

Report on the Recommendation CM/Rec (2010) (Asylum Court)

1. Chapter I - General aspects:

The independence of judges is enshrined at the constitutional law, but there is no independent authority, where a judge could refer, if his independence is threatened. The introduction of a “council for the judiciary” was discussed, but this idea was dismissed by the legislator.

Generally there is a guarantee to withdraw a case from a particular judge only with valid reasons (e.g. long illness) but now it is also possible to withdraw cases from a judge in order to have more balanced case loads.

2. Chapter II - External independence:

If the judge thinks he/she has to declare himself/herself biased, he/she has to withdraw from the case. The law lists some cases of judges being biased explicitly (e.g. if he/she is related to one of the parties).

There are no general sanctions against persons seeking to influence judges in an improper manner. The penal code just puts specific actions (e.g. to bribe a judge) under sanction.

Of course it is legitimate to criticise judicial decisions; the manner, however, how this is done in Austria also by executive powers sometimes exceeds the proper extent.

3. Chapter III - Internal independence:

So far there are no specific problems with regard to internal independence.

4. Chapter IV - Councils for the judiciary:

As already mentioned there is no such body in Austria.

5. Chapter V - Independence, efficiency and resources:

The judge has to furnish on a quarterly basis the president of the Asylum Court with a report on the number of cases ruled on in the last three months and the nature of the rulings pronounced in those cases. Moreover the judge has to indicate all the pending cases every year.

There are safety measures comparable to the ones at airports.

Judges are still supported by a number of legal assistants. This was decisive to reduce the substantial backlog of cases. Now the court is in the process of reducing these legal assistants. This already has a significant influence on the output.

6. Chapter VI - Status of the judges:

At the moment judges of the Asylum Court are recruited by the federal chancellery. In 2014 the Asylum Court will turn into the Federal Administrative Court. Then (in permanent law) judges will be selected in a way that court makes recommendation of three candidates from which the federal government the right to choose.

There is no specific obligation for judges of the Asylum Court to be trained. For those willing to be trained there is a broad variety of possibilities to do so. For the transformation of the Asylum Court into the Federal Administrative Court there will be trainings for judges.

7. Chapter VII - Duties and responsibilities:

So far there are no specific problems with regard to this chapter.

8. Chapter VIII - Ethics of judges.

The Austrian association of judges has passed a – non binding – code of judicial ethics (“Salzburger Beschlüsse”).