

Pro Bono Practices and Opportunities in Austria¹

I. Introduction

Austria has a population of approximately 8.773 million. As of 31 December 2014, the number of lawyers registered to the Austrian bar was 5,940 (and there were 80 EU lawyers registered in Austria under their home professional title). Pro bono legal work is undertaken in Austria, in particular, through NGOs, law firms, certain Chambers and Unions. In addition, a court will grant legal aid in certain circumstances. In such circumstances, if representation by a lawyer is mandatory or otherwise essential, a lawyer will be appointed represent the relevant party on a pro bono basis.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	1. Describe the laws/rules that regulate the provision of legal services?	<p>Lawyers in Austria are subject to the provisions of the professional code (<i>Rechtsanwaltsordnung</i> (the “RAO”)) and associated regulations.</p> <p>In addition to the RAO, the bar rules also regulate the compensation of lawyers.²</p> <p>The criteria that is used for admission is discussed immediately below.</p>
	2. Describe any licensure requirements governing the provision of legal services.	<p>To become a qualified lawyer (attorney) in Austria, the process is as follows:</p> <ul style="list-style-type: none"> • Legal education required: A prospective lawyer must complete: (i) a relevant university education (i.e. a master’s degree in law or business law); (ii) a five-year legal clerkship (<i>Praktische Verwendung</i>) in different parts of the legal system³; (iii) a minimum number of training seminars; and (iv) the bar exam (<i>Rechtsanwaltsprüfung</i>), which consists of written and oral exams (the bar exam can be taken after completion of three years of the legal clerkship). • Administrative requirements: In addition to the legal education requirements set out above, the applicant must: (i) obtain professional indemnity insurance; and (ii) be registered to the local bar association (<i>Rechtsanwaltskammer</i>). Registration requires proof of satisfaction of the above listed educational and administrative requirements only (i.e. if the candidate demonstrates that these requirements are met then the local bar

¹ This chapter was drafted with the support of Wolfgang Berger and Magdalena Hugeneck of Haslinger / Nagele Rechtsanwälte.

² In addition to the RAO, there is the Federal Attorney-at-law-Standard-Rate-Act (*Rechtsanwaltstarifgesetz*, “RATG”), 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”).

³ See RAO §§ 1, 2.

		association is required to undertake the registration). ⁴
(b)	Pro Bono Practice and Culture	
	1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.	There are no rules specifically relating to the provision of pro bono legal services (there are rules that relate to the provision of legal aid services – these are discussed below). As such, the same rules apply regardless of whether a lawyer in Austria is providing services to a paying client or a pro bono client.
	2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?	Lawyers in Austria are not required to complete a minimum number of hours of pro bono legal services as part of retaining the relevant license (although see below regarding obligations on judges). Practicing lawyers are required to provide legal aid (<i>Verfahrenshilfe</i>) to any natural or legal person unable to bear the expenses of the proceedings, if assigned a case by the local bar association (discussed below).
	3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?	Aspiring lawyers in Austria are not required to complete a minimum number of hours of pro bono legal services in order to become a licensed lawyer. While university law clinics do exist to provide a platform where students are able to provide pro bono legal advice, they are a relatively recent development.
	4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?	The most prominent Austrian organizations that are involved in facilitating pro bono legal services are in the area of immigration and refugee law (see organizations at (d)(2) below). The group in society that is most likely to be unrepresented are those low income individuals, who cannot afford adverse legal costs insurance (<i>Rechtsschutzversicherung</i>), but who do not meet the criteria to be able to benefit from legal aid.
	5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?	The main providers of pro bono legal services include: <ul style="list-style-type: none"> • NGOs: Notably, certain NGOs focused on immigration and refugee issues (see (d)(2) below). • Law Firms: A number of the larger commercial law firms will operate pro bono

⁴ See RAO § 1.

		<p>programs. However, these are not as advanced or as widespread as is found in US law firms.⁵</p> <ul style="list-style-type: none"> • Government: Please see the provision of free legal advice clinics operated by judges at (d)(1) below. • Chambers: Certain pro bono legal services are provided by the Austrian Chamber of Labour (<i>Arbeiterkammer</i>) and the Chamber of Commerce (<i>Wirtschaftskammer</i>). These are Chambers established by law with mandatory membership for all employees in Austria, thus qualifying as semi-governmental organisations. • Unions: Certain pro bono legal services, are also provided by the Austrian Labour Union (<i>Österreichischer Gewerkschaftsbund</i>) to its members.
(c)	Obstacles to Provision of Pro Bono Legal Services	
	1. Do lawyers require a license to provide pro bono legal services?	No additional license is required by Austrian lawyers in order to provide pro bono legal services.
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	<p>As a rule, only those lawyers qualified and admitted to the local bar are permitted to advise in relation to Austrian law – including pro bono matters.</p> <p>There are specific regulations and certain exemptions for qualified lawyers from European Union and EFTA member states wishing to practice in Austria (“European qualified lawyers”).⁶ These lawyers are, in general, permitted to give legal advice as well as represent clients before authorities and courts (after prior notification to the local bar association). However, where a client requires legal representation as a matter of law, then such European qualified lawyer must be assisted by an Austrian registered lawyer (<i>Einvernehmensanwalt</i>). This requirement can be avoided if the European qualified lawyer completes an eligibility test (<i>Eignungsprüfung</i>). This eligibility test requires evidence of formal qualification (<i>Ausbildungsnachweis</i>) as defined under Directive 2005/36/EC (see § 24 EIRAG).</p>
	3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working	Obtaining indemnity insurance is a requirement to qualify and register for the Austrian bar (discussed above). Hence, a practicing lawyer in Austria must

⁵ Examples include: <https://www.wolftheiss.com/firm/csr-pro-bono/> and <http://www.chsh.com/en/media/press-info/press-details/article/chsh-provides-pro-bono-advice-to-a-company-promoting-a-barrier-free-society.html> (last visited on May 1, 2019).

⁶ See European Lawyer Act (Europäisches Rechtsanwaltsgesetz „EIRAG“) §§ 1 et. seq.

	<p>under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?</p>	<p>have indemnity legal insurance cover of at least €400,000 per case (or at least €2,400,000 if the law firm is a limited liability company).</p> <p>As regards individuals working under the cover of another provider of pro bono legal services, there are no rules in Austria that prohibit this. However, not all insurers will necessarily provide such cover.</p>
	<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>There are no rules in Austria that prohibit advertising pro bono successes or soliciting new pro bono clients.</p>
	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Lawyers in Austria do not receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked.</p>
<p>(d) Sources of Pro Bono Opportunities and Key Contacts</p>		
	<p>1. Describe any governmental sources of pro bono and/or other legal services in Austria.</p>	<ul style="list-style-type: none"> • In relation to civil proceedings, at least once a week, judges at the district courts are obliged to provide free legal advice to individuals.⁷ • In relation to civil and criminal proceedings, a party (either an individual or legal entity) may be granted legal aid by the court if certain requirements are met.⁸ In essence, a grant of legal aid results in the partial or full exemption from paying the fees of the lawyer and the court in the event that the case is lost (if the recipient of legal aid wins its case, then the other party pays the cost of the fees of the lawyer and the court). • To receive legal aid, the applicant has to demonstrate that they do not have sufficient income and do not have sufficient assets to fund a lawyer. The applicant has to provide an income statement and a declaration of assets. • Lawyers are required to accept matters assigned to them under the legal aid scheme. Where a court decides that legal aid is to be granted and that a lawyer needs to be appointed, the judge will make a request to the local bar association. The board of the local bar association will then assign the matter to a lawyer that is a member of that local bar (and, to the extent possible, the board shall take into consideration requests for a specific attorney).⁹ The appointed lawyer may

⁷ See Code of Civil Procedure (Zivilprozessordnung “ZPO”) §§ 439, 434.

⁸ See ZPO §§ 63 et seq.

⁹ See ZPO § 67.

	only refuse the mandate for sound reasons such as a conflict of interest. ¹⁰
2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Austria.	<ul style="list-style-type: none"> • Helping Hands: This NGO is focused on legal aid and advice around all aspects of asylum legislation in Austria and also cases of discrimination and racism. The team consists of professional solicitors and aims to find concrete and individual solutions to cases. They also represent people facing deportation from Austria.¹¹ • Caritas Vienna – Asylzentrum: This organization provides legal advice and representation in asylum appeals, and voluntary return assistance. The legal advice covers: employment of foreigners, family reunion, citizenship law, detention, and administrative criminal cases.¹² • Diakonie Flüchtlingsberatung: This is another major NGO in the field of asylum and migration law, providing legal advice and representation in asylum cases.¹³
3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?	There are no material or well-known platforms that provide information or notifications on cases that require pro bono legal support in Austria.

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¹⁰ See RAO § 46, 2.

¹¹ See <http://www.helpinghands.at/> (last visited on May 1, 2019).

¹² See <https://www.caritas-wien.at/hilfe-angebote/asyl-integration/beratung-fuer-asylwerberinnen/asylzentrum/> (last visited on May 1, 2019).

¹³ See <https://fluechtlingsdienst.diakonie.at/einrichtung/arge-rechtsberatung-regionalstelle-wien-und-oesterreichweite-koordination> (last visited on May 1, 2019).