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ÖRAK Position Paper concerning the 2022 Rule of Law Report (public consultation by the European Commission)

Despite criticism by the European Commission in previous Rule of Law Reports, the regime of **Austrian court fees**, which leads to the highest fees in Europe, was not changed. 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. Some minimal changes are foreseen, however, according to estimations of the Austrian Bar, the retarded valorisation of the fees will overall even lead to an increase in fees.

The Austrian Bar would like to criticize the **excessive duration of some proceedings**. For example, in the so-called BUWOG proceedings after more than a year the orally issued judgement has not yet been rendered in writing so that, **as a consequence**, the already **convicted defendants cannot appeal**.

Consultation periods for legislative proposals were sometimes far too short. (Examples: Novellierung des Umweltförderungsgesetz [proposal Environmental Aid Act]: 23.12.2021- 10.01.2021 (holiday period), Impfpflichtgesetz [proposal on mandatory vaccination law] 9.12.2022 - 10.1.2022 (holiday season), Sterbeverfügungsgesetz [proposal on euthanasia law]: 23.10.2021 - 12.11.2021 (holiday period), Bundesgesetz mit dem das Verwaltungsvollstreckungsgesetz 1991 geändert und das Verwaltungsgerichtsbarkeits-Übergangsgesetz aufgehoben wird [proposal on coercive detention]: 19.10.2021 - 8.11.2021). Also, sometimes the entering into force of necessary legislation was delayed to the detriment of persons/companies. For example, Covid tests in businesses were subsidized, however, companies had to provide the tests at their own financial risk as the legislative basis for reimbursements only entered into force several months later.

The Austrian Bar also criticizes **retroactive legislation in the area of tax law**. For example, crypto assets shall be taxed if acquired after 28/02/2021 according to the tax law reform which enters into force only in March 2022.

In its contribution to the Rule of Law Report 2021 the Austrian Bar mentioned, that it was concerning that the **tone of discussions between politicians and all branches of the judiciary** became more heated. This view was supported by Elisabeth Lovrek,



President of the Austrian Supreme Court¹¹. Such developments are detrimental to objective discussions and impairs the rule of law and the trust of citizens in the latter.

The Austrian Bar would like to again raise the issue, that also **EU law** can pose problems with regard to the rule of law. In the past this was, for example, the case regarding reporting obligations which infringe professional secrecy (see previous input on the transposition of the DAC6 directive). Currently the criticism of the Commission as to the transposition of the Proportionality Directive regarding the lawyers' professional regulations and the resulting demands for change is, mildly put, challenging with regard to the **need to safeguard the independence of the bars**.

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¹¹ See interview in Der Standard, 23.12.2021, retrievable here: <https://www.derstandard.at/story/2000131855646/elisabeth-lovrek-das-ist-der-schlimmste-vorwurf-an-die-justiz> .

