



**SEMINAR ORGANISED BY THE SUPREME COURT OF SPAIN IN COOPERATION WITH
ACA-EUROPE
Madrid, 21 November 2022**

***Questionnaire
Application of general principles and clauses in the case law of contentious-
administrative courts***

In order to deepen the open dialogue between the high administrative jurisdictions of Europe, this seminar will analyse the application, within the administrative legal system, of different general principles or clauses of law.

Given the variety and large number of existing general principles, an effort has first been made to delimit and select, on the basis of their topicality or potential expansion, a series of general principles which, although underlying most legal systems, nevertheless present differences in the various legal systems in terms of their nature, their recognition in legal norms and, in short, with regard to their functionality, with divergences evidenced in particular by their judicial application.

The seminar offers an eminently practical vision. For this reason, the questionnaire primarily takes judicial experience into consideration, suggesting the following perspectives as lines of analysis:

- (i) General principles of law in the system of sources;
- (ii) Common incorporation of general principles of law: European Union and horizontal dialogue;
- (iii) General principles and fundamental rights;
- (iv) General principles in certain sector-specific areas of public law, selecting, in this regard, some of these principles to determine their application and projection in fields such as *administrative organisation and procedure / administrative sanctions / public subsidies or grants / contracting by public bodies / town planning and environment / taxation*.

In short, the aim of the seminar is to find out whether there are convergences in the guidelines of the high jurisdictions of the Member States, by determining the degree of influence of European Union law (e.g. through Directive 2006/123/EC on services in the internal market, or through incorporation of the principle of good administration, recognised in Article 41 of the Charter of Fundamental Rights) in its application, without losing sight of the effects of the horizontal dialogue between the high national jurisdictions, which we hope the seminar can continue to stimulate.



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I. – GENERAL PRINCIPLES OF LAW IN THE SYSTEM OF SOURCES

1^o) What place and function do general principles of law have in the system of sources of your country's legal system?

- They are applied where there are gaps in the law
- They may be applied directly, even to the extent of displacing the initially applicable written law and prevailing over it.

Explain your answer briefly:

In the Austrian legal system, general principles have a gap-filling function, especially in the area of private law. Sec. 7 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>) specifically refers to these principles (“principles of natural law”) if a gap has been identified and cannot be filled by way of analogy.

Owing to the adherence to positive law and the fundamental importance of the principle of legality (Art. 18 para. 1 Federal Constitutional Law - Bundes-Verfassungsgesetz, B-VG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>), general principles cannot displace and prevail over the initially applicable written law. According to the jurisprudence of the Austrian Supreme Administrative Court, the principle of legality is generally “stronger” than any other principle (see VwGH 11.5.2000, 99/16/0034, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_1999160034_20000511X00/JWT_1999160034_20000511X00.pdf, all judgements only available in German). If there is an applicable provision, there is no need to resort to general principles (see VwGH 24.3.2015, Ro 2014/03/0073, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2014030073_20150324J00/JWT_2014030073_20150324J00.pdf).

2^o) Can it be said that the most relevant general principles of law in your culture and legal tradition have been positivised, i.e. enshrined with legal status in your country's judicial system?

- Yes
- Yes, the most relevant ones (please indicate briefly the most notable of these)
- No

With reference to Public Law, the most relevant principles have been positivised in constitutional, procedural or special administrative laws. Concerning Administrative Procedural Law, principles such as the right to be heard, ex officio investigation as well as the principles of impartiality and reasoning are enshrined in the General Administrative Procedure Act 1991 (Allgemeines Verwaltungsverfahrensgesetz 1991,



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AVG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005768>). Amongst others, the principle of the right to a fair trial, ne bis in idem, no punishment without law or the principle of legitimate expectation are guaranteed by Constitutional Law. Furthermore, various sector-specific principles have been codified (see questions 24 to 27).

3^o) In the judicial practice of Public Law, are general principles of law frequently invoked and applied as a basis for decisions?

- They are frequently invoked and applied, and are also relevant and decisive in the settlement of disputes.
- They are frequently invoked and applied, although generally in a complementary manner, to reinforce challenging arguments based primarily on the interpretation and application of written rules.
- They are not frequently invoked and applied as a basis for decisions.

Explain your answer briefly:

Administrative courts apply written law as a basis for their decisions. Since the majority of the most relevant general principles of law have been positivised, they are frequently applied by the courts through direct invocation of the written law containing the relevant principles (see question 2), whereas unwritten principles are less often invoked by the courts.

Regarding Administrative Procedural Law, the Austrian Supreme Administrative Court has identified various general principles deriving from the essence of the rule of law (i.e. the principle of reasoning or the principle of the right to be heard). They can be invoked if none of the existing procedural laws apply as they constitute general principles of law applicable to any proceedings under the rule of law (see VwGH 20.9.2012, 2010/06/0105, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2010060105_20120920X00/JWT_2010060105_20120920X00.pdf; 20.11.2007, 2007/11/0157, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2007110157_20071120X00/JWT_2007110157_20071120X00.pdf).

4^o) If you have answered yes to the previous question, can it be said that the invocation and application of general principles of law is done in a general and transverse way, in all areas or matters of Public Law?

- Yes
- Especially or particularly in certain matters, or in certain sector-specific areas (in this case, explain your answer briefly)

5^o) In your country's legal system, are there general principles specific to Administrative Law, independent of other general principles of law?



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- o There are no general principles specific to Administrative Law
- o There are principles specific to Administrative Law that may be applied in conjunction with other general principles
- o There are principles specific to Administrative Law that exclude and displace the application of the other general principles

Explain your answer briefly:

General principles specific to Administrative Law which may be applied in conjunction with other general principles include, inter alia, the principles of official secrecy and subordination (obligation of subordinate civil servants to follow orders of superiors), as well as the principles of economy, efficiency and expediency.

II. – COMMON INCORPORATION OF GENERAL PRINCIPLES OF LAW: EUROPEAN UNION AND HORIZONTAL DIALOGUE

6^o) Has your country's administrative legal system patently incorporated the general principles of European Union law?

- o Yes, in general
- o No special or specific incorporation has been necessary, because in general these principles were already recognised and enshrined in the country's legislation and practice.

Explain your answer briefly (this question mainly concerns the work of the legislator, i.e. the “legislative system”).

In Austria, there has not been any particular difficulty in incorporating the general principles of European Union Law in our legislation. First instance administrative courts - where independent judges investigate the facts of a case - were introduced in 2014. Since then, the requirements of a “tribunal” as defined in European Court of Justice case law with reference to the principle of judicial protection deriving from Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) or Art. 47 of the Charter of Fundamental Rights of the European Union (CFR) are definitely met.

7^o) Is it common in your country's judicial practice for the specific general principles of European Union law to be invoked and taken into account in areas where there is no regulatory harmonisation?

- o Yes, for certain matters
- o No, not generally





Explain your answer briefly (this question mainly concerns the work of the judiciary, i.e. “judicial practice”).

The Austrian legal system is characterised by its adherence to positive or written law as opposed to case law. Precedents are not legally binding, but can give specific content to the law or determine the meaning of provisions of law. In areas where there is no regulatory harmonisation, general principles of the European Union are observed by administrative courts only if they correspond to general principles of Austrian Administrative Law as provided for in national laws or in the ECHR, which has constitutional status and is directly applied by authorities and courts.

8^o) When applying the general principles set out in European Union law, and when it is found that the general European principle applicable to the dispute in question conflicts in some way with national law, has the dispute been resolved through a solution involving the displacement and non-application of the national rule in order to give way to the general European principle?

- Yes
- This solution has been chosen in some cases, while in others different solutions or answers have been used (in this case, explain your answer briefly)
- No

Within the scope of European Union Law national law conflicting with the rules of the European Union is not applied.

Outside the scope of European Union Law, Austrian courts only apply general principles as provided for in national law and the ECHR. However, these principles often essentially correlate with the principles of European Union Law: For example, the principle of ex officio investigation as postulated by the European Court of Justice is reflected in the principles stipulated in the General Administrative Procedure Act 1991. Also, Art. 50 CFR and Art. 4 Additional Protocol No. 7 to the ECHR both stipulate the ban on being punished twice for the same offence.

9^o) Is it common in judicial practice for the principle of legitimate expectation to be invoked and taken into account?

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- No

Explain your answer briefly.





The Austrian Constitutional Court stated that the principle of legitimate expectation derives from the principle of equality as stipulated in Art. 7 B-VG (see VfGH 28.6.2004, G60/03, https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_09959372_03G00060_01/JFR_09959372_03G00060_01.pdf). Therefore, the principle of legitimate expectation can also be invoked outside the scope of European Union Law.

10^o) Can taking the principle of legitimate expectation into account even result in the annulment of administrative decisions that are contrary to or violate those principles?

- Yes
- No, these principles are applied only in order to provide for compensation or reparation when they are violated in some way by the decisions of the Administration.

Explain your answer briefly.

Since Austrian courts are bound by (European Union) Law (and due to the fact that this principle is considered to be derived from Art. 7 B-VG) an administrative decision can in fact be annulled if it violates the principle of legitimate expectation.

11^o) Has the “principle of good administration” referred to in Article 41 of the Charter of Fundamental Rights of the European Union been adopted and applied in your country’s judicial practice?

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- Not commonly applied

Explain your answer briefly.

In a judgement from December 14, 2015, Ra 2015/16/0126, the Austrian Supreme Administrative Court emphasized that an appeal invoking Art. 41 CFR did not meet the requirements for a ruling on the merits of the case because the right to a good administration as stipulated in Art. 41 para.1 CFR concerned institutions of the European Union, not national institutions (https://www.ris.bka.gv.at/Dokumente/Vwg_h/JWT_2015160126_20151214L00/JWT_2015160126_20151214L00.pdf).

12^o) Can taking the principle of good administration into account even result in the annulment of administrative decisions that are contrary to or violate that principle?

- Yes, in some specific cases.





- This would never be possible because, among other reasons, this principle applies solely as a guideline for conduct within the Administration and cannot be invoked by the citizen.
- No

Explain your answer briefly.

In principle, since a landmark decision of the Austrian Constitutional Court in 2012, the rights guaranteed by the CFR can be enforced before the Austrian Constitutional Court, which can revoke laws that contradict the rights of the CFR (see VfGH 14.3.2012, U466/11, https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_09879686_11U00466_2_00/JFT_09879686_11U00466_2_00.pdf).

However, the right to a good administration as stipulated in Art. 41 para. 1 CFR only concerns institutions of the European Union, not national institutions (see question 11).

Having said this, the principle of good administration is also reflected in the Austrian Administrative Procedural Law. In cases where national Procedural Law is applied, administrative decisions violating the general principles of Austrian Administrative Procedural Law can be annulled.

13^o) Is it common in judicial practice for the principle of necessity and proportionality of administrative measures that limit or restrict access to or the exercise of an economic activity to be invoked and taken into account?

- Yes, this is a positivised principle whose non-observance results in the nullity of the measure or provision of a general nature.
- Yes, in certain matters and to different extents
- No

Explain your answer briefly.

Austrian administrative courts take the principle of necessity and proportionality of administrative measures into account whenever this principle derives from written national or European Union Law applicable when dealing with a case.

The Austrian Constitutional Court has found regulations imposing the necessity of a certificate of competence for certain professions to be unproportional (i. e. regarding the photography business VfGH 27.11.2013, G 49/2013, https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20131127_13G00049_00/JFT_20131127_13G00049_00.pdf).

14^o) With regard to any of the above principles (legitimate expectation, necessity, proportionality or good administration) or other principles, has your country's



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Supreme Court taken into consideration the interpretation and manner of application of these principles by other European national high jurisdictions?

- Yes, on some occasions (in this case, explain your answer briefly)
- Never

The Austrian Supreme Administrative Court has occasionally quoted the German Federal Constitutional Court, especially in Asylum Law matters (more recently regarding the consideration of evidence able to show that an asylum seeker might be at risk when returning to their country of origin because of a change of faith inter alia VwGH 12.6.2020, Ra 2019/18/0440, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2019180440_20200612L00/JWT_2019180440_20200612L00.pdf).

However, the Austrian Supreme Administrative Court has never taken into consideration the interpretation and manner of application of the abovementioned principles by supreme courts of other Member States in its own judicial practice.

III. – GENERAL PRINCIPLES AND FUNDAMENTAL RIGHTS

15^o) According to Article 6, paragraph 3 of the Treaty on European Union, fundamental rights that result from the constitutional traditions common to the Member States shall constitute general principles of the Union's law. Has your country's Supreme Court identified any of these common constitutional traditions?

- Yes, especially on the basis of the case law of the Court of Justice or the European Court of Human Rights
- Yes, especially on the basis of the case law of the Supreme Courts of other Member States.
- No such identification has taken place.

16^o) What status and importance does the principle of non-discrimination and gender equality have in your country's judicial practice?

- It is a principle commonly and generally taken into consideration, across all areas
- It is a principle that is taken into consideration and applied in certain legal relations and sector-specific areas

Explain your answer briefly.

Art. 7 para. 1 B-VG stipulates that all nationals are equal before the law. Privileges based upon birth, sex, status, class or religion are excluded. Art. 7 para. 2 stipulates the de-facto equality of men and women. Measures to promote factual equality of men and



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women, in particular by eliminating actually existing inequalities, are therefore admissible.

The principle of equality, which includes the principle of gender equality, does not only prohibit privileges due to certain personal characteristics, but encompasses the principle of non-discrimination as well.

It is the most frequently applied fundamental right in the jurisprudence of the Austrian Constitutional Court. To name some examples, the Austrian Constitutional Court has declared the different treatment of men and women with regard to the retirement age to be unconstitutional. It also considered the exclusion of women from certain professions, the different regulations for severance entitlements of female and male civil servants, and a provision that allowed women, but not men, to add their former name to their new common surname in case of marriage, as a discrimination that was not objectively justified.

17^o) In the judicial practice of your country, is the principle of protection of particularly vulnerable groups (e.g. minors, women, people with disabilities) invoked and applied?

- Yes, in a general, open and transversal manner
- Yes, for certain groups that are predetermined and identified in the different sector-specific rules (give a significant example)
- No

Explain your answer briefly.

There is no predetermined list of particularly vulnerable groups as such. However, the principle of protection of certain vulnerable groups, such as disabled persons and women (see Art. 7 B-VG), is guaranteed in the constitution and therefore invoked and applied in the judicial practice.

Different provisions to protect specific vulnerable groups can also be found in certain Austrian administrative (court) procedural rules. To give an example, in Asylum Law cases regarding unaccompanied minors, the legal counselor, as the legal representative, has to attend every interview and hearing in the admission proceedings.

18^o) Do the judicial bodies demand enhanced reasoning in cases where the contested administrative measure or decision (e.g. eviction from housing, granting of nationality) affects these vulnerable groups (e.g. minors, women, people with disabilities) or has an impact on other constitutional values such as protection of the family?

- No special grounds are required in these cases
- Yes, and their absence results in the nullity of the decision



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Explain your answer briefly.

Enhanced reasoning in cases is always required when it derives from applicable written law. Concerning Asylum Law matters, for example, both the Austrian Supreme Administrative Court and the Austrian Constitutional Court have demanded enhanced reasoning in their jurisprudence. Referring to provisions of the CFR and the reception conditions directive as well as national provisions, these Austrian supreme courts ruled that enhanced reasoning regarding the question of return to the country of origin is required in relation to vulnerable groups such as (unaccompanied) minors and in regards to the best interests of the child (see judgement of the Austrian Administrative Supreme Court VwGH 10.3.2022, Ra 2021/18/0349, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2021180349_20220310L00/JWT_2021180349_20220310L00.pdf).

19^o) In your judicial practice, have disputes been raised regarding the issue of the principles of transparency, equality and non-discrimination in relation to decisions based on artificial intelligence or predictive data management systems?

- Yes
- These principles are not frequently invoked, but some examples exist
- No

Explain your answer briefly.

As of today, no such disputes have been raised in the Austrian judicial practice.

IV. – GENERAL PRINCIPLES IN CERTAIN SECTOR-SPECIFIC AREAS OF PUBLIC LAW

IV.1. – ORGANISATION AND ADMINISTRATIVE PROCEDURE

20^o) In the administrative organisation, do the principles of decentralisation and subsidiarity apply?

- Yes
- No
- Not generally, but in certain areas or sectors (in this case, explain your answer briefly)

21^o) Are the general principles set out below applicable to the procedure for formulating administrative acts and provisions?

Principle of publicity and transparency



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- Yes
- No

Principle of proportionality

- Yes
- No

Principle of impartiality

- Yes
- No

Principle of anti-formalism

- Yes
- No

Principle of gratuitousness

- Yes
- No

Principle of self-correction (executory decision, without the need for judicial assistance).

- Yes
- No

(If you consider it appropriate, please indicate any other general principles of administrative procedure different from the above)

IV.2. – ADMINISTRATIVE SANCTIONS

22^o) Are the general principles of criminal law applied or projected in the area of administrative sanctions law? (Indicate the answer that you consider best reflects your legislation and practice)

- Yes
- Yes, although with nuances arising from the different natures of criminal offences and administrative offences
- Not in respect of minor, lesser or trivial infractions



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- Only in relation to infractions that can be characterised as “criminal” in accordance with the doctrine of the ECHR

Explain your answer briefly.

There is no essential difference between the general principles applied in criminal law and administrative penal law proceedings in Austria.

Compared to criminal law the following variances in administrative criminal law proceedings may be highlighted:

- Principle of inquisition: In general, administrative penal authorities are both “prosecutors” and “judges” (with exceptions, see question 23).
- Representation by a lawyer in appeal cases before the first instance administrative courts is not mandatory.
- The principles of publicity, orality and immediacy are only applicable before the first instance administrative courts, but not before administrative authorities.

23^o) If you have answered yes to the previous question, could you specify whether or not the following general principles are applied for administrative sanctions, or to what extent?

Principle of presumption of innocence and right not to incriminate oneself or plead guilty:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principles of legality and definition of the constituent elements of the offence:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of non-retroactivity of sanctioning provisions:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of culpability:

- Yes



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- No
- With nuances (in this case, explain your answer briefly)

Principle of proportionality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of defence and legal assistance:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Representation by a lawyer is not mandatory (neither before the administrative authority nor the first instance administrative court).

However, if it is required in the interest of dispensing justice, in particular in the interest of adequate defence, a legal aid lawyer may be assigned to the defendant for the court proceedings upon their application if they are not able to bear the costs of his defence without impediment to the requirements for the basic necessities of life.

When assessing if the assignment of a legal aid lawyer is required in the interest of dispensing justice, the difficulty of the factual and legal situation, the special personal circumstances of the defendant and the special consequences of the case for the defendant should be taken into account.

Principle of hearing:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of separation between investigating authority and decision-making authority

- Yes
- No
- With nuances (in this case, explain your answer briefly)

As a general rule, administrative penal authorities are both “prosecutors” and “judges”. There are exceptions regarding disciplinary proceedings, where a disciplinary lawyer launches a prosecution.





Principle of reasoning of the sanctioning decision

- Yes
- No
- With nuances (in this case, explain your answer briefly)

In general, administrative penal decisions must include a reasoning.

However, in certain cases the administrative authorities (instead of issuing an administrative penal decision) may issue a penalty notice without prior investigations in accelerated proceedings. A reasoning of the penalty notice is not required. If the defendant subsequently files an admissible appeal against this penalty notice, the regular proceeding shall be instituted and the administrative authority may, if necessary, issue an administrative penal decision (with the required reasoning).

Principle of time-barring of administrative offences and sanctions

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of judicial protection

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of double instance

- Yes
- No
- With nuances (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general principles of administrative sanctions law different from the above)

IV.3. – SUBSIDIES AND PUBLIC AID

24^o) Is the principle of proportionality applied in order to modulate the consequences of non-compliance by a beneficiary of public subsidies, aid or resources, or in the area of regulated sectors?





- Yes (in this case, explain briefly in what areas and with what consequences or effects)
- No

In Austria, the majority of the subsidies granted do not fall into the area of Public Law, but Civil Law (private sector administration). As a result, civil courts are competent to rule on such cases.

A regulation of the Minister of Finance sets out general guidelines for the granting of subsidies from federal funds. Sec. 25 para. 1 of this regulation lists different criteria that create the obligation to repay the aid. Para. 2 provides the possibility to demand only partial recovery if the obligations assumed by the beneficiary are divisible, the partial performance is eligible for funding on its own, there is no fault on the part of the beneficiary and it is reasonable for the granting authority to maintain the grant agreement (Verordnung des Bundesministers für Finanzen über Allgemeine Rahmenrichtlinien für die Gewährung von Förderungen aus Bundesmitteln, ARR 2014, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008920>).

However, relevant jurisprudence of the supreme courts regarding this question does not exist.

(If you consider it appropriate, please indicate any other general principles of subsidies or public aid different from the above)

Other general principles of subsidies are, for example, the principle of effectiveness and transparency (sec. 2 para. 1 Federal Organic Budget Act 2013 - Bundeshaushaltsgesetz 2013, BHG 2013, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006632>) as well as the principles of economy, efficiency and expediency.

IV.4. – CONTRACTING BY PUBLIC BODIES

25^o) Is contracting by public bodies governed by different principles from contracting between private individuals and entities?

- Yes. Although based on a common foundation, administrative contracting is governed by different principles from civil or private contracting.
- There are specific principles applicable to contracting by public bodies as regards the procedure for advertising and selecting contractors and the award of the contract, but the performance, execution and effects of the contract are governed by principles substantially the same as those applicable to private contracting.
- No, public and private contracting are essentially governed by the same rules and principles.



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(If you consider it appropriate, please indicate any other general principles of contracting by public bodies different from the above)

General principles of procurement proceedings include the principles of equal treatment of all candidates and tenderers, non-discrimination, proportionality, transparency, free and fair competition and of economic efficiency, as well as the principle of awarding contracts to authorised, capable and reliable contractors at reasonable prices (sec. 20 para. 1 Federal Procurement Act 2018 - Bundesvergabegesetz 2018, BVergG 2018, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010295>).

IV.5. – TOWN PLANNING AND ENVIRONMENT

26^o) Could you say whether the following principles of environmental law are invoked and applied in your judicial practice?

Precautionary principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

“Polluter pays” principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general town planning or environmental principles different from the above)

Further examples of environmental principles are the principles of sustainability, conservation of resources, resource efficiency as well as waste prevention and separation (sec. 1 Waste Management Act - Abfallwirtschaftsgesetz 2002, AWG 2002, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002086>).

IV.6. – TAXATION

27^o) In tax matters, are the following principles applied in your legislation and judicial practice?



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Principle of legality: Tax liability can be established only by rules with legal status.

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of economic or contributory capacity

- Yes
- No
- With nuances (in this case, explain your answer briefly)

While the principle of economic or contributory capacity is one of the most fundamental principles of Income Tax Law, there are other areas of Tax Law where this principle is not applied, such as Value Added Tax Law.

Principles of equality and generality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of progressiveness and its limit: non-confiscatory taxation

- Yes
- No
- With nuances (in this case, explain your answer briefly)

In Austrian Tax Law, not every tax rate is set up progressively. Examples of such progressive tax rates are the income tax, where the rate is set up progressively depending on annual income, or the licence tax as provided for in the Gaming Act. Regulations stipulating taxes with a confiscatory effect (leading to an excessive burden of the tax payer), are unconstitutional (see judgement of the Austrian Constitutional Court VfGH 11.3.1977, B274/74 inter alia, https://www.ris.bka.gv.at/Dokumente/vfgh/JFR_19770311_74B00274_01/JFR_19770311_74B00274_01.pdf).

(If you consider it appropriate, please indicate any other general principles of tax law different from the above)

Other important principles of Austrian Income Tax Law are the principles of individual taxation, periodic taxation, taxation on net income as well as the principles of universality or territoriality.

