

# Legal Professions in Austria



# **Legal Professions in Austria**

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## Preface

I am convinced that investing in education and knowledge pay off in the long term. As an example, persons who have graduated with a law degree from an Austrian university possess a qualification that opens many doors.

No matter whether one wants to become a judge or a public prosecutor – the Austrian judiciary offers motivated and dedicated persons an abundance of interesting and captivating career options in their own country. A functioning and reliable judiciary needs notaries and lawyers. Apart from these legal occupations in the more narrow sense there is the profession of judicial officer, which is essential to the functioning of a state under the rule of law. It is important that the duties of all these professions complement each other while their competencies are clearly delimited.

The choice of a course of studies is not always easy. After all, with it we pave the way for our future professional career. What should be kept in mind, however, is that anyone of us can encounter the judiciary, even without a conflict. Our everyday lives offer meeting points with the state under the rule of law: may it be a case of inheritance in the family, or the registration of property in the land register.

With this brochure, persons interested in studying law as well as soon-to-be graduates can get a first impression of the different professional fields in the Austrian judicial system – complete with all their duties and performance.

I wish you all a good time reading,

Dr. Josef Moser  
Federal Minister of Constitutional Affairs, Reforms,  
Deregulation and Justice



Dr. Josef Moser  
Federal Minister of  
Constitutional Affairs,  
Reforms, Deregulation  
and Justice





1

# Introduction

## 1.1 Preliminary Remark

The personal expressions used in this brochure refer to both women and men.

## 1.2 General

This brochure intends to provide an overview of the occupations of judge, public prosecutor and court officer (*Rechtspfleger*) in the Austrian courts of law; it explains how to become a judge, a public prosecutor or a court officer and outlines the statutory bases. Unless expressly stated otherwise, the information contained in this brochure exclusively refers to jurisdiction exercised by the courts of law, i.e. jurisdiction over general civil matters, commercial matters, labour and social matters and criminal matters (see also Part I.D.2.). Matters of civil jurisdiction and criminal jurisdiction fall within the area of responsibility of the Ministry of Justice.

Judges, public prosecutors and court officers have in common that they are staff of the Republic of Austria. In addition, the professions of lawyer and notary will be presented herein, the latter not exactly being a profession (*freier Beruf*) because notaries also fulfil public duties and act as judicial organs in their capacity as court commissioners (*Gerichtskommissär*). All relevant legislation and the entire applicable law plus the rulings of different courts is available on the internet free of charge in the so-called Legal Information System of the Republic of Austria (*RIS*) at the following link: <http://www.ris.bka.gv.at>, if not printed in the Annex attached hereto.

The jobs of judge, public prosecutor and court officer as well as that of a notary fall within the so-called “core area of sovereign administration”, which means that also after Austria’s accession to the European Economic Area and the European Union only Austrian citizens are allowed to hold these positions.

In contrast, on certain conditions, the profession of lawyer may be practiced by citizens of another Member State of the European Union or a State that is party to the Agreement on the European Economic Area or by a Swiss citizen (see part VII.B, page 20).

Qualifications for the so-called “classic” legal occupations (such as judge, public prosecutor, lawyer, notary and state attorney) were adapted by the Austrian Statute Accompanying the Budget (*Budgetbegleitgesetz*) of 2011 (*BGBI.* (Federal Law Gazette) I No. 111/2010) insofar as, in principle, the required court internship, which previously had to be nine months, was reduced to five months as from 1<sup>st</sup> July 2011.

Before we present the different legal occupations, including their similarities and differences, we would like to give you some data on the persons holding such positions in Austria and on the main features of the Austrian legal system.

## 1.3 Selected Statistical Data

Of approximately 8.8 million people who live in Austria (thereof approximately 7.5 million Austrian citizens)

- approx. 6,200 work as lawyers,
- approx. 2,000 work as (professional) judges\* at courts of law, another 68 work at the Supreme Administrative Court (*Verwaltungsgerichtshof*) and approx. 610 at the federal and regional administrative courts,
- approx. 710 are court officers (*Rechtspfleger*)\*,
- approx. 515 are notaries and
- approx. 495 are public prosecutors\*.

(\*calculated according to full-time equivalents)

That means that there are approx.

- 70 lawyers,
- 23 judges,
- 8 court officers,
- 6 notaries public and
- 6 public prosecutors

per 100,000 inhabitants.

### Women and Men in the Justice System

In proportion to the total number of staff of the justice system the number of women who work in the justice system is around 55%. After a steady rise in the last 20 years, currently 55% of the judges and 52% of public prosecutors are women (headcount). Around 58% of the legal trainees and 66% of those in the trainee judge programme are women. Due to generation-related circumstances leading positions are currently predominantly held by men (women account for some 38%).

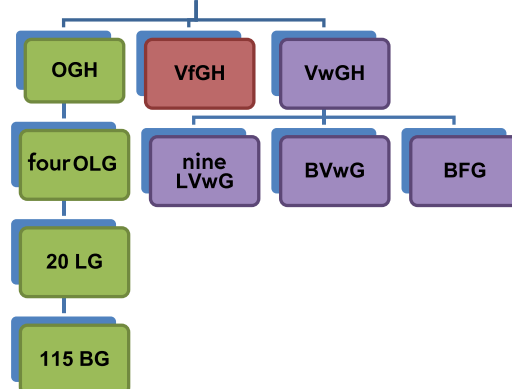
## 1.4 Constitutional Bases, Organisation of the Austrian Legal System

### 1.4.1 Jurisdiction competence

The so-called “competence articles” of the Federal Constitution (Austrian Federal Constitution Act (*Bundes-Verfassungsgesetz/B-VG*)) split legislative and executive tasks between the federation (*Bund*) and the states (*Bundesländer*). **Jurisdiction of the courts of law** and the professional rules of lawyers and notaries fall within the **exclusive competence of the federation**. The structure and the jurisdiction of the courts of law are regulated by federal laws.

The area of administration, which was completely redesigned as of 1<sup>st</sup> January 2014, not only comprises the Supreme Administrative Court (*Verwaltungsgerichtshof*) but also a Federal Administrative Court (*Bundesverwaltungsgericht*) and a Federal Fiscal Court (*Bundesfinanzgericht*) and nine regional administrative courts. The regional administrative courts are the successors to the former independent administrative panels in the states (*unabhängige Verwaltungssenate*) which used to have jurisdiction before the reform.

### JURISDICTION



### 1.4.2 The courts of law

“Jurisdiction of the courts of law” means jurisdiction over general civil matters, commercial matters, labour and social matters and criminal matters. On the other hand, there is administrative justice and jurisdiction of the public-law courts (administrative courts and constitutional courts) and private arbitral tribunals.

In Austria, jurisdiction of the courts of law is organised at **four levels**:

- a) Currently **115 District Courts** (*Bezirksgerichte/BG*) constitute the lowest organisational level; a total of approximately 710 judges work there.

The size of the District Courts varies considerably. With over 40 judges District Court Innere Stadt Vienna (*BG Innere Stadt Wien*) is the largest in terms of the number of judges. In the smallest District Courts there is not even enough work for one judge, which is why judges work at another District Court in addition.

- b) The second organisational level is Austria's 20 Regional Courts (*Landesgerichte/LG*), which are, in principle, responsible for all fields of the administration of justice. In Vienna and Graz there is a Regional Court with exclusive jurisdiction over civil matters and a Regional Court with exclusive jurisdiction over criminal matters. In addition, there is a Commercial Court (*Handelsgericht/HG*) and a Court for Labour and Social Matters (*Arbeits- und Sozialgericht/ASG*) in Vienna.

A total of around 740 judges work at the Regional Courts. The number of judges working at a Regional Court ranges from 12 to more than 70.

- c) The third organisational level is made up of the **four Higher Regional Courts** (*Oberlandesgerichte/OLG*), where currently around 190 judges work:

- **Higher Regional Court Vienna** (*OLG Wien*) for the states of Vienna, Lower Austria and Burgenland,
- **Higher Regional Court Graz** (*OLG Graz*) for the states of Styria and Carinthia,
- **Higher Regional Court Linz** (*OLG Linz*) for the states of Upper Austria and Salzburg, and
- **Higher Regional Court Innsbruck** (*OLG Innsbruck*) for the states of Tyrol and Vorarlberg.

- d) The highest instance in civil and criminal matters is the **Austrian Supreme Court** (*Oberster Gerichtshof/OGH*) in Vienna, where 67 judges adjudicate.

- e) The organisation of the courts at four levels is not to be confused with the stages of appeal available in a court case, i.e. the number of times that a decision can be reviewed and the type of courts that are competent to do so.

### 1.4.3 The stages of appeal

In civil matters three courts may be asked to deal with a case as a matter of principle (initial ruling by the court of first instance plus two stages of appeal) and in criminal matters two courts may be asked to deal with a case (initial ruling by the court of first instance plus one stage of appeal).

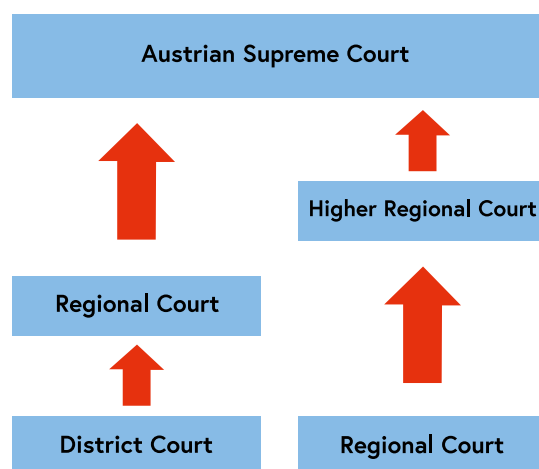


Chart #2: The stages of appeal in civil matters

### The stages of appeal in civil matters

The District Courts' jurisdiction over **civil matters** including **commercial matters** depends, on the one hand, on the amount in dispute ("**monetary jurisdiction**"; since 1<sup>st</sup> January 2013 the threshold in terms of the amount in dispute has been **EUR 15,000**) and, on the other hand, on the type of the matter ("**specific jurisdiction**", e.g. certain legal matters like matters of descent or parentage, maintenance matters and matrimonial matters, Land Register matters and enforcement matters, debt restructuring cases and most non-litigious matters definitely fall within the jurisdiction of the District Courts). Where District Courts have jurisdiction over civil matters appeals are dealt with by a Regional Court, which is the court of second instance in such cases and, sometimes, by the Supreme Court as the court of third instance. Where the amount in dispute exceeds the threshold fixed for the District Courts or where a legal matter otherwise falls within the specific jurisdiction of the Regional Courts (e.g. Business Register matters, other insolvency matters, labour and social matters or matters of liability of public corporations for damage or loss caused by their officers (*Amtshaftung*)), a Higher Regional Court will

deal with the appeal and, where necessary, the Austrian Supreme Court as the court of third instance.

In **labour and social matters** participation of expert laypersons (representatives of employers and employees) is provided for in all instances. In commercial cases, expert laypersons (merchants, *Kommerzialräte* (persons who were honoured for their services in business)) are called in for cases tried in courts of first or second instance only by way of exception.

## The stages of appeal in criminal matters

In criminal matters District Courts have jurisdiction over offences which exclusively carry a fine or a prison sentence of up to one year (except for specific offences for which it is particularly likely to be imprisoned like “serious threat” or “duress”; the Regional Courts having jurisdiction over criminal matters have jurisdiction over those cases as courts of first instance). Appeals against decisions in criminal matters rendered by District Courts may be lodged with the Regional Courts, which are the courts of last resort in these cases.

Where a Regional Court is the court of first instance in a criminal case, decisions are rendered by

- **sole judges** (regarding offences which carry a prison sentence of up to five years),

Decisions rendered by a sole judge of a Regional Court may be appealed against by means of a remedy to the Higher Regional Court.

- **panels which are composed of professional judges and lay justices** (*Schöffensenate*) (normally one professional judge and in certain cases two professional judges and always two lay justices) for offences which carry a prison sentence of more than five years, unless the case has to be dealt with by way of a jury trial.
- **courts including a jury** (*Geschworenengerichte*) (courts composed of three professional judges and eight laypersons “jurymen and jurywomen”) for offences which carry a minimum prison sentence of more than five years and a maximum prison sentence of more than ten years, and for political offences (e.g. treason, high treason, engagement in National Socialist activities).

Judgments rendered by courts including a jury or by panels which are composed of professional judges and lay justices may be appealed against in the Supreme Court, unless only the sentence will be appealed. In the latter case the court of appeal is the competent Higher Regional Court.



#### 1.4.4 Administrative Jurisdiction

Until the 31<sup>st</sup> of December 2018 administrative bodies held the jurisdiction as well in first instance as in second instance. The only exception were the so-called “UVS” – the independent administrative penal.

The area of administration, which was completely redesigned as of 1<sup>st</sup> January 2014, comprises not only the Supreme Administrative Court (*Verwaltungsgerichtshof*) but also a Federal Administrative Court (*Bundesverwaltungsgericht*) and a Federal Fiscal Court (*Bundesfinanzgericht*) and nine regional administrative courts.

### 1.5 Public Law Courts

Apart from the Austrian Supreme Court in Vienna, there are two more supreme courts (which are, however, outside the jurisdiction of the courts of law), namely the Austrian Supreme Constitutional Court and the Austrian Supreme Administrative Court.

The **Austrian Supreme Constitutional Court** (*Verfassungsgerichtshof*) is composed of 14 members appointed by the Federal President; some are proposed by the Federal Government, some by the lower chamber of the Austrian Parliament called the National Council (*Nationalrat*) and by the upper chamber of Parliament (*Bundesrat*) from among judges, professors, lawyers and public officials; in principle, they only work for the Supreme Constitutional Court on a part-time basis but nevertheless enjoy the full judicial guarantees of being independent and irremovable.

The Austrian Supreme Constitutional Court is, inter alia, in charge of reviewing federal laws and state laws for their constitutionality, regulations of administrative authorities for their lawfulness and final decisions of administrative authorities for their constitutionality when asked to do so by means of a petition.

The **Austrian Supreme Administrative Court** (*Verwaltungsgerichtshof*), which reviews rulings of the administrative courts for their lawfulness upon petition of the parties, is comprised of 69 full-time judges.

The **Austrian Asylum Court** (*Asylgerichtshof*) was integrated into the Federal Administrative Court (*Bundesverwaltungsgericht*), which was established on 1<sup>st</sup> January 2014.

# Features Common to the Education and Training of all Legal Occupations in Austria

## 2.1 University Education and on the Job Training

In Austria education and training of the legal occupations consists of two stages. In the first stage the focus is on university education in the form of a degree programme in Austrian law. The second stage is on-the-job training. Here the so-called “court internship” functions as a bridge between academic education and on-the-job training. After completion of court internship on-the-job training is different for the different legal occupations.

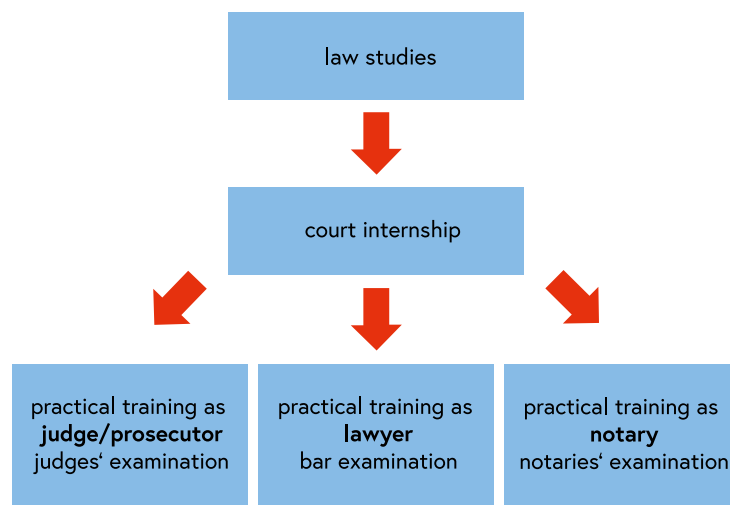


Chart #3: Education and training of the different legal occupations

## 2.2 Austrian Law Studies

The basic qualification for working in a legal occupation is completion of a university programme in Austrian law of at least four years and at least 240 ECTS credits. Graduates in (classic) diploma law studies and Austrian law studies which they commenced after 31<sup>st</sup> August 2009 and which they completed with a law degree usually fulfil these requirements.

The curricula of the **Universities of Vienna, Graz, Linz, Salzburg and the Vienna University of Economics and Business**, which offer law studies, regulate the details of diploma and master courses as defined in the Universities Act (*Universitätsgesetz*) 2002, *BGBI.* (Federal Law Gazette) I No. 120, which aim at providing the students with an academic educational background. After having passed an equivalency assessment test, graduates from other law programmes are, in principle, also entitled to work in the legal core occupations, provided that they fulfil certain statutory requirements.

In the course of an unpaid internship as a so-called *Rechtshörer* over several weeks, future graduates may gain an insight into the justice system while they study. For more information see Annex IV and the internet at: <http://gerichtspraxis.justiz.gv.at>.

## 2.3 Court Internship

After having completed their law studies in Austria graduates are **entitled** to continue their training as a **legal trainee** (*Rechtspraktikant*) in a court to deepen their theoretical legal skills and to use them in practice.

The legal bases are contained in the Federal Statute of 15<sup>th</sup> December 1987 on a Court Internship of the Legal Trainees (*Rechtspraktikantengesetz/RPG*), BGBl. No. 644/1987, as amended. This Statute, which was considerably amended by the Statute Accompanying the Budget 2011 (BGBl. I No. 111/2010), is attached as Annex III; for more information see also <http://gerichtspraxis.justiz.gv.at>.

Austrian citizenship is no prerequisite for a court internship. Law graduates from foreign universities whose command of the German language is sufficient to follow the course of a court hearing may also be admitted for court internships. However, they have no statutory claim to admission to a court internship.

In Austria **court internship** is **mandatory** not only for the occupations of judge and public prosecutor but also for lawyers and notaries as well as for a legal position with the Office of State Attorneys (*Finanzprokuratur*) (which must be for at least five months for each occupation).

However, since a completed court internship is also expected by many other employers, almost all law graduates make use of this option. Currently, around 800 persons are doing a court internship.

The mainly **practical training**, which consists of on-the-job training and training courses, is designed in such a way that by assisting the administration of the justice the trainees are, to the extent possible, offered a most comprehensive insight into the work of a judge and maybe also into that of a public prosecutor and into the work done by their

assistants; it is also structured in such a way that they learn how the justice system works in general. Legal trainees are, for example, asked to **draw up draft decisions** and to do other conceptual preparatory work and may also be asked to record court hearings or trials in criminal proceedings to the extent that this is reconcilable with the purpose of the training.

As early as in 2001 we started to use electronic programmes (**Electronic Learning - Training in the Net - ELAN**) for training legal trainees.

The 7-month training covers civil matters and criminal matters and may also be completed at a public prosecutors' office.

Court internships may, in principle, start on the first day of any month. They are no employment relationship but **traineeships**.

The application for admission to court internship must be sent to the President of the competent Higher Regional Court. The addresses of the four Higher Regional Courts are:

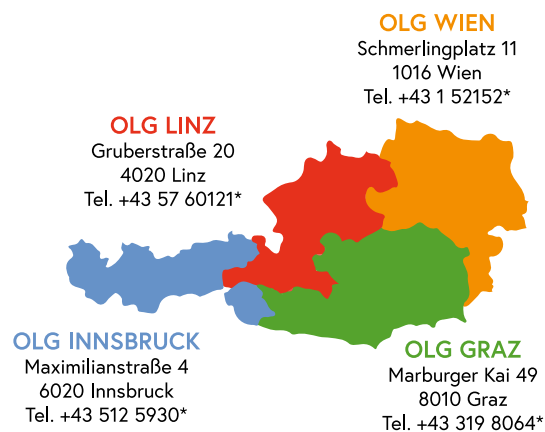


Chart #3: Four Higher Regional Courts (OLG)

Such application may include a statement to the effect that the applicant would like to be admitted to **the trainee judge programme** (*richterlicher Vorbereitungsdienst*) (see Part IV.B, page 10). An official certificate confirming that the legal trainee has completed court internship has to be issued upon request.

During the period of court internship legal trainees are entitled to a monthly gross “training allowance” of currently EUR 1.318,95 plus a pro-rata share of the special payments, i.e. the Christmas bonus and holiday pay.

3

# Continued training options

Training for the legal occupations starts to go different ways as early as after the court internship. This is earlier as, for example, in Germany. Nevertheless, career changes from one legal core occupation to another are possible at a later point.

The **Austrian Statute on the Recognition of Education, Training and Examinations** (*Ausbildungs- und Berufsprüfungs-Anrechnungsgesetz/ABAG*), BGBl. No. 523/1987, which provides for mutual accreditation of certain parts of the notary examination, the bar examination or the judge examination, makes such career changes easier. Lawyers who have successfully passed a vocational exam in one of the abovementioned occupations may apply for accreditation of the previously passed examination before taking another examination so that they only have to take a supplementary exam in certain examination subjects which are specific to the additional exam they want to take.

The mutual partial accreditation of exams has to be distinguished from the issue of mutual accreditation of work experience. The extent to which it can be accredited is set forth in the relevant provisions on practice (see Section 26 of the Austrian Act on the Service of Judges and Public Prosecutors (*Richter- und Staatsanwaltschaftsdienstgesetz*), Sections 1 and 2 of the Austrian Lawyers' Code (*Rechtsanwaltsordnung*) and Section 6 of the Austrian Notaries' Code (*Notariatsordnung*).

The following chapters describe the different options of education and training for the "classic" legal occupations, namely judge, public prosecutor, lawyer and notary, as well as training to become a court officer (*Rechtspfleger*) plus the relevant requirements for practicing the occupation and the job-related responsibility.

4

Judge



## 4.1 Bases

Apart from the provisions of the Federal Constitution Act (Bundes-Verfassungsgesetz) dealing with jurisdiction (as attached) the Austrian Federal Statute of 14<sup>th</sup> December 1961, BGBl. No. 305 on the Service of Judges, Public Prosecutors and Trainee Judges (*Richter- und Staatsanwaltschaftsdienstgesetz/RStDG*), which entered into force on 1<sup>st</sup> May 1962 and has been amended several times, is the material source of law governing education and training of judges and the professional status of judges (please see Annex II for an excerpt from the Statute).

Firstly, in 1962, the service and remuneration regulation for judges and trainee judges was compiled in this Statute, which had been spread over different legislation before, some of which more than a 100 years old. In connection with the establishment of public prosecutors as organs of the legal system in Article 90a of the Austrian Federal Constitution Act, the special provisions on employment and remuneration of public prosecutors were included in the Austrian Statute on the Service of Judges (*Richterdienstgesetz*) and the statute was renamed accordingly.

In the following, the so-called “trainee judge programme”, i.e. education and training of trainee judges (who may either become a judge or a public prosecutor), will be dealt with in more detail (see the first two parts of the RStDG referring to employment law, which are attached hereto as Annex II).

Most judges are members of the private-law Association of Austrian Judges (*Vereinigung der österreichischen Richterinnen und Richter*) (which has been embodied in Section 73a of the Austrian Court Organisation Act (*Gerichtsorganisationgesetz/GOG*), Reich Law Gazette (*Reichsgesetzblatt*) No. 217/1896, since 1<sup>st</sup> January 2012) which represents the judges’ interests vis-à-vis the employer and the general public (<http://www.richtervereinigung.at>). In addition, there is the “Federal Representative Body of Judges and Public Prosecutors within the Public Service Trade Union (*Bundesvertretung der Richter und Staatsanwälte in der Gewerkschaft öffentlicher Dienst*).

Judges are strongly involved in the administration of the court system, especially through staff panels which are established at all higher courts (Regional Courts, Higher Regional Courts, Supreme Court) and which to the most part consist of elected members. The staff panels decide, in particular, on the court-internal schedule of responsibilities and nomination proposals for vacant positions.

## 4.2 Admission to the Trainee Judge Programme

A person is admitted to the trainee judge programme by being given the job title *Richter-  
amtsanwärter* (**trainee judge**). Law graduates who are admitted to the programme and eventually want to work as a judge at a court of law therefore have to apply for a trainee judge position, which is publicly advertised by the President of a Higher Regional Court. Such advertisements can be found, for example, in the Official Journal of *Wiener Zeitung* and on the internet on the website of the Federal Ministry of Justice (<http://www.justiz.gv.at>).

The number of such trainee jobs is determined by the annual staff plan, which is part of the Federal Finance Act (*Bundesfinanzgesetz*). Apart from the number of cases to be handled by the courts the most important criterion for fixing the number of regular new recruits is the number of judges and public prosecutors who are expected to leave in the coming years, in particular due to retirement and temporary leaves and due to the budget situation. From 2004 to 2008 an average of 90 trainee judges was newly recruited per year, including to cover the increased demand for public prosecutors as a result of the Criminal Procedure Reform (reform of preliminary investigations). Lower average figures are expected for the next few years.

Following a selection procedure the President of the Higher Regional Court will propose candidates to the Federal Minister of Justice. The Federal Minister of Justice is responsible for the appointment without being bound by the proposal made by the President of the Higher Regional Court.

In practice, however, only persons proposed by the President of the Higher Regional Court are appointed trainee judges. Currently the total number is some 230.

Before making a proposal the President of the Higher Regional Court has to check whether the recruiting requirements are met.

Since judges (like public prosecutors) fall within the so-called “core area of sovereign administration”, Austrian citizenship is still a statutory employment requirement even after Austria’s accession to the European Economic Area and to the European Union (see Annex II, Section 2 RStDG).

The President of the Higher Regional Court will base his/her examination of whether recruiting requirements have been met on the statements of the judges and public

prosecutors who tutored the trainees during the court internship. In addition, the President has to get an impression of the overall personality of the candidate in an interview. From among several candidates preference must be given to those applicants who are more qualified for the job than others.

Since 1986 shortlisted candidates have had to take a psychological test, which is carried out by independent psychologists.

Before making his/her proposal the President of the Higher Regional Court will also give the elected representatives of the judiciary an opportunity to comment on the candidates.

### 4.3 Training of Trainee Judges

The training takes four years, which includes the court internship as a legal trainee, so that the period between the appointment as a trainee judge and the end of the training is normally not longer than three years. Currently the gross salary amounts to EUR 2.531,60; or EUR 2.599,- after having passed the examination.

#### Training structure:

- Training has to be done in a District Court, a Regional Court, a public prosecutors' office, in a prison or a facility where preventative measures are executed, at a law firm or a notary's firm or at the Office of State Attorneys (*Finanzprokuratur*) or at a victim protection facility or a public welfare institution. Part of the training can be done at a Higher Regional Court, at the Supreme Court, at the Federal Ministry of Justice or at a probation facility or in the financial sector.
- Training in a District Court or Regional Court must be for at least one year each; at a public prosecutors' office it must be for at least six months, at a law firm (or at a notary's firm or at the Office of State Attorneys) for at least four months, in a prison or a facility where preventative measures are executed for at least three weeks and at a victim protection facility or a public welfare institution for at least two weeks.
- Optional training in the financial sector serves the purpose of understanding financial and business processes and contexts and may, for example, be done at an agency of the finance administration (e.g. a tax office), a tax firm or a suitable company.

The purpose of training in professional representation of parties (lawyers, notaries, Office of State Attorneys) is to give the trainee a better understanding of the situation of persons seeking judicial assistance, in general, and of those who represent parties professionally, in particular.

On-the-job training is supported by a number of courses, seminars, etc. in legal and non-legal matters.

Details about the training programme and the structure of training are regulated in the Austrian Regulation on the Training of Trainee Judges (*Richteramtsanwärter/innen-Ausbildungsverordnung/RiAA-AusbVO*), BGBl. II No. 279/2012.

## 4.4 Judge Examination

Training to become a judge (or public prosecutor) is completed by the judge examination, which consists of a written and an oral part. The written examination consists of two decisions, one in a civil case and one in a criminal case, which have to be drawn up on the basis of court files.

The board of examiners for the examination, which lasts several hours, is comprised of five members. Two of them have to be judges and one of them has to be a member of the bar.

## 4.5 Appointment as a Judge

After having successfully passed the judge examination and after having worked in the judicial system for a total of four years, trainee judges may apply for a vacant position as a judge.

See Section 26 RStDG (attached as Annex II), which regulates the requirements to be met for being appointed as a judge.

The President of the Higher Regional Court or the President of the Supreme Court publicly advertise vacant judge positions.

After expiry of the deadline for application the responsible staff panels will shortlist the candidates; the shortlist has to include at least three persons if there are enough

applicants and, in the case that more than one vacancy has to be filled, at least twice as many candidates as vacancies that have to be filled.

Staff panels are panels of judges that consist of ex officio members (the President and the Vice President of the higher court) and members elected by the judiciary. The number of elected members is always higher than the number of ex officio members. Staff panels are set up at all Regional Courts and Higher Regional Courts as well as at the Supreme Court. Usually, two staff panels submit one proposal each for the position.

Pursuant to Article 86 (1) of the Austrian Federal Constitution Act the Federal President is empowered to appoint judges; however, for the majority of positions he has transferred this right of his to the Federal Minister of Justice.

The Federal President has reserved the right to appoint the Presidents and Vice Presidents of the higher courts and the judges of the Higher Regional Courts and the Supreme Court. However, in doing so the Federal President is bound by the proposal of the Minister of Justice.

Normally judges start their career as circuit judges or at a District Court, less often at a Regional Court. A change to a different (higher) court or a public prosecutors' office (in that case as a public prosecutor) requires participation in another job application process, with the way in which the office was handled in the past being the decisive criterion for promotion. No further examinations need to be taken.

## 4.6 Areas of Responsibility of Judges

Of the work done by the courts, the general public primarily notices the activities of the courts and public prosecutors' offices in criminal matters. However, only approximately 400 of around 1,710 judges de facto deal with criminal cases. In comparison, some 850 judges work on civil cases.

Other principal areas of responsibility of judges are non-litigious matters (in particular curatorship matters and family-law matters), with approx. 200 judges working on such cases, and labour and social matters, with around 160 judges adjudicating on such cases. Around 100 judges are entrusted with other judicial tasks and with matters of the administration of the justice system.

## 4.7 The Special Status of Judges

Austrian judges have a public-law employment relationship with the Republic of Austria and therefore belong to the group of federal officials in terms of employment law and remuneration law.

By being appointed as a judge one obtains the **independence** required for practicing the office of judge. Independence means that no instructions as provided for in Article 20 of the Austrian Federal Constitution Act for bodies of the administration can be given to judges in that capacity, neither individual instructions nor general ones, and neither specific instructions nor abstract ones. However, independence does not mean that judges are above the law. Metaphorically speaking, independence and being bound by the law are rather the two sides of the same coin.

Independence is safeguarded by the fact that judges cannot be **removed** from their office and **cannot be transferred to another position**.

The fact that judges cannot be removed from their office and cannot be transferred to another position means that judges, except for permanent retirement at the end of the year in which they attain the age of 65, may be removed from their office or be transferred to another position or have to take retirement against their will only in the cases and in the ways provided for by law and based on an official judicial decision.

The immobility that was accepted by the makers of the Constitution in order to safeguard judicial independence did not permit the creation of a flexible “staff pool”, as one was demanded, in particular in connection with large and complex cases. However, in 1994 a separate provision on **circuit judges** (*Sprengelrichter*), i.e. judges who may be transferred to another court in exceptional cases, was included in the Constitution to provide for a possibility to efficiently cover for judges who are unable to work (see Article 88a B-VG attached as Annex 1).

The number of circuit judges is limited to three per cent of all judge positions at the District Courts and Regional Courts. Circuit judges may only be asked to cover for judges of District Courts, Regional Courts or Higher Regional Courts and only if the latter are unable to work (illness, accident, etc.) or where the workload prevents them from fulfilling their duties within a reasonable period of time (these are the same requirements to be fulfilled in the case that the responsible staff panel wants to take away a case from a judge a posteriori and assign it to another judge).

The special guarantees for judges under constitutional law and sub-constitutional laws are not intended to create a class of privileged organs but must exclusively be seen in connection with the function of adjudication as an independent branch of the executive.

However, judges enjoy this special status under constitutional law only when they exercise their office of judge. Judges “exercise their judicial office” when they “attend to all tasks which were assigned to them by law and the schedule of responsibilities, except for those matters of administration of the justice system which, pursuant to statutory provisions, need not be discharged by panels or commissions” (Article 87 (2) B-VG).

To provide a better understanding of this restriction on the special status of judges which was imposed by the Federal Constitution, the term “matters of administration of the justice system” (*Justizverwaltungssachen*) needs to be defined in more detail. Article 94 of the Austrian Federal Constitution Act sets forth that “the justice system is separate from the administration in all instances”.

This constitutional principle means that only courts or administrative authorities may be asked to effect execution, but not public authorities which are organised partly as an authority of the justice system and partly as an administrative authority. Thus, tasks either have to be allocated to the judiciary or to the administration.

The Austrian Federal Constitution Act provides for an exception from this organisational separation only for the administration of the justice system.

It is the task of the (bodies of the) administration of the justice system to guarantee that the human and other resources required for operation of courts and public prosecutors' offices are provided while the principles of legality, expediency, economy and austerity are safeguarded, to ensure an administration of justice that safeguards the interests of the population in legal protection when those bodies exercise their right of supervision as embodied in the Austrian Court Organisation Act (Section 76 GOG); they also have to ask judges, public prosecutors, court officers and other staff of the courts and public prosecutors' offices to carry out their tasks and to offer support where necessary.

**All bodies of the administration of the justice system have to make sure that the judges' independence is not interfered with.**

This means that where judges are (also) in charge of matters of administration of the justice system, they enjoy the abovementioned special status under constitutional law only if a law explicitly provides that a matter of administration of the justice system be dealt with by panels or commissions. This applies, in particular, to the allocation of responsibilities to several judges of a court and to proposals for filling vacant judge positions.

Those judges who are (also) entrusted with tasks of administration of the justice system are, above all, the Presidents of the District Courts and the (Vice) Presidents of higher courts (Regional Courts, Higher Regional Courts, Supreme Court). Unlike in other countries they are entrusted with this task as part of their office of judge on a permanent basis and enjoy the guarantees of being irremovable also as organs of the administration of the justice system.

## 4.8 Legal Responsibility

Judges who culpably breach their professional and job-related duties are held accountable under disciplinary rules. This may also apply to acts of adjudication, which means that judges enjoy **no immunity**. They have to account for their actions before the disciplinary tribunal, which has been established at the Higher Regional Court or the Supreme Court and which exclusively consists of judges.

If a culpable breach of job-related duties constitutes a criminal offence as well, judges will also have to account for their actions before a criminal court. For public officials the Austrian Criminal Code (*Strafgesetzbuch*) provides for separate offences of malpractice in office, such as, e.g., abuse of official authority, corruption or breach of official secrets.

Judges cannot be held liable by parties under civil law. Parties who have suffered damage due to the unlawful or culpable conduct of a judge may only claim such damage from the government. However, in the case of wilful intent or gross negligence the government may seek recourse from the judge in whole or in part.



5

# Public Prosecutor

## 5.1 Bases

Public prosecutors are in charge of the statutory duties of the public prosecution, in particular tasks of investigation and indictment in cases dealing with acts that are subject to court punishment. As a result of the Criminal Procedure Reform of 2008 public prosecutors were included in Austria's Federal Constitution as “**organs of the courts of law**” (Article 90a B-VG), and their special provisions on service and remuneration were included in the service regulations for judges. At the same time around 50% more public prosecutor jobs were created. In contrast to judges, public prosecutors are bound by the instructions of their superior bodies.

In civil matters there are only a few areas left of which public prosecutors are in charge (matters of annulment of marriages, Section 28 of the Austrian Marriage Act (*Ehegesetz/EheG*)).

All 16 Regional Courts having jurisdiction over criminal matters have a public prosecutors' office.

In addition, a central “Office of Public Prosecutors for the Prosecution of Corruption (*Korruptionsstaatsanwaltschaft/KStA*)” (Section 2a of the Austrian Act on the Public Prosecution (*Staatsanwaltschaftsgesetz/StAG*)), which has jurisdiction all over Austria, was established on 1<sup>st</sup> January 2009 in Vienna to effectively prosecute corruption, breaches of official duties that are punishable by law and related offences throughout Austria and to perform key functions in the area of judicial assistance and cooperation with the competent institutions of the European Union and the judicial authorities of the Member States of the European Union for such offences. The Statute Amending Criminal Law (*strafrechtliches Kompetenzpaket/sKp*) (*BGBI. I* No. 108/2010), which entered into force on 1<sup>st</sup> September 2011, significantly extended the competences of that Office (in particular with regard to business offences), which was re-named “Central Office of Public Prosecutors for the Prosecution of Business Offences and Corruption (*Wirtschafts- und Korruptionsstaatsanwaltschaft/WKStA*)”. In the course of its endeavours to strengthen the justice system's competences regarding the prosecution of business offences the Ministry of Justice also increased human resources.

There is a Senior Public Prosecutors' Office (*Oberstaatsanwaltschaft*) at every Higher Regional Court and a Procurator General's Office (*Generalprokuratur*) at the Supreme Court.

The Senior Public Prosecutors' Offices and the Procurator General's Office directly report to the Federal Minister of Justice. The Procurator General's Office has no right to give instructions to the Senior Public Prosecutors' Offices or the public prosecutors' offices.

The public prosecutors' offices at the Regional Courts having jurisdiction over criminal matters also act as prosecutors in trials at the District Courts in the relevant Regional Court circuit. Normally, this task is performed by district public prosecutors (*Bezirksanwälte*) (skilled officials) who are subject to supervision and direction by public prosecutors.

**Instructions** to public prosecutors' offices have to be given in writing and reasons must be stated. If this is not possible because of imminent danger, an instruction which was given orally has to be confirmed in writing as soon as possible thereafter. For the purposes of transparency a written copy of the instruction must be taken on file.

Public prosecutors who think that a given instruction is unlawful must inform their superiors thereof. In that case and whenever a written instruction is required, superiors have to give or repeat the instruction in writing; otherwise it shall be deemed withdrawn

Public prosecutors have their own statutory staff representation. In addition, there is the private-law Association of the Austrian Public Prosecutors (*Vereinigung der österreichischen Staatsanwältinnen und Staatsanwälte*) <http://www.staatsanwaelte.at>.

## 5.2 Appointment as a Public Prosecutor

A person may be appointed public prosecutor only if he or she fulfils the requirements for appointment as a judge (see Section 26 RStDG as printed in the Annex) and has worked as a judge at a court for at least one year or as a public prosecutor in a previous capacity.

Pursuant to Section 174 (2) RStDG an exemption from the requirement of one year of work experience can be granted if there are no other equally qualified applicants who fulfil all requirements. As in the case of judges, you have to be an Austrian citizen to be appointed public prosecutor.

This means that there is no separate education and training for public prosecutors, but judges and trainee judges (being granted an exemption from the required work experience) will be appointed public prosecutors. A change from one of these positions in

the core area of administration of justice to the other is possible at a later point, which option is made use of quite frequently.

Vacant public prosecutor positions have to be advertised publicly, just like judge positions. The applications received have to be reviewed by a staff commission consisting of four persons all of whom have to meet the requirements for an appointment as public prosecutor. Staff commissions are set up at the Senior Public Prosecutors' Offices, at the Procurator General's Office and at the Federal Ministry of Justice.

The staff commissions set up at the Senior Public Prosecutors' Offices and at the Procurator General's Office comprise two members each by virtue of their office. In addition, both the Union of Public Services (*Gewerkschaft öffentlicher Dienst*) and the central staff representation body for public prosecutors delegate one public prosecutor to the staff commission.

The staff commission submits a shortlist which in terms of the form is equal to the one for a judge position. Although the proposal of the staff commission is not legally binding, only shortlisted applicants are appointed in practice.

The Federal President has the right to appoint public prosecutors; however, for the majority of public prosecutor positions, just like for judge positions (see Part IV.F.), he has transferred this right of his to the Federal Minister of Justice.

Similar to the creation of a staff pool of "circuit judges" (*Sprengelrichter*) a statutory basis for appointment of so-called circuit public prosecutors (*Sprengelstaatsanwälte*) (Section 175 (2) RStDG) was also created. Apart from covering for public prosecutors who are absent for a prolonged period of time, those circuit public prosecutors above all relieve the workload of public prosecutors whose departments (called *Referate*) handle large cases.

## 5.3 Legal Responsibility

The legal responsibility of the public prosecutors is analogous to that of the judges.

6

# Court Officer

## 6.1 General

Court officers (some 700) are an **indispensable pillar of the Austrian legal system**. In terms of numbers they issue the major part of all court decisions, especially in the areas of enforcement matters, Business Register and Land Register matters.

They are **specialty trained officials** of the courts who are entrusted with precisely defined transactions of the courts of first instance in civil matters under the Austrian Federal Constitution Act (Article 87a B-VG) and the Austrian Statute on Court Officers (*Rechtspflegergesetz*). In this capacity they only report to their judges and are only bound by the judges' instructions. This right of the judges to give instructions to their court officers has no practical importance today, so that court officers more or less completely work on their own responsibility.

Historically, this office goes back to the economic crisis in the late 1920s. At that time judges needed to be relieved from "simple and recurring tasks", in particular in enforcement cases. Initially, court officers were called "*Fachbeamte mit erweitertem Wirkungskreis*" (skilled officials with extended responsibilities), the term *Rechtspfleger* (court officer) was only established later.

The year of 1962, in which the office of court officer was embodied in the Austrian Federal Constitution and in which a separate Statute on Court Officers (*Rechtspflegergesetz*) was enacted, was an important milestone for the court officers.

As a result, their position as important organs of the Austrian legal system was further enhanced and their activities were defined in accordance with modern requirements. The area of their responsibilities was extended several times and the regulations on education and training of court officers were revised. Current provisions are set forth in the Austrian Statute on Court Officers (*Rechtspflegergesetz/RpflG*), BGBl. No. 560/1985. The legal responsibility of the court officers is analogous to that of the judges.

## 6.2 Areas of Responsibility of Court Officers

The Austrian legal regime provides for four areas in which court officers work:

- Enforcement matters, insolvency matters and civil procedure matters
- Non-litigious cases
- Land Register matters and Ship Register matters
- Business Register matters

The total of approximately 690 court officers are allocated to the following areas of responsibility:

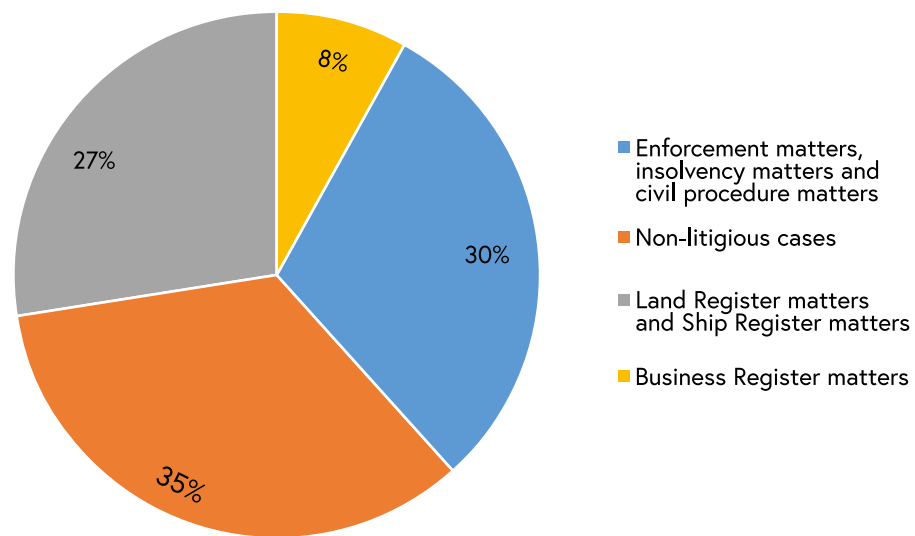


Chart #8: Areas of responsibility of court officers

Each of the four areas requires separate training and a separate appointment as court officer for the relevant area.

A special arrangement is provided for order for payment procedures (which are, in simple terms, civil actions for payments where a payment order will be issued to the defendant at first; if the defendant does not object, the payment order, which has then become non-appealable, constitutes an enforceable instrument). Those who completed their court officer training after 31<sup>st</sup> December 1985 are entitled to handle such cases.

Another important extension of the area of responsibility of court officers in enforcement matters entered into force at the beginning of 1995. At that time the provisions on insolvency proceedings before District Courts (so-called “debt restructuring cases” or “personal insolvency” cases), which are mainly handled by court officers responsible for enforcement matters, entered into force. Their responsibilities in Business Register matters were extended, also because of the Act amending Company Law (*Gesellschaftsrechts-Änderungsgesetz*), which entered into force on 1<sup>st</sup> July 1996, and by the additional accounting duties contained therein, as well as by the new Statute on Non-Litigious Matters (*Außerstreitgesetz*), BGBl. I No. 111/2003.

## 6.3 Definition of the Responsibilities of Judges and those of Court Officers

The responsibilities of court officers do not include all tasks to be performed and decisions to be taken in the aforementioned areas. The tasks which fall within their responsibility are specifically listed in the Statute on Court Officers, with the responsibilities differing from area to area.

Land Register matters, for example, are almost exclusively dealt with by court officers.

Likewise, the majority of enforcement matters is handled by court officers; judges only deal with very difficult cases (such as, for example, attachment of real property) or with parts of cases (such as, for example, declaring foreign enforceable instruments enforceable in Austria).

Also with regard to probate matters (*Verlassenschaftssachen*) and curatorship matters (*Pflegschaftssachen*), which are non-litigious proceedings, to order for payment procedures and also Business Register matters the area of responsibility of the court officers is a very broad one. For example, all probate matters in which the assets do not exceed EUR 150,000 and curatorship matters in which the assets of the ward do not exceed EUR 100,000 are dealt with by court officers.

## 6.4 Career and Training of Court Officers

The school-leaving examination (*Matura*) of a secondary school is a requirement for becoming a court officer.

Prior to admission to court officer training by the President of the Higher Regional Court the applicants have to work in a court office and pass the examinations prescribed for staff of assistant's offices of the courts and public prosecutors' offices.

Currently the total number of court officer trainees is around 90.



Court officer training takes three years and includes

- training on the job at one or several courts including preparing decisions in the envisaged area of work,
- attending a basic training course and a training course related to the envisaged area of work and
- the court officer examination, which is made up of two parts

The examination is conducted by a three-party commission. A judge will chair the examination and one member of the commission must be a court officer.

After having passed the court officer examination the court officer trainees will be given a diploma issued by the Federal Minister of Justice, which entitles them to use the job title *Diplomrechtspfleger* (Senior Court Officer).

After the three-year training a court officer diploma must be issued, which confirms the court officer's job qualification and includes the principal power to transact the business that falls within the tasks of the courts of law.

Court officers are represented by a statutory staff representation body. The Association of Court Officers in Austria (*Vereinigung der Rechtspfleger Österreichs*) (<http://www.vdroe.at>) is a private-law organisation.

## 6.5 Court Officers in other European Countries

A comparison with other European countries shows that the Federal Republic of Germany is the only country in which court officers are equally important to the legal system as they are in Austria. In other Western European countries comparable court officials (as, for example, the French “Greffiers”) do not perform judicial tasks. Their job primarily consists of preparing or drafting decisions.

The allocation of responsibilities between judges and court officers has proven to be successful both in Germany and Austria. The resolution of the Committee of Ministers of the Council of Europe of 12<sup>th</sup> September 1986 recommended that court officers be used more strongly in adjudication as it is done in the Federal Republic of Germany and in Austria. The European Union of Court Officers (<http://www.rechtspfleger.org>), which has a consultative status with the Council of Europe, also strongly supports this request.

7

Lawyer

## 7.1 General

It is the vocation and power of lawyers to represent parties in and out of court and in all public and private matters before courts and public authorities of the Republic of Austria.

No appointment by a public authority is required to practice as a lawyer in Austria; but the following qualifications are required.

The material legislation is contained in the Austrian Lawyers' Code (*Rechtsanwaltsordnung/RAO*), *RGBl.* No. 96/1896, the Disciplinary Code for Lawyers and Trainee Lawyers (*Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter/DSt*), *BGBI.* No. 474/1990, the Federal Statute on Lawyers' Tariffs (*Bundesgesetz über den Rechtsanwaltsstarif/RATG*), *BGBI.* No. 189/1969, and the Austrian Statute on the Bar Examination (*Rechtsanwaltsprüfungsgesetz/RAPG*), *BGBI.* No. 556/1985.

## 7.2 Requirements for Practicing as a Lawyer

Anybody who wants to become a lawyer has to prove that he/she has worked in a legal occupation of at least five years after having completed their studies of Austrian law. Of those five years at least five months must have been spent working at a court or a public prosecutors' office (**court internship**, see Part II.C, page 8) and at least three years as a trainee lawyer at an Austrian law firm. Currently there are around 2,200 trainee lawyers, 49% of whom are women.

The **bar examination**, which is required for practicing the profession, can be taken after having worked as a trainee lawyer for three years, at least five months of which at a court or a public prosecutors' office and at least two years at a law firm. Another prerequisite for taking the examination is completion of compulsory training courses offered by a Bar Association in Austria (*Rechtsanwaltskammer*).

The examination consists of an oral part and a written part and has to be taken before a panel of the board of examiners of lawyers (*Rechtsanwaltsprüfungskommission*), which is established at the Higher Regional Courts. The panel must comprise two judges and two lawyers.

Persons who meet the listed requirements may apply for registration in the list of the Bar Association in whose circuit they intend to practice as a lawyer.

The registration will be made upon fulfilment of the statutory requirements and after an oath has been taken before the President of the Bar Association (with no participation of the Minister of Justice). Registration can only be denied when the person concerned has committed an act which proves him/her unworthy of the trust required. Law firms—civil-law associations of lawyers (*Gesellschaften bürgerlichen Rechts*), general partnerships (*offene Gesellschaften*) or limited partnerships (*Kommanditgesellschaften*) (lawyers' partnerships) and limited liability companies (*Gesellschaften mit beschränkter Haftung*) must apply for registration in the List of Law Firms with the committee of the Bar Association in whose circuit they have established their law firm (see Section 1a of the Lawyers' Code).

If certain prerequisites are fulfilled a foreign lawyer who is a citizen of a Member State of the European Union or a State that is party to the Agreement on the European Economic Area or a Swiss citizen may

- temporarily practice as a lawyer in Austria, apply for registration in the list of lawyers of the competent Bar Association in Austria after having passed an examination that proves his/her qualification or
- straightaway establish himself/herself in Austria under the job title of his/her home country without taking an examination and become a member of the Austrian Bar after three years of having “effectively and regularly” practiced in Austria.

For more details see the Federal Statute on the Free Movement of Services and Establishment of European Lawyers and the Provision of Legal Services by International Lawyers in Austria (*Bundesgesetz über den freien Dienstverkehr und die Niederlassung von europäischen Rechtsanwältinnen und Rechtsanwälten sowie die Erbringung von Rechtsdienstleistungen durch international tätige Rechtsanwältinnen und Rechtsanwälte in Österreich/EIRAG*), BGBl. I No. 27/2000.

## 7.3 Legal Responsibility

Lawyers who breach their professional duties or harm the reputation of the profession must account for their action to a disciplinary board elected by the local Bar Association. The disciplinary board's power to impose punishment goes as far as striking lawyers off the list. The court of second instance is the Supreme Court, where a panel of four persons, comprising two judges of the Supreme Court and two lawyers, will decide. Apart from that, lawyers are obviously also accountable under criminal law and civil law.

## 7.4 Bar Associations

All lawyers and trainee lawyers of an Austrian state who are registered in the relevant list of lawyers form a Bar Association. Bar Associations are public-law corporations and autonomous self-governing bodies. The Bar Associations, which also have to fulfil government tasks, are governed by freely elected committees and a President, who is elected by all members as well.

## 7.5 The Austrian Bar

At a federal level delegates from the state Bar Associations form a joint representation, namely the Austrian Bar, to coordinate their responsibilities (<http://www.rechtsanwaelte.at>).

Among other things the Austrian Bar is responsible for:

- making proposals for and giving expert opinions on bills,
- notification of defects in the administration of justice and in the administration, and making proposals for improvement of the administration of justice and the administration,
- issuing guidelines, e.g. on legal practice, on the criteria for calculating reasonable fees (where no statutory provisions are provided) or on the training of trainee lawyers.

## 7.6 Office of State Attorneys – the Advocate and Counsel for the Republic

Passing the bar examination is a requirement also for a job with the Office of State Attorneys (*Finanzprokurator*) (public-law service relationship), which acts as the advocate and counsel for the Republic of Austria and government-related institutions (<http://finanzprokurator.bmf.gv.at>).

8

# Notary

## 8.1 General

Since the Austrian institution of notary was re-established in 1850 persons who seek legal assistance may turn to a notary, who is an independent and impartial organ of the preventative administration of justice, to take care of their private-law legal relationships.

The main task of a notary is to attend to legal transactions and to provide the citizens with legal support. Notaries execute public documents, keep safe third party property, draft private documents and represent parties, above all in non-litigious matters. In addition, notaries have to act as agents of the court in non-litigious proceedings. As so-called court commissioners (*Gerichtskommissäre*) they are, in particular, responsible for handling probate proceedings. Notaries have to ensure that the assets of a deceased person are protected and that they are distributed. This requires special expertise in the field of inheritance law and non-litigious cases, which is why people regularly seek the assistance of notaries to draw up their last will and testament and to get advice on and be represented in inheritance affairs.

Notaries hold a public office but they are no public officials. They bear the financial risk involved with a notary's firm but do not practice a trade. The job of a notary is similar to a profession but in their capacity as court commissioners they act as judicial organs. The job of a notary has to be performed as a primary occupation and, unlike in other countries, a notary cannot practice as a lawyer at the same time.

The number of notary positions and their official place of office is governed by regulations of the Federal Minister of Justice. Currently there are around 515 notary positions in Austria.

The material legislation for the job is contained in the Austrian Notaries' Code (*Notariatsordnung/NO*), *RGBl.* No. 75/1871, the Austrian Act on Notarial Deeds (*Notariatsaktsgesetz*), *RGBl.* No. 76/1871, the Austrian Statute on Notaries' Rates (*Notariatstarifgesetz/NTG*), *BGBI.* No. 576/1973, the Austrian Statute on the Notary Examination (*Notariatsprüfungsgesetz*), *BGBI.* No. 522/1987, the Austrian Statute on Court Commissioners (*Gerichtskommissärsgesetz*), *BGBI.* No. 343/1970 and the Austrian Statute on Court Commissioners' Rates (*Gerichtskommissionstarifgesetz/GKTG*), *BGBI.* No. 108/1971.

## 8.2 Education and Training

The road to appointment as a notary is a long one. After you have completed your studies of Austrian law and if you are interested in becoming a notary, you have to find a notary who will employ you and arrange for your registration in the list of candidate notaries (currently there are around 450 candidate notaries) in Austria. Registration in the list of candidate notaries, which is kept by the competent chamber of notaries, is only permitted if the applicant has completed a **court internship** of five months as a legal trainee (at a court or a public prosecutors' office, see Part II.C) and is below 35 years of age at the time of initial registration in the candidate register.

Other than that, registration can only be denied for important reasons (cause), e.g. in the case of a disastrous financial situation.

Once you are a candidate notary this must be your only job. Any secondary occupation is subject to approval.

## 8.3 Notary Examination

Candidate notaries have to attend compulsory training courses offered by the chamber of notaries for them to be able to take the notary examination.

The notary examination consists of two parts:

- The first part of the examination may be taken after having worked as a candidate for 18 months and must be taken by the end of the fifth year of being a candidate notary; otherwise you will be struck off the list of candidate notaries.
- The second part of the examination can be taken after another year of work as a candidate notary. After a period of ten years as a candidate notary you have to pass the second part of the notary examination; otherwise you will be struck off the list.

## 8.4 Appointment as a Notary

Vacant or newly created notary positions have to be advertised publicly before they are filled. Among other things, the law (Section 6 of the Notaries' Code) requires job applicants to:



- be citizens of a Member State of the EU or of a Member State of the European Economic Area or a Swiss citizen,
- have successfully completed their diploma law programme or their studies of law and political sciences (studies of Austrian law),
- have passed the notary examination and
- have worked in a legal occupation for at least seven years, thereof at least three years as a candidate notary after passing the notary examination.

However, meeting these basic requirements gives you no right to be appointed as a notary. In the course of the appointment procedure applicants will be examined and listed by the local chamber of notaries and, subsequently, by the staff panels of the competent Regional Court and the Higher Regional Court, with the length of work being the decisive criterion. The chamber of notaries and the two staff panels each propose three applicants to the Federal Minister of Justice. Although the Minister of Justice is not bound by these proposals, he or she will always appoint shortlisted applicants in practice.

Notaries can perform their office until 31 January of the calendar year following the year in which they attain the age of 70. After the age of 64 notaries can no longer be appointed to a different notary position; likewise, appointment to a different position is only permitted after a minimum term of office of six years at the previous notary position. An ex officio transfer of a notary to another notary position is not permitted.

For the purposes of practicing their occupation notaries may establish general partnerships or limited partnerships (notaries' partnerships) (for more details see Sections 22 et seq. of the Notaries' Code.

## 8.5 Supervision of Notaries; Legal Responsibility

Due to their duty as authors of public documents and as court commissioners notaries are subject to special supervision requirements. Notaries are supervised by the Federal Minister of Justice, the administration of the justice system and by the chambers of notaries directly.

A separate disciplinary law applies to notaries. Disciplinary offences are punished by the Higher Regional Court as the disciplinary court of first instance for notaries and by the Supreme Court as the disciplinary court of second instance for notaries; the decision-making panels have to include notaries. The punishments the disciplinary court may impose even include removal from office. Mere regulatory offences are punished by the chamber of notaries; the Higher Regional Court as the disciplinary court for notaries serves as the court of appeal in such matters.

Besides their disciplinary responsibility notaries are obviously also accountable under criminal law and civil law.

For the purposes of criminal law notaries who act as court commissioners are deemed public officials and are therefore accountable for so-called offences of malpractice in office, in particular abuse of official authority. Their liability under civil law is regulated differently. Where they act as court commissioners notaries are subject to the same liability regulations as judges and public prosecutors. This means that they cannot be held directly liable by parties but the parties have to assert their claims for damages vis-à-vis the government. In the case of wilful intent or gross negligence the government is entitled to seek recourse. Where they do not work as court commissioners, notaries are directly liable to the parties under civil law.

## 8.6 Boards of Notaries

The notaries whose official place of office is in an Austrian state plus the candidate notaries who are registered in the list of notaries of that state together form a Board of Notaries. The states of Vienna, Lower Austria and Burgenland and the states of Tyrol and Vorarlberg form joint Boards each. Each Board consists of a group of notaries and a group of candidate notaries. The Board is in charge of safeguarding the dignity and honour of the profession and of representing the interests of the profession.

Each Board of Notaries elects a Chamber of Notaries from among its members. The Chamber of Notaries comprises one notary as president, six notaries (Vienna: twelve) and three candidate notaries (Vienna: six) as members.

## 8.7 The Austrian Chamber of Notaries

The state Chambers of Notaries form the Austrian Chamber of Notaries (<http://www.notar.at>). The Austrian Chamber of Notaries is in charge of safeguarding the rights and affairs of all notaries and of representation of the same where the notaries are concerned as a whole or where affairs are concerned that go beyond the area of a single Chamber of Notaries.

Their area of responsibility includes making proposals for and giving expert opinions on bills as well as establishing and keeping the Central Register of Last Wills and Testaments (*zentrales Testamentsregister*), the Escrow Register of the Austrian Notaries (*notarielles Treuhandregister*) and the Electronic Archive of Documents of the Austrian Notaries (*elektronisches Urkundenarchiv des österreichischen Notariats*).

### PLEASE NOTE:

The full text of the laws printed here and the entire laws applicable in Austria can be viewed on the internet free of charge at <http://www.ris.bka.gv.at>; the database is updated daily.