

Pro Bono Practices and Opportunities in Austria

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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This chapter describes the law governing the provision of legal services, the practice and culture of *pro bono*, and *pro bono* opportunities for international law firms in Austria.

I. Legal Services and the Legal Profession in Austria

In Austria, the compensation of lawyers is regulated by a set of federal laws and professional rules issued by the Austrian Bars.¹ Pursuant to these laws and rules, Austrian lawyers are, in principle, free to agree on their fees, including the type of fee, the amount of the fee and how it is to be paid.² In practice, Austrian lawyers charge their clients hourly rates rather than, for instance, flat rates. Contingency fees are prohibited; however, Austrian lawyers may agree on a premium for successful services.³

If there is no agreement on the fees between the lawyer and the client, the statutory fee schedules for legal services set forth in the federal laws and professional rules apply.⁴ The calculation of the statutory fees is based on the value of the dispute and, to some extent, on the time the lawyer spent on the matter. The statutory fee schedules are actually designed for litigation matters, in which the defeated party basically has to bear all incurred costs and fees.⁵ A characteristic of the statutory fee schedules is that they provide fees for every individual service rendered by the lawyer to the client (such as phone calls, memos, letters, briefs, participation in negotiations or in court proceedings, etc.).⁶ For that reason, the Austrian statutory fees are comparatively high.⁷

In any event, the fees charged by the lawyer must be reasonable. As a general standard, the charged fees are not reasonable if they exceed more than twice the market value of the rendered service. To determine whether the invoiced amount is fair, one has to take into consideration the statutory fee schedules set forth in the federal laws and professional rules.⁸ Insofar as these statutory fee schedules are mandatory in litigation matters, Austrian lawyers are not allowed to offer their clients free legal services. The purpose behind that is not to render legal services less affordable (Austrian lawyers may charge their clients fees even higher than the statutory fees⁹), but rather to prevent lawyers from competing with each other too extensively on pricing.

¹ The pertinent laws and professional rules regulating the fees lawyers may charge and the legal profession are the Federal Attorney-at-law-Standard-Rate-Act (*Rechtsanwaltstarifgesetz*/"RATG"), the Federal Profession Code (*Rechtsanwaltsordnung*, "RAO"), the Professional General Terms on Fees (*Allgemeine Honorar-Kriterien*, "AHK") and the Professional Guidelines (*Richtlinien für die Ausübung des Rechtsanwaltsberufs, für die Überwachung der Pflichten des Rechtsanwalts und für die Ausbildung der Rechtsanwaltsanwärter*, "RL-BA").

² See sections 2 para. 1 and 26 para. 2 RATG; section 16 para. 1 RAO, section 1 AHK; section 50 para. 1 RL-BA.

³ See section 879 para. 2 Nr. 2 ABGB (Austrian Civil Code); see also section 12 AHK which allows in criminal matters a premium up to 50 % of the incurred fees.

⁴ See section 879 para. 2 Nr. 2 ABGB (Austrian Civil Code); see also section 12 AHK which allows in criminal matters a premium up to 50 % of the incurred fees.

⁵ See section 41 para. 1 ZPO (Code of Civil Procedure); *Wrabetz/Betrans*, AnwBl 1987, 505, 508.

⁶ See *Lesigang*, *Anwaltsblatt*, 1965, 157, 161; *Neidhart*, DAR 1983, 122.

⁷ In addition, lawyers may charge to their client a premium of up to 100% for services rendered between 8 p.m. and 8 a.m. or during weekends and holidays

⁸ See section 2 AHK.

⁹ See section 2 para. 2 RATG.

In the past, in principle, any kind of dumping, *i.e.*, to charge less for legal services than provided for the respective services in the statutory fee schedules, was prohibited.¹⁰ An exception was made only for reasons of equity and only subsequent to the conclusion of the matter. This, however, has changed significantly in recent years. Under present Austrian law, lawyers may, even in litigation matters, go below the statutory fees.¹¹

A. Legal Advice

In Austria, there is a variety of forums for free legal advice.¹² For example, the Austrian Bars have set up information centers in which individuals can obtain free primary legal advice.¹³ Legal advice is only given by lawyers who are admitted to one of Austria's Bars and is provided irrespective of whether one is indigent or not. However, such legal advice only comprises an initial legal assessment, practical information, legal information, or a referral to a specialized body or organization. Some lawyers even offer this service in their own office. It is not mandatory for Austrian lawyers to participate in this program.

Primary legal advice is also provided by the Austrian municipal courts. For this purpose, the judges are obliged to provide individuals free legal advice at specific dates (at least once a week).¹⁴ In cases where a representation by a lawyer is not required by statute,¹⁵ actions and other motions can be filed by the parties. Nevertheless, a party unrepresented by a lawyer will receive guidance *during the trial proceedings* since the judge must fulfill his legal duty to inform and notify the party.

B. Legal Aid

In civil and criminal proceedings, a party (individuals or legal entities) is to be granted legal aid by the court under certain circumstances.¹⁶ Receiving legal aid results in the partial or complete exemption from paying attorney's fees (if the assignment of an attorney is mandatory by law or seems to be necessary) and court fees. To receive legal aid, the applicant has to be indigent. To demonstrate indigence, the applicant has to disclose an income statement and a declaration of assets. Furthermore, in civil proceedings the applicant's claim must not be frivolous or without merits on its face.¹⁷ In criminal proceedings, the legal and/or factual circumstances must require the assignment of counsel to the accused. As a matter of fact, in most cases legal aid is granted.

If legal aid is granted, the state will pay the statutory fees to the attorney of the applicant's choice and will waive the court fees. If the applicant prevails in the litigation, the other party pays the attorney's fees and court fees.

¹⁰ See Lesigang, *Anwaltsblatt*, 1965, 157

¹¹ See Lesigang, *Anwaltsblatt*, 1965, 157

¹² Detailed information is provided by the *Bundeskanzleramt*, available at: <http://www.help.gv.at/Content.Node/98/Seite.980300.html#Recht>.

¹³ More detailed information on this service ("*Erste Anwaltliche Auskunft*") is available at: www.rechtsanwaelte.at.

¹⁴ See section 439 para. 1 ZPO (Austrian Code of Civil Procedure) – so-called "*Amtstage*".

¹⁵ In criminal proceedings the representation by a lawyer is mandatory, in civil proceedings it primarily depends on the value in dispute.

¹⁶ See sections 63 *et seq.* ZPO (Austrian Code of Civil Procedure).

¹⁷ See sections 63 para. 1, 66 para. 1 ZPO (Austrian Code of Civil Procedure); see also sections 56 *et. seqq.* RL-BA.

II. *Pro bono Opportunities in Austria*

Austrian attorneys' above-mentioned participation in free legal advice programs exemplifies Austria's tradition in providing *pro bono* services. This tradition is by no means limited to primary legal advice. Many Austrian lawyers, including law firms, regularly offer free legal advice on a secondary level. Typical beneficiaries of such *pro bono* activities are cultural and art institutions, welfare or church institutions, regardless of their ability to pay.

One of Austria's leading law firms, for example, provides *pro bono* services to *Medecins Sans Frontières* (an international medical and humanitarian aid organization) regarding the establishment of associations, labor law, real estate law, and law of succession.

With respect to the legal representation of parties in litigation matters, however, restrictions exist. Although the applicable federal law allows Austrian lawyers to go below the statutory fees or even to waive any fees vis-à-vis the client, there is only a marginal *pro bono* practice in the litigation context. The main reason is that it is considered a violation of professional ethics to represent a party in a litigation matter without charging any fees. As explained above, in court proceedings legal aid is provided by the state, so there is no need to obtain free legal services.

III. *Conclusion*

In Austria there is a strong culture of providing *pro bono* work to indigents. Although free legal services are rendered by the Austrian state to a considerable extent, there are remaining *pro bono* opportunities for law firms. With respect to litigation matters, however, *pro bono* opportunities are limited in Austria.