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REPORT

**THE ORGANISATION OF WORK OF LAW CLERKS
AS SUPPORT FOR DECISION-MAKING
BY CONSTITUTIONAL COURT JUDGES**

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1. The present staff situation

The entire staff of the Austrian Constitutional Court - the Constitutional Court Judges excluded - consists of 83 employees, 32 thereof belonging to the juridically trained staff. Every employee has to be assigned to a post according to the Plan of Established Posts which forms an integral part of the annual Budget Act.

Among the juridically trained staff most persons holding management functions are civil servants. They are employees of the Federation under public law. All other employees are contract staff, i.e. they are employed by the Federation under a contract governed by civil law. Among this latter group 22 law clerks support the judges in the decision-making process.¹

2. Requirements to become a law clerk²

Generally, the law clerks are between 25 and 30 years of age when they join the Court. The minimum requirements for employment are completed law studies with very good results in public law courses as well as a couple of months of practice at courts of the ordinary judiciary. Professional experience is desirable, for instance in a solicitor's office. Frequently, assistant professors or civil servants employed by the authorities of the provinces (*Länder*) are sent to the Constitutional Court for a limited period of time (one or two years) in order to broaden their professional experience. Increasing emphasis is put on the knowledge of foreign languages and professional experience abroad (post graduate studies, stages with European institutions, etc.). The position of a law clerk is not meant to be one for lifetime; it rather represents an elitist career step for young, highly qualified jurists before they decide which professional career they will finally aspire.

3. Recruitment

Matters concerning the administrative staff of the Court (as well as budget requirements) lie within the President's authority. The Personnel Panel of the Court (consisting of President, Vice President and all reporting judges) has to be heard before important personnel matters are carried out, especially before recruiting staff or before entrusting a staff member with a management function (§ 13 Act on the Constitutional Court as amended by BGBl. I 123/2002).

In practice, the President - usually in agreement with the reporting judge having a vacancy - selects several candidates from among the applications regularly submitted to the Court. These applicants are invited to present themselves in a hearing before the Personnel Panel. Then the President decides in favour of one of the applicants.

¹ The Austrian Constitutional Court consists of the President, the Vice President, 12 judges and 6 substitute judges. The judges elect from among themselves reporting judges for a period of three years (re-election is possible and regularly practiced). Each of the presently eight reporting judges disposes of two to three law clerks. One law clerk is working for the Vice President who also acts as a reporting judge, however, to a lesser extent.

Generally, the Court gathers for four Court sessions per year which last three weeks each. In the case of need intermediate Court sessions can be convoked by the President. The time between the Court sessions is dedicated to the preparation of draft decisions. Every year the Court decides approximately 2000 to 2500 cases.

The Austrian Constitutional Court does not have the power to review decisions of the courts of ordinary judiciary.

² All denominations of functions at the Constitutional Court mentioned in this contribution (law clerk, reporting judge, etc.) are gender-neutral and apply likewise for persons of female and male gender. Two of the presently eight reporting judges and more than half of the law clerks are females. However, for a better legibility's sake in this contribution merely "he" is used instead of "he and/or she".

The Court rarely advertises a vacancy publicly since it is not obliged to apply the respective Statute (1989 Act on the Advertisement of Vacancies). The reason thereof is that the Personnel Panel - consisting of Constitutional Court Judges - guarantees the objectivity of the selection procedure.

4. Legal situation

Principally, a distinction has to be made between civil servants (*Beamte*) and contract staff (*Vertragsbedienstete*).

The legal basis for the regulations concerning civil servants are the Service Code for Civil Servants of 1979 (*Beamten-Dienstrechtsgesetz 1979*) and the Remuneration Act of 1956 (*Gehaltsgesetz 1956*), whereas the employment and remuneration conditions for the contract staff is regulated in the Contract Staff Act of 1948 (*Vertragsbedienstetengesetz 1948*). Up until now, all these statutes have been amended many times.

The salaries of both categories of state employees are determined by the legislator and laid down in the respective statutes.

In the vast majority of cases a contract under civil law will be concluded between the Federation represented by the President of the Constitutional Court and the applicant for a law clerk post. At first, the contract is limited to a six-month-trial-period. After this time the Personnel Panel decides - in consultation with the respective reporting judge - on the prolongation of the contract for an unlimited period of time. In spite of this fact, law clerks usually remain for two to four years at the Court.

Only if the applicant has already civil servant status when joining the Court (and if he is not just assigned to the Court by another state authority for a limited period of time), he has to be appointed on a post of the Court by the Federal President upon request of the President of the Constitutional Court.

5. Organization of work of law clerks

The law clerks form the Scientific Service.

Each law clerk is directly subordinate to one of the reporting judges who supervises his work. In rare cases (e.g. at times when the workload is unevenly distributed among the reporting judges) a law clerk can be subordinate to two judges for a certain period of time. The reporting judge, his law clerks and his secretary form an independent organizational unit within the Constitutional Court.

A short time ago, the function of a "Coordinator for the Scientific Service" had been created. It is carried out by a very experienced former law clerk. One of the Coordinator's tasks is to introduce the law clerks into their duties when they join the Court in order to guarantee uniform solutions to all issues arising in the course of the preparatory proceedings (which lie in the sole responsibility of the respective reporting judge) in all reporting judges' units. For this purpose the Coordinator has worked out or revised existing detailed papers on practically all steps of the decision-making process relevant for the law clerk (preparatory proceedings, collection of AutoText parts of decisions, jurisprudence on the costs of proceedings) with the aim of achieving the utmost uniformity with regard to technical aspects in the jurisprudence of the Court. Besides, the Coordinator supports and coordinates the law clerks in their daily work.

6. Work of the law clerks

Under the supervision of their reporting judge the law clerks perform a lot of different agenda.

After registration the registry submits a new file to one of the law clerks working for the reporting judge, to whom the case has been assigned by the President.

The law clerk will discuss the case with his reporting judge, who then decides whether the case may be rejected on procedural grounds (e.g. no jurisdiction of the Court to decide on the case, evident non-observance of the time limit for filing a complaint with the Court etc.) or refused (because the complaint will not have any reasonable chance of success or because it does not raise any constitutional question).

In case a rejection or a refusal is envisaged, the law clerk will prepare a draft decision and discuss it with his reporting judge. If the latter agrees, the draft signed by him will be forwarded to all other judges of the Court for deliberation during the next Court session.

If the reporting judge wishes to decide the case on the merits, preparatory proceedings will be initiated under his responsibility. It is then the law clerk's duty to take care of the necessary steps (service of the complaint on the other parties of the proceedings, allowing them to give a statement in defence within a fixed period of time, etc.)

When preparatory proceedings are concluded and the pro and contra arguments are laid down the law clerk is responsible for compiling all material necessary to prepare a draft decision (prejudices, literature, etc.). Experienced law clerks will even be entrusted with drafting parts of the draft decision.

Then the law clerk has to take care of the timely distribution of all finalized draft decisions to all other judges for deliberations during the next Court session.

During the deliberations and the oral hearings the law clerks draw up minutes of the discussion. The draft decision is then being adapted according to the results of the discussion laid down in the minutes.

After the President has signed the minutes and the final version of the draft decision, the law clerk is in charge of preparing the definite judgement and - after having carefully checked and corrected it - of its service on the parties of the proceedings.

The working atmosphere among the law clerks is very good. There is no hierarchy in the Scientific Service and therefore practically no rivalry between the law clerks because they normally do not have the possibility to improve their position.

In this context it has to be mentioned that most of the staff members holding management functions now (e.g. Secretary General, Deputy Secretary General, Coordinator of the Scientific Service, Head of Documentation Department, Head of Protocol, Staff Officer) have been former law clerks. The number of these functions is, however, very limited.

7. Prospects for law clerks

It can be assumed that a law clerk needs half a year (two Court sessions) to get acquainted with the special features of his work in the Court. After this period of time he usually is a valuable support for his reporting judge.

The longer a law clerk stays and the more experience he is able to gain, the more valuable he becomes for the Court. After several years the law clerk has a good knowledge of the jurisprudence of the Court, is well acquainted with all data bases and search strategies, is contributing to Constitutional Court decisions of utmost juridical and political importance and knows a lot about the decision-making process at the Court. All this - in addition to his initial qualification - makes a law clerk a much sought-after jurist in the administration, among advocates or in the private sector.

Although one or the other may be tempted to stay longer than may be good for him, it is very important for a law clerk to leave the Court in time because, as mentioned above, there is only very little chance for him to work his way up in the Court.