

Vienna, 08 March 2021

ÖRAK Position Paper concerning the 2021 Rule of Law Report (public consultation by the European Commission)

Austrian court fees remain to be highest in Europe. While they are midrange with regard to low-value litigation, Austrian court fees are *excessively* high concerning high-value litigation as unlike in other member states no cap/maximum fee is foreseen. This can pose a serious obstacle with regard to access to justice, both for companies and for citizens with high-value claims. Despite this being mentioned in the European Commissions' Rule of Law Report in 2020, no changes have been introduced.

The Austrian Bar is very worried that a criminal **complaint has been filed against a critical journalist from the magazine "Die Presse" by prosecutors** belonging to the *Wirtschafts- und Korruptionsstaatsanwaltschaft* (Public Prosecutors Office for White Collar Crime and Corruption) who felt their work was criticised in a press article. This happened with regard to one of the journalist's articles about a Supreme Court Judgement which limited the possibility to keep private information without relevance to a case in procedural files. No initial suspicion was confirmed. This could be considered as an attempt to undermine independent journalism and freedom of expression.¹ The Austrian Bar also notes that **more complaints are filed by prosecutors with regard to lawyers' conduct in specific cases**. The aim seems to be to intimidate the lawyers concerned as usually not even an initial suspicion can be confirmed.

Also, the Austrian Bar would like to mention a politically sensitive case concerning the *Bundesamt für Verfassungsschutz und Terrorismusbekämpfung* (Office for the Protection of the Constitution and Fight against Terrorism) where the suspect, a former employee, has been **interrogated by the police at multiple occasions without a lawyer**. During the course of several days the client in custody was interrogated even though his lawyer explicitly asked not to do so. After confessing to several crimes and handing over passwords to the investigators, he had to be admitted into psychiatric care. His lawyer expressed serious doubts whether there was valid agreement on the part of her client to be interrogated without his defence counsel. In another case, also concerning an employee to the Office for the Protection of the Constitution and Fight against Terrorism, the lawyer in case also criticized that his client was interrogated without him being present at first.²

¹ Article in *Die Presse*: <https://www.diepresse.com/5924432/wksta-anzeige-gegen-journalistin-angriff-auf-pressefreiheit>

² Article in *Der Standard* here: <https://www.derstandard.at/story/2000123812259/beschuldigter-nun-in-psychiatrie-anwaelte-kritisieren-ermittler-in-bvt-afaeere>



The Austrian Bar notes **gold plating regarding the implementation of the DAC 6 Directive which is detrimental to the fundamental right of citizens to professional secrecy**. Firstly, according to § 9 para 1 *Rechtsanwaltsordnung* lawyers are bound to professional secrecy. In cases where a client relieves the lawyer of this duty, the lawyer still has to assess whether this is in the clients' interest. This is not reflected in § 11 *EU-Meldepflichtgesetz*. Secondly, according to § 11 para 4 *EU-Meldepflichtgesetz*, a duty for lawyers is imposed to disclose evidence regarding the information of intermediaries or their client to tax authorities. No specific preconditions have to be met for this disclosure which inevitably includes information protected by professional secrecy.

In some **family and succession law matters** of highest complexity **time limits of only 14 days are foreseen for bringing an action**, see e.g. § 46 para 1 *Außerstreitgesetz*. This time limit even applies throughout the periods during summer and Christmas time when specific rules regarding proceedings apply (formerly known as "trial free time", *verhandlungsfreie Zeit*). In practice, this means that for decisions, some of them 60 pages and longer, which were served on 21 December 2018, lawyers had only five working days within this time frame. For comparison: the EU Succession Regulation foresees time limits of between 30 and 60 days with regard to questions of enforceability (see Art. 50 para 5 [Regulation No. 650/2012](#)).

In general, it is concerning that the tone of discussions between politicians and all branches of the judiciary has become more heated. This is detrimental to objective discussions and impairs the rule of law and the trust of citizens in the latter.

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