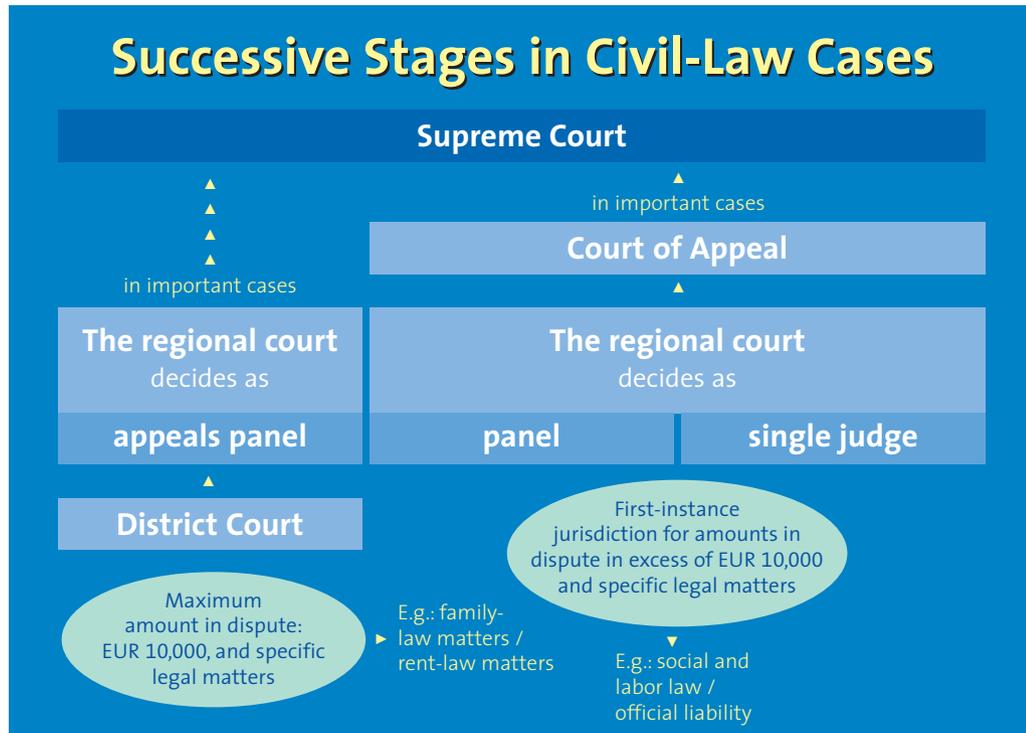
Four courts of appeal have been set up on the third organizational level. They are located in Vienna (covering Vienna, Lower Austria and Burgenland), Graz (covering Styria and Carinthia), Linz (covering Upper Austria and Salzburg), as well as Innsbruck (covering Tyrol and Vorarlberg). These second-instance courts are appellate courts for all civil and penal-law cases. In addition, these courts play a special role in the administration of the judicial system. The president of a court of appeal is the director responsible for the administration of all courts in his/her court district. In this function, his/her only and immediate superior is the Federal Minister of Justice.

3.1.7. The Supreme Court

The Supreme Court in Vienna is the highest instance in civil and penal-law cases. Together with the Constitutional Court and the Administrative Court it is referred to as the Highest Court. This means that no further (domestic) remedy is possible against its decisions. The jurisdiction of the Supreme Court is a major contribution towards preserving the uniform application of the law throughout the national territory. Although the lower courts are not bound by law to its decisions, as a rule they will be guided by the case law of the highest court.

3. Institutions

3.1.8. Successive stages in civil-law cases



The district courts are the first-instance courts; appeals are lodged with the higher-level regional court. There, an appeals panel will rule as second-instance agency.

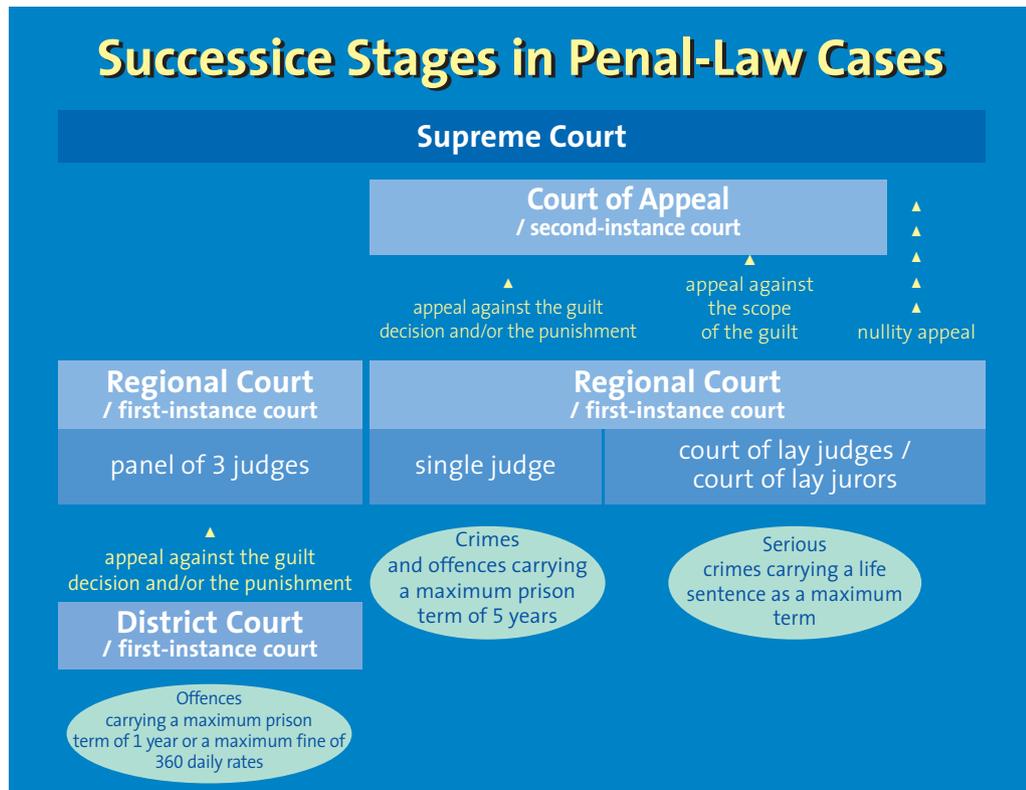
Whenever regional courts act as first-instance courts (either by a single judge or a panel) appeals against their rulings will be handled by the court of appeal as a second instance.

In cases requiring a decision on legal issues of fundamental importance, a further appeal is also possible to the Supreme Court. There are therefore three successive stages in civil-law cases.

3.1.9. Successive stages in penal-law cases

Whenever a district court rules as a first-instance court, a nullity appeal, an appeal against the scope of the guilt and the terms of the punishment may be entered to higher-level regional court, where a panel of three judges will take a decision.

3. Institutions



Whenever a single judge of a regional court rules as a first-instance court (on all offences and crimes carrying a maximum prison term of five years such as, for example, giving false testimony in court), nullity appeals, appeals against the scope of the guilt and the terms of the punishment are directed to the superior Court of Appeal.

Whenever a panel of lay judges or a lay jury at a regional court is responsible as a first-instance court, a nullity appeal must be lodged with the Supreme Court. If the appeal only relates to the terms of the punishment, the superior court of appeal will issue a ruling. There are two successive stages in penal-law matters.

3.1.10. Public prosecutors

Public prosecutor's offices are special bodies separate from the courts that safeguard the public interest in the administration of penal justice. This primarily involves laying charges against persons and representing the indictment in penal proceedings. They are therefore also called indictment agencies. In criminal proceedings they are also in charge of preliminary proceedings.

Public prosecutor's offices are judicial authorities that are separate from the courts, but not independent. They have a hierarchical structure and are bound by the instructions of the offices of senior public prosecutors and ultimately of the



3. Institutions

Federal Minister of Justice. There are precise statutory rules for the right to issue instructions. Instructions by an office of senior public prosecutors or by the Federal Minister of Justice may only be issued in written form and must contain a statement of reasons. Moreover, any instruction received has to be recorded in the criminal case file. The Federal Minister of Justice bears ministerial responsibility and is thus obliged to provide Parliament with information, to which she is accountable. The staff members of the individual offices of public prosecution must comply with the instructions given by the office director. However, if they consider an instruction to run contrary to law, they may demand a written order concerning the instruction and may even ask for a release from dealing with the penal matter in question. The offices of public prosecution are therefore organized with subordinate and superior levels. This is also necessary on account of the fact that – contrary to court rulings – their decisions cannot be contested by means of any legal remedy.

Basically, the organisational levels of the prosecution correspond to the levels of court organisation.

An office of public prosecution is set up with every regional court in charge of penal cases. The public prosecutors of these courts are in charge of filing and representing indictments, both before the regional court and the district courts of the respective regional court district. As a rule, district prosecutors will present the indictment before the district courts. The latter are officials with special expertise, but do not require university training.

The offices of senior public prosecutors are on the level above the offices of public prosecution and can be found with the courts of appeal in Vienna, Graz, Linz and Innsbruck. In addition to acting for the prosecution before the higher regional court they are also responsible for the supervision of all prosecutor's offices in their district and are directly subordinate to the Federal Minister of Justice.

The General Procurator's Office, set up with the Supreme Court, holds a special position. The General Procurator's Office is directly responsible to the Federal Minister of Justice and does not have the right to issue any instruction to the offices of public prosecution and the offices of senior public prosecutors. Nor does it issue any indictments, but it is in charge of supporting the Supreme Court. In order to comply with this task, it is especially authorized to lodge so-called "nullity appeals for observance of the law" in penal matters in which the parties have no (further) possibility of appeal. It thus serves an important function in preserving the uniformity of the law, as well as legal certainty in penal-law matters.



3. Institutions

3.2. Public-Law Courts of Justice

3.2.1. Special position

The "public-law courts of justice", i.e. the Constitutional Court and the Administrative Court, hold a special position within Austria's judicial system. Although they are also independent courts, they are not part of the justice department, but enjoy organizational autonomy. Both are located in Vienna and have jurisdiction for the entire national territory. They are also separate from the ordinary courts with regard to their functions, as they do not rule on civil and penal-law matters (not even as an appellate court) but have their specific responsibilities in the public-law field. The decisions of the ordinary courts are therefore not subject to the control of the public-law courts of justice; rather, the Supreme Court, as the highest instance in civil and penal-law cases, must also monitor compliance of court rulings with the constitution.

3.2.2. The Constitutional Court

The primary task of the Constitutional Court is to check for compliance with the constitution, which also contains the fundamental rights. It is especially called upon to review federal and provincial laws for their constitutionality, as well as to examine ordinances by administrative bodies for their lawfulness, and highest-instance decrees by administrative bodies for their constitutionality, and repeal them, if necessary.

In contrast to the other courts, the judges at the Constitutional Court do not serve on a professional but on an honorary basis. The members of the court may only be outstanding personalities who already completed a successful legal career in another function. Most of the judges of the Constitutional Court exercise their office on a part-time basis and may continue to exercise their previous profession (e.g. as judges or university professors, however not as civil servants, who must be released from their official duties). The Constitutional Court only convenes for "sessions", which are usually held four times per year.

3.2.3. The Administrative Court

The Administrative Court is called upon to review the entire public administration for its lawfulness, with the exception of ordinances, which only the Constitutional Court may examine and repeal. It mainly rules on complaints against last-instance decrees by administrative bodies. It checks these for their lawfulness and may repeal unlawful ones.



3. Institutions

3.3. Arbitral Tribunals

Arbitral tribunals also differ from ordinary courts. They are not at all state agencies, but private judicial institutions. They are based on private-law agreement, so-called arbitration agreements, by means of which the parties involved accept the ruling of an arbitral tribunal in a specific litigation.

The advantages of private arbitral adjudication are that the parties may nominate persons of their confidence to reach a decision, that the decisions can be taken by special experts who, moreover, may take equity-based decisions without being bound by strict regulations, and that such proceedings are (possibly) conducted with expediency. Problems may arise in connection with the arbitrators preserving their objectivity and the often high costs of arbitral proceedings. Especially in commercial exchanges, arbitration plays a major role.

The decisions of arbitral tribunals ("awards") are binding upon the parties involved. However, in case of grave procedural mistakes, applications to repeal an award may be lodged with the ordinary courts. Furthermore, the jurisdiction of arbitral tribunals is limited to the extent that they have no power of punishment or enforcement. In other words, arbitral tribunals cannot impose any punishments and cannot enforce their rulings by applying coercive measures. This is reserved exclusively to the state, i.e. the ordinary courts.

3.4. Penitentiary System

3.4.1. General comments

The Federal Minister of Justice is also responsible for the penitentiary system. The Federal Constitution distinguishes between the federal responsibilities for legislation and enforcement. The primary legal basis for the penitentiary system in Austria is the 1969 Penitentiary System Act. The regulations for prisons on the enforcement of criminal court decisions must be mentioned among the general provisions based on this law.

3.4.2. Prisons – types and numbers

There are altogether 28 prisons:

- ▶ 7 prisons for men to enforce court sentences of more than 18 months;
- ▶ 1 prison for juveniles;
- ▶ 1 prison for women;
- ▶ 3 institutions for the enforcement of measures;
- ▶ 16 court prisons at the site of regional courts in charge of penal cases.

In addition, there are 16 annexes of prisons which are partly run as agricultural

3. Institutions

undertakings. The size of the prisons varies between 63 and 990 facilities for detainees.

3.4.3 Imprisonment – types and purpose

The Austrian legal system distinguishes three types of imprisonment imposed by penal courts, namely pre-trial detention, imprisonment as punishment and preventive measures connected to imprisonment.

Pre-trial detention must be imposed if a person is urgently suspected of having committed a punishable act and if one of the reasons for detention stipulated by law (risk of absconding, risk of collusion, and risk of committing and/or perpetrating an offence) prevails. The foregoing is governed by the 1975 Code of Penal Procedure.

The law on the penitentiary system governs the imprisonment imposed as a punishment by a court. According to § 20 of that law, enforcing a prison sentence is meant to assist the convicted person to obtain an honest approach to life that is adapted to the needs of life in a community, as well as to prevent him/her from following criminal leanings. Moreover, the enforcement of a sentence is to show the negative value of the conduct underlying the conviction.

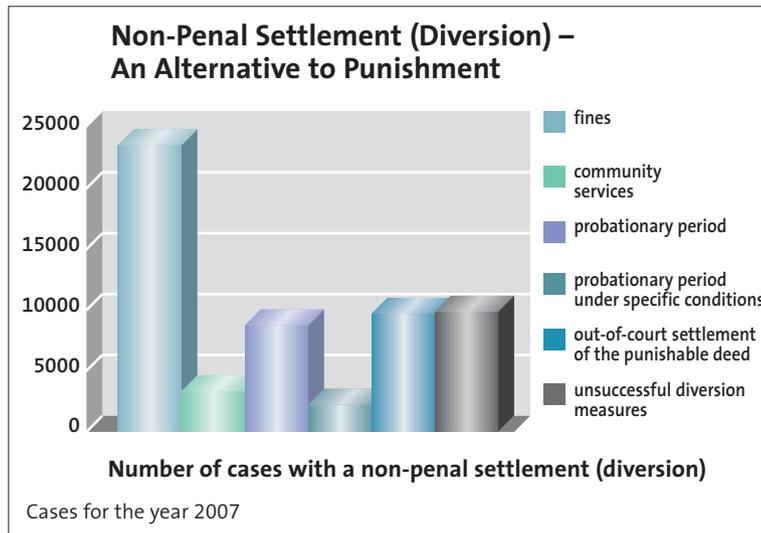
The penal-law code distinguishes two types of punishments: imprisonment and fines. A punishment is a reaction to the preceding culpable conduct of the convicted person. In addition, the penal-law code provides to preventive measures linked to imprisonment. These are directed at the dangerous nature of the offender. They are also used whenever they serve better to obtain results regarding an improvement of the delinquent and the protection of society, or when it is not possible to impose a punishment in the absence of guilt (for example for lack of criminal responsibility).

One of these measures is to accommodate such persons in institutions for mentally disturbed offenders. This measure is imposed for a limited period. The court must examine, at least on an annual basis, whether the accommodation is still necessary. A special institution is available to enforce this measure. However, it is also possible to detain persons in special public psychiatric hospitals.

3.4.4. Non-penal settlement (diversion) – an alternative to punishment

In past years increasing efforts were made – especially with first-time offenders – to react to punishable acts by imposing measures of benefit to society. One form of non-penal settlement (diversion) is to provide community services, as an alternative to a punishment, and an out-of-court settlement of the punishable

3. Institutions



deed may be achieved. The high level of acceptance of diversion measures is demonstrated by the fact that every year 54,000 persons are offered the possibility of a non-penal settlement and that over 45,000 accept this option.

3.4.5. Detainees

About 8,300 persons are detained in Austria's prisons. Of these, 5,700 serve a prison sentence, 1,700 are pre-trial detainees, 150 are other prisoners and administrative detainees, and 800 are persons accommodated for the enforcement of measures.

About six per cent of the prison inmates are women, about two per cent are juvenile delinquents and about six per cent are young adults (persons between the ages of 18 and 21 years). About 3,500 inmates, i.e. about 43 per cent from more than 100 nations, are not of Austrian nationality.

Every detainee capable of work is obliged to work. The working environment is an important area for technical and social learning. Different workshops and undertakings in about 50 branches are available at Austrian prisons. Detainees earn a remuneration for their work, which is to help them to return to an orderly life after serving their prison term.

3.4.6. Managing the penitentiary system

The administration of the penal system lies within the responsibility of the Federal Ministry of Justice. The Central Prison Authority (Stabsstelle Strafvollzug), being a supportive and advisory body to the Minister of Justice, is the highest authority of the penal system responsible for its strategic management as well as staff and functional supervision.

Since 1.1.2007, a newly established Prison Service Department (Vollzugsdirektion) serves as the prison staff supervision authority directly subordinated to the Minister of Justice and the highest operational authority in the Austrian penal system.



3. Institutions

3.4.7. Staff resources of the penitentiary system

3,593 persons work in Austria's prisons. Of these, 3,087 are members of the prison guards. The job profile of an officer of the prison guards is that of an all-rounder. They do not only work as guards and in the different prison departments, but also in the workshops and undertakings, they act as ministers, prison physicians, psychiatrists, psychologists, sociologists and teachers (pedagogues). The human resources also comprise social workers, nurses and department assistants, as well as other prison staff with special qualifications.

Regular training activities, especially in the facilities belonging to the prison-guard school and the further-training center "penitentiary system", as well as by third-party providers are provided for the further training of prison staff.

3.4.8. Budget resources for the penitentiary system

The budget expenses for the penitentiary system were about EUR 342.2 million for the year 2007. The staff expenses account for about EUR 154.9 million, material expenses amount to EUR 187.3 million. Revenues for 2007 were budgeted to amount to about EUR 74.5 million.

3.4.9. A new start after serving a sentence

The Republic of Austria entrusted the nation-wide probationary services to a private body, i.e. the association "Neustart – Bewährungshilfe, Konfliktregelung, Soziale Arbeit" (A New Start – Probationary Services, Conflict Solution, Social Work). "Neustart" operates throughout Austria. In addition to providing probationary services, it also offers services in connection with the out-of-court settlement of punishable deeds, regarding assistance to persons released from prison, as well as housing facilities. "Neustart" has facilities in all federal provinces. The initiatives also comprise advice and help upon release from prison, as well as communication centers, training for work, finding community services, clearing, crime prevention, social work in schools, assistance to juveniles and assistance to crime victims.

3.5. The Federal Ministry of Justice

3.5.1. The Federal Minister of Justice – the supreme administrative body

The judicial administration is headed by the Federal Minister of Justice. The Federal Ministry of Justice is subordinate to the Federal Minister of Justice. The Federal Minister of Justice belongs to the supreme administrative bodies of the Federal State and is a member of the Federal Government. She is responsible for the political management, coordination and supreme supervision of the judicial system (including the penitentiary system), together with all associated service units.



3. Institutions

3.5.2. Organization

The Federal Minister of Justice figures at the top of the Federal Ministry of Justice. At present, the Ministry has a staff of about 210 which work in five administrative departments ("Directorates"):

- ▶ the Directorate for Central Administration and Coordination (coordination, revision, public relations, information technology, and management of the judicial system),
- ▶ the Directorate for Civil Law and Legislation,
- ▶ the Directorate for Penal Legislation,
- ▶ the Directorate for Administration and Personnel and
- ▶ the Directorate for Criminal Justice.

3.5.3. The tasks

3.5.3.1. Preparing legislation

An important task of the Federal Ministry of Justice is to prepare the legislative acts. This task primarily includes the civil and the penal law. Civil law comprises family and inheritance law, contract law, company law, copyright law, as well as the provisions on conducting civil proceedings, executions and insolvencies. The Federal Ministry of Justice also prepares proposals for legislation regarding penal and penal procedural law, the penitentiary system, as well as – partly – media law.

The judicial legislation affects many personal and private spheres of life. It has been a long-standing tradition to keep its legislation separate from day-to-day politics as much as possible, and to reach a consensus among all the parties represented in Parliament, irrespective of its political composition. The broad consensus on arrangements relating to these personal spheres ensures a high level of their acceptance by the population.

3.5.3.2. Ensuring the independence of the judiciary

Court rulings in civil-law and penal-law matters are the exclusive responsibility of independent judges in Austria. Certain court business is handled by "Rechtspfleger", who are court officials with a special training.

The constitution guarantees the independence of judges. It comprises independence from instruction, as well as the practice that a judge may be removed from office or transferred to another position only upon a judicial finding. A judge is solely bound by the legal system. No body inside or outside the judicial system can issue any instruction to a judge in connection with a decision on a specific



3. Institutions

subject matter, not even the Federal Minister of Justice or the Federal Ministry of Justice. Judges are appointed by the Federal Minister of Justice on the basis of an objective selection procedure. The appointment of senior judges is reserved to the Federal President.

The Federal Ministry of Justice is responsible for maintaining and developing the activities of the courts and other judicial institutions. This includes, inter alia, that the staff and organizational resources for the operation of the ordinary courts, the offices of public prosecution, the prisons and the probationary services are ensured.

3.5.3.3. International cooperation

An important aspect of the work of the Federal Ministry of Justice is to participate in the preparations of legal instruments in the organs of the European Union. The Federal Ministry of Justice contributes actively to the development of the European Union so that it becomes an area of freedom, security and justice. The Union set itself this goal in the Treaty of Amsterdam, which entered into force on 1 May 1999. In addition, the Federal Ministry of Justice takes part in international penal-law and civil-law cooperation on other levels such as the Council of Europe and the UNO. An important goal of this work is to ensure international legal assistance.

3.6. The Federal Cartel Attorney

By an amendment adopted in 2002 the Federal Cartel Attorney was set up as a responsibility of the Federal Ministry of Justice. He represents public interest in matters of competition law before the cartel court. His competencies do not only relate to cartel-law cases in the narrower sense of the word, but also to cases of abuse of a market-dominating position, or merger procedures. The Federal Cartel Attorney has an official function – in addition to the Federal Competition Office, which is part of the Federal Ministry for the Economy and Labor. As a result, he also becomes a party in cartel-court proceedings that he did not file himself, for the purpose of protecting public interest.



4. The Legal Professions

4.1. Working for the Judiciary System

At present, there are about 1,700 professional judges in Austria. In addition, lay persons are assigned to cases and work on a voluntary basis. They act as lay judges or jury members in penal cases, as well as associate judges with special expertise in commercial, as well as labor and social-law cases, together with professional judges. Moreover, there are about 300 public prosecutors. More than 4,800 civil servants and contract-based employees help to maintain the proper operation of the courts and the offices of public prosecution. About 3,600 staff members (including some 3,100 prison guards) are on duty in the penitentiary system.

Status:
01/01/2008

Federal Ministry of Justice (Central Offices):	
A-level staff (university graduates), as well as judges and public prosecutors (including assigned positions)	108.00
Other staff (including assigned positions)	105.20
Supreme Court and General Procurator' Office:	
Judges (including judges in the information center of the Supreme Court)	66.00
Public prosecutors	13.00
Other staff	35.00
Judicial bodies in the federal provinces:	
Judges	1,592.50
Public prosecutors	296.00
Candidate judges	247.00
Other staff	4,712.41
Trainees	865.56
Prisons:	
Total number of staff	3,593.10
Probationary services:	
Total number of clerks (expiring)	77.25

4.2. General Remarks

As the term judiciary system primarily implies the implementation of laws by the courts, judges come first to one's mind when thinking of the professions in this field. The state assigns judges to the task of determining the law and adjudicating civil-law and penal-law cases. However, in order to ensure that a judiciary system is fully operative, on the one hand, while sufficiently preserving the rights of



4. The Legal Professions

the individual citizens, on the other hand, additional actors are necessary, who participate in the administration of justice. It is the duty of the public prosecutor, to lay charges on behalf of the state. Following a comprehensive reform of criminal procedure the prosecutor also became responsible for conducting preliminary criminal proceedings with effect from 1 January 2008. It is a matter of principle that no penal-law proceedings may be initiated in Austria without a motion by a public prosecutor (principle of public indictment, principle of public prosecution). One exception is the so-called offences with private prosecution, which are only prosecuted upon the request of the injured party.

The accused, in turn, has the right to retain a legal counsel. It is one of the essential tasks of a lawyer to fully safeguard the interests of the accused in criminal proceedings, or of a party in civil-law cases. Lawyers also represent their clients in front of other authorities, and they also act as general legal advisors. For the benefit of persons who are not familiar with the law, as well as for reasons of accelerating proceedings, it is a statutory requirement to be represented by a lawyer before all higher courts and, generally, also before a district court, whenever higher amounts in dispute are involved.

Notaries also have limited authority to represent their clients in court. In the framework of the judiciary system, though, notaries serve a special task when acting as court commissioners. In this function they assist in the performance of probate proceeding or in public auctions. As certification and authentication activities have been delegated to notaries, the courts are relieved of activities that actually do not form part of adjudicating the law in the proper sense.

"Rechtspfleger" are another group of employees who are equally important, although they are not considered as one of the legal professions in the narrower sense of the word. Rather, they are court employees with a special training who have been assigned certain tasks, clearly defined by law, in first-instance civil-law jurisdiction (e.g. default actions, certain execution cases, commercial register and inheritance matters).

The activities of the different legal professions have been developed in such a way that the professions complement each other. In each case, though, the respective competences and duties have been clearly defined. It is only through this interaction that the judiciary system, as envisaged by the law, has become a reality. It follows from this approach that the theoretical training is the same for all legal professions, with the exception of the "Rechtspfleger". Although the practical training differs for the various legal professions, traineeships make it possible to gain some insight into the respective other legal professions. Candidate judges, for example, must work for a lawyer or a notary or at the



4. The Legal Professions

Financial Procurator's Office during their training, and candidate lawyers or candidate notaries must spend some time working at court. Candidate lawyers are also given credit for their work for notaries, and vice versa. Judges, public prosecutors and "Rechtspfleger" are in a public-law employment relation to the Federal State; lawyers work as members of a liberal profession. Notaries also belong to the liberal professions, in the sense that they – like lawyers – bear the economic risk for running their offices. However, there is one major difference, due to the public-law character of a notary's official work. Whenever acting as a court commissioner, a notary is an agent of the court. In the European Union, the self-employed liberal professions are free to become established and to provide their services in all member states. However, activities related to the exercise of public power do not come under the freedom of establishment and service provision. Judges, public prosecutors, notaries, as well as "Rechtspfleger" exercise public duties; these activities therefore continue to be reserved to Austrian nationals, even after Austria's accession to the EEA and the EU. However, under certain circumstances lawyers, who are nationals of another member state of the EEA and are admitted to the bar in their home state, may exercise their profession in Austria.

4.3. Legal Training

It is a common feature of all legal professions (with the exception of "Rechtspfleger") that one must first study law at one of the universities in Austria (law departments can be found in Vienna, Graz, Linz, Salzburg and Innsbruck). This is followed by a nine-month traineeship at court and then by the specific professional training, which differs for the individual legal professions.

4.4. Studying Law

The school-leaving examination ("Matura") from a higher secondary school and proof of certain knowledge of Latin are the requirements for studying law. The curriculum consists of a diploma course and a doctorate course. Only the diploma course is required for the exercise of any of the legal professions. Apart from a career at university, the doctorate is not a requirement for working in a legal profession. However, the training periods for future lawyers and notaries are shorter if they obtain a law doctorate.

The academic degree of a "Magister (Magistra) der Rechtswissenschaften" (Master of Law) is awarded at the end of the diploma course. Having completed the diploma course is the requirement for commencing the doctorate course in law. It is meant to further develop the skills for independent scholarly work in the law field. The academic degree of a "Doktor (Doktorin) der Rechtswissenschaften" (Doctor of Law) is awarded at the end of the doctorate course.



4. The Legal Professions

4.5. Practical Court Work

Every graduate of a university diploma course has a legal title to continue his/her preparation for a career by working as a trainee at a court. For some legal professions, it is a requirement to pursue this training for a minimum of nine months. In practice, almost all law students undergo the traineeship at court after completing their studies.

Admission to a traineeship at court for a period of nine months is obtained by means of decree by the president of the court of appeal. Trainees are in a training relationship to the Federal State and receive a so-called contribution to their training as pay for their work. University graduates can begin the practical work at court on the every first day of a month and they can interrupt their traineeship at any time by written notice. Trainees are expected to familiarize themselves with court activities as comprehensively as possible. To this end, they are assigned to various courts. Trainees are assigned drafting jobs, but also to drawing up the minutes of court proceedings.

Austrian citizenship is not a requirement for performing a traineeship at court. Persons who have successfully completed a law course at a foreign university may also be admitted to a traineeship at court if their German language skills permit them to follow the course of proceedings in courts.

4.6. Judges

At present, there are about 1,700 professional judges in Austria (of which 63 are assigned to the Administrative Court).

Lay persons on the bench must be distinguished from professional judges. They do not need any legal training and work on a voluntary basis. They may either be lay judges or jury members in penal proceedings, or associate judges with special expertise in labor and social-law cases.

Professional judges have a public-law employment relationship with the Federal State. In addition to the Federal Constitution Act, the Judges Services Act is the main legal source for the training and professional status of judges. Professional judges are appointed for an unlimited period of time and retire at the end of the year in which they reach the age of 65.

Judges are responsible for adjudicating civil-law and penal-law cases, but in administrative and constitutional-law matters they act as a check on the administration and as a guardian of the constitution. According to Articles 87 and 88 of the Federal Constitution Act, judges act as independent agents of the state in determining the law and in adjudicating cases. This independence finds expression



4. The Legal Professions

in the independence of judges from compliance with any instructions (independence regarding subject matter), as well as in the independence from transfer to another position (personal independence).

Judges are only bound by the law and decide on the basis of their own legal convictions. Nor are they bound by earlier decisions in similar legal issues by other courts (precedents). One exemption is administrative matters within the judicial system (measures to maintain the operation of the judicial system). In this connection, judges are only independent if they deal with these matters on panels or in commissions (such as the distribution of court business, proposals for appointments to court positions). Otherwise, judges are bound to the instructions by their superiors in such matters. An established distribution of court business ensures the right to a judge under the legal system, which is guaranteed by the constitution.

Judges, who are found guilty of violating their professional and ethical duties, face disciplinary and possibly also penal-law sanctions. Judges may only be liable to the Federal State under civil law. Parties who suffer damage on account of an unlawful and culpable conduct by a judge may only assert their claims vis-à-vis the Federal State under the provisions of the law on official liability.

Persons wishing to become judges must apply for one of the established posts for candidate judges. Vacancies are advertised by the president of a court of appeal. The Federal Minister of Justice appoints the candidate judge upon proposal by the president of a court of appeal. Having completed one's university studies, Austrian citizenship, aptitude regarding subject-matter and character, as well as physical fitness for the profession of judge, and a nine-month traineeship at court are the prerequisites for being admitted to the preparatory service period of judges. When deciding on an admission, the training judges and the director of the courses for trainees are also heard. Since 1986 a written examination and a psychological aptitude test, conducted by an independent psychologist, are also among the prerequisites.

With the appointment as a candidate judge, the future judges are admitted to the preparatory service period for judges. It generally lasts four years. The traineeship at court is included in this training period. The training period is spent at a district court and a court of first instance, with an office for public prosecution, in a prison, as well as with a lawyer or notary or at the Financial Procurator's Office. The judge's examination comes at the end of the training period. It is a written and an oral examination. After having passed the examination and completed four years of legal practice, candidates may apply for a vacant established post for judges. Upon proposal by the competent staff panels, applicants are appointed as



4. The Legal Professions

judges for an indefinite period of time. The appointment is reserved to the Federal President, who has delegated this privilege to the Federal Minister of Justice for most of the judges' positions.

4.7. Public Prosecutors

The prosecution is a self-contained judicial authority separate from the courts which has to safeguard the interest of the state in the administration of justice. The prosecutor's most important tasks include the commencement of criminal proceedings, acting for the prosecution and conducting the preliminary proceedings. The Public Prosecution Act governs these tasks. In contrast to the judge, the prosecution, as a judicial body, is obliged to follow the instructions of the superior authority. At first-instance courts their responsibilities are vested in the public prosecutor, at the court of appeal in the senior public prosecutor and at the Supreme Court in the general procurator. The offices of senior public prosecutors and the General Procurator's Office are each only subordinate to the Federal Ministry of Justice. A general procurator does not have any authority to issue instructions to senior public prosecutors or public prosecutors. At present, there are about 300 public prosecutors in Austria.

Only judges or former judges, who continue to meet the requirements for being appointed as professional judges, may become public prosecutors. Just as the established posts for judges, the established posts for public prosecutors are also advertised publicly to applicants. The Federal President appoints public prosecutors upon proposal by the staff commission. However, for most established public-prosecutor posts he has delegated the right of appointment to the Federal Minister of Justice.

Public prosecutors are in a public-law employment relation to the Federal State and represent the public interest on behalf of the state in court, as an independent body in the administration of justice. In penal proceedings, public prosecutors present the indictment and are thus formally a party in the proceedings. However, they are obliged to observe full impartiality vis-à-vis all sides. Public prosecutors must follow up on aggravating as well as mitigating circumstances with the same diligence and care. The prosecutor heads the preliminary proceedings and in doing so may ask the criminal police to take evidence. The prosecutor grants and issues orders. Any party to the proceedings that regards a prosecutor's order as onerous may turn to the court.

If a public prosecutor is found guilty of violating the professional and ethical obligations, he/she is responsible to a disciplinary commission set up with the Federal Ministry of Justice. The sanctions which this commission may impose also



4. The Legal Professions

include termination of the employment relationship. In addition, public prosecutors also have a penal-law liability. In terms of civil law, public prosecutors may only be held responsible by the state, similarly to judges, and not by the parties involved in a case, who may only bring an action against the state for official liability.

4.8. Lawyers

4.8.1. General remarks

As distinct from judges or public prosecutors, lawyers work on a self-employed basis. They exercise their profession under their own economic responsibility and in their own offices or joint offices, together with one or several colleagues. There is no need for any appointment by an authority; the only requirement is admission to the bar (admission to the register of lawyers = Rechtsanwaltsliste). The most important statutory basis for the exercise of the profession is the Regulations for the Lawyers' Profession. In addition, there are numerous guidelines which lawyers must observe.

There is one bar association (Rechtsanwaltskammer) in every federal province of Austria. On the federal level, they belong to the Austrian Federal Bar Association (Rechtsanwaltskammertag). These associations are public-law corporations (Kammern) and autonomous self-governing bodies which safeguard the interests of the profession vis-à-vis the state. In Austria there are currently more than 5,300 lawyers.

4.8.2. Scope of activities

Lawyers are authorized to represent parties on a professional basis in all court and out-of-court cases, in all public and personal matters before all courts and authorities in Austria. In addition, they provide services as legal advisors in various legal matters and draw up contracts or act as asset managers. With the implementation of electronic communications with the courts, official documents can be submitted in automated form (for example default actions). Moreover, both land-register and commercial register inquiries may be performed from a lawyer's office (as with notaries).

Lawyers are obliged to safeguard the interests of their clients. They are therefore subject to an obligation of secrecy, protected by law, and strict disciplinary rules. When found guilty of violating their duties, lawyers are liable with all their assets. This liability is complemented by a professional liability insurance, which they must prove before being admitted to the bar. Whenever lawyers operate in a limited-liability company, the absence of the partners' personal liability is offset by a much higher minimum insurance sum.



4. The Legal Professions

Lawyers receive a fee for their services, which is subject to agreement. However, the Lawyers' Fees Act stipulates rates for work at court, which are primarily of importance for the cost refunds in civil cases, as well as in criminal cases in the event of private prosecution. Moreover, the Autonomous Fee Schedule is used as guidance and serves as a basis for an agreement. The fees' committee of the bar associations will examine whether invoiced fees are reasonable.

When working under the legal-aid scheme, lawyers do not receive a fee but are only entitled to a refund of the necessary cash expenses by the state. The state pays an adequate annual lump sum for the work done by lawyers on a pro-bono basis, which is used to finance retirement pensions for lawyers.

Five years of legal practice are required for the exercise of the lawyer's profession, of which a minimum of nine months must be spent as a trainee at court, and a minimum of three years must be with an Austrian lawyer as a candidate lawyer (Rechtsanwaltsanwärter). The bar examination may be taken after three years of practical work experience, if the candidate can prove that he/she participated in the training activities required by the bar associations.

4.9. Notaries

Notaries hold a public office. Appointment as a notary is a sovereign act and is for a specific office location. However, notaries are not civil servants, as they are not in an employment relation to the Federal State. As they bear the economic risk of their office operations, they work on a self-employed basis. It is only when acting as court commissioners that they are court agents. The Federal Minister of Justice sets up notarial offices in specific locations. At present, there are 483 notarial offices in Austria.

The notaries of a federal province (sometimes also of several federal provinces), together with the candidate notaries, form a board of notaries, which elects the officers of the chambers of notaries. As with the bar associations, these are public-law corporations. In addition, there is the Austrian Chamber of Notaries. Its members are elected by the chamber of notaries in Austria. They are set up to safeguard the rights and interests of notaries in Austria, as well as to represent the profession.

The most important statutory basis for the exercise of the profession of notary is the Notaries Regulation and the Court Commissioner Act. In addition, there are numerous guidelines which notaries must observe, with disciplinary proceedings pending otherwise.



4. The Legal Professions

The scope of activity, as defined by law, comprises three types of activities:

- ▶ executing public deeds, safekeeping of third-party objects and authenticating processes (e.g. lotteries and raffles, shareholders' meetings of stock corporations),
- ▶ drawing up private deeds and representing parties, as well as
- ▶ performing official acts reserved to notaries upon instruction by a court in proceedings on non-litigious matters.

In their function as court commissioners notaries are especially called upon to administer inheritance cases.

The main task of notaries as independent and impartial agents in the administration of justice with responsibilities for provident legal measures is to assist people in legal transactions. Their involvement in legal transactions helps to secure legal certainty and to prevent litigation. Their official nature as authenticators is to ensure that the principle of public execution of deeds is maintained. At the same time, by assigning the authenticating responsibility to the notaries, judges are relieved of responsibilities that do not form part of adjudicating the law in the proper sense of the word.

On account of their responsibility as executors of public deeds and as court commissioners notaries are subject to special control. The Federal Minister of Justice, the judicial administration and, directly, the chambers of notaries exercise supervision over the individual notaries.

Disciplinary powers in disciplinary matters are vested in the courts of appeal and the Supreme Court as disciplinary tribunals for notaries. In case of a breach of regulation, the chambers of notaries and the Permanent Committee of the Austrian Chamber of Notaries exercise this function. Moreover, notaries may be held liable under civil and penal law. Before taking up their professional activities, notaries must prove that they have taken out professional liability insurance.

Persons wishing to become notaries must become employed by a notary, after completing their law studies and work at court as trainees for nine months. Their name must also be entered into the register of candidate notaries, which is maintained by the chambers of notaries. A person may only be entered into that register if he/she has not yet reached the age of 35, when first registered in the list of candidates.

A requirement for admission to the notaries' examination is attendance of the training events, which is compulsory for candidate notaries. The notaries' exami-



4. The Legal Professions

nation consists of two parts, which are both in writing and oral. The first part of the examination may be taken after having done practical work as a candidate notary for 18 months, the second part of the examination after another period of practical work for a minimum of one year. In addition to passing the notaries' examination, candidates must have worked in a legal profession for seven years, of which a minimum of three years as a candidate notary after taking the notaries' examination, before they are entitled to being assigned a notarial office. However, meeting all requirements does not create a right to being appointed a notary. It is in the discretion of the Federal Minister of Justice to decide on appointments on the basis of proposals. Vacant or newly established notarial offices must be advertised publicly prior to any appointment. Notaries may serve in their profession until they have reached the age of 70.

4.10. Rechtspfleger

There are about 600 "Rechtspfleger" (full-time equivalents) in Austria. These higher-level court clerks are an indispensable pillar of the judiciary. More than one fourth of all decisions taken at district courts in Austria are already being taken by them.

"Rechtspfleger" are judicial officers with a special training and special qualifications, who are assigned the handling of certain first-instance transactions under civil law, on the basis of the Federal Constitution Act and the Rechtspfleger Act, in order to ease the work load of judges. 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).



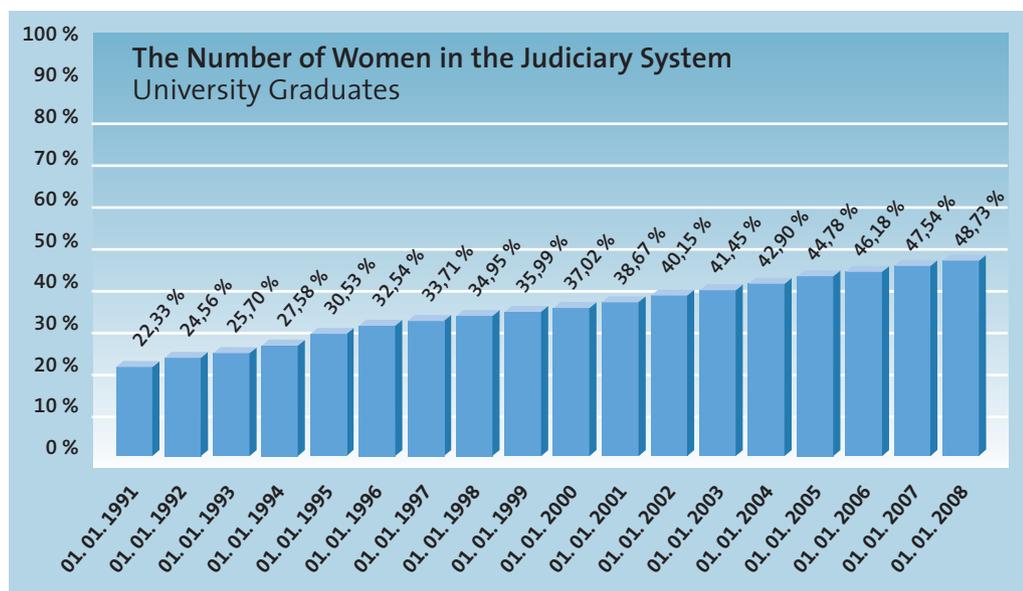
4. The Legal Professions

"Rechtspfleger" may be appointed for one or several of these working areas. Each field of work requires a special training and a separate appointment as a "Rechtspfleger" for the specific field.

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 and comprises work at court, especially preparing dispositions in the targeted field of work, participating in a basic and special course in the specific field of work and passing an examination in the respective fields. After passing the "Rechtspfleger" examination, the Federal Minister of Justice awards the candidate "Rechtspfleger" a diploma.

4.11. Promoting Women

For the purpose of expanding the participation of women, especially university graduates, in the judiciary system, the Federal Equal Treatment Act, adopted in 1993, created the statutory basis for setting up equal-treatment officers and liaison officers throughout Austria. This law is also the legal basis for further structural measures in order to eliminate the disproportionately small number of women. The plans for promoting women describe the specific measures to implement equal treatment and to promote women.



In recent years the number of women in positions for university graduates within the judiciary system has risen steadily to more than 40 per cent. Among the next generation of judges, women hold a share of more than 60 per cent.



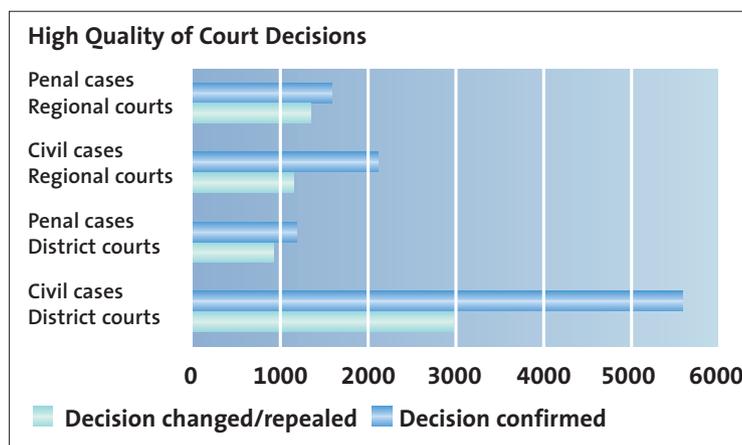
5. Judiciary Services

5.1. Court Cases

COURT CASES	District courts	First-instance courts	Courts of appeal	Supreme Court
	2007	2007	2007	2007
Civil cases	622,079	88,560		
Non-litigious matters	361,893	17,420		
Land/Commercial register	683,810	15,571		
Execution matters	1,144,234			
Insolvency cases	10,156	13,368		
Appeals in civil cases		25,614	8,986	1,405
Penal cases	67,304	64,773		
Appeals in penal cases		2,630	6,766	820
Land register excerpts	158,367			
Judicial administration matters	150,089	124,502	57,249	5,405
TOTAL	3,206,932	352,438	73,001	7,630

5.2. Quality and Acceptance of Court Decisions

Even when considering the growing complexity of laws and court proceedings, the share of court decisions that is challenged is small. The higher number of legal remedies after first-instance court proceedings is due to the fact that these cases carry longer sentences and apply to higher amounts in dispute.



Recent years have seen an increase in the quality of court decisions. Surveys indicate that judges are seen as friendly and competent by the population at large. This is also reflected in the acceptance of court

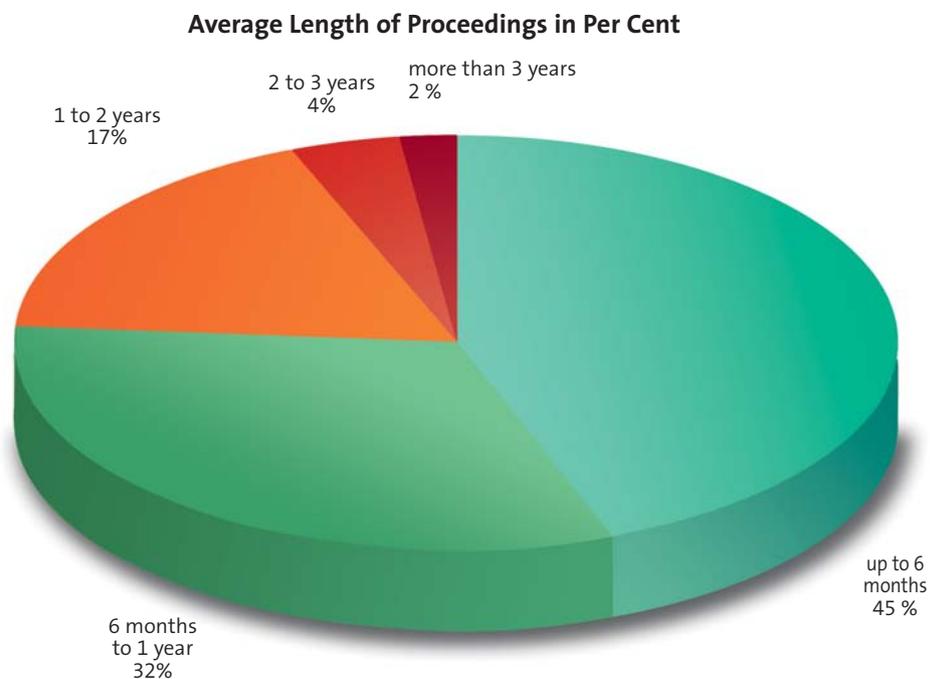
rulings: only every fifth decision is challenged by resorting to a legal remedy. The majority of challenged decisions are confirmed by the appellate court.



5. Judiciary Services

5.3. Length of Proceedings

Long proceedings do not only constitute a financial and mental burden for the parties; one consequence may also be that the outcome of a legal action becomes unattainable or uninteresting, for example if the defendant goes bankrupt in the course of the proceedings.



Austrian courts work expeditiously – most cases are finished after only a few months.

In penal cases the time required for adjudication has become longer in statistical terms since the provisions for non-penal settlements (diversion) went into force in the year 2000, because only more serious crimes and offences now require adjudication by means of a judgment.

5.4. IT Use in the Judicial System

Since the beginning of the eighties of the last century, Austria's judiciary system has built up a comprehensive IT network. This network supports the nation-wide use of IT applications. All courts, offices of public prosecution, prisons and the Federal Ministry of Justice can cooperate via the interface at the Federal Computing Center, where all judicial applications are supported. The Federal Computing Center is also responsible for communications with the other federal ministries and service units, as well as, ultimately, all citizens.



5. Judiciary Services

The judiciary IT network currently comprises 220 routers, 360 servers and 10,500 computer work stations. In the course of many years, the automation of judiciary processes by means of an electronic register has proved to be of benefit. On account of its many additional functions, the successfully completed re-design facilitates an even faster and easier handling of about 40 different types of processes at court. Electronic legal correspondence has contributed largely towards increasing work efficiency; it facilitates the electronic communication of almost all types of submissions to the courts and the electronic service of documents by the courts. The data base on decrees (www.edikte.justiz.gv.at) can be accessed free of charge and publishes insolvency proceedings, court auctions, decrees derived from penal and civil cases, publications, custodianships and the service of documents. The documentation of the judicial case law is also available free of charge on the Internet, as part of the Federal Legal Information System (www.ris.bka.gv.at). By setting up the web site www.sdgliste.justiz.gv it has become much easier to find court-certified expert witnesses, as well as court-certified interpreters/translators.

A central data base archiving documents has been set up. It will be possible to use the data base for all kinds of applications and proceedings, especially for the land and the trade registers.

The "Integrated Administration of the Penitentiary System" serves the goal of providing comprehensive IT support to managing the administration of prison inmates. It comprises a list of current inmates, helps to manage detention space, to plan and manage the transfer of inmates, as well as to automatically calculate the end of a prison term and all deadlines associated with it. Other IT activities include, inter alia,

- ▶ list of receivers (insolvency cases),
- ▶ European Business Register,
- ▶ European Land Information System,
- ▶ electronic case files,
- ▶ master plan e-Government,
- ▶ portal platform

5.5. The Land Register

5.5.1. The land register

The land register is a public schedule maintained by the district courts for recording real-estate and the associated rights in rem. The following rights may be



5. Judiciary Services

recorded in the land register: ownership, home ownership, pledges, building rights, easements and land charges. In addition, notes and references may point to certain facts of legal consequence.

The primary importance of the land register lies in the fact that all rights in rem may only be acquired when recorded in the land register (principle of recording rights), as well as that everybody may rely upon the correctness and completeness of the land register (principle of reliance). The land register consists of a main ledger, which contains the current entries in the land register, a list of cancelled entries and a collection of documents (this is a collection of the documents that are at the basis of the land-register entries, for example, purchase contracts when acquiring real estate by way of purchase). In addition, there are auxiliary schedules, such as a schedule of real-estate plots, a list of addresses, and a list of persons or names. All these schedules indicate the entry number which was used to record the real-estate in question or the respective owner in the land register.

5.5.2. Cadastral maps

The cadastral maps are a public instrument, maintained by the surveyors' offices, which indicates certain actual real-estate conditions and – to the extent recorded – the binding evidence of real-estate boundaries. The new cadastral border maps have not yet been completed. The cadastral maps comprise the schedule of coordinates, maps and aerial views, the cadastral file with drawings describing the real-estate plots, and the schedule of real-estate plots. The latter indicates a real-estate plot number, the type of use or the sections of use (such as building sites, garden areas, etc.) and the size of the area.

5.5.3. Land-register data base

The land-register data base is a central data base that has been set up with the Federal Computing Center in Vienna. It comprises the land register and the cadastral maps and links the data of these two areas.

The main ledger, the schedule of cancelled entries and the auxiliary schedules are kept by storing the entries in the land-register data base. However, the collection of documents is not stored in the land-register data base. It can only be accessed at the land-register courts, which have local competencies for the respective land register. The IT-supported management of the land register has proved to be absolutely reliable. A particularly strict liability of the Federal State has been stipulated for any damage from the use of IT support for the land register (the damaged party does not have to prove the fault of the federal agency, which is differ-



5. Judiciary Services

ent from the approach under the official-liability law). So far, though, not a single case has occurred in which this liability was claimed.

The land-register data bank contains all border posts, triangulation and other surveying points, as well as information on the map sheets, a digitalized form of the cadastral maps and references to changes (file number of the surveying office regarding changes in the cadastral maps). The schedule of real-estate plots is also kept in the land-register data base.

5.5.4. Inquiries

As a matter of principle, everybody is entitled to inquire about entries in the land register and its auxiliary schedules in the land-register data base. The same applies to the cadastral maps, including the digital cadastral maps.

When entering the name of the cadastral community and the number of the real-estate plot (so-called entry numbers or "EZ") or of the real-estate property, information may be obtained from the data base (excerpts from the land register, excerpts from the cadastral maps, copies of maps). This information contains all currently recorded data. Upon request, data that has been cancelled in the meantime may also be obtained (back to when the system was converted to IT).

It is not possible to obtain information on persons. For this type of information interested persons must turn to (any) land-register court and demonstrate a legal interest in the information. Since mid-1999 inquiries to the land-register data base (also land register and cadastral maps) are possible via the Internet by accessing accounting centers. Access to the real-estate data base is possible via the Internet addresses given at <http://www.justiz.gv.at> for the accounting centers (chapter "Grundbuch"). This is how land-register and cadastral-map inquiries can be made and copies from these schedules may be obtained, which are completely identical with officially produced copies.

However, public documents on the status of the land register or the cadastral maps, for the purpose of submission to authorities, etc., may only be obtained by contacting the (any) district court (land-register department) or a notary, or in surveying matters by contacting a (any random) surveying office or civil engineer.

5.5.5. Costs

Inquiries to the land-register data base are subject to a fee. The fees are invoiced in keeping with the Fees Ordinance of the Federal Ministry for the Economy and Labor via the above-mentioned accounting centers, where every customer must obtain an account.



5. Judiciary Services

5.5.6. Access to the data base

Public access to this data base is via the companies (accounting centers) listed at <http://www.justiz.gv.at> under "Grundbuch" (land register).

5.6. The Commercial Register

5.6.1. The commercial register

The trade register is a public schedule maintained by the regional courts (in Vienna by the Commercial Court Vienna, in Graz by the Regional Court for Civil Matters Graz). It serves to record and disclose facts that must be registered according to commercial-law provisions.

The trade register consists of a main ledger, which contains the entries in the trade register, and the collection of documents (this is the collection of those documents that are the basis for entries in the trade register, for example the articles of incorporation or the balance-sheet).

The following entities are registered in the Commercial Register:

- ▶ sole proprietors;
- ▶ open partnerships;
- ▶ limited partnerships;
- ▶ joint-stock companies;
- ▶ limited liability companies;
- ▶ cooperative, industrial and provident societies;
- ▶ mutual insurance companies;
- ▶ savings banks;
- ▶ private foundations;
- ▶ European economic partnerships;
- ▶ European companies (SE);
- ▶ European cooperative societies (SCE);
- ▶ other entities whose registration is legally provided for.

5.6.2. Trade-register data base

The main ledger is maintained by filing the entries in a central data base (trade-register data base) at the Federal Computing Center in Vienna. Since the middle of 2005 the collections of documents of all trade-register courts are kept in electronic form. As in the past, older documents may be inspected at the trade-register court, which has the local competence for the respective trade register. Since 2001 it has been possible to review electronically filed balance sheets via the Internet.



5. Judiciary Services

The IT-supported management of the trade register has also proved to be absolutely reliable. So far, there has not been a single case of liability.

5.6.3. Inquiries

As a matter of principle, everybody is entitled to access the trade-register data base to obtain information on entries in the trade register. When entering the trade-register file number, an excerpt from the trade register may be retrieved from the data base. This excerpt contains the currently recorded data. Upon request, data that have been cancelled in the meantime may also be obtained (only going back until the conversion to IT management).

Inquiries may also ask which legal entities were newly recorded recently, or amended, or deleted.

Since the middle of 1999 the trade register may be accessed via the Internet by way of accounting centers.

The access to the trade-register data base is via the Internet addresses of the accounting centers. By using this facility, trade-register inquiries may be drawn up and copies from the trade register may be generated, which are completely identical with the officially produced excerpts from the trade register. However, only the regional court (trade-register department) or a notary may produce public documents on the status of the trade register for the purpose of submission to an authority.

5.6.4. Costs

Trade-register inquiries are subject to costs. The fees are calculated in keeping with the Fees Ordinance of the Federal Ministry of Justice and are handled by the accounting centers, where every customer must obtain an account.

5.6.5. Data base access

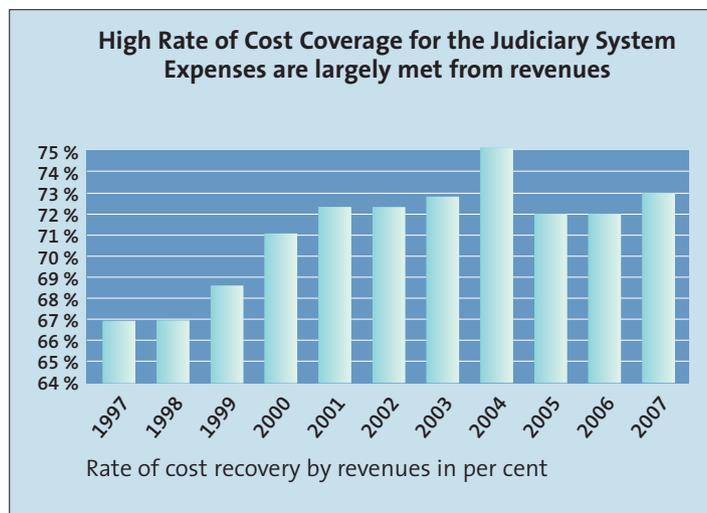
The Federal Ministry of Justice has made arrangements so that public access to this data base is via the companies (accounting centers) listed at www.justiz.gv.at under "Firmenbuch" (trade register).



6. Budget

6.1. Expenses and Cost Coverage

Expenses amount to EUR 1,086 million (of which EUR 499 million are expenses for personnel and EUR 586.7 million are material expenses), while revenues amount to EUR 789.8 million (2007). The justice department can therefore boast a high rate of cost coverage of about 73 per cent.



Efficiency improvements of recent years have had the effect that the expenses incurred by the courts are covered by the revenues from court fees.

It is only for the prisons that tax money is needed, as costs of about EUR 89 per inmate and day can

only partly be covered by the sale of products and services generated at the prisons. The costs of proceedings are mainly determined by two factors, namely for personnel costs and the volumes of work. In connection with the penitentiary system, the costs are largely determined by the number of inmates, the quality of their accommodation and the level of care. A cost to performance calculation, guided by business-management considerations, is currently being developed. It will make it possible in the future to optimize the use of resources within the legal requirements.

6.2. Budget Responsibility (Budget Performance)

The Federal Constitution Act governs the preparation and performance of the budget in great detail.

The federal budget law, which is adopted by a simple majority, determines the organization for managing the budget, the planning of the budget, the preparation of the budget, as well as budget performance (income and expense management, asset and debt management, payment transactions, clearing), as well as accounting and internal revision procedures. The Federal Minister of Justice takes the lead in managing the budget of the entire judiciary system, for which she is responsible.



6. Budget

A federal financing act is required for every budget year (calendar year), as the legal basis for all administrative acts associated with revenues and expenses. The annexes to the annual federal financing act are the federal budget (for the financial resources) and the schedule of established posts (for the resources of personnel).

Chapter 30 of the federal budget – "judiciary system" – consists of five budget headings (the figure in brackets indicates the – always rounded – share in the total expenditure of the justice department):

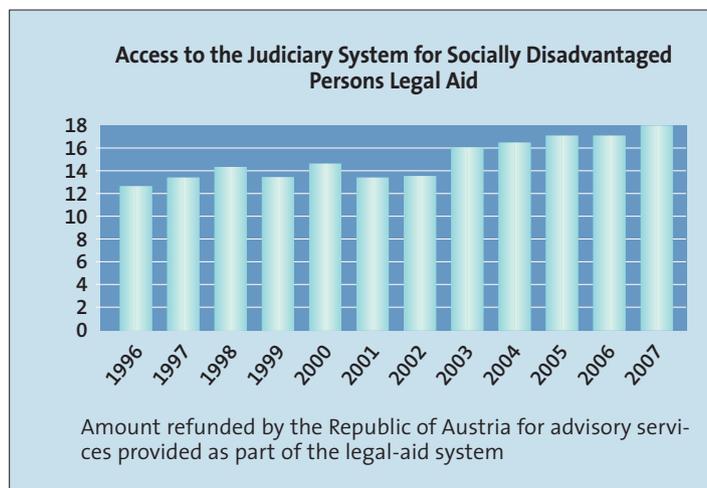
- ▶ Federal Ministry of Justice; this also includes grants, for example for "Vereins-sachwalter" (professional custodians) and patient ombudsmen, the representatives of institution occupants, and assistance to victims (3.8%)
- ▶ Supreme Court and General Procurator's Office (1.2%)
- ▶ judicial authorities in the federal provinces, i.e. all other courts and the offices of public prosecution; the Federal Ministry of Justice distributes the money, allocated by the legislator under this heading, among the four districts of the courts of appeal (61%)
- ▶ prisons (31%)
- ▶ probationary services (3%)



7. Services for Austria's Citizens

New forms of work organization and communication make the often seemingly abstract judiciary institutions more comprehensible, bringing them closer to citizens. For example, setting up service centers at the regional courts in Linz and Innsbruck has helped to make contacts to the courts much easier for persons in search of judicial assistance. In addition, the drop-down menu "Recht zum Bürger" (bringing the law to citizens) at www.justiz.gv.at provides interactive information on legal subjects of general interest in a visual and acoustic format.

7.1. Access to the Judiciary System for Socially Disadvantaged Persons



Someone who cannot pay the cost 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.

Every year, the Federal Ministry of Justice transfers a lump sum to the bar associations in order to cover the services provided by lawyers as legal-aid counsels. This money is used for pension payments to retirees and surviving dependants.

7.2. Judicial Ombudsoffices

On 1 November 2007, the Austrian judiciary introduced ombudsoffices to offer Austrian citizens an improved information and complaint service.

Anyone involved in court proceedings may turn to the ombudsoffice if they have questions or complaints concerning the work of the courts. They are located at the higher regional courts and are headed by experienced judges.

Ombudsoffices, however, must not interfere with pending proceedings nor do they constitute another type of appellate court.



8. International Cooperation

The goal of international cooperation is the general exchange of ideas and opinions with representatives of foreign judiciary systems, as well as to support other countries when building up their legal systems, based on the rule of law and democratic principles. Austria's judiciary system, which is held in high esteem abroad, makes valuable contributions in this direction. Austrian expertise is also often applied in projects that receive international support.

Here are a few examples: As part of the support mission financed by the European Union for the Albanian judiciary system, "EURALIUS", one of the vice-presidents of a court of appeal served as mission leader, working in Albania, from 2005 to 2006.

In the regional project "Judicial Systems in the Western Balkan Countries", financed by the European Union under the CARDS program, Austria had headed a consortium of several countries and the Council of Europe. The goals of this project are to bring the judicial systems of the Western Balkan countries closer to the standards of the European Union, to provide assistance in developing national action plans and strategy papers, and to promote regional cooperation and networking. From June 2001 to June 2005 between five and ten prison guards worked in the Kosovo, supporting the international management of the prisons, as well as training local prison guards.

The Federal Ministry of Justice of Austria has – based upon a cooperation agreement – outsourced the administration of the aforementioned projects to the Center of Legal Competence (CLC), a Mandated Body closely related to the Federal Ministry of Justice and entitled to act in lieu of public administrations in the framework of twinning projects. CLC manages the project funds and assists the Ministry in the monitoring and execution of the projects.

CLC is a research, training and consulting institution established by a decision of the Council of Ministers of December 1998 as a non-profit association. Members of the association are the Austrian Federal Government, represented by the Federal Minister of Justice, the Federal Chamber of Attorneys (Bar Association), the Federal Chamber of Notaries Public, the Federal Chamber of Commerce and the Austrian Federation of Industry. The CLC activities serve to strengthen Austria's contribution towards promoting the legal and institutional reforms in transitions countries by way of research, training and consulting services (www.clc.or.at).



9. Sources:

www.justiz.gv.at

Marcus Hrnčir, Sigrid Urbanek: JustizRechtStaat, Forum Politische Bildung