

**Administrative jurisdiction revised –  
independent administrative courts**



## Administrative jurisdiction revised – independent administrative courts

Effective on 1 January 2014, the Administrative Jurisdiction Act provides a thorough reform of the system of administrative jurisdiction in Austria. Administrative procedures are to be handled more rapidly and more citizen-oriented. Affected parties are offered more legal redress through a two-stage court revision process for administrative decisions. Nevertheless, in addition to the new procedural rules consideration must also be given to complex transitional provisions for proceedings pending on the date of the Amendment's effectiveness.

A key change of the reform starts from the challenging of orders issued by administrative authorities. Orders can no longer be appealed against: the various stages of appeal within the administrative system – i.e. from the deciding authority to the next higher authority – are to be abolished, with a single exception – decisions in matters pertaining to a municipality's own sphere of action. In the future, **complaints** against a decision by an administrative authority, rather than being submitted by appealing to the next higher government authority, need to be submitted by appealing to an **administrative court**. To this end, nine administrative courts at state level and two at federal level are about to be set up and will take up their work on 1 January 2014. These administrative courts will not just replace the higher-level government authorities but also the Independent Administrative Senates (UVS) and more than 120 special authorities run by the federal and state governments, including the Federal Public Procurement Office (BVA), the Data Protection Commission and the Supreme Court for Patents and Brands, all of which will be dissolved as of the end of this year.

A complaint needs to be filed with the administrative authority which has issued the order **within four weeks**. The authority must submit the complaint to the competent administrative court. Optionally and similar to the preliminary appellate decision of the previous system,

it may pass a **preliminary decision** in which it may set aside or modify the order, or reject or dismiss the complaint. In the latter case, the complainant is entitled to request, within two weeks, that the complaint be submitted to the competent administrative court. This court then has to **rule on the merits of the case within a period of six months after the complaint has been submitted to the court**. If the government authority has not sufficiently ascertained the facts of the case, the court may decide to remit the case to said authority. The principle that public law courts are restricted to reviewing the lawfulness of an administrative decision has thus been jettisoned in favour of accelerating the procedure. Up to now, courts were limited to setting aside an order due to its unlawfulness and remitting the case to the respective authority for a new decision. In case an administrative court prospectively is belated, an application for setting a time limit can be filed with the Supreme Administrative Court (VwGH).

Decisions by the administrative courts may be litigated by an **appeal ("Revision") to the VwGH** which is now, in turn, also authorised to rule on the merits of the case. Such an appeal is open for all administrative issues but is admissible only when the ruling depends on solving a legal issue which is of fundamental importance. Similarly, a complaint to the Supreme Constitutional Court



(VfGH) is permissible only with regard to a ruling by the administrative court, but not against an order by an administrative authority.

The entry into force of the amendment poses **complex transitional issues**. The transition to a two-stage system of administrative jurisdiction – with the exception of matters within the competence of the Federal Fiscal Court (UFS) – is regulated in a special Administrative Jurisdiction Transition Act. Orders approved after 30 September 2013 must include information on the transition rules and the new rules (such as deadlines, competent authorities) applicable once the Amendment becomes effective.

Competence for procedures of independent administrative authorities (such as UVS, UFS, BVA and the other special authorities to be dissolved) will pass to the administrative courts as of 1 January 2014. Pending procedures may be continued at the relevant administrative court only under certain circumstances; if these are not met, they need to be recommenced.

An order by an administrative authority service of which has been arranged before the expiry of 31 December 2013 is deemed to have been served to all parties to which such service has been arranged even when it has not been validly served by the end of that day. This service assumption is explained by the fact that orders can be effectively served only when the government authority issuing the order (still) exists at the time of service. Without this service assumption the legal validity of many orders would be endangered. This, however, does not reduce periods allowed for appeal: if an order is in actual fact served after 31 December 2013, the period commences only on the date of actual service. Similarly, enforcement of the order is suspended until such date. If no effective service is made before the expiry of 30 June 2014, the order ceases to be in force.

Periods for remedies and complaints against orders by government authorities which are served prior to 31 December 2013 for which the periods for remedies have not expired by the end of that day will recommence as of 1 January 2014. **They end on 29 January 2014**

**in the case of appeals (then “complaints”) against orders by government authorities and on 12 February 2014 in the case of complaints (then “appeals”) filed with the VfGH or VwGH.** Any remedies and complaints filed prior to the turn of the year are deemed to be complaints and appeals filed timely under the new legal situation.

For procedures pending at the VfGH and VwGH upon expiry of 31 December 2013, the administrative courts take the place of the independent administrative authorities. Upon completion of a procedure dealing with a complaint against an order or a complaint against a delay, the procedure may, if necessary, be continued before the competent administrative court.

A special rule applies to orders notified orally by an independent administrative authority before the turn of the year: if no arrangement for the service of the written order has been made before the expiry of 31 December 2013, the order becomes ineffective as of the end of that day.

**The introduction of a two-stage administrative jurisdiction system is probably the most important legal redress in Austria’s history post World War II. It remains to be seen whether the new provisions will actually produce the desired simplification and acceleration of administrative procedures. For the legal subjects, it is important to note that the new rules and competences apply not just to administrative proceedings filed on or after 1 January 2014 but also cover administrative issues pending before that date.**



For further information on the subject please contact:

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## Enhancement for Preslmayr



**Gerald Trieb** has been admitted to bar and joined our firm as a new partner in September 2013. He could persuade with his competence and personality as an associate at our firm for several years. Gerald Trieb will predominantly advise our clients in the areas of data protection law, banking law, insolvency law and restructuring.



**Petra Kollmann** enhances our team as an attorney at law since September 2013. She mainly practices in the areas of commercial law, warranties and damages, civil law as well as civil procedure.

## Electronic P-News

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