

## **Working Group IX**

### **31 October 2003 – Inaugural Meeting**

The Working Group inaugurates and unanimously elects Univ.-Prof. Dr. Clemens Jabloner (with one abstention) as vice-chairman. The chairman Univ.-Prof. Dr. Herbert Haller suggests to focus the work on “ordinary jurisdiction”, “public law courts”, and “introduction of administrative jurisdiction in the provinces”. To tackle the first point, experts will be heard, for the last point a small working group will be formed.

The vice-chairman suggests that Working Group IX shall take over the question of “preventive administration of the advisory boards” from Working Group IV and to list the independent authorities in three categories. The Working Group agrees on this.

### **21 November 2003 – 1<sup>st</sup> Meeting of the “Small Working Group”**

Univ.-Prof. DDr. Christoph Grabenwarter is asked to explain the draft of the Constitutional Law Department of the Federal Chancellery of 1998 on the introduction of administrative jurisdiction in the provincial diets which he revised. Then the Working Group discusses questions such as the two tiers of administrative jurisdiction, the introduction of nine or ten administrative tribunals (meaning “just” nine provincial administrative tribunals or nine provincial administrative tribunals plus one federal administrative court of first instance); the Higher Administrative Court as mere court of appeal; a uniform law of procedure for all administrative tribunals; the role of the judges; the scope of power of decision; the kind of power of decision of the future administrative tribunals (appeals and referrals); keeping Vienna’s specific role; and the future fate of the collegial bodies with a quasi-judicial structure.

### **15 December 2003 – 2<sup>nd</sup> Meeting of the “Small Working Group”**

The Small Working Group continues its discussion on the introduction of administrative jurisdiction in the provinces and debates especially questions of how to nominate the judges of the future administrative tribunals (provincial administrative tribunals and federal administrative tribunals of first instance).

**16 December 2003 – 2<sup>nd</sup> Meeting of the Working Group**

The Working Group hears the following experts: Dr. Barbara Helige, the President of the Austrian Association of Judges, Dr. Wolfgang Fellner, head of the General Affairs Division in the Federal Ministry for Justice, Dr. Klaus Schröder, the chairman of the Department of Judges and Public Prosecutors in the Trade Union for Public Officials, Dr. Wolfgang Swoboda, the President of the Association of Austrian Public Prosecutors, and Dr. Walter Presslauer, the Procurator General. Afterwards the Working Group discusses with the experts about the reform of the court organisation, the increase of independence of the judges, and the constitutional position of the public prosecutors.

**22 January 2004 – 3<sup>rd</sup> Meeting of the “Small Working Group”**

The Small Working Group continues its discussion on the introduction of administrative jurisdiction in the provinces. They debate especially the nomination and role of the judges, the change of the current system of Independent Administrative Senates, the Higher Administrative Court as mere court of appeal, the question of default notices, the inclusion of financial jurisdiction; and the kind of power of decision of the future administrative tribunals (appeals and referrals).

**26 January 2004 – 4<sup>th</sup> Meeting of the “Small Working Group”**

The Small Working Group discusses the introduction of administrative jurisdiction in the provinces and of the federal administrative tribunals of first instance. They debate in detail if and how existing collegial bodies with a quasi-judicial structure and other independent administrative authorities may become part of the future administrative courts are whether they should remain independent bodies.

**28 January 2004 – 3<sup>rd</sup> Meeting of the Working Group**

The Working Group hears three speeches on ordinary jurisdiction and especially on the organisation of the courts held by Dr. Helmut Hubner, Dr. Gerhard Benn-Ibler and Dr. Bernhard Fritzberg. Afterwards they hear two speeches by Mag. Gero Schmied and Dr. Hans Linkesch on administrative jurisdiction in the provinces. Finally the Working Group discusses these topics with the experts.

**12 February 2004 – 4<sup>th</sup> Meeting of the Working Group**

The Working Group debates the relation of the Highest Courts to each other and discusses questions concerning the state liability and the ordinary jurisdiction.

**13 February 2004 – 5<sup>th</sup> Meeting of the Working Group**

The Working Group speaks about state liability and discusses questions concerning legal protection officers and the Human Rights Advisory Board.

**27 February 2004 – 6<sup>th</sup> Meeting of the Working Group**

The Working Group debates the state liability and discusses the first three sections of the draft report (general questions; ordinary jurisdiction; public law courts).

**19 March 2004 – 7<sup>th</sup> Meeting of the Working Group**

The Working Group leads a final discussion on the draft report.

**6 May 2004 – 8<sup>th</sup> Meeting of the Working Group**

The Working Group discusses questions concerning the set-up of public law courts such as openness when nominating members (hearings?) and the problem of the "dissenting opinion". Afterwards they continue to debate questions of state liability – especially high-court decisions violating community law. Finally they speak about questions concerning lay jurisdiction.

**7 June 2004 – 9<sup>th</sup> Meeting of the Working Group**

The Working Group leads a final discussion on lay jurisdiction and debates who is entitled to appeal before the Supreme Constitutional Court (extension to associations, office-holders and control bodies?).

## **Additional Mandate**

### **2 July 2004 – 10<sup>th</sup> Meeting of the Working Group**

The Working Group discusses how to proceed with the additional mandate. Then the members debate, if and how section "B. Jurisdiction" of the Austrian Constitution could be tightened up. Finally, the Working Group starts a detailed debate on the introduction of administrative jurisdiction of first instance based on a paper of DDr. Christoph Grabenwarter and Dr. Clemens Jabloner.

### **1 September 2004 – 11<sup>th</sup> Meeting of the Working Group**

The Working Group discusses the draft paper on the installation of a parliamentary committee to improve control and transparency regarding the authority of ministers to give instructions and the introduction of the "dissenting opinion" in the Supreme Constitutional Court. Afterwards the members debate the introduction of legal proceedings of highest authorities in front of the Supreme Constitutional Court. Finally they talk about merit incentives for and merit control of judges.

### **15 September 2004 – 12<sup>th</sup> Meeting of the Working Group**

The Working Group debates the introduction of administrative tribunals of first instance based on a revised mutual paper by Univ.-Prof. DDr. Christoph Grabenwarter und Univ.-Prof. Dr. Clemens Jabloner.

### **23 September 2004 – 13<sup>th</sup> Meeting of the Working Group**

The Working Group finishes the debate about the introduction of administrative tribunals of first instance. Then the members discuss the introduction of a judicial review based on a paper of Univ.-Prof. Dr. Clemens Jabloner, Univ.-Prof. DDr. Christoph Grabenwarter and Dr. Johann Rzeszut. Finally they speak about the introduction of a constitutional complaint against the judgment.

### **11 October 2004 – 14<sup>th</sup> Meeting of the Working Group**

The Working Group discusses whether to introduce legal proceedings of highest authorities in front of the Supreme Constitutional Court, whether to set up an "Independent Judiciary

Senate", the authority of the Federal Minister of Justice to give instructions, whether to stipulate state liability when violating national law in the constitution, and the future fate of the collegial bodies with a quasi-judicial structure.

**27 October 2004 – 15<sup>th</sup> Meeting of the Working Group**

The Working Group leads a final debate of whether to set up an "Independent Judiciary Senate", whether to stipulate state liability when violating national law in the constitution and the results of the expert committee installed by the Praesidium.

**28 October 2004 – 16<sup>th</sup> Meeting of the Working Group**

The Working Group debates the draft report about the additional mandate presented by the chairman.