

## **1. Legislation in Austria**

One important task of the Austrian Bar (ÖRAK) is to express an opinion on the many bills and other drafts for legal regulations. These position papers are prepared by experts from among the ranks of the bar. During the period January 2024 to December 2024, ÖRAK had to deal with 120 bills and draft regulations. The position papers submitted by ÖRAK on the various bills are an important contribution to law-making, which is highly appreciated by the parties involved in the legislative process as well as the public.

It is regrettable and difficult to understand from a factual perspective that in the subsequent steps of the legislative process, no further attention is often paid to the profound position papers prepared by recognized experts. In addition, it unfortunately happened during the expired legislative period that, for the first time, more laws were passed upon initiatives by members of parliament than based on government bills. As a result, the consultation period was shorter, information was missing and there were fewer opportunities to evaluate legislative proposals. Whenever a bill has considerable impact on citizens, it should undergo thorough scrutiny before being adopted.

## **2. New Rules Concerning Professional Regulations**

An ongoing practice of the ÖRAK working groups and task forces is to prepare proposals updating and amending the professional regulations. On the basis of ÖRAK proposals, the **2024 Professional Regulations Act (BRÄG 2024)** contains important changes concerning the Disciplinary Code for Lawyers. New instruments in relation to penal orders under the Disciplinary Code for Lawyers and shorter periods for issuing awards have been introduced. The regulations are guided by the well-proven provisions of the Austrian Code of Criminal Procedure (StPO) for mandating processes as well as the shorter periods for issuing the transcript of judgments – and have been adapted to the specific features of disciplinary procedures. These measures are intended to considerably lighten the task of the disciplinary councils of the regional bars, while maintaining all guarantees afforded in a state under the rule of law and observing the procedural rights of parties charged under the Disciplinary Code. Furthermore, several items in the Lawyers' Act (RAO) have been updated. One should mention that amendment concerning the eligibility requirements for the old-age and occupational-disability pension of lawyers, in order to comply with decision C-58/21, dated 15 September 2022, of the European Court of Justice. Moreover, the period in the Insurance Contribution Schedule has been extended from twelve to 24 months, during which reduced insurance contributions can be claimed in case of a child's birth, adoption or acceptance into gratuitous care of a minor child. The standards of the Financial Action Task Force (FATF) contain a stipulation in Recommendation 1 of the FATF Recommendations that both, the member states and the obliged parties (including lawyers), must assess and reduce the risk of non-implementation and bypassing targeted financial sanctions in connection with proliferation financing. In this connection, the obliged parties must implement adequate strategies, processes and internal controls. The relevant provisions in the BRÄG 2024 serve to implement and clarify these requirements. Moreover, the **5<sup>th</sup> FATF Country Review Austria** is currently ongoing. It began in October 2024 and will continue until February 2026. The assessment is conducted by an audit team of the International Monetary Fund made up of seven experts. It will indeed be very important to prove to the audit team the effectiveness of the supervisory measures adopted by the bars.

On an internal level, the ÖRAK assembly of representatives implemented changes in the Guidelines. With the introduction of a law on flexible corporations (FlexKapGG), published in the Federal Law Gazette BGBl I 2023/179, § 12 has made it possible to agree on a legal transaction for the transfer of company shares (§ 76 para. 2 of the law on limited-liability companies [GmbHG]) also in the form of a document drawn up by a lawyer. § 12 para 4 of the law on flexible corporations (FlexKapGG) refers to § 10 para 4 of the Lawyers' Act (RAO). The changes in § 11 and § 11a of the Guidelines on the Practice of the Lawyer's Profession (RL- BA 2015) now offer clarification on the obligations when drawing up documents according to § 10 para 4 of the Lawyer's Act (RAO) and § 12 para 1 of the law on flexible corporations (FlexKapGG). The changes in the General Fees' Schedule (AHK) offer further clarification. They also relate to the valorisation of the assessment basis according to §§ 5, 9 and 10, (mainly) based on the

consumer price index. The 2024 Professional Regulations Act (BRÄG 2024) required adaptations in the Statute concerning the eligibility requirements for a lawyer's old-age and occupational disability pension for resident European lawyers. In addition, the later payment of contributions was clarified in cases of contribution suspensions due to parenting and in cases of contribution reductions due to childbirth, adoption or acceptance into gratuitous care according to § 10a of the Statute, Part A 2018. Another clarification concerned the amount of entitlement in case of a widower's/widow's pension.

### **3. Company-Law Changes with Impact on Lawyers**

The federal law on flexible corporations (Flexible Corporations Act – FlexKapGG, Federal Law Gazette I 2023/179), which entered into force on 01 January 2024, creates a new type of corporate structure, i.e. the so-called flexible corporation (FlexCo), whereby the existing law on limited-liability companies and stock companies remains largely unchanged. The law on flexible corporations (FlexCo) is based on the legislation governing limited-liability companies. This law is also applied in all cases where the law on flexible corporations (FlexKapGG) does not contain any specific regulation. Specific regulations can now be found in the following three areas: nominal capital, requirements of form and shareholdings by staff members.

Section 12 of the Flexible Corporations Act (FlexKapGG) is particularly welcomed by lawyers when practicing their profession, as a notarial deed is no longer required for the transfer of company shares. These have been replaced by private deeds (issued by lawyers or notaries) to cover capital increases and share transfers that can now be implemented more swiftly and economically.

### **4. Professional Secrecy**

The professional secrecy of lawyers is an indispensable prerequisite for ensuring the right to a fair trial. Independent lawyers committed to professional secrecy guarantee the functioning of a democratic state governed by the rule of law. It is only when the professional secrecy of lawyers is guaranteed and respected that legal peace is maintained and legal certainty is achieved. Time and again, attempts can be noticed which aim at diluting the professional secrecy of lawyers. In cooperation with partner companies from the IT industry, ÖRAK has developed a communication tool in order to ensure the confidentiality of communication between lawyers and their clients. Since spring 2022, the tool (context – confidential client communication) has been in operation. You find more information at [www.context-services.at](http://www.context-services.at).

### **5. Services for Citizens**

In 2023, Austrian lawyers provided gratuitous services to almost 32,000 citizens, either by counselling or representing them. The services include, amongst others, legal-aid services, the "stand-by legal counselling service for arrested suspects" (*Rechtsanwaltlicher Bereitschaftsdienst für festgenommene Beschuldigte*) as well as the gratuitous "initial legal advice" (*Erste Anwaltliche Auskunft*). By providing these services, Austrian lawyers live up to their self-imposed claim of making an essential contribution to law and order in Austria.

### **6. Services for Bar Members**

ÖRAK supports its members by offering lawyers a wide range of services. Especially in the field of Legal Tech, ÖRAK is committed to reacting to the challenges of digitalization. For example, ÖRAK designed a tailor-made solution for lawyers to control digital signature processes, which can be used from any location and any terminal device to apply a digital signature to a document in a simple and qualified form.

### **7. Legal Aid**

In 2023, lawyers were assigned under the legal-aid scheme to a total of 18,996 cases in Austria (14,269 criminal cases / 4,196 civil cases / 198 cases before the Constitutional Court / 300 cases before the Supreme Administrative Court, 16 cases before the Regional Administrative Courts, 14 cases before the Federal Administrative Court, 3 cases before the Federal Finance Court). The value of these legal-aid services amounted to more than € 37 million in 2023.



## 8. Stand-by Legal Counselling Service for Arrested Suspects – Arrest Hotline

A person becomes a “suspect” in criminal proceedings when suspected of having committed a punishable offence, on account of certain specific facts, and when investigations are conducted concerning that person, or constraint is exercised against him/her. In keeping with § 49, number 2 of the Code of Criminal Procedure (StPO), suspects have the right to retain a lawyer. As early as 2008, ÖRAK launched a stand-by service for arrested suspects, together with the Federal Ministry of Justice (BMJ), in order to facilitate the exercise of this right. Depending on the case, the service comprises a counselling interview either by telephone or in person as well as legal assistance during the examination, if required. The telephone number 0800 376 386 is available free of charge 24 hours/day and 7 days/week so that a lawyer can be contacted without delay.

In 2020 the Stand-by Legal Counselling Service for Arrested Suspects was re-organized when transposing the Directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings as well as the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Since that date, recourse to this service has once again expanded tremendously. In 2024, for example, there were 3,997 on-site interventions (cutoff date 21/01/2025) and 3,589 telephone interventions, which were conducted via the stand-by hotline. The enormous importance of the stand-by legal counselling service is illustrated by this tremendous demand as well as the fact that telephone and on-site interventions have reached almost an equal level in the meantime.

Together with the regional bars, ÖRAK is responsible for managing the stand-by service, which is a considerable task, given the large number of cases. ÖRAK is engaged in an ongoing dialogue with the Federal Ministry of Justice (BMJ) in order to ensure high quality as well as efficiency in operating this service, which is of considerable significance in a state under the rule of law.

## 9. Access to Justice

For years, electronic legal transactions (ERV) with the general courts have been common practice in Austria. The system runs smoothly and to everybody's satisfaction. In the day-to-day work of lawyers, the system helps to save time and money and facilitates the quick and secure communication between and among all participants. Since 21 July 2023, an amendment, which had been long overdue, put submissions by mail and electronic submissions on equal footing concerning time limits. Another urgent concern of ÖRAK is to fully connect also the regional administrative courts and the Federal Administrative Court to the ERV system. It is gratifying to note that, in the meantime, eight of the nine regional administrative courts can be reached via the ERV system. All supreme courts have been linked to the ERV system since 01 January 2015.

## 10. Update of Rates for Legal Services

§ 25 of the Rates for Legal Services Act (RATG) stipulates that the Federal Minister of Justice has to determine by decree what surcharge has to be added to the fixed rates indicated in the rate scheme as remuneration due to lawyers, as well as to the amounts listed in § 23a of the Rates for Legal Services Act (RATG), if and whenever this appears to be necessary in order to ensure that lawyers earn an income that is adequate to and commensurate with changed economic conditions. A change in economic conditions can be assumed whenever the consumer price index rises by 10%. The most recent adjustment in keeping with § 25 of the Rates for Legal Services Act (RATG) was made in May 2023 and amounted to 20%.<sup>1</sup> As early as April 2021, ÖRAK had applied to the Federal Minister of Justice for a determination of a surcharge in keeping with § 25 of the Rates for Legal Services Act (RATG). At that time, the consumer price index VPI 2015 showed a rise of 10.5%. In a further letter in April 2022, ÖRAK reminded the Federal Ministry of Justice of the application to determine the surcharge. ÖRAK succeeded in obtaining the surcharge required under the RATG only after applying considerable pressure and engaging in protest measures. It entered into force on 01 May 2023. At that time, the VPI 2015 index already showed a rise of 29.8%. The increase that entered into force on 01 May 2023 therefore covered merely two thirds of the actual inflation. Such serious deviation from inflation has not been experienced in earlier years.

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<sup>1</sup> Federal Law Gazette [BGBl II 131/2023](#).

Ever since, the consumer price index VPI 2015 has gone up by a further 12.9% (VPI status of October 2024) – when taking into account the inflation rise not covered by the recent enactment of the surcharge. In consequence, ÖRAK submitted a further application to the Federal Minister of Justice requesting her to seize the Main Committee of the National Council with the task of enacting the surcharge by way of decree.

Every time when applying for a determination of the surcharge, ÖRAK also calls for an overhaul of § 25 of the RATG, in line with § 2 of the Reimbursement of Expenses Act and 31a of the Court Fees Act, respectively.

As in the past, the adjustments are made insufficiently and at irregular intervals, which leads to major disadvantages as well as legal uncertainties. This is to the detriment of Austria as a venue of litigation and as an industry location. On account of the current arrangements, only the price increases of the past are taken into account (and, by far, not to their full extent). The price increase between adjustments constitutes a burden on every individual lawyer as well as on the people seeking legal assistance, who depend on an adequate refund of their expenses. This is not ensured by the adjustment of rates for legal services.

## **11. Digital Monitoring Report**

By now, the monitoring report is being published in form of a continuously updated website, in order to comply with the legal requirements of monitoring the administration of justice, public administration and legislation throughout the year and in a modern format. The report can be found at [www.wahrnehmungsbericht.at](http://www.wahrnehmungsbericht.at). With this report, ÖRAK contributes significantly towards exemplifying and remedying failings in the justice sector, the administration and in legislation.

## **12. Securing and Analyzing Data and Data Carriers**

On the basis of an expert opinion prepared by experts of the University of Vienna, ÖRAK calls for a comprehensive reform:

- To raise the requirements for securing communication media by introducing special provisions that are similar to those pertaining to the control of communications
- To draw up clear rules on how to handle discoveries by accident
- Transparency vis-à-vis accused persons in connection with seizures
- Shorter periods for the analyzing process by introducing binding time limits
- To restrict the examination of files by co-accused persons – in analogy to the legal status of victims, private participants and private plaintiffs – to the extent that their interests are not affected
- To recognize the accused person's right to object when a person who is subject to professional secrecy pleads confidentiality

In its decision of 14 December 2023 (case number G352/2021), the Constitutional Court ruled that it is unconstitutional to secure mobile data carriers in criminal proceedings without first obtaining court authorization. Some of the arguments listed in the court decision tally with ÖRAK criticism. In this context, ÖRAK also drew up specific possible solutions for new regulations. The 2024 Amendment of the Criminal Procedural Law stipulated new rules for the seizure of data carriers and data as well as their analysis. In the opinion of ÖRAK, there is further need for action in this context, as the requirements listed in the decision of the Constitutional Court were not adequately taken into account. In particular, it is necessary to clearly distinguish between the persons and organizations processing and analyzing the seized data.