



COMPARATIVE

NOTE

on
JUDICIAL
ADMINISTRATIVE SYSTEMS III



PORTUGAL | AUSTRIA

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PRELIMINARY

NOTE

This comparative study examines the administrative judicial systems of Portugal and Austria, two European Union Member States whose constitutional traditions, while distinct, share a common commitment to specialised administrative jurisdiction, judicial independence and the protection of citizens against unlawful action by public authorities.

The comparison between the Portuguese and Austrian systems is particularly instructive: Portugal organises its administrative justice as a structurally autonomous jurisdiction, with its own Superior Council and a separate apex court (the Supreme Administrative Court), whereas Austria, following the constitutional revision in force since 2014, has consolidated a robust two-tier model of independent administrative courts headed by the Verwaltungsgerichtshof (VwGH), with constitutional review concentrated in the Verfassungsgerichtshof (VfGH). Both systems operate within the framework of European Union law and the European Convention on Human Rights, and both must continuously balance legal certainty with effective judicial protection of rights.

The substantive topics covered – cassation and revision appeals, immigration and asylum litigation, principles of tax law, judicial review of administrative offences, legal effects of invalid administrative acts and review of discretionary decisions of the public administration – are not merely technical matters. They reflect structural tensions at the heart of the relationship between the Administration and the courts, and between legal certainty and effective judicial protection of rights, which both systems must resolve within the broader framework of European Union law and fundamental rights.

This comparative document aims to provide public notice of what brings these two administrative justice systems closer together and what distinguishes them – their historical origins, organisational structures, jurisdictional scope, access to the judiciary, procedural frameworks and use of technology.

Comparative knowledge is not a purely academic exercise. It is a living instrument for improving the quality of judicial decisions. Understanding how a system shaped by a federal constitutional tradition – and which underwent a profound restructuring of its administrative jurisdiction in 2014 – approaches problems common to Portugal broadens the judicial horizon and strengthens the judge’s capacity to decide with rigour and sound reasoning. It is in this spirit that the present study has been prepared.

BRIEF

HISTORICAL NOTE

PORTUGAL

The current Supreme Administrative Court evolved from the Council of State, an advisory body of the monarchy established in 1842 (although it was already mentioned in the Constitutional Charter of 1826). The same applies to the Constitutional Court, created in 1984, whose doctrinal origins also trace back to the historical Council of State. Although the Council of State has undergone significant reforms, it remains a constitutional body but with very limited powers, entirely political in composition and exercising exclusive advisory functions before the President of the Republic.

It was not until the constitutional revision of 1989 that administrative and tax jurisdiction was incorporated as an autonomous jurisdiction in the Portuguese Constitution of 1976. The new Statutes of the Administrative and Tax Courts were approved in 2002; the administrative procedural reform in 2004 (current Code of Procedure in Administrative Courts); and the legal framework was completed in 2023 with the approval of the legal regime for administrative and financial autonomy of the Superior Council of Administrative and Tax Courts.

BRIEF

HISTORICAL NOTE

Austria

The Republic of Austria is a federal democratic State whose judicial organisation is constitutionally structured by the Federal Constitutional Law (Bundes-Verfassungsgesetz –B-VG), enshrining the principles of separation of powers, judicial independence and concentrated constitutional review. The Austrian judicial model rests on a tiered architecture of courts, with a clear distinction between ordinary jurisdiction, administrative jurisdiction and constitutional jurisdiction.

The Austrian judicial system has undergone significant historical transformations. Following the collapse of the Austro-Hungarian Empire in 1918, the Oberster Gerichtshof (OGH) was established as the supreme instance in civil and criminal matters, a solution consolidated by the 1920 Constitution. The National Socialist regime period (1938–1945) entailed a significant loss of judicial independence, which was reversed with the restoration of the Second Republic from 1945 onwards, with the constitutional reaffirmation of judicial independence.

The current configuration of the system, particularly in administrative jurisdiction, results from the constitutional revisions of 2012, fully applicable since 2014, which established administrative courts of first instance in all Länder and reorganised the specialised administrative courts, consolidating a two-instance administrative system. This model is grounded in the B-VG, the Verwaltungsgerichtshofgesetz (VwGG) and the legislation governing the organisation and functioning of administrative courts. As in Portugal, where the consolidation of the democratic judicial model emerged following the rupture with the Estado Novo and the 1976 Constitution, in Austria the moments of political transition – the end of the monarchy, the Anschluss and the restoration of the republican order – were also associated with structural reforms of the judicial system, designed to assert principles such as the natural judge, reasonable duration of proceedings and judicial independence.

THE PORTUGUESE JUDICIAL SYSTEM

Under the current version of the Portuguese Constitution, the Portuguese judicial system comprises two separate jurisdictions: the judicial jurisdiction (civil, commercial, criminal and social/labour law) and the administrative jurisdiction (administrative and tax law). Each jurisdiction has its own Superior Council of the Judiciary, which means the existence of two distinct governing bodies. Jurisdictional conflicts between both jurisdictions are resolved by the Court of Conflicts.

In addition to the judicial and administrative jurisdictions, Article 209 of the Portuguese Constitution provides for the existence of the Constitutional Court as an independent judicial body that exercises constitutional review through concrete review, successive abstract review and preventive abstract review (and also a mixed model for generalising the effects of concrete review when decisions in such concrete review processes are repeated in more than three cases). It also provides for the Court of Auditors, which is responsible for supervising and imposing sanctions for violations of financial regulations.

Portugal also constitutionally recognises arbitral tribunals as genuine courts, with jurisdiction in civil, commercial, administrative and tax disputes. The CJEU has declared that the Portuguese “tax arbitration system”; meets the requirements of a referring court (Ascendi judgment, case C-377/13). Finally, it should be noted that the Public Prosecution Service acts as a promoter of legality with powers to challenge administrative acts.

THE AUSTRIAN JUDICIAL SYSTEM



The Austrian judicial system is structured according to a model of plural jurisdictions, distinguishing functionally and organically between ordinary jurisdiction (civil, commercial, labour, social and criminal), administrative jurisdiction and constitutional jurisdiction.

Ordinary courts are organised under the Gerichtsorganisationsgesetz (GOG) and the Jurisdiktionsnorm (JN), while administrative courts of first instance and the Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) are based on the B-VG, VwGVG and the VwGG.



The Constitutional Court (Verfassungsgerichtshof, VfGH), regulated by the B-VG and the Verfassungsgerichtshofgesetz (VfGG), guarantees the constitutional review of laws and regulations and decides individual constitutional complaints. The Federal Ministry of Justice (Bundesministerium für Justiz) is responsible for the administration of ordinary justice, the Public Prosecution Service and the prison system.

Unlike Portugal, the Austrian system is structured around a federal architecture: the nine Länder host their own regional administrative courts of first instance (Landesverwaltungsgerichte), complemented at federal level by the Bundesverwaltungsgericht (general federal administrative matters) and the Bundesfinanzgericht (specialised tax court). Administrative jurisdiction is structurally distinct from ordinary jurisdiction, with concentrated constitutional review reserved exclusively to the VfGH. Austria does not constitutionally recognise arbitral tribunals as genuine courts in the same manner as Portugal, nor does it provide for tax arbitration as an alternative to the judicial route. The system relies instead on the specialisation of the Bundesfinanzgericht in tax and customs matters.

THE NUMBERS OF ADMINISTRATIVE JURISDICTION

IN PORTUGAL 	IN AUSTRIA 
<p>10,344,802 inhabitants (2021 census)</p> <p>NUMBER OF JUDGES 1st instance: 295 judges 2nd instance: 71 judges STA Judges: 24</p> <p>JURISDICTIONAL STRUCTURE 1st instance courts: 17 TAF Central Courts: 2 TCA Supreme Administrative Court: 1 STA</p> <p>JURISDICTIONAL ACTIVITY</p> <p>1st Instance Cases/year per court: 1,600 Resolution rate: 123% Average resolution time: 600 days</p> <p>2nd Instance Cases/year per court: 2,634 Resolution rate: 89% Average resolution time: 1,168 days</p> <p>STA Cases/year: 1,379 Resolution rate: 102% Average resolution time: 169 days</p>	<p>9,219.113 inhabitants (2026 Statistik Austria)</p> <p>NUMBER OF JUDGES (Administrative jurisdiction) <i>Verwaltungsgerichtshof (VwGH): 68 judges</i> <i>Bundesverwaltungsgericht: 219 judges</i> <i>Bundesfinanzgericht: 213 judges</i> <i>Landesverwaltungsgerichte: 10–85 judges per court (avg.)</i></p> <p>JURISDICTIONAL STRUCTURE Regional Administrative Courts (<i>Länder</i>): 9 Federal Administrative Court: 1 Federal Tax Court: 1 Supreme Administrative Court (VwGH): 1</p> <p>JURISDICTIONAL ACTIVITY</p> <p>Supreme Administrative Court (VwGH) Cases entered/year: ~7,300 Cases resolved/year: ~7,600 Resolution rate: > 100% Average resolution time: ~5.5 months</p> <p>1st Instance Average resolution time: ~312 days (European comparative data)</p>

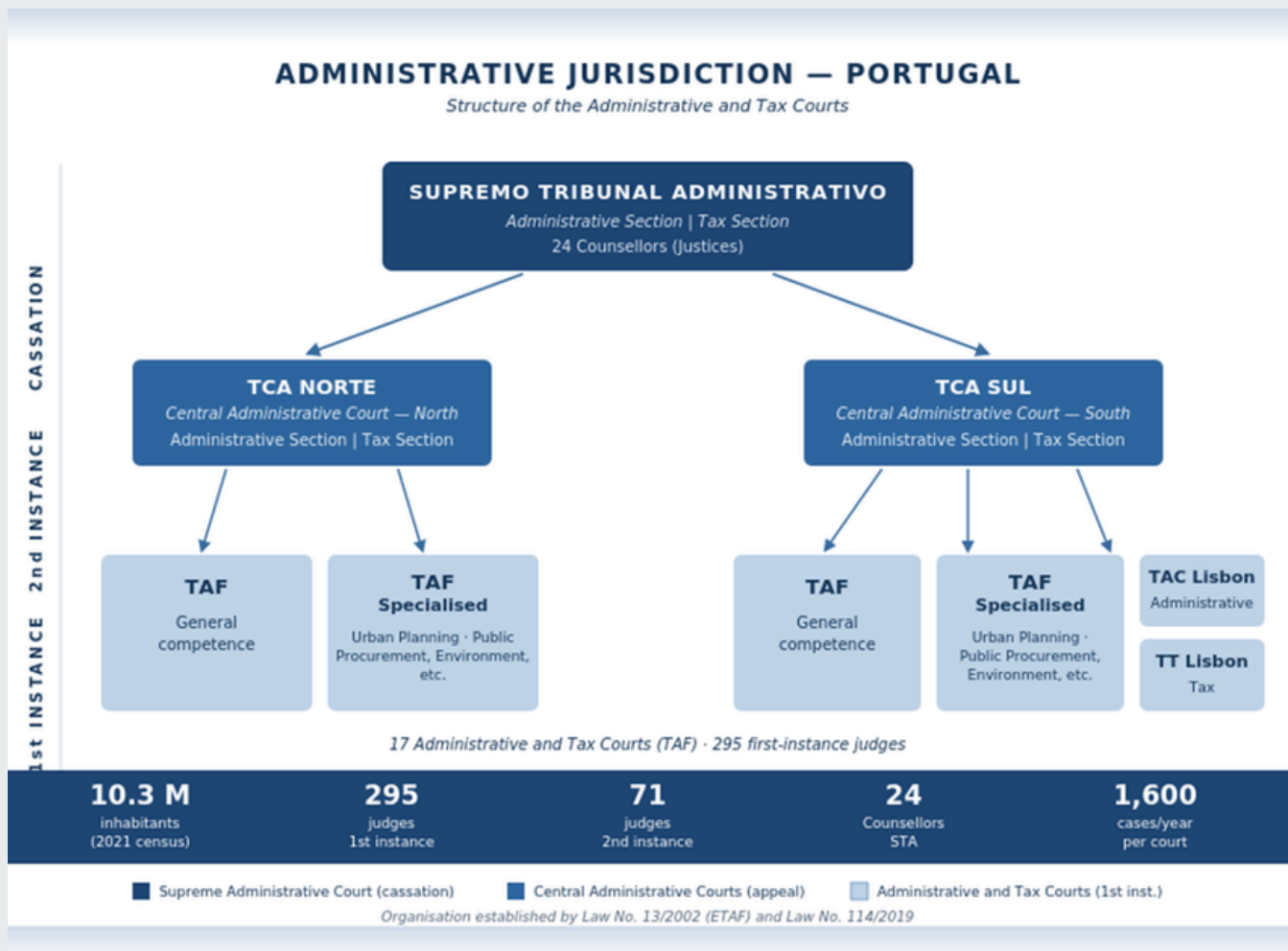
SUBJECT MATTER OF ADMINISTRATIVE LITIGATION JURISDICTION

IN PORTUGAL 	IN AUSTRIA 
<p>LEGAL BASIS: Art. 4 ETAF</p> <p>INCLUDED MATTERS:</p> <ul style="list-style-type: none"> • Fundamental rights in administrative and tax legal relationships • Legality review of administrative norms and acts (including constitutionality) • Public procurement and administrative contract disputes • Non-contractual civil liability of the State • Judicial protection under <i>actio popularis</i> (urban planning, environment, etc.) • Public intersubjective relationships of an administrative nature • Electoral and public employment litigation; tax litigation <p>EXCLUDED:</p> <ul style="list-style-type: none"> • Employment contracts governed by labour law • Review of political and legislative acts • Administrative offences by the Competition Authority • Consumer law matters 	<p>LEGAL BASIS: Articles 129–131 B-VG · VwGVG · VwGG</p> <p>INCLUDED MATTERS:</p> <ul style="list-style-type: none"> • Legality review of individual administrative acts • Unlawful administrative inaction (omission of decision) • Administrative coercive measures • Disputes arising from administrative and tax legal relationships • Tax and customs litigation (<i>Bundesfinanzgericht</i>) • Asylum, immigration and foreigners' status (BVVG) • Public procurement; public sector employment and disciplinary regimes • Urban planning, environment and regulatory matters <p>EXCLUDED:</p> <ul style="list-style-type: none"> • Civil and criminal disputes (ordinary jurisdiction) • Constitutional review and protection of fundamental rights (reserved to VfGH) • Disputes between private parties governed by private law

ORGANISATION OF THE COURTS

PORTUGAL

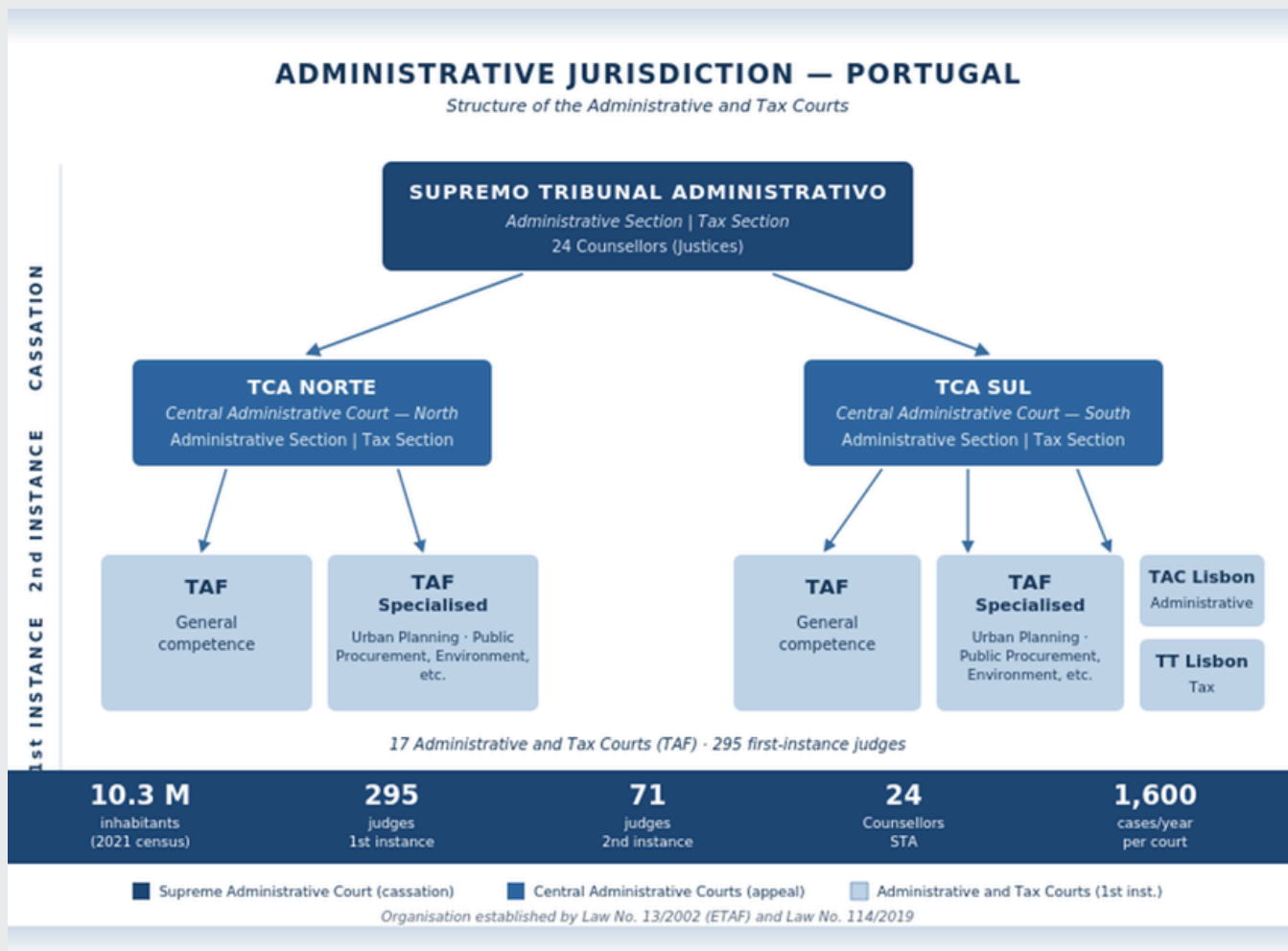
Administrative and tax courts, as courts of first instance, operate as a unified court (TAF), except in Lisbon, where the administrative and tax courts of first instance are separate. When the volume or complexity of cases warrants it, the law allows for specialisation: ordinary administrative cases; social cases; public procurement; urban planning, environment and land use; tax cases; tax enforcement. The Supreme Administrative Court has two Sections: the Administrative Section and the Tax Section.



ORGANISATION OF THE COURTS

In PORTUGAL

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ORGANISATION OF THE COURTS

In AUSTRIA

The Austrian administrative jurisdiction was profoundly reformed in 2014 and is structured in two independent court instances: eleven courts of first instance and the Supreme Administrative Court (Verwaltungsgerichtshof) as the apex of the system.

Regional Administrative Courts (Landesverwaltungsgerichte)

Nine courts, one in each Land, with general jurisdiction over acts of the regional administrative authorities. They typically operate with professional judges specialised in administrative law, in single-judge or collegiate formations, depending on the complexity of the case.

Federal Administrative Court (Bundesverwaltungsgericht – BVwG)

Federal court based in Vienna, with chambers in Linz, Graz and Innsbruck. It has national jurisdiction over matters of federal administration, in particular asylum and immigration, federal public procurement and certain regulatory areas.

Supreme Administrative Court (Verwaltungsgerichtshof – VwGH)

Apex of administrative jurisdiction. It hears revision appeals (Revision) against decisions of administrative courts of first instance and is limited, as a rule, to questions of law, with no general re-examination of facts (§ 28 VwGG). Access is conditional on the existence of a legal question of fundamental importance (Article 133(4) B-VG), namely where there is no consolidated case-law, where there is divergent case-law or where the contested decision departs from VwGH jurisprudence. The court is composed of 68 justices (President, Vice-President, panel presidents and the other justices [Hofräte]), organised in specialised senates by subject matter of administrative law.

Constitutional Court (Verfassungsgerichtshof - VfGH)

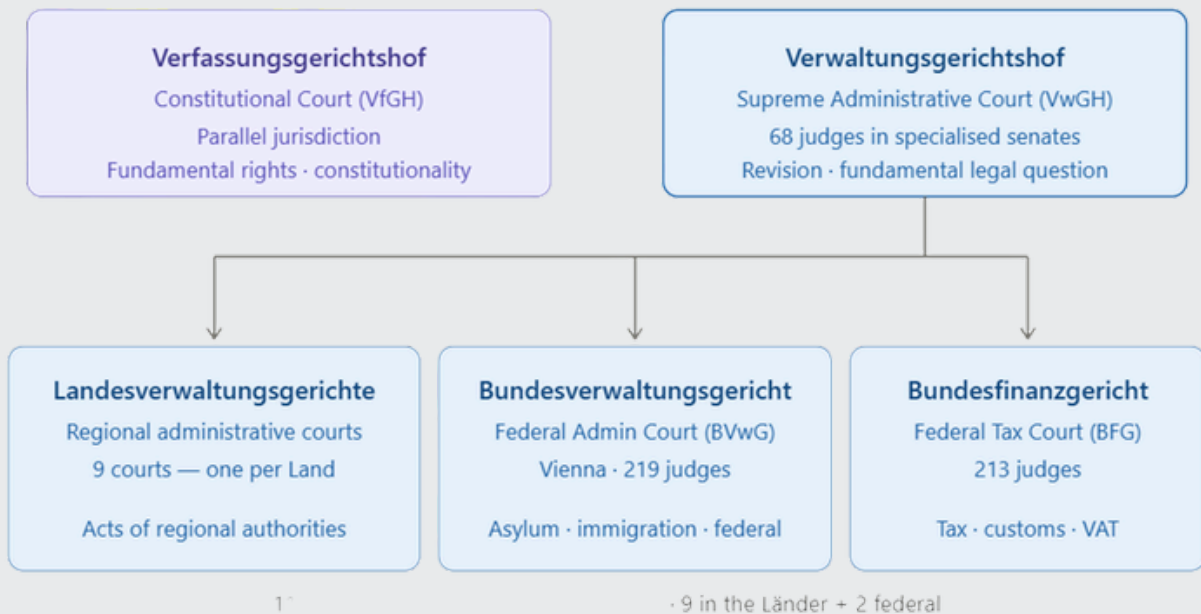
As a separate institution, the Constitutional Court reviews the constitutionality of laws and regulations and protects fundamental rights, including individual constitutional complaints against administrative or judicial decisions. The dual supreme jurisdiction (VwGH for legality, VfGH for constitutionality) is one of the structural features of the Austrian model.

ORGANISATION OF THE COURTS

In AUSTRIA

Administrative jurisdiction — Austria

Structure of the administrative courts (post-2014 reform)



9 M Inhabitants (2024)	68 VwGH judges (Hofräte)	219 BVwG judges (federal admin)	213 BFG judges (tax)	~7,300 cases/year (VwGH)
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Reform basis: B-VG (Articles 129–135) · VwGG · VwGVG

Administrative jurisdiction Constitutional jurisdiction (parallel)

JUDICIAL

APPOINTMENTS

Rules in PORTUGAL

First Instance Judges (TAF)

By open competition (Law No. 2/2008): knowledge test, curriculum assessment and psychological evaluation; initial training at the Centre for Judicial Studies (1 theoretical year + 1 practical year). Also by transfer.

Judges of the Central Administrative Courts

By transfer from another section of the TCA; by competition (TAF judges with more than 5 years of service and a rating no lower than 'Good with distinction').

Counsellors of the Supreme Administrative Court

By transfer; by competition among TCA judges with more than 5 years, Deputy Prosecutors with more than 5 years, or jurists of recognised merit with more than 20 years of professional experience in public law.

JUDICIAL

APPOINTMENTS

Rules in AUSTRIA

Ordinary Courts:

Access to the judiciary in Austria follows a professionalised career model based on rigorous academic and practical requirements set out in the Richter- und Staatsanwaltschaftsdienstgesetz (RStDG), the statute of judges and public prosecutors. Recruitment is competitive and combines curricular evaluation, performance assessment during practical training and aptitude tests, ensuring criteria of merit, technical capacity and personal suitability.

Entry Requirements

- Law degree from an Austrian university (or equivalent recognition);
- Mandatory practical court placement (Gerichtsjahr / Rechtspraktikum), typically lasting one year, in different court divisions (civil, criminal, family, enforcement);
- Successful completion of the selection process governed by the RStDG, including knowledge tests, performance assessment and aptitude tests.

Initial Training

The training of future magistrates is predominantly practical and structured around rotations in different court sections and at the Public Prosecution Service. This model favours an early institutional socialisation and an integrated understanding of the role of the judge and the prosecutor in the legal system. Continuous professional development is ensured through programmes promoted by the Federal Ministry of Justice and participation in national and European training initiatives, including the European Judicial Training Network (EJTN).

JUDICIAL

APPOINTMENTS

Rules in AUSTRIA

Administrative Courts:

Unlike the ordinary courts, there is no legally prescribed uniform training for judges of the Administrative Courts.

Appointments of the judges of the first instance administrative courts are made as follows:

- Members of the Federal Administrative Courts: by the Federal President, acting on the proposal of the Federal Government.
- Members of the Regional Administrative Court: by the Provincial Government.

In cases not involving the position of President or Vice-President, the Federal Government (or Provincial Government) must obtain non-binding recommendations of three candidates from either the plenary assembly of the Administrative Court or a committee composed of the President, the Vice-President, and five additional members (Personnel Senate).

Members of the Provincial Administrative Courts and the Federal Administrative Court (BVwG) must have completed a degree in law and possess five years of professional legal experience (Art. 134, Paras. 2 and 3 B-VG). For members of the Federal Finance Court (BFG), a relevant degree and five years of relevant professional experience are required.

JUDICIAL

APPOINTMENTS

Rules in AUSTRIA

The Supreme Administrative Court (VwGH)

The members of the Supreme Administrative Court (VwGH) are appointed by the Federal President upon the proposal of the Federal Government. Insofar as the position is not that of the President or Vice-President, the Federal Government submits its proposal based on lists of three candidates provided by the Plenary Assembly. The members of the VwGH must have completed studies in law and possess ten years of professional legal experience. At least one quarter of the members should be drawn from professional positions in the federal provinces (Länder), preferably from the administrative service of the province.

Statutory Regime and Independence

Judicial independence is constitutionally guaranteed by Articles 87 and 88 of the B-VG: judges are independent in the exercise of their functions, subject only to the law, and benefit from irremovability, and may not be transferred, suspended or removed otherwise than under the conditions provided for by law. The disciplinary regime for the ordinary courts is governed by the RStDG, with guarantees of contradictory proceedings and the independence of disciplinary bodies. Judges are appointed for an indefinite term until statutory retirement age. The establishment and organization (including the disciplinary law) of the administrative courts are regulated by special statutes, some of which refer to the RStDG.

Public Prosecution Service

The Austrian Public Prosecution Service (Staatsanwaltschaft), regulated by the Staatsanwaltschaftsgesetz (StAG), is hierarchically structured and functionally dependent on the Federal Ministry of Justice in matters of general direction of criminal policy, within the limits of the law and under institutional control. Although prosecutors do not enjoy the same degree of functional independence as judges, the Austrian framework provides for legality and transparency guarantees in the exercise of directive powers.



República Portuguesa

