

Follow-up information and written answers

Rule of Law Report 2024 – country visit Austria

14 March 2024

JUSTICE SYSTEM

3. *As regards the amendments adopted in December 2023 to the decree on reporting obligations for prosecutors referred to in your written input, could you please summarise the content of the key changes? Please also share the text of the adopted decree. Could you also indicate when the 'Weisungsbericht' for 2022 is expected to be published?*

Please find the decree on reporting obligation of 27 November 2023 (available only in German) attached:



Berichtspflichtenerlas
s 2021 idF 2023.pdf

With regard to the suspension of all reporting obligations on further steps, please refer to “1.4. Entfall der Vorhabensberichtspflicht“, which reads as follow:

Bei Gefahr im Verzug (§ 8 Abs 4) oder während eines nicht bloß kurzfristigen Ausfalls der elektronischen Kommunikationseinrichtungen (Blackout) ist in unaufschiebbaren Fällen – auch in ansonsten vorhabensberichtspflichtigen Strafsachen – ergänzend zu einem noch offenen oder anstelle eines erst zu erstattenden Vorhabensberichtes unverzüglich im Nachhinein ein Informationsbericht über das eigenständig entschiedene Vorhaben zu erstatten.

6. + 35.

Specifically as regards the appointment of the president of the Federal Administrative Court, is there any information you can share as regards the delay in this appointment procedure?

(35.) In the past years, delays in the appointments to the heads of independent authorities have been observed (e.g. the Competition Authority, Federal Anti-Corruption Bureau) that were recently resolved. Do you see any specific reasons for such delays (e.g. procedures, linked to individual circumstances of the post) and are any mechanisms in place to avoid this?

Statement incl. Links to the Act on the Advertising of Vacancies

In general, it can be noted that the [Act on the Advertising of Vacancies – Ausschreibungsgesetz 1989 -AusG](#) stipulates deadlines for both the advertisement of management positions and the selection procedure to ensure that a proper appointment is made as quickly as possible and thus avoid long interim appointments to top positions (see, for example, [Sections 5](#) and [12 AusG](#)).

According to [Section 5 \(3\) AusG](#), the advertisement shall be published three months before the position or job becomes vacant if possible, but at the latest within one month. The deadline of one month is extended to three months if it has not yet been determined whether this function or job is to remain or be discontinued. If a new function is established or a new job created, it shall be advertised within one month of the date of the relevant organizational measure. In individual cases, however, special situations may arise in which longer interim appointments are necessary, for example if the head is absent for a long period due to illness.

9. *Following up on the information provided in your written input, could you specify the exact number of posts created in the judiciary in 2023, and how many of them are for judges, prosecutors and court staff? Have there been any challenges in filling the vacancies and are further additional posts planned in 2024? In addition, could you please provide an update as regards the resources of the Federal Finance Court, both as regards posts (for judges/court staff) and the progress in the filling of vacancies? [figures can be provided in writing]*

Ministry of Justice

The increase of + 122 posts with the 2023 staff plan was already reported in the course of the last rule of law report.

With the 2024 staff plan the judiciary has received further **135 posts** so that the total number has **increased from 12.381 to 12.516:**

Federal Ministry of Justice	+ 22
Public Prosecutor	+ 13
Court Staff	+ 9
Courts and Public Prosecutor's Office	+ 103
Public Prosecutors	+ 4
Judges	+ 30
Candidate-Judges	+ 25
Court Staff	+ 44
Correctional Institution (Strafvollzug)	+ 10
Prison officers in the law enforcement sector (Exekutivdienst)	+ 6
Prison officers in the general administrative service (Allgemeiner Verwaltungsdienst)	+ 4
Total	+ 135

Due to the continuous increase in the number of posts as well as the changed conditions on the labour market ("labour shortage"), the Austrian judiciary is certainly (like others) faced with the challenge of filling all the vacancies. In particular, it was difficult to fill all vacancies for court staff and prison officers.

Therefore, the Federal Ministry of Justice is implementing various measures in order to fill the vacancies and also to strengthen the long-term loyalty of employees to the judiciary. These measures also include a widespread advertising campaign that is currently running on TV and in online and social media with the aim of emphasising the value of a functioning justice system for society and the wide range of career opportunities within the judiciary. As a result of all the measures taken, many employees have already been recruited. For example, at the end of 2023, the majority of posts for court staff were filled (only well below 1% of these posts remained unfilled).

The most important measures, the Federal Ministry of Justice has been implemented in order to fill the vacancies and also to strengthen the long-term loyalty of employees to the judiciary, are as follows:

- Widespread advertising campaign that is currently running on TV and in online and social media with the aim of emphasising the value of a functioning justice system for society and the wide range of career opportunities within the judiciary.
- Apprenticeship campaign, which not only intensifies the recruitment and training of apprentices, but also implements comprehensive employee satisfaction measures.
- Promotion of the "Justice at School" project, which aims to convey the special importance of the judiciary to pupils and to interest them in working in the judiciary.
- Onboarding to make new employees feel welcome and valued in the justice system, including the development of mentoring and buddy systems.
- Career portal of the judiciary, which provides an overview of the wide range of careers offered by the judiciary, information on entry and career opportunities as well as current job advertisements so that interested persons can apply quickly and easily for a suitable job with the judiciary.
- Reorganisation of teleworking (expansion with a view to the ongoing implementation of the digital court file) and increased flexibility in working hours.
- Ensuring more performance-related remuneration.

The link to the career platform that also includes the advertising campaign is the following:

<https://karriere.justiz.gv.at/>

Federal Finance Court

Judges

As of 31.12.2023/1.1.2024, out of a total of 224 judges' posts (excluding president and vice-president), 181 were filled, one legal officer (juristische Mitarbeiterin bzw. juristischer Mitarbeiter) worked on another judges' posts, and 42 posts were vacant.

Development from 31.12.2022 to 31.12.2023:

Departures: 20 judges (1 judge was appointed at the Supreme Administrative Court, the rest retired)

Additions: 11 judges

Outlook for 2024: 7 judges are expected to retire in 2024. In 2023, there was a call for 16 additional posts for judges; on 1.2.2024, 13 judges have already taken up their duties and the rest will take up their duties on 1.4.2024, 1.7.2024 and 1.9.2024. In addition, on 2.3.2024, another call for applications for 13 judge posts took place (planned appointment: first quarter of 2025).

Staff

As of 31.12.2023/1.1.2024, 53 out of a total of 56 positions were filled; employees within the meaning of the question include the one legal officer mentioned above that was appointed as a judge on 1.2.2024.

Development from 31.12.2022 to 31.12.2023:

Departures: 6 employees

Additions: 7 employees (2x policy officers [*Fachreferentinnen und Fachreferenten*], 1x IT-coordinator, 4x main clerks [*Hauptsachbearbeiterinnen und Hauptsachbearbeiter*]); both figures do not include assignments during the year and do not include legal and administrative interns.

Outlook for 2024: 1 employee is expected to retire.

In its report “BUND 2021/1”, the Austrian Court of Audit recommended, among other things, effective measures that would relieve the burden of administrative work on judges. For this purpose, together with the Federal Ministry of Finance a concept was developed, which is currently being implemented. The number of positions for administrative staff therefore was increased by 20 positions to 76; the process of filling the vacancies has already started.

10. *On the digitalisation of justice:*

- c. *Could you also provide us with the latest data on the state of implementation of Justice 3.0 (updated from the October 2023 data provided in the written input)? [in writing]*

Currently there are already digital proceedings at all courts and public prosecution offices (160 legal authorities). More than 6.200 users (> 80% judges and 100% of prosecutors/district attorneys) are using the digital judicial workplace. Over 1.7 million new cases have been/are conducted digitally and more than 500.000 hearings with eDossiers in over 750 (> 90%) newly equipped courtrooms have been taken place.

ANTI-CORRUPTION FRAMEWORK

15. *In relation to the final report of the OVP inquiry committee (adopted on 27 April 2023), has there been any follow up on the recommendations included in this report (as far as not covered under a different question)? (i.a. transparent procedures for applications for top positions, ensuring sufficient resources for the WKStA)?*

Statement incl. Links regarding Recommendation no. 1

[The Act on the Advertising of Vacancies – Ausschreibungsgesetz 1989 –AusG](#) contains extensive provisions aimed at guaranteeing a fair and transparent advertising procedure in the federal service.

Pursuant to [Section 5 AusG](#), the hiring authorities shall advertise the vacancy and determine the required knowledge and skills. In the case of appointments to top positions the selection decision shall be supported by the **Evaluation Commission**.

[Section 7 \(2\) AusG](#) shall ensure the independent composition of the Evaluation Commission. Accordingly, a total of four members shall be appointed - one female and one male by the employer, one by the union of public service and one by the staff council.

The Evaluation Commission shall examine the applications received and - if necessary, also in the form of an interview - gain an impression of the overall personality, abilities, motivations, knowledge, skills, training and experience of the applicants. In doing so, it may also consult experts and expert witnesses, if necessary for the proper evaluation of the applicants ([Section 9 AusG](#)).

Pursuant to [Section 10 AusG](#), the Evaluation Commission shall draw up a reasoned report after conducting the necessary surveys and taking into account its findings. In the interests of **transparency**, the Evaluation Commission shall publish the number of applicants considered suitable for the advertised position in its report, broken down by gender, according to the extent of their suitability, as well as the names of the members of the Evaluation Commission on the ministry's website.

The recommendations will be evaluated and, if necessary, adjustments to sharpen the existing provisions will be considered. However, it should be noted that, with regard to the parliamentary-democratic principle, a reform can only bring a better support for the responsible ministers through expertise and an increase in the quality of this expertise - the final decision must remain with the politically and legally responsible federal ministers.

Regarding Recommendation no. 3

Sect. 301 of the Austrian Criminal Code (Strafgesetzbuch - StGB) penalizes the unlawful publication of proceedings. The provision reads:

Sect. 301 CC - Unlawful publication of proceedings

(1) Any person who, acting in violation of a statutory prohibition, makes information about the content of closed proceedings before a court or administrative authority available in a printed document, by broadcast, or otherwise publishes the information in a way that it becomes accessible to a broad segment of society is liable to imprisonment for up to six months or a fine not exceeding 360 penalty units.

(2) The same penalty applies to any person who in any of the ways set out in para. 1 publishes information about consultations that are part of judicial or administrative proceedings, about voting and voting results of such consultations, and any person who violates an obligation to secrecy imposed in such proceedings by the court or the administrative authority on the basis of a statutory provision.

(3) Any person who in any of the ways set out in para. 1 publishes information about the content of results stemming from a request relating to data retention, or data relating to communication or surveillance of communication, or visual or acoustic surveillance of persons using technical devices (Sect. 134 subpara. 5 Code of Criminal Procedure [Strafprozeßordnung (StPO)]), is, unless these results have previously been put on file (Sect. 145 para. 2 Code of Criminal Procedure), liable to imprisonment for up to one year or a fine not exceeding 720 penalty units.

Statement incl. Links regarding Recommendation no. 6

Pursuant to [Section 7 \(11\) Federal Ministries Act 1986 – Bundesministeriengesetz 1986 - BMG](#) the secretary general is entrusted with the comprehensive handling of all business belonging to the powers of the federal ministry. The secretary general is the direct superior of all heads of section within the federal ministry as well as superior of all offices subordinate to the federal ministry. The number is therefore limited to one and the salary is also fixed ([Section 31 \(2\) of the Civil Servants' Remuneration Act – Gehaltsgesetz 1956 - GehG](#) and [Section 74 \(2\) of the Act on Contractual Public Employees – Vertragsbedienstetengesetz 1948 - VBG](#))

Member's of a minister's private office can only consult and support the federal minister in decisions of her:his responsibility in the field of general government policy ([Section 7 \(3\) BMG](#)). They cannot issue orders to civil servants.

The recommendations will be evaluated and, if necessary, adjustments to sharpen the existing provisions will be considered.

19. As regards the **revised code of conduct for civil servants** which was adopted in March 2021, can you update us on its implementation? Were there any cases brought before the Federal Disciplinary Authority or any available statistics?

The Code of Conduct is available on the website oeffentlicherdienst.gv.at and is also available in English. Since November 2020, the supplementary e-learning course website has received 19.685 unique visits (until 30 November 2023) from civil servants and the general public. In the internal learning administration system of the Federal Academy of Public Administration, 2.010 civil servants interacted with the e-learning course.

Regarding statistics of the Federal Disciplinary Authority it can be referred to the annual report. The annual report is accessible via [Bundesdisziplinarbehörde \(bmkoes.gv.at\)](http://Bundesdisziplinarbehörde (bmkoes.gv.at)).

21. We understand that a new obligation requiring the parties to provide their statutes in the public party register was set to enter into force in January 2024: can you update us regarding the impact of the adopted reform of the political party financing framework?

a. We understand that civil society had noted the lack of criminal sanctions to punish misconduct and the absence of provisions regarding disclosure before the elections of campaign financing: could you elaborate on this choice?

Link to the translation of the Political Parties Act (Parteiengesetz 2012 – PartG): https://ris.bka.gv.at/Dokumente/ErV/ERV_2012_1_56/ERV_2012_1_56.pdf

Regarding Section 12a para. 4 mentioned during the country visit, please refer to page 30.

Link to the register of statutes of parties: <https://www.bmi.gv.at/405/start.aspx> respectively <https://citizen.bmi.gv.at/at.gv.bmi.fnsweb-p/par/public/Parteienregister>

The **Corruption Criminal Law Amendment Act 2023** (Korruptionsstrafrechtsänderungsgesetz 2023), issued on 20 July 2023 in the Federal Law Gazette 100/2023, implemented a significant expansion of the fight against corruption in criminal law. The most impactful changes are:

- A new definition of "**candidate for office**" in a new Section 74(1)(4d) CC is introduced and criminal liability is now extended to such candidates for office in Section 304(1a) CC and Section 307(1a) CC:

Section 74(1)(4d) CC: *"Candidate for an office: anyone who, in an election campaign, an application or selection procedure for a function as an office holder (item 4a) or in a comparable position to obtain a function he or she is seeking as a supreme executive body of the federal government or of a federal state or as a body responsible for monitoring the legality of law enforcement, provided that obtaining the function is not entirely improbable"*

Section 304 (1a) CC: *"Any person who, as a candidate for office, demands, accepts or accepts the promise of an advantage for himself or a third party for the performance or omission of an official act in this capacity in breach of duty shall also be punished. The offender who demands an advantage or allows himself to be promised such an advantage shall only be punished in accordance with this paragraph if he has actually obtained the position as a public official."*

Section 307 (1a) CC: *"A person shall also be punished who, in the event that a candidate for office becomes a public official office holder, for the performance or omission of an official act in this capacity in breach of duty offers, promises or grants an advantage for him or a third party in this capacity. The offender who who offers or promises an advantage shall only be punished under this paragraph if the candidate for an office has actually obtained the position of public official."*

- Introduction of the criminal offense of "**buying a mandate**" (Section 265a CC):

(1) Any person who, in connection with an election to the National Council, to a provincial parliament or to the European Parliament, demands, accepts or accepts a promise of payment for himself or a third party for influencing the allocation of a mandate to a candidate shall be liable to a custodial sentence not exceeding two years if the candidate is actually sworn in or takes the seat.

(2) Likewise, anyone who, in connection with an election pursuant to subsection 1 person in charge of an election campaigning party for influencing the allocation of a mandate to a candidate, offers, promises or grants a fee to the candidate or a third party, provided that the candidate is actually sworn in or takes the seat.

(3) Anyone who commits the offense with regard to remuneration exceeding EUR 50.000 shall be punished with a prison sentence of six months to five years.

(4) Promises, agreements or services relating to permissible party donations in accordance with the donation regulations standardized by federal and state law, the assumption of election advertising expenses for oneself, party donations, more promising list positions for defeated candidates and comparable promises, agreements or services are not illegal.

(5) The offender shall only be punished in accordance with the above paragraphs if the offense is not punishable by a more severe penalty under another provision."

- Introduction of an additional qualification if the value of the benefit exceeds EUR 300.000 for all corruption offenses in the public sector (Sections 304-307b CC)

In view of the fact that various clamorous cases of corruption have come to light in recent years which are the subject of public debate, it deemed appropriate to emphasize the unworthiness of acts with a particularly high value of advantage. Therefore, a new threshold was introduced for a benefit value exceeding EUR 300.000. The penalties were increased in accordance with the amended section 304 para. 2 last sentence of the CC and section 307 para. 2 last sentence of the CC, the penalties are one to fifteen years imprisonment. For candidates for office pursuant to Section 304 para. 1a CC and Section 307 para. 1a CC, these penalties apply equally.

In the offenses under Section 305, Section 306, Section 307a and Section 307b of the CC if the value of the benefit exceeds EUR 300.000, those criminal acts are punishable by one to ten years' imprisonment.

- Restriction of the exception to criminal liability in Section 305 para. 4 no. 2 CC to the effect that persons from the family circle (Section 166 para. 1 CC) of the public official or the arbitrator may not exert any decisive influence on the use of the benefits for charitable purposes (Section 35 BAO)

Section 305 CC (Acceptance of benefits) reads as follows:

(1) A public official or arbitrator who demands an advantage for himself or a third party for the dutiful performance or omission of an official act or who accepts an undue advantage (Subsection 4) or allows himself to be promised such an advantage shall be liable to a custodial sentence not exceeding two years.

(Note: Para. 2 repealed by Federal Law Gazette I No. 61/2012)

(3) Anyone who commits the offense in relation to an advantage with a value exceeding EUR 3.000 shall be punished with imprisonment of up to three years, but anyone who commits the offense in relation to an advantage with a value exceeding EUR 50.000 shall be punished with imprisonment of six months to five years. If the value of the benefit exceeds EUR 300.000, the offender shall be liable to a custodial sentence of between one and ten years.

(4) The following are not undue advantages

1. Advantages whose acceptance is permitted by law or which are granted in the context of events in whose participation there is an official or objectively justified interest,

2. Advantages for charitable purposes (Section 35 BAO), over the use of which the office holder, arbitrator or a person from the family circle (Section 166 para. 1) of the office holder or arbitrator does not exercise any decisive influence, as well as

3. in the absence of licensing norms within the meaning of no. 1, gifts of low value customary in the locality or country, unless the act is committed on a commercial basis.

(5) Section 304 (3) shall apply mutatis mutandis.

- increase in the cap on daily rates in the VbVG:

Increase of the upper limit of a daily rate in the VbVG to three times, namely from EUR 10.000 to EUR 30.000, and from EUR 500 to EUR 1.500 for associations that serve a charitable, humanitarian or ecclesiastical purpose (Section 4 para. 4 VbVG)

- Tightening of the provisions on eligibility in the Austrian National Council election rules as well as the Austrian European electoral regulations.

Persons who are faced with a sentence of imprisonment of more than six months for a public corruption offense (Sections 304-307b CC) as a consequence of the judgment also lose their eligibility for election.

Please find the abovementioned changes in German language in detail – legal text and explanatory notes - under [Korruptionsstrafrechtsänderungsgesetz 2023 – KorrStrÄG 2023 \(244/ME\) | Parlament Österreich.](#)

23. *[can be answered in writing] In your written contribution you state that a total of 3 alleged corruption cases against legal persons are reported to be pending (p. 24), while last year 112 pending cases were reported . Do you confirm that all were closed? Could you share the outcomes and if possible, any reasons for this significant change in the number of cases?*

The statistics as per November 2022 only showed the proceedings that were conducted following corruption offences, but not separately those that were conducted against legal persons. This means that the 112 proceedings do not differentiate between proceedings against natural persons and those against legal entities. We have now carried out another analysis, which as of November 2022 shows 9 proceedings in connection with the VbVG.

According to the statistics already provided as per November 2023, 3 proceedings are open.

MEDIA PLURALISM AND MEDIA FREEDOM

28. *In June 2023 the public prosecutor opened an investigation against a journalist and seized his electronic devices on the grounds that he would have aided in a violation of official secrecy and the data protection laws when he disclosed an incriminating payroll of a civil servant. The case was dropped, according to the journalist himself, also due to an intervention by the Ministry of Justice. Could you elaborate whether you think any consequences would be appropriate to prevent such a case in the future?*

The case in question was an exceptional series of unfortunate circumstances since the competent Public Prosecutor failed to inform the persons responsible for the subject-specific supervision as well as the head of the Public Prosecutor's Office and the Senior Public Prosecutor's Office.

In order to raise awareness especially for the specific protection of persons subject to professional confidentiality provided by law, the case was discussed with all heads of Public Prosecutors' Offices and Senior Public Prosecutors' Offices at the annual meeting in November 2023. It was emphasized

that for every coercive measure against a person subject to professional confidentiality, such as journalists, the law requires a strong and urgent suspicion that this person has committed a criminal offence. Furthermore, the importance of informing all persons responsible for the subject-specific supervision, especially the head of the Public Prosecutor's Office about all cases of (a possible) public interest in order to follow the rules on reporting obligations and to provide support to the competent Public Prosecutor was underlined.

Subsequently, the heads of the Public Prosecutors' Offices conducted further "awareness-raising" meetings with all practitioners at their offices.

30. Do you plan any guidelines or training courses regarding the application of the Freedom of Information law?

In accordance with its responsibilities, the Federal Chancellery-Constitutional Service is planning to send a circular to the federal ministries explaining the fundamental changes and pointing out the further necessary legal adjustments that need to be made in the respective areas of responsibility. Numerous legal provisions contain the element of "official secrecy" (cf. e.g. the duty of confidentiality under civil service law and the corresponding penalty provision); these must be examined in the light of the new legal situation and adapted if necessary.

Training and general guidelines are to be provided, as usual, by the bodies responsible for the respective office (regional authority) under organisational or service law. There is an established exchange with the provinces (e.g. through the participation of the Federal Chancellery-Constitutional Service in conferences of the provincial office directors and provincial governors); cross-regional working groups will also take place. Notwithstanding this, the Federal Chancellery intends to prepare comprehensive information material to make it easier for the authorities to implement the law. The data protection authority is legally responsible for the "provision of guidelines and offers for further training" in the data protection issues that are probably mainly affected in practice (see the constitutional provision in para 15 (1) IFG). In addition, the Association of Local Authorities has already announced on several occasions to create or organise training courses. This is particularly useful because it can build on existing structures (municipal academies) and thus provide low-threshold access for those responsible in the municipalities.

The Federal Academy of Public Administration is planning and organising training courses and workshops on the application of the Freedom of Information law in the second half of 2024.