INTERNATIONAL COMPARATIVE STUDY ON ALLOCATION OF CASES TO AND WITHIN COURTS -

The case of Austria

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June 2004
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1. Profile of the Austrian judicial system

1.1 General remarks

Austria is a Federal State formed of nine independent “Bundesländer”. Pursuant to Austria’s Federal Constitution, jurisdiction is exclusively the responsibility of the Federal State. Consequently, there exist only federal courts but no judicial authorities of the Bundesländer.

The court system is laid down by federal legislation. The Constitutional Court and the Administrative Court (“courts of public law”) have been created as guardians of the Constitution and the administration under the Federal Constitutional Act itself, which also provides detailed rules for these judicial authorities.

1.2 Ordinary courts – Civil and Criminal courts

Organization of courts

figure 1

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1 See also section 2.
3 In 1988 independent tribunals ("Independent Administrative Boards") were established in each Bundesland that have - amongst others - the task to review decisions of administrative authorities that impose administrative penalties (fines and sentences of imprisonment). These tribunals took up work in 1991. It is considered to transform these tribunals to Administrative Courts of each Bundesländer. Since 1991 the Independent Administrative Boards provide legal protection against administrative decisions. Applicants have to address their appeals first to an Independent Administrative Board, in cases that are within its competence. An appeal against the ruling of the board can be launched with the courts of public law.
Ordinary courts are the courts competent to exercise civil and criminal jurisdiction. They include:

1. 150 District Courts (magistrates’ courts, “Bezirksgerichte”); 5
2. 20 First instance courts (“Regional Courts”, “Landesgerichte”);
3. Criminal Courts of Assize (“Geschworenengerichte”), acting within the First instance courts;
4. Four Courts of Appeal (“Oberlandesgerichte”, “courts of second instance”): established in Vienna, Graz, Linz and Innsbruck;
5. The Supreme Court (“Oberster Gerichtshof”), which seats in Vienna.

District Courts and First instance courts (courts of first instance), as a rule, exercise both competence in civil and criminal cases. Exceptions to this rule are the following:

1. In commercial cases a special District Court (“Bezirksgericht für Handelssachen”) and a Commercial Court serving as a First instance court (“Handelsgericht”) have been established only in Vienna. The reason to establish such special courts in Vienna (also in Prague and other important cities of the former Austro-Hungarian monarchy) was a historical one, facing the importance of having such courts in the business centers, as the capitals of the former Austro-Hungarian monarchy always also have been business centers. This decision was not motivated by the argument of caseloads, as there have always been enough special commercial cases to deal with for a whole court. Outside the competence of these two courts, commercial cases are dealt with by District Courts and First instance courts;
2. Special District Courts and special courts of first instance have been set up in Vienna (one First instance court for civil and one for criminal cases) and in Graz (for both civil and criminal cases);
3. A separate Juvenile Court (“Jugendgericht Graz”) has been established in Graz; it is in charge of juvenile civil and criminal cases;
4. A special Labour and Social Court (“Arbeits- und Sozialgericht”) acts in Vienna as a court of first instance in disputes arising from employment relations and certain branches of the social insurance system.

All special courts have been historically established rather because of needs of specialization than of caseloads.

It also is worth mentioning that civil cases include contentious and non-contentious cases.

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4 As the term “Bezirksgericht” is a technical term in Austria and correlates with the English term “District Court”, this term is used further on instead of the term “magistrates”.
5 Eight of them will be closed and merged with others until 2005. The “Österreich Konvent” (a constitutional convention established by parliament) will discuss the idea in 2004 of merging the District Courts with the First instance courts, to create a new kind of court of first instance.
6 A special Juvenile Court (“Jugendgerichtshof Wien”) was established in Vienna, which, acting as a court of first instance and as a District Court, was responsible for handling cases in certain sections of civil and criminal jurisdiction. It was closed by the 1st of July 2003. Therefore Graz is the only one city, which has a juvenile court. In all the other courts juvenile cases are dealt with the court of “general competence”.
7 Judges of all special courts may move from one court to another, even if they are so specialized.
System of legal recourse, sphere of activity in civil cases:

figure 2

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Remedies available in non-contentious jurisdiction consist of two forms of appeal against decisions rendered by courts of first instance, viz.: "Vorstellung" and "Rekurs" and one form of appeal against decisions of courts of second instance, viz.: "Revisionsrekurs". In contentious jurisdiction there are two forms of appeal against decisions by courts of first instance, viz.: "Berufung" and "Rekurs" and three forms of appeal against decisions by courts of second instance, viz.: "Revision", "Revisionsrekurs" and "Rekurs".

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8 Remedies available in non-contentious jurisdiction consist of two forms of appeal against decisions rendered by courts of first instance, viz.: "Vorstellung" and "Rekurs" and one form of appeal against decisions of courts of second instance, viz.: "Revisionsrekurs". In contentious jurisdiction there are two forms of appeal against decisions by courts of first instance, viz.: "Berufung" and "Rekurs" and three forms of appeal against decisions by courts of second instance, viz.: "Revision", "Revisionsrekurs" and "Rekurs".
1.3 Extraordinary courts

The Austrian court system includes, in addition to the ordinary courts, other courts, which are referred to in the literature as extraordinary courts or special courts (“special” meant as more special than the “special courts, mentioned above, referring to “special ordinary courts” i.e. as the above mentioned labour court). These are, in particular, the following:

1.3.1 The Courts of Arbitration

It is set up in accordance with the rules of the Austrian Code of Civil Procedure. On the basis of a valid arbitration agreement the case may be transferred to such arbitration courts created under the provisions of the arbitration agreement.

Arbitration courts do not have executive power. Their negotiated outcomes are enforceable by ordinary courts only if they are signed by all arbitrators and their enforceability is certified by the head of the Court of Arbitration to become executable.

1.3.2 The Arbitration Court for Stock Exchange Cases

The Arbitration Court for Stock Exchange Cases has a double function. They are public courts in the case of disputes, but they also are deemed private courts of arbitration if their competency is based on an arbitration agreement. In any case, however, they do not have any executive power. Their decisions/negotiated outcomes are enforceable and, if required, must
be executed by ordinary courts. The terms of reference of the arbitration courts/boards for stock exchange cases are laid down in the statutes of the respective stock exchanges.

1.4 The Public Prosecutor’s Office

The Public Prosecutor's Office is organized as a judicial administrative authority. It is competent in general to institute proceedings in the case of offences subject to public prosecution and, in particular, to represent the Public Prosecutor's Office. Every Public Prosecutor's Office has a "Chief prosecutor" ("Leitender Staatsanwalt") and a "Deputy chief prosecutor" ("Erster Stellvertreter des Leitenden Staatsanwaltes"). The office can be structured in “Groups” with a “Group Chief” ("Gruppenleiter") ahead.

The functions of the Public Prosecutor are dealt with by the so-called “agents”\(^9\) within the Public Prosecutor's offices at District Courts. There are 16 public prosecutor's offices at the courts of first instance (except for the civil first instance courts in Vienna and Graz, the Viennese Court of Labour and Social matters and the court of first instance in commercial matters in Vienna; see 1.2.1.). Furthermore, there are senior Public Prosecutors at courts of second instance, and there are the Attorney General and deputies at the Supreme Court.

In the fulfillment of their functions, the members of the public prosecuting authorities are independent of the courts where they are appointed.

Public Prosecutors at courts of first instance are subjected to directions of senior Public Prosecutors, the latter and the Attorney General at the Supreme Court are subjected to directions of the Federal Ministry of Justice (for example the minister of justice may instruct the senior public prosecutor to instruct the public prosecutor of the relevant case to appeal against the sentence).

In fulfilling their functions, Public Prosecutors are authorized to contact directly and enlist the support of police authorities, other authorities of the Bund and the Bundesländer as well as local authorities.\(^10\)

Public Prosecutors have an important sphere of action beyond criminal proceedings. They represent, for instance, the “public interest” in disciplinary cases against judges (public prosecutors themselves are disciplinarily dealt by “Disciplinary Commissions” according to the rules of the “Public Office Law”). In civil cases their cooperation is necessary among other things, in proceedings concerning legitimacy, marriage and proceedings concerning declarations of death.

1.5 Other courts of Public Law

1.5.1 Common principles

1. The Administrative Court and the Constitutional Court ("Verwaltungsgerichtshof, Verfassungsgerichtshof") are provided for in the 6th chapter ("Hauptstück") of the

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\(^9\) The agents of Public Prosecutor’s offices (“Bezirksanwälte”) are law trained judicial officers, who are allowed to act for the Public Prosecutor’s offices under supervision of a Public Prosecutor (quite similar to the well known Austrian “Rechtspfleger”, but with a lower range of competence and a minor level of education. They are appointed into permanent positions, recruited and trained by the Presidents of the Courts of Appeal, similar as the usual clerks.

\(^10\) The above-mentioned reform of the Code of Criminal Procedure conducting preliminary investigations or preliminary inquiries wants to strengthen the role of the Public Prosecutor in many ways.
Federal Constitutional Act of 1920 as amended in 1929 under the heading "guardians of the constitution and the administration" (Art. 129 to 148). They are called (other) "courts of public law". In the same part of the Constitution the Independent Administrative Boards are regulated too. They function as a "guardians of the administration" as a kind of first instance preceding an appeal to one of the courts of public law.

2. The Administrative Court and the Constitutional Court are "genuine courts" as all of their members enjoy the judicial privilege of independence and immunity from being removed or transferred.

3. Both the Administrative Court and the Constitutional Court are "supreme courts" as they are independent from, and neither superior nor subordinate to one another. The same applies to the Supreme Court.

4. Only one Administrative Court and one Constitutional Court exist (principle of concentration), their jurisdiction extends over the whole of the Austrian territory and both have their seat in Vienna (principle of centralization).

5. The above mentioned principles have been weakened by the amendment to the Constitution of 1988. As the Independent Administrative Boards serve an appeal function against administrative decisions, they fulfill the task of "first instance reviewers of administrative decisions" although strictly speaking they cannot be qualified as courts. However, as they are composed of independent members that are appointed for at least six years in accordance with the Constitution and who can only be removed on the same grounds as judges can, they fulfill the requirements for "tribunals" of Article 6 of the European Convention on Human Rights.

2. The Administrative Court decides on:
   1. official appeals ("Amtsbeschwerden");
   2. appeals by private parties ("Parteibeschwerden");
      a. appeals against administrative decisions ("Bescheidbeschwerden");
      b. complaints against an administrative authority's failure to render a decision ("Säumnisbeschwerden").

1. Official appeals:
   Such appeals may be lodged by certain public agencies as authorized under federal constitutional, or "simple" acts (acts which may be passed by a simple majority) on the grounds of violation of the public law; they are also called "objective" appeals.

2. Appeals by private parties:
   a. Appeals against administrative decisions
      After exhaustion of the administrative system of recourse, every party may, within six weeks, lodge with the Administrative Court an appeal against a decision of an administrative authority on the grounds of alleged unlawfulness of that decision. Such an appeal is also called "subjective appeal".
      Appeal can also be lodged against a decision of an Independent Administrative Board; in cases falling within its responsibility, the "exhaustion of the system of recourse" therefore also requires that an appeal to the Independent Administrative Board has been lodged before the Administrative Court can be addressed.
      An administrative decision against which an appeal is lodged, can be set aside by the Administrative Court for the following reasons:
      1. Unlawfulness of its contents;
      2. Unlawfulness because of the authority's incompetence;
      3. Unlawfulness because of violation of rules of procedure, in particular on the grounds that:
(i) the facts on an essential point as assumed by the authority concerned are in contradiction to what is on record; or
(ii) the facts need to be supplemented on an essential point; or
(iii) rules of procedure have been disregarded and the authority concerned might have arrived at another decision if it had proceeded in line with these rules.

b. Complaint against an administrative authority’s failure to render a decision
A complaint against an administrative authority’s failure to render a decision may be lodged by anyone who under an administrative regulation was entitled to claim observance of the obligation to render a decision. It may be lodged by the party concerned with the Administrative Court only if the highest administrative authority addressed under rules of administrative procedure fails to decide on the matter within six months. In the case of such a complaint the Administrative Court may decide on the matter as such.

According to the annual reports\(^{11}\) of the Administrative Court on average it receives approximately 9,000 appeals a year. The Court has 61 judges (and a President and one Vice-President) at this time. It sits in units (sections) composed of 5 members; in some cases - especially in criminal administrative matters - there are chambers of three members (composed of the members of a section). Responsibility for preparation of the decision lies with one member of the chamber (called the "reporting member"). According to the figures in the annual report (see above) each reporting member prepares approximately 141 decisions a year (at present there are 49 reporting members).

The Judges of the Administrative Court are appointed by the Austrian President, following a proposal of the Federal Government. This proposal follows (not in case of the (Vice-)
President’s appointment) a proposal of the general assembly of the Administrative Court’s judges. The judges of the Administrative Court have to be graduated in law, must have been executing a judicial profession for at least ten years. The third part of them has to appointed as an (ordinary) judge, a quarter of them should have been administrative officers of the “Bundesländer” (Art. 134 of the Austrian Constitution).

1.5.2 The Constitutional Court
The Constitutional Court is competent to act as a
1. so-called "Kausalgerichtshof";
2. tribunal for deciding disputes about jurisdiction or competences:
   a. decisions on conflicts between entities within the state organisation. ("Organ-
streitigkeiten");
   b. decisions on conflicts of competence or jurisdiction;
   c. advance determination of competence;
3. tribunal for deciding disputes on the existence of and compliance with a treaty between the Bund and one or more Länder according to Article 15a of the Constitution, on the request of the Federal Government or one of the governments of the “Länder” concerned (Article 138a). The same competence exists with regard to treaties between the Länder, when this competence is fixed in the treaty;
4. tribunal for examining (general) regulatory orders ("Verordnungsprüfungsgericht");
5. tribunal for examining laws ("Gesetzesprüfungsgericht");
6. tribunal for examining international agreements ("Staatsvertragsprüfungsgericht");
7. election court ("Wahlgerichtshof");

\(^{11}\) Tätigkeitsbericht des Verwaltungsgerichtshofes für das Jahr 2002
8. High Court of State ("Staatsgerichtshof");
9. special administrative court ("Sonderverwaltungsgerichtshof");
10. tribunal for the application of international law in Austria ("Völkergerichtshof").

The (Vice-) President and six of the Judges of the Constitutional Court (and three deputies) are appointed by the Austrian President, following a proposal of the Federal Government. They have to be (ordinary) judges, administrative officers in law service or university professors from a law faculty. Further six Judges of the Constitutional Court (and three deputies) are appointed by the Austrian President, following proposals of the two chambers of parliament. (See Art. 147 of the Austrian Constitution for further details).

1.5.3 Independent Administrative Boards
The Independent Administrative Boards are competent to decide upon:

1. appeals against administrative decisions in administrative criminal cases (for example driving a car under influence of alcohol, employing foreigners without permission, …);
2. appeals against other administrative measures directly infringing the rights of citizens without a formal decision according to the Act on Administrative Procedure (measures exercising administrative power directly: "Ausübung unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt" - "exercise of direct administrative power");
3. appeals in other administrative cases where it is provided for by law (not compulsory by Constitution; an Act of Parliament can vest the Boards with this responsibility; such laws have been issued in only a few cases so far);
4. complaints against the breach of the obligation to take a decision by an administrative authority in those cases where an appeal to the Board is possible against the decision that should be taken.

As they are established as authorities of the “Bundesländer” they are also differently managed and competent. Therefore their data are not compatible or available.\(^\text{12}\)

As of this study does not aim at the Administrative Court, the Constitutional Court ("Verwaltungsgerichtshof, Verfassungsgerichtshof") and the Independent Administrative Boards are not mentioned in further details.

1.6 Statistical information

1.6.1 Personnel statistics\(^\text{13}\)
The number of judges, public prosecutors, judge office candidates and court trainees is now about: 1,732 judges (slightly decreasing in the future)\(^\text{14}\), 219 public prosecutors\(^\text{15}\) (stable or raising, dependent on the reform of the Code of Criminal Procedure), 225 judge office candidates\(^\text{16}\) (depending on the presumed retirements) and 1,146 court trainees\(^\text{17}\) (stable in the next years, depending on the newly academics in juridical studies):

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\(^\text{12}\) Referring to the information given by the “Verbindungsstelle der Bundesländer”, which also coordinates the cases of the Independent Administrative Boards.
\(^\text{13}\) All data given in full-time-equities (fte)
\(^\text{14}\) Data given in “Full-time-equivalents”, April 1st 2003; the different figure of total heads on April 1st was: 1,799 judges, 221 public prosecutors and 226 judge office candidates. Those include the judges in “waiting period” staying at home with their children and those working half time.
\(^\text{15}\) Without Ministry of Justice
\(^\text{16}\) These are to become a Judge within the three-years initial training period.
Simplified explained: Taking part at the Court Practice ("Gerichtspraxis"), a common 9-month practicing, accessible for everyone who graduated at an Austrian faculty of law, in the function of a kind of bridge between university education and practical professional education. This practice-time is mandatory to join one of the "classic" juridical professions (lawyer, notary, judge, public prosecutor). In these nine months the trainees are educated by a judge, rotating every three months to another judge/court to be trained in different branches and at different courts.
Figure 6

Judge Office Candidates
(incl. substitutional Judges (“Ersatzkräfte”), but without substitutional cases (“Ersatzfälle”))

Figure 7

<table>
<thead>
<tr>
<th>Human Resources</th>
<th>Number/Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Registered attorneys</td>
<td>3969</td>
</tr>
<tr>
<td>Professional judges</td>
<td>1752,5</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>213</td>
</tr>
<tr>
<td>Administrative judges</td>
<td>0</td>
</tr>
<tr>
<td>Personnel of the civil and criminal courts</td>
<td>5.234</td>
</tr>
<tr>
<td>Prosecutors’ office administrative personnel</td>
<td>319,51</td>
</tr>
<tr>
<td>Personnel of the administrative courts</td>
<td>0</td>
</tr>
</tbody>
</table>

In addition, there are approximately 695 “Rechtspfleger” employed, law trained judicial officers, who decide on some sort of cases in family cases, execution cases, registry of estate or companies and civil cases under supervision and (only) according to instructions of the responsible judge (but in real life they are working and deciding their cases independently by themselves). Established in 1962 (partially administering since the 1920ies) to relieve the judges, their role was strengthened in 1985 (the new law on “Rechtspfleger” - “Rechtspflegergesetz”) and 1994 to become a highly competent, fast working and important part of the Austrian judicial system. Their role in the judicial system is unique in Austria and Germany, and recommended by the European Council and the European Union. 18 75% of the overall court caseload (see below) is dealt with by the “Rechtspfleger”!

18 “Rechtsberufe in Österreich, JMZ 600.00/25-III.1/2002
1.6.2 Caseloads

**Figure 8**

<table>
<thead>
<tr>
<th>Case management (District and First instance courts without administration)</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming</td>
<td>3,480,507</td>
<td>3,477,698</td>
<td>3,377,982</td>
</tr>
<tr>
<td>Decided</td>
<td>3,500,208</td>
<td>3,446,812</td>
<td>3,279,087</td>
</tr>
<tr>
<td>Pending</td>
<td>576,198</td>
<td>607,084</td>
<td>626,554</td>
</tr>
<tr>
<td>Special cases for the judge (&quot;Richterlicher Sonderanfall&quot;)</td>
<td>402,121</td>
<td>n.a.</td>
<td>426,934</td>
</tr>
<tr>
<td>Contentious civil cases (Streitige Erledigungen bzw. Verfahren (in C))</td>
<td>104,099</td>
<td>n.a.</td>
<td>105,676</td>
</tr>
<tr>
<td>Written criminal judgments</td>
<td>44,387</td>
<td>more than 29,895</td>
<td>47,250</td>
</tr>
</tbody>
</table>

*Figure 9*

(Read columns from left to right according to the legend from top to base.)

The current number of the population in Austria is 8,067,300.\(^{19}\)

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\(^{19}\) Source: ÖSTAT, December 31\(^{st}\) 2002
2. Legal rules and actual functioning of case allocation between courts and within courts

2.1 Allocation of cases between courts

2.1.1 Circuits of ordinary courts:
Circuits of District Courts are, as a rule, formed of coherent areas of one or several municipalities. The circuits of all District Courts taken together extend over the entire Austrian territory.
Each of the circuits of the First instance courts covers the areas of several district courts and the circuits of the various courts of appeal comprise the circuits of two or more First instance courts. The Supreme Court is competent for the entire national territory.

Figure 10

Organization of District Courts

142 Bezirksgerichte (1.1.2005)

2.1.2 Civil jurisdiction
Ordinary civil jurisdiction is, as a rule, exercised in three instances:
   a) First instance: by District Courts or First instance courts;
   b) Second instance: by First instance courts (Regional Courts) or by Courts of Appeal; and
   c) Third instance: by the Supreme Court.

The subject competence (“Sachliche Zuständigkeit”) of District Courts, in principle, covers financial disputes in general not exceeding 10,000 € as well as certain disputes irrespective of the value in litigation such as disputes concerning paternity, the recognition or contestation of legitimate descent, maintenance payments due to law, divorce actions and dissolution or nullification of marriage as well as all other disputes arising from the relations between spouses or between parents and children, the disturbance of possession, real estate rents and nearly all matters of non-contentious jurisdiction.

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20 The established system of the “Zulassungsrevision” (System of authorized appeal) consists of a mixture of value and importance of the appealed question. In most of the cases the appeal has to be authorized by the second instance.
Regional Courts as courts of first instance are competent with regard to financial disputes involving values exceeding € 10,000 and certain matters irrespective of the value in litigation such as public liability, declaration of invalidity of lost documents and proceedings concerning declaration of death.

For the above shown circuits of District Courts, **local competence** ("Örtliche Zuständigkeit") is the result of a certain legal venue ("Gerichtsstand"). The most important is the "general legal venue" ("Allgemeiner Gerichtsstand"): Legal action may be brought in at the Court of the defendant’s residence (or a company’s seat).

Beside this there are a lot of elective venues ("Wahlgerichtsstände"), which give an additional choice to the petitioner to file the case at another court instead of the general legal venue. For example, at the place of agreed performance ("Gerichtsstand des vereinbarten Erfüllungsortes"), place of invoice issued ("Fakturengerichtsstand", relevant in commercial matters), place of property ("Gerichtsstand des Vermögens") or at the place of damage ("Gerichtsstand der Schadenszufügung"), very important in traffic matters, especially with many people involved, usually living in different places).

Another type of venue to be noticed is the exclusive venue ("ausschließlicher Gerichtsstand"), which excludes the use of the general venue, except the parties agree ("Prorogation") on another place of proceeding. Such exclusive venues are common in family and heritages matters, in accordance with claims on immovable goods, disturbance of possession or law of tenancy. In some of these cases it is not possible to filing the case at another court than the general venue by agreement (i.e. against consumers).

2.1.3 **Criminal courts**

Criminal courts, as a rule, exercise their activities in the first instance as:

a) District Courts, which are responsible for conducting criminal proceedings concerning any misdemeanours (Vergehen) punishable by a sanction involving pecuniary penalties or deprivation of liberty not exceeding one year; they also cooperate in preliminary inquiries and preliminary investigations in cases of crimes (Verbrechen) and misdemeanours (Vergehen) punishable by deprivation of liberty exceeding one year;

b) The First instance courts (Regional Courts) acting as:
   i. Investigating Courts ("Untersuchungsgerichte") which are generally responsible for conducting preliminary investigations or preliminary inquiries into all crimes and misdemeanours;
   ii. Judges' Chambers ("Ratskammern") which decide on complaints against decisions of investigating judges except decisions concerning detention;

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21 The courts acting in the second instance are:

- a) The courts of first instance which decide on remedies taken against judgments (as regards conviction and sentence) and against orders passed by District Courts in cases of contraventions;
- b) The courts of second instance (Courts of Appeal) which, in particular, decide on complaints raised against decisions of Judges’ Chambers and decisions of investigating judges concerning detention, appeals against committal of an accused for trial and appeals against sentences from judgments rendered by Courts of Assize and Jurors’ Courts as well as by magistrates in simplified proceedings;
- c) The Supreme Court, which is competent in particular to decide on all pleas of nullity of convictions ("Nichtigkeitsbeschwerde") as well as on appeals connected with pleas of nullity. Since 1993 the Supreme Court is also competent to decide on appeals against decisions of criminal courts (allegedly violating the constitutional right to (personal) liberty after all (other) remedies have been exhausted (i.e. in case of unjustified imprisonment).

22 A reform of the whole Code of Criminal Procedure conducting preliminary investigations or preliminary inquiries is on the agenda of parliament now. It is planned to be effective in 2006.
iii. Jurors' sections ("Schöffengerichte"), sections of court composed of judges and lay assessors, and single-judge sections (magistrates, "Einzelgerichte") in simplified criminal proceedings;

c) Courts of Assize ("Geschworenengerichte") which decide on all charges of certain crimes (and misdemeanors) enumerated in the Code of Criminal Procedure such as high treason, rioting and insurrection, and incitement to hostilities; furthermore, they decide on charges of all other crimes liable to punishment of more than ten years' imprisonment provided that further conditions as described in the law are given (as a rule, most serious criminality).

Regarding the persons or bodies exercising jurisdiction at ordinary courts the following broad information is furnished:

1. District Courts exercise their judicial activities with respect to both civil and criminal cases through magistrates ("Einzelrichter").

2. As for courts of first instance, a distinction has to be made between civil jurisdiction and criminal jurisdiction:
   a) In civil cases magistrates, irrespectively of the value of the claim, deal with most cases. However, if the claim exceeds 50,000 € the parties may apply for a panel of three judges ("Dreiersenat"). In commercial cases the panel of three judges comprises two professional judges and an expert lay judge. A panel of three judges also sits in cases of public liability and disputes arising from employment relations or social insurance cases. When acting in these cases two professional judges are replaced by expert lay judges. Acting as the second instance in civil cases, the courts of first instance sit generally in panels consisting of three professional judges. Solely for decisions on judgments rendered by District Courts in commercial cases an expert lay judge replaces one professional judge of the three judge’s panel.
   b) In criminal cases the courts of first instance act as Investigating Courts as well as through magistrates in simplified proceedings.
      i. As courts of judge and lay assessors they sit in sections consisting of two professional judges and two lay assessors ("Schöffen"). The assessors participate in the decision making process; the absolute majority decides (3:1).
      ii. As Courts of Appeal they sit in sections of three professional judges.
      iii. As Judges' Chambers and in all other cases the courts of first instance exercise criminal jurisdiction in assemblies of three professional judges.

3. A Court of Assize consists of the judges of assize ("Schwurgerichtshof", “normal” but not newly appointed judges) and the jury ("Geschworenenbank"). The judges of assize are three professional judges, one of them acts as the chairman; the jury is formed of eight jurors. As a rule, the jurors alone decide on the question of guilt, while the question of punishment is decided upon jointly by the professional judges and the jurors.

4. The Courts of Appeal sit both in civil and in criminal cases in panels consisting of three professional judges. If a Court of Appeal has to decide on an appeal in commercial cases one of the professional judges is replaced by an expert lay judge. If it has to decide in labour disputes or in social insurance cases, the panels are composed of three professional judges and two expert lay judges. The Court of Appeal acts in cartel cases as a court of first instance. It consists of one professional judge and two expert lay judges.

5. At the Supreme Court jurisdiction in civil and in criminal cases is generally exercised by panels of five professional judges. In special cases, however, cases are handled by panels of three members or by enlarged panels of 11 professional judges. For decisions on appeals concerning an alleged violation of the constitutional right to (per-
personal) liberty the panels are composed of three professional judges. When deciding on a "Revision" entered against a judgment of a Court of Appeal in labour disputes or social insurance cases the panels of the Supreme Court as a rule are composed of three professional judges and two expert lay judges.

6. In cartel-cases the Supreme Court decides in panels of one professional judge and four expert lay judges.

**Local competence** in criminal cases (if the offence is committed in Austria) is in general examined by the court competent according to the place of a crime ("Gerichtsstand des Tatorts"). Referring to this, the location of the offence is most important. As long as the location is not certain the first investigating judge is competent. There are also some special venues for special cases, i.e. juvenile cases. Also the residence or actual stay of a charged person can indicate which court is competent from a territorial perspective. More proceedings against the same person or against different persons because of their connected actions can be dealt with at one court. An agreement on the venue is not possible in criminal cases.

2.1.4 **Backgrounds of the system of case allocation**
In general it has to be said, that history is the main reason for the territorial structure the court organization in Austria. The recent structure was invented in 1848 (see the 2001 graphic below) and was sometimes adapted by merging some District Courts (last time in 2003) and closing the Juvenile Court in Vienna. Before 1848 the landlords had competence at the levels of what nowadays are the districts, so these structures were imported into the judicial system (a District Court had to be reached within a one-day’s journey by an ox-wagon or horse).

**Figure 11**

The Courts of Appeal had been some “artificial” summaries of areas of First instance courts (containing the areas of the subordinated District Courts) all over the former monarchy (today they are only “left” in Vienna, Graz, Linz and Innsbruck). The structures of territorial competence are still the same today, modified by allocation rules needed in modern life (i.e. for traffic accidents and consumers) and in order to promote effi-
ciency. For instance, the institution of the District Court of Commerce or the special Labour and Social Court in Vienna should increase the efficiency in these kinds of proceedings. But also simple political reasons lead to the establishment of new judicial units such as: “it will be easier for judiciary to get more room and manpower for courts in the area of Vienna, if every Viennese political district will get his own fully equipped District Court”.

Overall the (not logical) idea, that cases at the District Courts (i.e. financial disputes involving a value not exceeding € 10,000) are less difficult than at the First instance courts is thought in the background of this system, even although judges are trained universally and First instance courts are also accessible to newly appointed judges.

Furthermore, it does not meet modern standards of criminal proceedings to examine criminal cases in the “inner circle of residence” of the charged person (may be in her/his hometown). A general change of structure in first instance is discussed as mentioned above.23

2.1.5 The choice of courts and the opportunity to steer the flow of cases

The choice

In civil matters there is a minor possibility for the parties to choose the court (elective or agreed venues, if a max. € 10,000 is claimed as a part of a higher debit), but strictly within the above-mentioned limits (see 2.1.2).

In criminal cases there is never such a choice for the parties. But sometimes there may be an intensive investigation for connections to a certain place of crime, situated in a certain area of a court/public prosecutor’s office, or the charge may be coincidently brought to the court right on time to be dealt with by a certain judge…

But the same case can never be filed at two different courts at the same time (all jurisdiction is federal).

The Opportunity

Because of the constitutional guarantee of the competent judge and the principle of a file’s connectedness to court (perpetuatio fori), there is no opportunity to steer the flow of pending cases.

Whereas the institute of “delegation” offers a court, which is not able to handle a file (i.e. because of prejudice of all of its judges), the possibility to refer the case to the superior court of the next level, which can delegate the file to another court of the same type at the same level as the referring court. However, this is not possible for reasons such as lack of personnel and other resources. “Delegation” may also be requested by the parties (and in that case it is a way to steer the case to another court of the same type) because of expediency; but this is an exception. If it is suitable, if prescribed by law or if there are reasons of efficiency, the judge may decide, that single steps of proceedings may be examined by another court (“Rechtshilfe”), whereas the case is still pending at the original court.

Of course it is possible to steer the flow of future pending cases by changing the law concerning the rules of allocation of cases between courts. This is done i.e. from time to time in Austria by raising the value of financial disputes filed at the District Court. (also to compensate inflation). Changing the law has been pointed out by judiciary management as a very important) instrument to steer the allocation of future cases – it is almost the only instrument.

2.1.6 Conflicts of jurisdiction among the courts and their solution

Conflicts between administrative authorities and ordinary (“or any other” – means also extraordinary) courts, and also between The Administrative Court and the Constitutional Court

23 See footnote 6
are decided by the Constitutional Court (Art. 138 of the constitution), conflicts of jurisdiction among the other courts are solved by the following rules:

If court A declares itself incompetent, court B has to accept this decision. If court B also declares itself incompetent, a real conflict of competence between courts occurs. Such conflicts are to be decided by the court of the next superior level (i.e.: First instance court decides over a conflict between two District Courts within its area, or the Court of Appeal referring to two District Courts, which don't have a common First instance court, otherwise the Supreme Court).

There are no hard figures about the amount of conflicts of jurisdiction among the different courts, but they are not many: I.e. at the Court of Appeal in Linz (with 64 subordinated Courts (5 Regional, 59 District Courts), which had to handle 32,694 incoming criminal cases in 2002) approximately only 20 cases of conflicts between courts in criminal cases were pending in 2002. So the problem nearly does not exist.

2.1.7 Court competence and allocation of cases between courts
Court competence has definitely not been changed within the last (five) years in order to enable a more efficient handling of caseloads. As mentioned above, the system of resolution of conflicts of competence works very efficient by forcing the "second" court to take care of the file.

Because of the rigidity of the rules of allocation, the responsibility for court administration (mainly a task of the Heads of the Courts of Appeal and the Ministry of Justice) consists "only" of providing the facility and personnel infrastructure or to initiate a change of law to have a more efficient allocation of cases.

2.1.8 International dimension?
Referring to the strategic possibility of e.g. companies to choose a forum that meets their desires, it must be confessed that there are no numbers available and that we don't know of a company that changed residence for this kind of reason (as is observed with companies changing residence from Germany to Austria because of better conditions on taxes in Austria nowadays).

If we deal with the international dimension in general, it must be mentioned that some case allocation problems arose during the Balkan-war in the 1990s, causing Austrian courts to stop referral of cases to former Yugoslavia. Furthermore, there is a rise in drug-dealing-crimes in connection with African immigrants and a higher number of sentenced prisoners from Eastern European countries.

2.2 Allocation of cases within a court

2.2.1 By whom
At this point I want to introduce the "Judicial Boards" ([In Austria called “Personnel Senate”]”) in order to give a better understanding of the mechanism of case allocation in Austria. Judicial Boards are panels of judges at courts of first and second instance composed of ex officio members (president and vice-president of the court) as well as of members elected by the judges of these courts (and in case of the First instance courts also by judges of the lower level District Courts). The number of the elected members is always higher than the number of members ex officio. In addition to their tasks regarding allocation of cases within courts they also have functions for the appointment of judges, the assignment of ‘flexible’ judges attached to a Court of Appeal and its territory to a specific court, the administration of jus-
tice (see below 3.10.5) and they have to select the members of disciplinary-courts\textsuperscript{24}. So the Judicial Boards are some kind of guarantee of judicial (personnel) independence and the result of separating justice from its “administration”.

\subsection{2.2.2 Legal background}
Concerning the way of allocation of cases within the courts, the constitution guarantees that cases have to be allocated to judges by fixed rules (i.e. by chronological order, alphabetical order, specialization etc.) in advance (“Geschäftsverteilung”). An allocated case can only be transferred to another judge by the “Judicial Board” in case of disability, or if the judge is unable to examine the case in proper time because of the huge amount of other duties (“fixed case-allocation”).

The law of judicial organization (Gerichtsorganisationsgesetz – GOG) rules that the incoming cases have to be allocated for the period between February 1\textsuperscript{st} to January 31\textsuperscript{st} in a way to achieve an equal caseload per judge/panel in respect of their duties but also referring to people’s legal protection. This is done by the afore mentioned Judicial Boards, which prepare a draft plan of case allocation for the period. At the same time, a fixed scheme of substitutes for each judge has to be established to deal with any case of inability of the “originally” competent judge. For example: the competent court unit (referring to judge A) for proceedings against a defendant whose surname starts with “E-Ge” would be Unit 1. In case of inability of judge A, unit 2 (judge B) will become responsible, in case of inability of judge B, unit 3 (judge C) will become competent.

\subsection{2.2.3 The proceeding – check, check, double-check}
This draft of the presumably case-allocation has to be published to the referred judges between December 15\textsuperscript{th} and January 12\textsuperscript{th} to offer the ability to plead well founded against it (i.e. because of unequal duties or the wish to change the position within the court). If the Judicial Board fixes the allocation of cases, every judge has the additional right of appeal until February 10\textsuperscript{th} to the “Aussensenate” (“Outside-Senate” or “Outside Judicial Board”) of the next higher court for a proper change of case-allocation.

The prefixed scheme of case-allocation for every court may be adapted before next February 1\textsuperscript{st}, if the number of judges of a court changed (for example because of less posts), if there is a significant change in workload concerning a single chamber/judge, or for other important reasons. In addition the “Leitende Visitator” (Chief Inspector of judges, established at every Court of Appeal, serves within the system of “internal auditing”) may apply at the Judicial Board for a change of case-allocation in a court (also entailing the names of the substitutes of judges), if there is the suspicion of a breach of law.

\subsection{2.2.4 The prefixed scheme of case-allocation}
Within the boundaries of this prefixed allocation, first the cases have to be sorted and allocated to chambers or single-judges by categories (i.e. civil, criminal, un-contentious, execution, labor and social), especially in family cases and sexual offences they have to be allocated to the same judge. Another method is, that they are either allocated by the first letters of the defendant’s name (in the classical civil trial), of the concerned party (i.e. in criminal cases) or other prefixed criteria (streets and (odd-) numbers or may be a certain part of a motor-

\textsuperscript{24} Disciplinary proceedings against Judges (and Judge Office Candidates) lie on disciplinary courts installed at the Court of Appeal respectively at the Supreme Court. They consist of a panel of five judges: A chairman, his deputy and three further judges.

The members are elected by the “Personnel panel” of the relevant court for one year Public prosecutors themselves are disciplinarily dealt by “Disciplinary Commissions” according to the rules of the “Public Office Law”. In both cases the real use of a judge/prosecutor (i.e. in the ministry of justice) does not change the competence of the Disciplinary Court/Commission.
highway). A new very common method is to allocate cases in a fixed sequence according to their incoming: First case to judge No. 1, second to judge No. 2 ... and if every judge has its first case, allocation starts again from the beginning with judge No. 1. Because this is allocation in some sort of a cycled wheel it is colloquially called “Radlverteilung” (“allocation by cycle”).\textsuperscript{25, 26}

Within a certain chamber (so called “senate” in Austria) the allocation of cases is not pre-established, but the President (head) of the chamber (not to mixed up with the President of any court) discretionally allocates the cases to the judges of the chamber.

The scheme of case-allocation of a court has to be published within the court.

2.2.5 \textit{Tensions and solutions?}

Because of the clear rules, principles and possibilities to appeal against the allocation of cases, tensions within the court are almost non-existent. In addition, most case-allocations consist of the general rule, that, if a case cannot be allocated in a clear way by the system, a certain chamber/judge has to minister it. A few years ago the balance of allocation of cases between judges at the District Court of Commerce in Vienna was watched very carefully by a monthly data-monitoring of pending and incoming cases, the local system of allocation was adapted if threshold values were passed, the judges were informed about the results and therefore never minded about the allocated amount of cases and worked on their cases with a clear head (nowadays this court adheres to the cycled principle of allocation).

3. Un (expected) changes in caseloads and backlogs

3.1 Speed of justice in general

First of all it has to be stated, that the Austrian judiciary is known as fast working (at least looking on the values on average below):

\textbf{Figure 12}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure12.png}
\caption{Fast working judiciary: Decisions after a few months.}
\end{figure}

\textsuperscript{25} By the way this is a capable method to manage the amount of work of “half-time-“ or otherwise reduced capacities.

\textsuperscript{26} Even this method is widespread nowadays its legality is sometimes discussed, stressing the argument, it is unpredictable for the parties, what judge will be the “next one” referring to the constitutional guarantee of being dealt by the competent authority/judge.
90% of all cases are expected to be finished within one year (but of course there are also some two, three or longer pending ones).\textsuperscript{27} Second it has to be said, that unexpected increases/decreases of caseloads is very uncommon, at least because of the controlling-instruments explained below.

### 3.2 The measure of caseloads (and needed human resources)

One of those instruments is the so called “PAR” (“\textit{Personalauforderungsrechnung}”), a calculation of needed human resources: Measured amounts of time per case of each court section and unit in an initial research project lead to defined standards for working loads for a judge and a Rechtspflegers’ man-years\textsuperscript{28}. Counting the amount of cases in each court unit using information technology every year, and combining these data with the normal amount of time needed for working on the cases, gives as a result the working loads in terms of judges’ time and Rechtspflegers’ time—and the human resources needed at each court. The results of caseload/need of human resources are seen as balanced, if the results are between 90\% and 110\% of the fixed standards of available human resources.

Regarding to this, for example the Court of Labor and Social matters in Vienna had to endure an increased caseload of 112\% in 2002, the District Court of Leonfelden (Upper Austria) had an increased caseload of 170,67\% in 2001 (decreased to 133,67\% in 2002), on the other hand Bad Ischl had a decreased caseload of 73,19\% in 2000, 85,88\% in 2001 and 76,4\% in 2002). As a consequence of these results the appropriate steps could be taken especially by the Ministry of Justice to adjust the number of statutory limited position of ‘flexible’ judges and Rechtspfleger at the Courts of Appeal (for solutions see instruments against backlogs below 3.10.).

In general, changes of a court structure or the appointment of judges/staff were pointed out as the main reasons for “increased caseloads/per judge”, thus leading to an unbalance of manpower and caseloads. The sometimes occurring “big” cases (i.e. in connection with the accident of the Kaprun-cable-car causing many casualties), seemed to be not a problem at all, because they are statistically equalized by loads of small cases (of course this statement is not valid for the workload of the judge who has to examine the big case, but it is valid for the whole court).

### 3.3 Typical causes of highs and lows

There are some typical causes of highs and lows in caseloads of certain courts listed:

#### 3.3.1 Political

**Diversion**

As shown by the graphic below, diversion in criminal cases, instead of usual criminal procedure, decreases the incoming cases with more than 50,000 cases a year (in more than 60,000 cases a diversion is tried, and only approximately 10,000 cases fail).

Following § 90a of the Code of Criminal Procedure, the public prosecutor has to initiate a procedure of diversion, if the circumstances of the incident are clear, any proceeding has to be

\textsuperscript{27} Data are drawn by statistics, which recognize only the amount of “more than … months” pending cases. This causes the data to be rather “blurred”. Automated administered cases also included. New method of statistics is on the way (measuring the lasting of proceedings from the day of start to their end by sentence).

\textsuperscript{28} “Rechtspfleger” are law trained judicial officers, who decide on some sort of cases in family cases, law of execution, registry of estate or companies and civil cases under supervision of the responsible judge.
done by the law but imprisonment is not necessary. The alternatives for diversion are: a fine, serving for public interest, probation, and probation under conditions or extra judicial compensation. Additional condition: general or special preventive reasons may not exist. By law, diversion is possible only if the case is not under the competence of the Jurors' Courts or Courts of Assize, the incident is not serious and it has not caused any casualties. In practice, it has turned out that the instrument of inflicting a fine or a probation are the most common, because of their easier administration rather than, for example, serving for public interest. If the diversion procedure fails, a normal criminal proceeding will start.

Figure 13

BPGG (Bundespflegegeldgesetz, Federal Law on money for nursing): Mid 1990s a new law created a new way of distributing social transfer payment for people needing care. One thing was, that from now on, the Courts of Labor and Social cases could be appealed, if the amount of money awarded by the social public services was considered too small. A huge increase of cases (at least at the beginning) at Social Courts had been registered, approximately 100 additional judges had to be appointed in 1997 and 1998 to handle the caseloads.

More police officers
It is quite simple: More police officers in service will increase the numbers of cleared up crimes and therefore the court caseload. In Austria this is planned for the near future.

Political discussion
Political discussion alone also is a possible and effective cause for additional caseloads: The general political discussion about social security and social insurance in particular in 2001 increased the incoming cases at the Court of Appeal in Linz (second instance) from 275 in 2000 to 555 (!) in 2001, to decrease in 2002 to about 341 new pending cases.

3.3.2 Social

Insurances
- Insurances (especially for legal costs) are supposed to have increased caseloads in general within the last 10 years. Everyone, who pays premiums for a long time, wants to get
something for exchange someday. In case of Insurances for legal costs this is a trial at the court.

- Also a simple report of an insurance company in traffic accidents increased caseloads at courts within an area of a Court of first instance by no more agreeing on settlements and arrangements (but this did not last very long, because local lawyers pushed the insurance company to change policy, to allow normal work at/with the courts). Therefore it has to be pointed out, that only 48,1% (2002) of the litigant cases at the District Courts (34,41% at the Courts of first instance) end with a formal judgement. 51,9% (65,59%! at the Courts of first instance) end by withdrawal of the action, friendly settlement or standstill of proceeding. That means that – although there is no prefixed rate to fulfill officially, - getting cases to end by friendly settlements is quite normal and necessary to handle the judge’s (and also the lawyer’s) caseload in proper time. Massive deviation of the above mentioned quotes will lead immediately to lengthy judicial hearings, delays and to much more (time-consuming) written decisions.

**Economy**

In general the economic situation is supposed to have a huge affect on caseloads (especially in civil and execution cases). If someone is in a bad economic situation someone may not pay debts and may prefer to be brought to court as a defendant rather than engage in another credit arrangement. Difficult economic periods therefore are supposed to cause increasing loads of civil cases and execution cases.

In Austria there seems to be such a relation between the unemployment-rate (red line in the graph) and the amount of cases in law of execution (blue line, displaced app. 1 year after the unemployment rate), but there is no such relation to the cases in civil law (green line) generally:

**Figure 14**

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<td>amount of E</td>
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For the nearby future an increase in loads of execution cases is expected (and is reported already).

**Boom of mobiles**

A simple social effected caseload-increase can be identified parallel to the boom in the use of mobile phones: As mobiles get wide-spread (Austrian citizens are one of the most mobile-equipped within Europe) an increase of default actions related to bills not paid was noticed.
3.3.3 Organizational

ICT
The examination of 656.317 (2002) summary notices to pay (covering financial disputes involving a value not exceeding € 30,000) by an ICT-supported procedure, dramatically decreases the amount of cases to be examined “manual” by an oral trial with all parties present in front of the judge. It also is worth mentioning that more than 90% (597,917 cases) of these cases become unappealable using this ICT assisted procedure.

3.4 Studies on backlogs

There seem to be no studies or hypothesis in the Austrian legal or judicial administration literature that try to understand why some courts have backlogs and other courts do not. Anyway within the judicial administration literature there are of course explanations to single effect and general developments along monitoring, but not “scientific literature”.

3.5 Differences in processing times between comparable courts?

If there are major differences in processing times between comparable courts, it has to be said that processing times are not registered and monitored at all right now29, but processing times exceeding some threshold values are pointed out as “qualified long-lasting proceedings”. So there are no reliable data especially to quick proceedings, but there is a focus on the long lasting ones. Referring to this, in general it can be said, that there are no major differences in processing times between comparable courts, with some exceptions: I.e. at the Commercial Court in Vienna 38% of the court-units (referred to different chambers/judges) reported “qualified long-lasting proceedings” in October 2002, whereas the absolute amount of long proceedings could be reduced and the remaining ones are spread to many judges. The main reason for this situation seems to be the lack of five judicial positions in relation to the amount of incoming cases. On the other hand the long-lasting proceedings at the First instance court for Civil cases in Vienna decreased in numbers (ca. -24% from 2000 to 2002). This may be the result of a strong leadership of the Court’s Head and, of course, of the hard work by the judges.

In general, the amount of very long lasting civil proceedings involving a value more than €10,000, could be reduced with about 41% within the last 10 years, whereas the “small” civil cases and the criminal proceedings do last slightly longer. As may be seen on the above examples, differences in processing times between comparable courts in Austria seem to depend more on structural causes at a single court or on the (way of working of) the judge him/herself than on dislocation of cases. Special organizational problems at certain courts relating to the problem of backlogs could not be pointed out (the Juvenile Court in Vienna was said to have some; it was closed in 2003).

3.6 Key-factors for solutions

Serving the court with the needed amount of hardworking and straight ahead oriented, somehow un-bureaucratic judges within reach of the parties and sometimes stiff-necked (but also

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29 This will be possible within the near future by redesigning software applications.
positively motivated) by their Head of court, who should perform as an advanced charismatic person, a well trained staff and good infrastructure were pointed out as the key-factors to speed up justice. In addition, the experience tells, that keeping judges unchanged for a longer period in courts with about 13 colleagues (knowing and controlling each other) under a tough leader should result in a good working pace.

3.7 The specialized judge

The presence of adequately specialized judges and/or legally specialized court staff lawyers at a court is supposed to make a difference regarding case processing, according to the interviewees, but cannot be proven by statistical data. As the case of the Commercial Court of Vienna showed, specialized judges don’t work faster than their non-specialized colleagues at comparable amounts of caseload, but they are supposed to solve special problems (and sometimes to see problems unseen to others). In times of general advanced specialization it would be recommended, to train judges in a more branch-related specific way. Although the Austrian judge is trained universally, many of them work as specialists in a special branch at the District Court for business matters, at the Commercial Court in Vienna, at the special District Courts and at the special courts of first instance in Vienna (First instance court for civil jurisdiction) and in Graz (for both civil jurisdiction and criminal jurisdiction), at the Juvenile Court in Graz or at the Labour and Social Court in Vienna.

The “omni competent” judge is a fiction just as the “omni competent” medical doctor is.

3.8 Easy access to courts

Except trials at the District Court (mostly without a lawyer) there are no types of courts “easier accessible” (e.g. simplified legal procedure, internet access, limited costs) to file a case than others.

3.9 Specials

The formal seat of companies usually does not cause special problems on allocation of cases. Of course i.e. an insolvency of a big company may cause a huge amount of cases at the Labour and Social Court, but generally caseloads stay within the norm even if something big like that occurs.

Also within big industrial zones no special effects are reported.

More effect on the kind of incoming cases is caused by the people’s social structure: More working class means relatively more cases at the District Courts, more middle and higher class more civil (commercial) cases.

3.10 Specific policies and instruments to solve problems

3.10.1 Monitoring

A huge load of data, relevant to speed of justice, is monitored regularly (at least once a year):

- The capacity of judges in use (per court, branch and overall),
- the amount of incoming cases,
- the amount of decided cases,
- the kind of decisions (written in extend, short-cut, default acts),
the amount of diverted cases in criminal law and
the deviation of incoming, (contentious) decided and pending cases in relation from average values.

Furthermore prudent planning and distribution of resources is possible to ensure their effective usage.

3.10.2 Committed to report
Every judge, whose performance fulfills the following conditions upon pending over-long-lasting proceedings, has to report his progress of work:
- At least one closed file without written sentence for six months;
- More than five closed files without written sentences each for two months;
- More than 10 cases pending longer than three years (two years in civil cases at the District Court, more than one year in criminal cases at the Courts of first instance);
- More than 20 cases (in Vienna 30\(^{30}\)) pending longer than two years (one year in civil cases at the District Court, more than six months in criminal cases at the Courts of first instance);

This “knowing about being monitored” is supposed to pressure judges effectively to speed up the treatment of their cases.

3.10.3 Working plans
Great effect on speeding up judges, who caused backlogs, has been seen by the method of agreements on working-plans: The judge has to examine a certain prefixed amount of backlogged files a week and to report about work in progress to the Head/President of Court.

3.10.4 PEG (Personaleinsatzgruppe):
A certain amount (144 in 2003) of the posts of “Rechtspfleger” (see remark 22) is not located at a certain district-court but at a higher court of appeal, sent to a court within the area of the Court of Appeal where and when needed (as a task force).

3.10.5 “Richter für den Sprengel eines Oberlandesgerichtes” (Judge for the territory of a higher court of appeal):
2% of the posts\(^{31}\) of Judges (§ 65a Judge Office Law, “RDG”; § 65a RDG is released as a constitutional law within “normal” law, existing since 1994 in the today known form) are allocated to the higher court of appeal. These judges are used as a flexible task force in the district courts or in the court of appeal when a judge is or will be off duty for a long time or cannot handle a case in due time because of the huge caseload.
It has to be added, that statistically these judges are always “on duty”, so they don’t have to “wait” until their next task\(^{32}\). In practice, the way in which they are allocated to the different courts is decided by the “Aussensenat” (another Judicial Board similar to the “Personnel Senate” for not internal affairs) of the relevant Court of Appeal.

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\(^{30}\) Vienna is supposed to be a more complex and difficult area for administering justice.
\(^{31}\) The amount of posts is limited by the appendix of the law of the financial budget. The posts are spread by the Ministry of Justice to the areas of the Courts of Appeal each year depending on the workload measured by PAR (time-weighted incoming cases, see 3.2.) and the calculated “Planstellenidealverteilung” (referring to the amount of handled cases within the last three years and the cases decided by judges, all of that in a not “time-weighted” manner).
\(^{32}\) Innsbruck is the smallest Court of Appeal with 218 judges (fte).
3.10.6 “Staatsanwalt für den Sprengel einer Oberstaatsanwaltschaft” (prosecutor for the territory of a higher public prosecution):
The system of the public prosecution is almost the same as the above mentioned for the judges.

3.10.7 “Ersatzrichter” (substitute-judge) - the (more) moveable judge
In case of the most usual kinds of long-term absence (staying at home for caring for the baby, half-time capacities, international engagements) an additional (to the plan of posts) – full time judge can be appointed - for lifetime - to substitute the absent colleague. Therefore long vacancies and proceedings can be avoided. If the substitution ends with the return of the original judge, the substitute-judge will be used for the next substitution, unless the substitute judge is appointed to the court. This opens the possibility of a more flexible usage of (the youngest) judges too.

3.10.8 Stop of incoming files
The case assignment to a single panel/judge can be stopped by the Judicial Board, usually following an instruction of the head of court, if the caseload is huge or if a “mega-case” is pending.

3.10.9 Last opportunity: To move the court
At last you may try to move a whole court towards the cases and the people who need it. This was done in 2002 (for organizational reasons) with the Juvenile Court in Vienna, but the ministry got in touch with the limits of constitutional law (immovability of judges; but Art. 88 Abs. 2 of the constitution opens an opportunity to move also judges in case of a main change in the organization of judiciary), and political sensitivity very quickly. At last the problem was discussed and solved “very politically”: The initial wish to close the court (thought to be ineffective and in disagreement with the European Convention on Human Rights) was opposed by politicians and the association of Austrian judges, stressing the argument of causing the creation of a worse situation for juvenile suspects and prisoners. The next step within this (political and now administrative) process (after many discussions) was to merge the court within Vienna with the Criminal Court of first instance, before it was formally closed. (remaining (supernumerary) judges who didn’t apply for another post were moved by law to another court).  

Another problem is that merging circuits of courts need the consent of the government of the effected “Bundesland”. Merging (or closing) courts is politically never attractive and also organizing consent is very difficult. Within the discussion of merging smaller courts, there was also the idea of moving the courts to the place of the court with which they should be merged, because in this case – leaving the areas of the effected courts unharmed - a consent with the government of the effected “Bundesland” would formally not be necessary. At the end political talks solved the problem in the way of a compromise without stressing the theoretical possibilities of the law.

All described policies and instruments are generally implemented or designed at the national level, often executed by the Courts of Appeal (or the Presidents/Heads of Courts).


3.11 The role of the non existing head of court

In general the head of court does not play the leading role in case allocation within the court. Following the mechanism described above (2.2.), which is a kind of automatism, the specific basic principles of the allocation system and court jurisdiction is left unharmed. Only within the chambers of courts, which decide in panels, the Head of the panel allocates the files to the different judges.

3.12 The role of ITC

In the mentioned way of monitoring and analysis ICT-applications have a special role to remedy bottlenecks in allocation of cases and jurisdiction. But the administrative system takes time to react (sometimes several months later than the specific data occurred) and because there are no data predictions it mostly is a procedure of reaction. On the other hand, it has to be stated that the current system of (personnel) controlling is flexible and fast enough to handle the recent problems within the frame of constitutional guarantees.

3.13 The role of special courts

In general there is no trend to create specialized courts. The District Court of criminal cases in Vienna and the Juvenile Court in Vienna were closed, the Juvenile Court in Graz may follow. The goal was to build up “Full District Courts” (at least due to get personnel and facilities easier).
Nowadays a reform is in discussion, to transfer and concentrate all criminal cases of District Courts to the superordinated court of first instance to avoid such simple things as transport of files between them. Also renewing the judicial system creating a three-tier instead of a four-tier system may be the result of discussion at the “Österreich Konvent”, a nowadays-established constitutional convent.
A mediation agency for traffic cases, to prevent minor cases from entering court, is another discussed topic.
4. Emerging problems and creative solutions

4.1 Speeding up justice

Asked for their needs concerning justice, people gave the following answers in 2001:

Figure 15

The most important requests on judiciary: Competence and speed

<table>
<thead>
<tr>
<th>Request</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competence</td>
<td>56%</td>
</tr>
<tr>
<td>Speed</td>
<td>27%</td>
</tr>
<tr>
<td>Friendliness</td>
<td>10%</td>
</tr>
<tr>
<td>Proximity</td>
<td>7%</td>
</tr>
</tbody>
</table>

Source: Repräsentativbefragung Spectra 2001

So speeding up justice became a top priority (political) intention in Austria (especially in civil cases): No civil proceeding should last longer than one year, after the needed resources have been determined and given, and the state (and also the involved judges, parties, witnesses or experts) would become liable otherwise.

An economical advantage of ca. 70 Million Euros (Austrian GDP: 218,3 billion Euros) would be the result.

4.2 Specialization on needs of business/economy

As stated above, some cases are allocated to specialized courts/panels/judges. But the way of specialization should be more orientated towards the needs of the customers: So there is no specialization on building law or warranties for example, which is very common in civil cases and often requires special knowledge by the judge about “how to plan the proceeding effectively”.

May be it would be useful to allocate cases, according to the necessity of special expertise to handle the problem, or not. The right usage of experts is said to be a main key of (cost-) efficient proceedings.

4.3 Predictions of caseloads

As the above-mentioned “PAR” enables only reactions afterwards the allocation of cases has changed, it should be worth developing methods of prediction of case-allocation. No one tries to predict amounts and allocation of cases, but many scientists and institutes are trying to predict the common economic data, the unemployment rate or rate of inflation for example. If we
can relate these data to the amount of cases and the allocation of cases to courts, we would be able to predict them (see the example above 3.3.2.). So it would be worthwhile to search for such relationships. May be there are some of these relations concerning migration, average age of the population in a court’s territory, size of room for living, types of registered cars, amount of drug consuming etc. (local weather would be great, because it is more seriously predicted than drug consumption).

4.4 Earlier use of task forces

Task forces should be used and measures set not after backlogs occurred but when they occur.

4.5 Statement of work

Monthly statements of work are able to present the judge’s workload and indicate a de/increase of work in time.

4.6 Forwarding the long pending file

It might also a discussable idea to force the judge to forward long pending (threshold value exceeding) cases to the next higher court (which might be able to fix a period to decide or to take disciplinary measures) with the obligation of arguing the reasons of delay would effect a gentle pressure to finish the case instead of reporting.

4.7 Press work

High quality Public relation is especially needed in huge cases causing public interest, to keep the judge’s head clear and not divert the judge’s attention off the case. PR-special-trained officers should do it only.

5. “Forum shopping in Austria” - some short thoughts

Regarding “forum shopping” we have first of all to think about the recent opportunities to choose among several venues introduced by the Austrian civil procedure (see 2.1.2. for details).

Second, we should ask for the basic values related to “forum shopping”. In the range of arguments between the needs of fairness (equal procedural chances for all), equality and efficiency I would say that equality with the most possible efficiency (resulting in fairness too) should be the leading idea. From the point of view of the Austrian tradition of civil procedure (think about Franz Klein, “pro futuro”, JBl. 1890) I have to underline the overall goal of civil procedure is to fulfill the social needs of the involved parties. “Efficiency” itself cannot be the only header solving all the problems discussed.

Social fairness and peace are the essential properties of the balance between an absolute realization of equality of procedural chances and leaving some choices to parties.

If differences between courts with the same kind of competences and competition between courts may be acceptable, we have to remember, that from the point of view of judicial or-
ganization the problems occur not with the best courts, but with the worst ones. Should we take into account that less competitive courts will become less equipped, serving lower quality of justice to (local) people, who really can’t take advantage of forum shopping (I mean this is a serious social matter)? Of course, if there would be a non-limited budget, it would be a good idea, to fund courts according to the number of cases they acquire also to fulfill all needs, that of the average party as well as those of the “first-class”-customers, who will always be able to pay for additional speed and quality. The fiction of law is, that the parties at the court and the courts itself are equal. True life is different; but this difference is not allowed to exist under the constitutional guaranteed equal treatment of all law-subjects.

To avoid this conflict the present solution may only be to deliver high quality justice to everyone by standards of quality – also in initial and further training -, assured by a central institution of judicial administration.
Sources

Spehar/Fellner: Richterdienstgesetz (RDG) und Gerichtsorganisationsgesetz (GOG), Kommentar, 3. Auflage, Manz Verlag, Wien 1999;

Danzl: Kommentar zur Geschäftsordnung für die Gerichte I. und II. Instanz, Manz Verlag, Wien 2002;


Stohanzl: Jurisdiktionsnorm und Zivilprozessordnung, 15. Auflage, Manz Verlag, Wien 2002;


Brochure of the Austrian law professions: Dr. Wolfgang Fellner, Dr. Anton Paukner: “Die Organisation der Rechtsberufe in Österreich”, JMZ 600.00/25-III.1/2002; available at www.bmj.gv.at „Infobroschuren“;


„Soll-Ist-Vergleich zum Stichtag 1.4.2003“, JMZ 234.00/9-PR.6/2003, Austrian Ministry of Justice,

For general Austrian statistics: Statistik Austria (ÖSTAT), December 31st 2002, www.statistik.at

All public available information about the Austrian Judiciary (including schemes of the judicial system) can be found at: www.justiz.gv.at = www.bmj.gv.at;

Austrian laws and judiciary is available free at: www.ris.bka.gv.at

The (other) public courts of Austria have their own website with further info:
VwGH (Administrative Court): www.vwgh.gv.at (containing also the “Tätigkeitsbericht für das Jahr 2002” with statistic informations)
ViGH (Constitutional Court): www.vfgh.gv.at