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**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Techniques for the protection of private subjects in
contrast with public authorities: actions and remedies
– liability and compliance”**

Rome, 23 May 2022

Answers to questionnaire: Austria



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“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.

INTRODUCTION

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?

- An ordinary judge
- An administrative judge
- A judge who deals with special areas
- Others

Austrian Reply:



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The Austrian legal system has two separate jurisdictional orders: the ordinary courts, ruling over civil and criminal law matters, and the administrative courts, ruling over administrative matters. The Austrian administrative procedural system is composed of three instances - firstly the administrative authorities, secondly the first instance administrative courts, and finally the Supreme Administrative Court.

Following the so called “9+2 model”, nine administrative courts of the provinces were established. In addition, two federal administrative courts were created: the Federal Administrative Court reviewing decisions of federal authorities, and the Federal Fiscal Court reviewing decisions in financial matters. The Supreme Administrative Court is empowered to review the rulings of these first instance administrative courts, thus retaining final jurisdiction in all administrative matters.

Furthermore, the Constitutional Court monitors compliance with the constitution, which also contains the fundamental rights. In addition to the appeal with the Supreme Administrative Court, a complaint against the ruling of a first instance administrative court may be filed with the Constitutional Court if the violation of constitutionally guaranteed rights (fundamental rights) is alleged.

As a result, the judges competent to pronounce on disputes in which one of the parties is the public administration are administrative judges. Claims against administrative authorities or courts as a result of damage to any person or any property caused by unlawful acts of persons at fault when implementing the law on behalf of such legal entities are civil claims and can be enforced through civil proceedings before ordinary courts. The liability of the persons at fault for the damages thus caused to the administrative authorities or courts may also be enforced through civil proceedings, therefore ordinary judges are competent to pronounce on such disputes.

2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

- Annulment of administrative acts
- action of condemnation
- Other actions

If you have replied ‘other actions’, please clarify which.

Austrian Reply:

Administrative jurisdiction can only be exercised over acts of an administrative authority exercising its public power prerogative (issued decisions or acts of direct administrative power and compulsion) or failure of an administrative authority to comply with its time limit to issue a decision. For administrative courts to act, a complaint has to be filed with the competent court.

In addition, first instance administrative courts are competent to rule on complaints of persons who claim that their rights under the General Data Protection Regulation have been infringed by a first



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instance administrative court in the exercise of its judicial powers. The Federal Administrative Court rules on the use of coercive measures against informants of an investigation committee of the National Council. Federal or state law may give first instance administrative courts other responsibilities for adjudication, such as complaints against the unlawful conduct of administrative authorities in execution of the law as well as complaints in matters of procurement law and relating to the employment of public servants (art. 130 Federal Constitutional Law - Bundes-Verfassungsgesetz 1920, B-VG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>).

3. From which sources can actions be proposed brought before the administrative court?

- Law
- Public authority regulations
- Guidelines
- Supreme Court rulings
- Other

Austrian Reply:

In the Austrian legal system actions that can be brought before the administrative courts are determined by law (art. 130 B-VG).

4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

Austrian Reply:

Pursuant to art. 130 para. 1 B-VG, first instance administrative courts rule on actions:

- against decisions by administrative authorities due to unlawfulness,
- against the unlawful exercise of direct administrative power and compulsion, and
- on the grounds of breach of duty to issue a decision by an administrative authority.

Against the decisions of the aforementioned administrative courts, complaints can be filed with the Supreme Administrative Court and the Constitutional Court. According to art. 133 para. 4 B-VG a complaint before the Supreme Administrative Court is admissible, if the solution depends on a legal question of fundamental importance (if the contested court ruling departs from relevant past decisions of the Supreme Administrative Court, or if there is no - or no consistent - case law on the issue in



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question). A complaint with the Constitutional Court is possible if the violation of constitutionally guaranteed rights (fundamental rights) is alleged (art. 144 para. 1 B-VG).

General legal acts, such as laws and regulations, may be brought before the Constitutional Court, which examines them for their constitutionality or legality (art. 140 B-VG).

Procedural decisions settling the legal position of the parties to the proceedings may be challenged in an appeal before the first instance administrative courts.

Acts inherent to the procedure regulating the progress of proceedings may only be challenged in an appeal against the decision settling the matter. A separate appeal is not admissible (sec. 7 para. 1 Proceedings of Administrative Courts Act - VwGG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008255>).

5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other

Austrian Reply:

An administrative act can be challenged for unlawfulness due to substantive as well as procedural errors before a first instance administrative court (sec. 130 para. 1 B-VG). Procedural errors committed by an administrative authority can be remedied by a duly conducted appeal procedure before the first instance administrative court.

The Supreme Administrative Court can annul the ruling of a first instance administrative court on the grounds of breaches of the law, breaches of competence or the violation of formal rules and procedures (sec. 42 para. 2 Supreme Administrative Court Act - Verwaltungsgerichtshofgesetz 1985 - VwGG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000795>).

6. Can the judge partially annul the challenged administrative act?

- Yes
- No

If your reply is yes, please elaborate.



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Austrian Reply:

Yes, the partial annulment of an administrative act is possible, if the verdict of the challenged administrative act consists of separable and autonomous parts. This returns the case to the state it was in before the act was issued. A new decision must then be issued to the extent of the annulment.

7. Can the judge substitute the Administration by modifying the content of the administrative act?

- Yes
- No

If your reply is yes, please elaborate.

Austrian Reply:

In the majority of cases, first instance administrative courts rule on the merits of the case, if the relevant facts have been established, or the determination of the relevant facts by the administrative court itself is in the interest of expeditiousness or is associated with a considerable cost saving (sec. 28 para. 2 VwGVG). To that extent, the court's ruling replaces the challenged act. If the aforementioned conditions are not met, a first instance administrative court may annul the challenged act and refer the matter back to the administrative authority for the issuance of a new decision (sec. 28 para. 3 VwGVG).

There are, however, special proceedings allowing for different approaches: For example, in proceedings concerning a complaint against an act of direct administrative power and compulsion, the act may be declared unlawful and annulled. In procurement law proceedings, decisions concerning public contracts may be declared invalid and a judicial assessment of infringement of the law may be requested.

8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?

- Yes
- No

If your reply is affirmative, please elaborate.

Austrian Reply:

When a first instance administrative court refers a matter back to the administrative authority, the authority is bound by the legal assessment on which the first instance administrative court has based its ruling (sec. 28 para. 3 VwGVG).



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Likewise, when the Supreme Administrative Court annuls the ruling of a first instance administrative court, the first instance administrative court having to rule on the matter again is bound by the legal assessment of the Supreme Administrative Court.

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other

Austrian Reply:

The effects of the jurisdictional annulment of an administrative act become applicable from the date of the adoption of the act (*ex tunc*).

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

- Yes
- No
- Other

Austrian Reply:

In the Austrian legal system, administrative judges cannot modulate the effects over time of the ruling of annulment of an administrative act. Following the annulment of a challenged act, the first instance administrative courts and the administrative authorities are obliged to immediately establish the legal situation in accordance with the legal opinion of the Supreme Administrative Court using the legal means at their disposal (sec. 63 para. 1 VwGG).

11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

Austrian Reply:

The compensation of damages is only possible in accordance with the provisions of civil law (see questions 12-15 of session 1).



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12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Please elaborate

Austrian Reply:

Public legal entities are liable under civil law for any damage to property or persons culpably caused by unlawful conduct of persons acting in execution of the law as a body on behalf of such legal entities. The unlawful conduct in question may include unlawful actions as well as non-active behaviour such as the failure to issue a decision in time (sec. 1 para. 1 Liability of Public Bodies Act - Amtshaftungsgesetz, AHG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000227>).

13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

Austrian Reply:

Civil claims against public legal entities can be raised as a result of damages to property or persons.

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other

Austrian Reply:

Yes, compensation is conditional on the exhaustion of the chain of appeals. Damages shall not be compensated, if the injured party would have been able to avoid the damage through any legal remedy or complaint brought before a first instance administrative court as well as a final appeal brought before the Supreme Administrative Court (sec. 2 para. 2 AHG).



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15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?

- Yes – the party with burden of proof is...
- No

Austrian Reply:

Claiming compensation of damages on the grounds of the Liability of Public Bodies Act, the plaintiff must prove that he has suffered a damage and that this damage may have resulted only from a violation of a law on the part of a body of the legal entity sued. To this end the plaintiff must demonstrate that he would not have suffered the alleged damage without this violation of rights as well as provide proof for the causal connection between the event giving rise to liability and the damage incurred (sec. 2 AHG).

16. Can the judge convert *ex officio* one action into another?

- Yes
- No

If the reply is yes, please elaborate

Austrian Reply:

An administrative judge cannot convert one action into another.

17. Is there a time-limit for the proposition of the compensatory action?

- Yes
- No

If the reply is yes, please elaborate

Austrian Reply:

In accordance with the provisions of civil law, the statute of limitation for compensatory claims against public legal entities is three years after the day on which the injured party took notice of the damage, in no case however before expiry of one year after a decision or act violating the law has become final (sec. 6 para. 1 AHG).

18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes – explain
- No



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Austrian Reply:

As stated in the answer to question 7 of session 1, first instance administrative courts usually rule on the merits of the case. However, if an administrative authority fails to comply with its time limit to issue a decision even after a complaint was brought before the first instance administrative court, the first instance administrative court only then becomes competent to rule on the merits of the case instead of the administrative authority.

If a complaint is brought before the Supreme Administrative Court because a first instance administrative court failed to issue a timely decision, the Supreme Administrative Court specifies an extension period for the first instance administrative court to rule.

SESSION II – SPECIAL PROCEDURES

1. Does your administration have provisions for special procedures

- Yes
- No

If the reply is yes, please elaborate

Austrian Reply:

Yes.

The general provisions of the administrative procedural rules are stipulated regarding the general administrative procedure in the General Administrative Procedure Act 1991 (Allgemeines Verwaltungsverfahrensgesetz 1991, AVG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005768>), regarding the administrative penal procedure in the Administrative Penal Act 1991 (Verwaltungsstrafgesetz 1991, VStG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005770>), regarding the administrative execution procedure in the Administrative Enforcement Act 1991 (Verwaltungsvollstreckungsgesetz 1991, VVG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005772>), and regarding the tax law procedure in the Federal Tax Code (Bundesabgabenordnung, BAO, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003940>).



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However, divergent regulations can be made in special laws when they are requisite for the regularisation of the matter. A large number of such special procedural laws have been passed, such as the Federal Office for Immigration and Asylum Procedures Act for asylum matters and the Federal Procurement Act for procurement procedures.

A similar regime also exists for the first instance administrative courts, while the organisation and procedure of the Supreme Administrative Court is governed by a single separate federal law, from which divergent regulations in other laws are not allowed.

2. What do the specialities consist of?

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other

Austrian Reply:

The specialities of the procedures identified above vary, including different provisions regarding procedural time-limits and formal rules

Examples for special procedural provisions in asylum law are:

In deviation from the general four-week appeal period, in asylum matters only a two-week appeal period applies, when the decision of the administrative authority is connected with the issuance of a measure terminating residence (sec. 16 para. 1 Federal Office for Immigration and Asylum Procedures Act, BFA-Verfahrensgesetz - BFA-VG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007944>).

In contrast to the general six-month decision period, a decision shall be taken within three months if an asylum seeker is held in detention pending deportation (sec. 22 para. 6 Asylum Act 2005, Asylgesetz 2005 - AsylG 2005, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>).

3. The special rites are established:

- According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above

Please elaborate



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Austrian Reply:

The special rites can be established according to subjects (such as administrative offences, tax matters, aliens, tenders) as well as according to actions (for example, actions against the omission of an administrative authority or a first instance administrative court to issue a timely decision, requests of ordinary courts to pronounce on the legality of a particular decision by an administrative authority or by one of the first instance administrative courts or requests to decide on conflicts of jurisdiction).

4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?

- Yes
- No

If the reply is yes, please elaborate

Austrian Reply:

Yes, appeals against the silence of the Administration are provided for in the context of an alleged delay of the authority to reach a timely decision (art. 130 para. 1 lit. 3 B-VG). Such complaints have to be filed after the expiry of a certain period of time (sec. 8 VwGVG, see question 2 of session II) and may only be raised by someone who is entitled to the issuance of a decision and whose legal interests are therefore impaired by the authority's default. The authority remains competent to issue a decision within a period of up to three months from the notification of the complaint. If the authority does not, however, issue a decision, it shall submit the complaint and the files of the administrative proceeding to the respective first instance administrative court (sec. 16 VwGVG).

5. Do the Administrations comply spontaneously with the decisions of the administrative courts?

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases
- Hardly ever, in any case less than in 50% of cases

Austrian Reply:

Yes, the administrative authorities usually comply spontaneously with the decisions of the administrative courts.

6. . In your legal system, is there a special procedure for ensuring the integral execution of the sentence?

- Yes



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- No

If the reply is yes, please elaborate

Austrian Reply:

Yes, the execution of the decisions issued by the first instance administrative courts (with the exception of the Federal Fiscal Court) is carried out in accordance with the Administrative Enforcement Act (Verwaltungsvollstreckungsgesetz 1991 - VVG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005772>) and generally falls within the responsibility of the district administration authorities.

Decisions on the reimbursement of costs issued by the Supreme Administrative Court are enforced by the ordinary courts.

7. Are the judge's decisions which are not of the last resort immediately enforceable?

- Yes
- No

If the reply is yes, please elaborate

Austrian Reply:

Decisions of the first instance administrative courts become formally legally binding as soon as they are issued and are therefore immediately enforceable. The enforceability of the decisions can be suspended only upon application (sec. 30 VwGG). The suspension of the challenged act ensures that the applicant does not suffer any adverse consequences from the contested decision for the duration of the proceeding before the Supreme Administrative Court.

8. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the aforesaid discretionary power which ensure the definition of the litigation once and for all?

- Yes – elaborate
- No

Austrian Reply:

As pointed out in question 7 of session I, first instance administrative courts generally rule on the merits of the case.



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In case the administrative authority has not exercised its discretion in accordance with the law, the court itself must exercise discretion in its decision on the merits which, if that decision is not contested before the Supreme Administrative Court, ensures the definition of the litigation. It is only when the administrative court is not obliged to reach a decision on the merits of the case that the court sets aside the contested discretionary decision and remands the matter to the authority for the issue of a new decision, in which case the authority is bound by the legal evaluation on which the first instance administrative court based its decision (sec. 28 para. 4 VwGVG).

However, the first instance administrative court cannot - with the exception of administrative penal proceedings and in legal matters pertaining to the competence of the Federal Fiscal Court (art. 130 para. 3 B-VG) - modify (or set aside) the administrative decision only because it considers another exercise of discretion more appropriate. Similarly, decisions by first instance administrative courts characterized by discretionary power are subject to limited review. The Supreme Administrative Court may only examine whether the first instance administrative court was authorized to exercise its discretion and, if so, whether it exercised its discretion in accordance with the law (art. 133 para. 3 B-VG).

SESSION III – PRECAUTIONARY MEASURES

1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?

- Yes
- No

Austrian Reply:

In the proceedings before the administrative courts of first instance pursuant to sec. 13 para. 1 VwGVG, a timely and admissible complaint generally grants the contested decision suspensive effect. However, the authority may exclude the suspensive effect if, after weighing the public interests affected and the interests of the parties, the early execution of the contested decision or the exercise of the right granted by the contested decision is urgently required due to imminent danger (sec. 13 para. 2 VwGVG).

In the proceedings before the Supreme Administrative Court, on the other hand, a complaint does not grant the contested decision suspensive effect (see sec. 30 VwGG). However, suspensive effect may be granted by the Supreme Administrative Court upon application pursuant to sec. 30 para. 2 VwGG, if there are no compelling public interests to the contrary and if, after weighing the public



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interests affected and the interests of other parties, the implementation of the contested decision or the exercise of the right granted by the contested decision would be disproportionately disadvantageous for the appellant.

2. In your legal system, are precautionary measures provided for?

- Yes
- No

Austrian Reply:

No, apart from the granting of suspensive effect set out in question 1 of session 2, there are no other precautionary measures.

Without being provided for in the VwGG, the appellant may according to the case law of the Supreme Administrative Court (see e.g. VwGH 29.1.2015, Ro 2014/07/0028) - on the basis of directly applicable Union law - request other provisional measures, with the effect that the appellant is provisionally granted a legal position, the granting of which was refused by the challenged decision on the basis of a national legal provision (possibly in conflict with European Union law).

3. What kinds of decisions can the judge apply as a precautionary measure?

- The suspension of the challenged act;
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

Austrian Reply:

See question 2 of session 3.

4. What are the conditions for the acceptance of a precautionary request?

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- Other prerequisites (please specify)



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Austrian Reply:

See question 2 of session 3.

5. Can the judge force the petitioner to pay bail?

- Yes
- No
- If yes, in which cases?

Austrian Reply:

No.

6. Are precautionary measures generic?

- Yes
- No – are there some subjects in which precautionary measures are not admitted?
Which?

Austrian Reply:

In general, a timely and admissible complaint filed with a first instance administrative court automatically grants the contested decision suspensive effect (sec. 13 para. 1 VwGVG). However, exceptions can and have been dictated by law. An authority can exclude the suspensive effect by means of an administrative decision if, after having considered the affected public interests and the interests of other parties, the early enforcement of the contested administrative decision or the exercise of the authorization granted by the contested administrative decision is urgently required because of imminent danger (sec. 13 para. 2 VwGVG). To the extent possible such an exclusion shall be included in the administrative decision issued on the merits of the case. Furthermore, there is an exception from the suspensive effect concerning cases in asylum matters: Complaints filed against administrative decisions rejecting the demand on procedural grounds only have suspensive effect if granted by the Federal Administrative Court (for further reference see sec. 16 sec. 2 Federal Office for Immigration and Asylum Procedures Act - BFA-Verfahrensgesetz - BFA-VG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007944>).

In proceedings before the Supreme Administrative Court any appeal may be granted suspensive effect.

Beyond the granting of suspensive effect, further provisional measures - on the basis of directly applicable Union law - are only possible upon request.



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- 7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?**
- Yes
 - No

Austrian Reply:

No, suspensive effect requires the filing of an appeal with a first instance administrative court or the Supreme Administrative Court.

- 8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?**
- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
 - No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

Austrian Reply:

n.a.

- 9. When dealing with the precautionary request, does your legal system provide for specific procedure?**
- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
 - No

Austrian Reply:

No.

- 10. Is the precautionary decision taken unilaterally or collegiately?**
- Unilaterally;
 - Collegiately;
 - Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

Austrian Reply:

There is no legal regulation.

- 11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?**



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- Yes (explain in which conditions)
- No

Austrian Reply:

No. In the proceedings on the granting of suspensive effect, the legality of the contested decision is not to be reviewed.

12. Can precautionary measures be challenged before the Supreme Court /Council of State?

- Yes
- Yes, but only if they pass a test of eligibility
- No

Austrian Reply:

Generally not. However, there are exceptions to this general rule: Decisions of the Federal Administrative Court granting - under certain conditions - suspensive effect to an appeal ex officio (see sec. 17 para. 1 BFA-VG) may be contested by the Federal Office for Immigration and Asylum by means of an official appeal before the Supreme Administrative Court.

13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?

- Yes
- No

Austrian Reply:

Yes.

14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

Austrian Reply:

We are unable to provide the requested figures.



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