AUSTRIA

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I. OVERVIEW

The Republic of (then: German-)Austria was founded in the aftermath of the First World War by a unilateral declaration made by representatives from the German-speaking component states (*Länder*) of the former Austro-Hungarian Empire in Vienna. Following this declaration of 21 October 1918, the constituent *Länder* themselves also gave their explicit approval to join the new Republic. It took two more years, however, to adopt the new Federal Constitution (*Bundes-Verfassungsgesetz*, hereafter *B-VG*),[1] which was negotiated between the political parties as well as between the central government and the *Länder*. Federalism has for many years been a crucial issue of constitutional discussion, but despite almost innumerable attempts to improve the federal system, no large-scale reform has been realized yet.

Although it is one of the leading constitutional principles, Austrian federalism has always been described as "weak" due to a high degree of centralism within the federal system. Centralism becomes most manifest in the weakness of the second chamber at the federal parliamentary level, which is composed of *Länder* representatives, as well as in the distribution of competences. Moreover, the federation has the power to enact the Fiscal Adjustment Act which usually favours federal finances, even though the *Länder* and municipalities take part in the political negotiations preceding its enactment. The *Länder* do not have a broad sphere of constitutional autonomy either: Since the Federal Constitution determines most institutional aspects of the *Länder* (such as the *Land* Parliaments, *Land* Governments and the relations between them), they can add little more than details, and the risk of restrictive judgments delivered by the Constitutional Court is high. On the other hand, however, the *Länder* are responsible for the execution of many federal affairs that, even though they remain a matter of the federal competence, are executed by the *Land* Governors or the Independent Administrative Senates in the *Länder* (indirect federal administration). Moreover, a number of instruments of co-operation and co-ordination serve *Länder* interests: The *Länder* cannot only conclude treaties with each other and with the federation respectively under Article 15a B-VG, they may also participate to a considerable degree in the national decision-making in EU matters. Apart from these formal instruments, the *Länder* also co-operate informally through joint conferences (the most important of which is the Conference of *Land* Governors), their representatives and their own liaison office in Brussels. Austrian federalism can therefore be described as co-operative as well as rather symmetric, since the *Länder*, with few exceptions, all have the same constitutional status.

Since Austria is a civil law jurisdiction, court decisions do not have any binding effect beyond the case in which they are rendered. In practice they nevertheless shape the law as persuasive to practitioners. This is particularly true for rulings by the three supreme courts, the Austrian Supreme Court (*Oberster Gerichtshof*, reviewing cases in civil, commercial and criminal matters), the Constitutional Court (*Verfassungsgerichtshof*, dealing with constitutional matters), and the Administrative Court (*Verwaltungsgerichtshof*, hearing appeals in administrative matters including tax cases).

[1] Strictly speaking, the Austrian Federal Constitution does not only consist of the B-VG, but also of a large number of additional federal constitutional acts, single federal constitutional provisions within ordinary federal laws and several laws dating back to the former Austro-Hungarian monarchy (until 1918), which, as well as certain state treaties, were given the status of federal constitutional law. Very recently, however, their number has been reduced. An English translation of a selection of important federal constitutional laws can be found at http://www.ris.bka.gv.at/Englische-Rv/.

II. THE FEDERAL DISTRIBUTION AND EXERCISE OF LAWMAKING POWER

1. The allocation of powers is entrenched mainly in Articles 10 through 15 of the B-VG. The federation is responsible for the legislation and execution of an impressive number of tasks (Art 10 B-VG). A much shorter list of matters (Art 11 B-VG) includes those that are shared between the federation (as regards legislation) and the *Länder* (as regards execution). Another rather short list comprises areas in which the federation is responsible for framework laws while the *Länder* are called to implement them (through their own legislation) and to execute the resulting laws (Art 12 B-VG). As is usual in most federal systems, the *Länder* also hold a residual competence (Art 15 para 1 B-VG), being thus responsible for all matters that have not been enumerated explicitly in favor of the federation. Since most (important) matters are explicitly enumerated, however, not very much remains in the residual *Länder* sphere. Yet, apart from these main distribution models, there are a large number of more specific power-sharing regimes, within and without the B-VG.

The catalogue of Articles 10-15 B-VG includes the following specific competences:

(i) Exclusive federal powers under Article 10 B-VG

1. The Federal Constitution, in particular elections to the National Council, and referenda as provided by the Federal Constitution; the Constitutional Court;

2. External affairs including political and economic representation with regard to other countries, in particular the conclusion of international treaties, notwithstanding *Länder* competences in accordance with Article 16 paragraph 1; demarcation of frontiers; trade in goods and livestock with other countries; customs;

3. Regulation and control of entry into and exit from the Federal territory; immigration and emigration; passports; deportation, turning back at the frontier, expulsion, and extradition from or through the Federal territory;

4. Federal finances, in particular taxes to be collected exclusively or in part on behalf of the Federation; monopolies;

5. The monetary, credit, stock exchange and banking system; the weights and measures, standards and hallmark system;

6. Civil law affairs, including the rules relating to economic association but excluding regulations which render real property transactions, legal acquisition on death by individuals outside the circle of legal heirs not excepted, with aliens and transactions in built-up real property or such as is earmarked for development subject to restrictions by the administrative authorities; private endowment affairs; criminal law, excluding administrative penal law and administrative penal procedure in matters which fall within the autonomous sphere of competence of the *Länder*; administration of justice; establishments for the protection of society against criminal or otherwise dangerous elements; the Administrative Court; copyright; press affairs; expropriation in so far as it does not concern matters falling within the autonomous sphere of competence of the *Länder*; matters pertaining to notaries, lawyers, and related professions;

7. The maintenance of peace, order and security including the extension of primary assistance in general, but excluding local public safety matters; the right of association and assembly; matters pertaining to personal status, including the registration of births, marriages and deaths, and change of name; aliens

police and residence registration; matters pertaining to weapons, ammunition and explosives, and the use of fire-arms;

8. Matters pertaining to trade and industry; public advertising and commercial brokerage; restraint of unfair competition; patent matters and the protection of designs, trademarks, and other commodity descriptions; matters pertaining to patent agents; matters pertaining to civil engineering; chambers of commerce, trade, and industry; establishment of professional associations in so far as they extend to the Federal territory as a whole, but with the exception of those in the field of agriculture and forestry;

9. The traffic system relating to the railways, aviation and shipping in so far as the last of these does not fall under Article 11; motor traffic; matters, with exception of the highway police, which concern roads declared by Federal law as Federal highways on account of their importance for transit traffic; river and navigation police in so far as these do not fall under Article 11; the postal and telecommunications system; environmental compatibility examination for projects relating to these matters where material effects on the environment are to be anticipated and for which the administrative regulations prescribe an alignment definition by way of ordinance;

10. Mining; forestry, including timber flotage; water rights; control and conservation of waters for the safe diversion of floods or for shipping and raft transport; regulation of rivers; construction and maintenance of waterways; regulation and standardization of electrical plants and establishments as well as safety measures in this field; provisions pertaining to electric power transmission in so far as the transmission extends over two or more *Länder* matters pertaining to steam and other power-driven engines; surveying;

11. Labour legislation in so far as it does not fall under Article 12; social and contractual insurance; chambers for workers and salaried employees with the exception of those relating to agriculture and forestry;

12. Public health with the exception of burial and disposal of the dead and municipal sanitation and first aid services, but only sanitary supervision with respect to hospitals, nursing homes, health resorts and natural curative resources; measures to counter factors hazardous to the environment by exceeding input limits; clear air maintenance notwithstanding the competence of the *Länder* for heating installations; refuse disposal in respect of dangerous refuse, but in respect of other refuse only in so far as a need for the issue of uniform regulations exists; veterinary affairs; nutrition affairs, including foodstuffs inspection; regulation of commercial transactions in seed and plant commodities, in fodder and fertilizer as well as plant preservatives, and in plant safety appliances including their admission and, in the case of seed and plant commodities, likewise their acceptance;

13. Archive and library services for the sciences and specialist purposes; matters pertaining to Federal collections and establishments serving the arts and sciences; matters pertaining to the Federal theatres with the exception of building affairs; the preservation of monuments; religious affairs; census as well as – allowing for the rights of the *Länder* to engage within their own territory in every kind of statistical activity – other statistics in so far as they do not serve the interests of one *Land* only; endowments and foundations when their purposes extend beyond a single *Land*'s sphere of interests and they have hitherto not been autonomously administered by the *Länder*;

14. Organization and command of the Federal police and the Federal gendarmerie; settlement of the conditions pertaining to the establishment and organization of other protective forces with the exception of the municipal constabularies; settlement of the conditions pertaining to the armament of the protective forces and their right to make use of their weapons.

15. Military affairs; matters pertaining to war damage and welfare measures for combatants and their surviving dependants; care of war graves; whatever measures seem necessary by reason or in consequence of war to ensure the uniform conduct of economic affairs, in particular with regard to the population's supply with essentials;

16. The establishment of Federal authorities and other Federal agencies; service code for and staff representation rights of Federal employees;

17. Population policy in so far as it concerns the grant of children's allowances and the creation of burden equalization on behalf of families;

18. Elections to the European Parliament.

(ii) Concurrent federal powers under Article 11 B-VG

1. Nationality;

2. Professional associations in so far as they do not fall under Article 10, but with the exception of those in the field of agriculture and forestry as well as in the field of alpine guidance and skiing instruction and in that of sport instruction falling within *Länder* autonomous competence;

3. Social housing affairs except for the promotion of domestic dwelling construction and domestic rehabilitation;

4. Highway police;

5. Sanitation;

6. Inland shipping as regards shipping licences, shipping facilities and compulsory measures pertaining to such facilities in so far as it does not apply to the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters; river and navigation police on inland waters with the exception of the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters;

7. Environmental impact assessment for projects relating to these matters where material effects on the environment are to be anticipated; in so far as a need for the issue of uniform regulations is considered to exist, the approval of such projects.

(iii) Concurrent federal powers under Article 12 B-VG

1. Social welfare; population policy in so far as it does not fall under Article 10; public social and welfare establishments; maternity, infant and adolescent welfare; hospitals and nursing homes; requirements to be imposed for health reasons on health resorts, sanatoria, and health establishments; natural curative resources;

2. Public institutions for the adjustment of disputes out of court;

3. Land reform, in particular land consolidation measures and resettlement;

4. The protection of plants against diseases and pests;

5. Matters pertaining to electric power in so far as they do not fall under Article 10;

6. Labour legislation and the protection of workers and employees in so far as it is a matter of workers and employees engaged in agriculture and forestry.

Federal powers are always established by enumerating them explicitly (no residual competence of the federation). Several powers are granted to the federation on the condition that "there is need for uniform federal law" (objective parameter) or if "the federation considers uniform federal law necessary" (subjective parameter with discretionary power for the federal government).

Another type that could be mentioned here is the federal government's competence to enact certain pieces of subsidiary legislation if the *Länder* fail to do so in time (Art 15 para 6, 16 para 4, 23d para 5 B-VG). This concerns cases where the *Länder* are responsible for the implementation of international treaties, federal framework laws and EU law. The *Länder* remain competent, however, which means that if they enact legislation at a later date, the federal government's subsidiary measures cease to be in force.

While it is hard to assess which of the competences allocated to the federation are most important, key matters include foreign affairs, civil law, commercial law, criminal law, defence, labour law, civil , criminal and administrative procedure, fiscal equalisation, trade and industry, immigration, the maintenance of peace and security, and many matters pertaining to schools and education, environmental law, to land-use planning, health and social welfare etc. There are, however, reservations and exceptions to nearly all of the subject matters.

2. Regarding the areas of the law remaining within the jurisdiction of the *Länder*, it is important to note that the *Länder* have residual competence under Article 15 paragraph 1 B-VG which means that all subject-matters not enumerated as federal are *Länder* powers. Although this clause seems to be *Länder*-friendly, there is, in fact, little that is left to them.

Some of their powers are enumerated insofar as they are concurrent. According to constitutional doctrine and case law, enumerated subject-matters have to be interpreted in light of their historic meaning (including more modern matters, if there is a close and systematic connection between the historic meaning and the new matter). If there remains any doubt, whether a subject-matter is a federal or a *Land* power, it is regarded as the latter. Again, this method of interpretation is not applied very often, since most subject-matters clearly fall under a federal power.

Exclusive powers under the residual competence are not enumerated explicitly, but comprise those "remaining" competences that are not listed as federal . One could mention building codes, fishery, hunting, fire police, tourism, sport, local government, transfer of real estate, agriculture, youth protection, protection of nature, general aspects of zoning etc. For the concurrent powers see above (Art 11 and 12 B-VG).

In principle, the Austrian allocation of powers is characterized by the principle of exclusivity of (either federal or *Land*) powers. Even in case of Articles 11 and 12 of the B-VG, where competences are shared, powers are not really concurrent as the entities have different spheres of competence: only the federation is competetent to enact (framework-) legislation while the *Länder* have the power to enact implementing legislation and to execute the law. Nevertheless, there are several exceptions to this rule: As mentioned, some powers are granted to the federation on the condition that "there is need for a uniform federal law" (objective parameter) or if "the federation considers uniform federal law as necessary" (subjective parameter with discretionary power for the federal government). In this case, uniform federal laws may be adopted, and the *Länder* may only deviate from these uniform federal laws if this is "indispensable".

In a few cases, ordinary federal laws may entitle the *Land* legislatures to adopt specific legislation on a single-issue-basis (e.g., in water law). If, however, the federal law-maker wants to retain the competence for these issues, the *Länder* receive no power over them. Another problem is the interpretation of subject-matters, since an extensive interpretation of federal powers reduces the matters that fall under the residual competence.

While it is difficult to assess what the most important areas of exclusive or predominant component state government regulation are, one could mention the *Land* competence on general aspects of zoning, building codes, nature protection, local government and the transfer of real property as examples.

A legislative competence of particular quality and scope is the constitutional autonomy of the *Länder* (Art 99 B-VG). They are entitled to adopt their own *Land* constitutional law as long as it complies with the Federal Constitution (which, however, constrains the *Land* constitutions to a high degree).

Since powers are usually exercised exclusively, there are hardly any cases where the federation and the *Länder* enact rules in exactly the same field or under the same power. One of the few examples occurs under Article 15 paragraph 9 of the B-VG, according to which the *Länder* may adopt ancillary legislation in the fields of civil and criminal law (which are classic federal powers) if this is "indispensable" for the effectiveness of their own competences. Another case of co-existence occurs in those rare cases where both a federal and a *Land* law are required to put a certain measure into effect (e.g., if federal and *Land* borders are rearranged). Under the aegis of co-operative federalism, the federation and the *Länder* may also conclude formal agreements (called concordats) in complex matters which require harmonised legislation. This concerns areas within both entity's sphere of power, but involve separate, yet intersecting, competences.

3. Residual power is allocated to the *Länder* under Article 15 paragraph 1 of the B-VG. As regards the (very complicated) subject-matter of schools and education (Art 14 and 14a B-VG), *Länder* powers are enumerated, whilst the federation holds the residual power, but this is only a "microcosm" within the "macrocosmic" allocation of powers.

4. Since Austria is a highly centralistic federal state, it is perhaps surprising to find that no principle such as the "supremacy of federal law" exists. There is only the supremacy of federal constitutional law that has to be observed under all circumstances. This means that ordinary federal laws on the one hand and constitutional or ordinary *Land* laws on the other hand are on an equal level. There may be particular instances, however, where ordinary federal laws also enjoy "supremacy", e.g. federal framework laws under Article 12 B-VG, or "requirement laws in need of uniformity" under Article 11 paragraph 2 B-VG, etc.

According to the Constitutional Court, both the federation and the *Länder* may regulate the same subject matter if they address different aspects. Since complex subject matters involving a variety of aspects may – in the long run - lead to a plethora of different norms with contradictory effects, the Constitutional Court assumes that Austrian federalism is based on a "principle of mutual consideration" (not explicitly mentioned in the Federal Constitution) that obliges both the federation and the *Länder* to consider the legislative interests of the other entity in order to avoid undermining them excessively. *In abstracto*, the principle treats both tiers equally, although it has hitherto been applied more often in favor of the federation. Moreover, it allows a (federal or *Land*) legislature to enact ancillary rules that fall under another tier's competence if they merely serve the other's interests and make its laws better applicable.

5. The municipalities, though they form the "third tier" of territorial entities in Austria, have no law-making powers and do not form part of the federal system in principle. All their "competences", including those that are exercised within their "autonomous" sphere (which, being broadly defined in the Federal

Constitution, nevertheless require explicit transferral to the municipal level by ordinary laws of the federation or *Länder*), derive from either federal or *Land* competences. These municipal "competences" are always of an administrative rather than legislative nature, which corresponds to a municipal organisation that provides for elected councils rather than parliaments. The highest, i.e. most abstract, type of norm that may be issued by a municipality is that of a "decree" or "ordinance".

III. THE MEANS AND METHODS OF LEGAL UNIFICATION

1. One way to accomplish legal unification is via directly (and explicitly) applicable constitutional norms addressing the exercise of central power. For example, Article 21 paragraph 4 B-VG provides: In order for the service code, the staff representation regulations, and the employee protection scheme of the federation, the *Länder,* and the municipalities to develop along equal lines, the federation and the *Länder* have to inform each other about their plans in these matters.

According to Article 4 B-VG, the federal territory is a uniform currency, economic and customs area, and intermediate customs barriers or other traffic restrictions may not be established within the federal territory.

Another example is the so-called "principle of homogeneity" regarding the electoral system, where the B-VG explicitly stipulates (Art 95, 117 B-VG) that the *Länder* must not adopt electoral laws (with regard to *Land* or municipal elections) which would narrow the (active and passive) suffrage in comparison to elections at the federal level.

Apart from these explicit provisions, all other parts of the Federal Constitution, insofar as they do not refer to the federal level only, also have a unifying effect. This is true not only for the leading constitutional principles (democracy, republicanism, federalism, rule of law, separation of powers, human rights), but also for other principles or constitutional provisions of a more general character. With regard to the principle of democracy, the Constitutional Court has frequently struck down *Land* legislation, including *Land* constitutional legislation, if it did not observe the absolute predominance of representative democracy, even though provisions on the relation between representative and direct democracy were not explicitly provided in the Federal Constitution.

In the cases in which the federation may enact uniform laws if it "deems" them necessary or if they "are" necessary, uniform laws were enacted at the earliest date.

Where the *Länder* fail to implement EU law, international treaties or federal framework laws, the federation may enact subsidiary measures, but the *Länder* do not thereby lose their competence to enact measures at a later date.

In matters falling under Article 12 B-VG, the federation may enact framework laws which the *Länder* have to implement through their own legislation, and to execute.

The federation is responsible for fiscal equalisation, and although Fiscal Equalisation Acts are usually negotiated between representatives of the three tiers for political reasons; the federation is clearly predominant in these negotiations. One recent example how the federal government forces the *Länder* to restrict their budgets is a provision of the Fiscal Equalisation Act that obliged the *Länder* to pay heavy fines unless they entered into a "voluntary" agreement under Article 15a B-VG binding themselves to reach an annual budgetary surplus (which shall help to keep Austria within the EU convergence criteria).

The *Länder* prefer to enter into agreements with each other in order to achieve uniform standards throughout Austria rather than face the threat of a federal constitutional amendment, which would transfer one of their powers to the federal level (whereas the Federal Council would have an absolute veto in that case, it has never exercised such a veto because it largely neglects *Länder* interests).

Where the *Länder* are obliged to implement EU law (as far as it is not directly applicable) when it falls into their sphere of powers, the federal government is obliged to inform the *Länder* without undue delay about all plans at the European level that may concern them. Since EU law often affects several aspects and competences from the perspective of the Austrian allocation of powers, both the federal government and the *Länder* may be called on to implement it. In this case, the federal government has a particularly strong position insofar as it receives and distributes most information from the EU and works as a clearing house or interface between the EU and the *Länder* so that the federal government appears almost as a supervisory authority of the sub-units.

The Austrian Constitutional Court does not really "create" uniform norms, since courts in general cannot "create" norms in Austria inasmuch as their decisions are not binding in any general normative sense. The Constitutional Court has nevertheless developed what could be called a "homogeneity judicature" in several fields. Note also that the Austrian *Länder* have no judiciary of their own. The difficulty is that the Federal Constitution consists of a variety of different principles that are phrased in a rather vague manner. Occasions may arise for the Court to interpret these principles in a way that cannot always be predicted. One example is the Court's judgment on a *Land* constitutional provision that provided more instruments of direct democracy at the *Land* level than the Federal Constitution did at the federal level. Although the Federal Constitution does not contain any explicit provision that refers to direct democracy at the *Land* level, the Court held that the explicit provisions for the federal level contained implicit restrictions also with regard to direct democracy within the *Länder* .

The Constitutional Court may also review cases on the need to enact uniform federal laws (except the cases in which it is up to the federal government's discretion to "deem" uniform federal laws necessary) or where the *Länder* thought it indispensable to deviate from these laws.

2. The Federal Constitution provides for a specific formal instrument that allows the *Länder* to co-ordinate their law-making where necessary. Under Article 15a B-VG, they may conclude formal agreements (concordats), either with each other or with the federal government. This is particularly useful in complex fields where more than one tier is concerned, where harmonized laws are necessary, and where such a voluntary agreement is to be preferred to a federal constitutional amendment that re-allocates powers. Such agreements are concluded very frequently, e.g., in the fields of environmental protection, development planning, health and social welfare.

The governors of the Austrian *Länder* meet several times a year in the so-called "*Landeshauptmännerkonferenz*" which is an informal and voluntary body. Being a stronghold of *Länder* power that is much better able to defend *Länder* interests than the Federal Council, the *Landeshauptmännerkonferenz* has been called a "power in the shadow". There are also other joint bodies where the *Land* executives co-operate, such as the conference of certain senior public servants at the *Land* level or conferences where certain members of the *Land* governments meet. The *Länder* have also informally established their own "liaison office", which facilitates co-operation and co-ordination between them and is particularly valuable with regard to the exchange of information.

3. In light of the very limited range of subject matters remaining within the legislative powers of the *Länder*, there is little room for internal unification of originally diverse laws to begin with. While academic writing occasionally proposes changes to specific solutions found in the laws of one *Land* by pointing at the corresponding rules in other *Länder*, or by suggesting (mostly in descriptive rather than

legislative terms) a new general model for a specific subject matter, there is no established initiative promoting harmonization by way of restatements or by model laws in any of the areas left to the *Länder*.

There are some "semi-state" actors which play a certain role in the legislative process not only on the federal, but also on the state level. The principal economic interest groups, including the federal chambers of commerce, agriculture and labor, for example, all have corresponding institutions on the level of the *Länder*. There is compulsory membership in these public entities, which are regulated by federal law. Among other tasks and responsibilities, they are called upon to comment on legislation that affects the interests of their constituent groups, and they are invited to nominate members to certain committees and advisory bodies. To the extent legislation on the level of the component states concerns the agenda of these interest groups, it is highly likely in practice that their representatives will pursue a uniform strategy throughout the country, which may play a certain limited role in supporting harmonization. However, this impact depends more on their political weight on a day-to-day basis than on any pre-determined degree of importance.

Other institutions that may support legal harmonization include the Austrian Standards Institute (*Österreichisches Normungsinstitut*), a non-profit organization accredited by federal law, which prepares the Austrian Standards (*ÖNORMEN*) for industry. Furthermore, there are true non-state interest groups which are more or less active in promoting uniformity in all component state laws for the subject matters affecting their constituency. For example, the Austrian Alpine Club (*Österreichischer Alpenverein*) is interested in matters of the environment and regional planning. However, these activities can best be described as lobbying, and their influence on the actual legislative process does not exceed the impact of equivalent activities in other countries.

4. Law is currently taught at six Austrian universities (including the Vienna University of Economics and Business Administration, which offers a special business law degree program), each attracting students from the entire country, even though for practical reasons, faculties tend to draw their student bodies from the regions geographically closer to them.

Legal education focuses primarily on system-wide law, not only because this indeed accounts for the majority of laws in force. Regulations do not restrict law faculties' curricula to any specific component state law but invariably speak of "Austrian" law without any separation between federal and component state law. However, certain aspects of administrative law falling under the competence of the *Länder* may be selectively referred to in class, with a natural tendency of each faculty member to draw such examples from the *Land* where the university is seated or from adjacent *Länder*. However, textbooks for students are invariably aimed at the entire country, and exams in theory are not limited to one or more specific *Länder* (even though the range of subjects on a particular exam may in practice be reduced to the laws of a specific *Land* by announcement of the examiner in advance).

Bar admission is governed by federal law, the Attorneys Act (*Rechtsanwaltsordnung*, RAO) and the Bar Examination Act (*Rechtsanwaltsprüfungsgesetz*, RAPG). Admission to the bar is overseen by the Chamber of Attorneys (*Rechtsanwaltskammer*) in the *Land* where the candidate is registered as a trainee (*Konzipient*). The RAO institutes Chambers of Attorneys to represent the interests of attorneys in each *Land*, and provides each Chamber with disciplinary powers and jurisdiction over all attorneys having their office (geographically) in that *Land*. All nine Chambers are united in the Austrian Conference of Chambers of Attorneys (*Rechtsanwaltskammertag*).

Bar exams are administered by panels instituted at the seat of each *Oberlandesgericht* (Court of Appeals) for all *Länder* within its respective jurisdiction. Just as at the universities, the subjects tested are primarily system-wide law. Section 20 of the RAPG, which lists the subjects of the oral part of the bar examination, speaks of "Austrian" law exclusively without differentiating between or referring to the laws of the

Länder. However, to the extent the laws of the *Länder* fall under the range of subjects of the exam, the focus will primarily be on the *Land* of the candidate in practice (though not necessarily so).

Admission to the bar is invariably for the entire federal system and to all courts irrespective of the place where the exam was taken or where the attorney is registered (§ 8 RAO). Attorneys are free to establish offices throughout the country.

In theory, graduates could set up their practice anywhere in the federation. More than 40 percent of all attorneys work in Vienna, where 20 percent of the Austrian population lives. Larger law firms (again primarily seated in Vienna) draw their staff from the entire country. Still, for pragmatic reasons, graduates tend to remain either within the vicinity of their original domicile or of their place of study.

Institutions of legal education do not play a major role in unifying the law of Austria, although they do not interfere with unification either. The Academy of Austrian Attorneys (*Anwaltsakademie*), for example, which administers training for future attorneys as well as continuing legal education, does not offer courses tailored to any specific component state law.

5. The *Länder* are obliged to implement international treaties as far as their powers are affected by them. If they fail to do so in time, the federal government will take over the responsibility and be entitled to adopt subsidiary measures, even though the *Länder* still remain competent. If they implement these treaties at a later date, the federal government's measures cease to be in force. A similar procedure takes place with regard to the implementation of EU law, if the European Court of Justice declares that the *Länder* failed to implement EU law in due time.

While international voluntary coordination does play a certain role on the federal level in an international context, it has almost no impact on the harmonization of laws internally. There may be very limited ad hoc influences on the legislation of the *Länder* by way of their factual representation in international initiatives such as the Alpine Convention, but this impact remains at a fairly low level.

IV. INSTITUTIONAL AND SOCIAL BACKGROUND

1. The Constitutional Court (*Verfassungsgerichtshof*) can be petitioned to intervene when federal legislation has exceeded the law-making power allocated to the federal government. The Court may, among numerous other functions, review and strike down both federal and *Land* laws (both constitutional and ordinary laws, as well as decrees and administrative rulings), on an abstract or concrete basis, if they are unconstitutional. The Court's adjudication is perhaps rather more centralistic than *Länder*-friendly, but this is also due to the rather centralistic concept of the Austrian Federal Constitution and on the whole a rather casuistic field of jurisdiction.

All courts, in particular the ordinary courts, the Constitutional Court, and the Administrative Court, may have to interpret *Land* law provided that they have to apply it in a given case. On the appeal of the federal government or the *Länder* governments, moreover, the Constitutional Court decides whether draft laws or decrees, if enacted, would be in compliance with the allocation of powers. The statement in which the Court expresses its opinion ("*Rechtssatz*") is regarded as an "authentic interpretation" of the Federal Constitution and the Court itself considers it to be binding. No other kind of *ex ante*-review is allowed by the Court, and there is no formal obligation to consider precedents otherwise, even though it is highly advisable as well as routine for state authorities to follow the opinion expressed by one of the three Austrian Supreme Courts (*Oberster Gerichtshof, Verwaltungsgerichtshof, Verfassungsgerichtshof*).

There are no state courts since the judiciary constitutes a sole federal power (Art 82 para 1 B-VG). Nevertheless, the courts are geographically located in the *Länder* and certain courts of appeal are misleadingly called "*Landesgericht*" or "*Oberlandesgericht*".

While the states do not have their own courts, there are, however, quasi-judicial panels on the level of the *Länder* (so-called Independent Administrative Panels or *Unabhängige Verwaltungssenate*) which hear appeals in certain administrative matters in conformity with Article 6 of the ECHR. Despite this role, they are not part of the judiciary in the constitutional sense. Extraordinary appeals against their decisions go to the Administrative Court or to the Constitutional Court for a review of possible differences in interpretation among these panels.

2. In principle, the central government does not have the power to force component states to legislate. In case of delayed implementation of international or EU law, a Member State may claim damages which internally shall be borne by the *Länder*.

The execution of federal law depends on the allocation of powers since there are some instances (Art 11, 12 B-VG) where the *Länder* are responsible for executing matters that are regulated by federal law. Most subject-matters, however, are exclusive federal matters (Art 10 B-VG), which means that the federation is responsible both for the legislation and the execution. Even if Article 102 B-VG provides that the *Länder* are charged to execute most of these matters on behalf of the federation, the federation is and remains formally competent. There is thus no need for an expensive double structure of administration: the *Länder* administrative authorities normally take care of federal administration. There are numerous exceptions to this rule, though.

The *Länder* are represented in the Federal Council (*Bundesrat*), which is the second chamber of the Federal Parliament. Normally, however, the Federal Council may only exercise a suspensive veto. Even in those rare cases where it is entitled to an absolute veto, it never makes use of it for political reasons. De facto, the Federal Council is a chamber of political representatives who follow the policies of the coalition governments with a constitutional majority in the National Council rather than represent the interests of the *Länder*.

In a few cases in the legislative process, the *Länder* (represented by the *Land* Governments) have direct rights of approval (in addition to whatever the Federal Council decides) so that each *Land* could prevent certain draft laws from coming into effect.

Every time a *Land* parliament is re-elected, it itself re-elects its delegates to the Federal Council. This means that the Federal Council is a permanent body that is not elected or re-elected as a whole, but whose members change from time to time, according to the election dates of each *Land* parliament. The number of delegates varies between a minimum of three and a maximum of twelve delegates according to the proportions between the *Länder* and their respective numbers of inhabitants.

The power to tax is arranged by the Fiscal Equalisation Act, which is an ordinary federal statute. In legal terms, the federation may decide "who gets what" (although there is a political tradition to negotiate the Fiscal Equalisation Act anew every four years between the federation, the *Länder*, and the municipalities). Section 3 of the Fiscal Constitutional Act, however, obliges the federation to take care of the administrative tasks imposed by the federal legislation on the various tiers and of their abilities so that a Fiscal Equalisation Act would be unconstitutional if it excessively neglected these criteria. According to the present Fiscal Equalisation Act, some taxes are exclusive federal taxes, some exclusive *Länder* taxes, some exclusive municipal taxes, but a considerable part of the revenue is shared between these tiers, regardless which level levies the tax). All taxes that are not mentioned in the Fiscal Equalisation Act

(most of them are) are left to the *Länder*. This allows them to invent their own subjects of taxation which they are, however, highly reluctant to do for fear of becoming unpopular with their citizens.

Section 6 of the Fiscal Constitutional Act explicitly allows that identical taxes are levied regarding the same objects. It is up to the Fiscal Equalisation Act to decide whether - if at all - and which – if any - taxes are ultimately being distributed among the *Länder*.

Within the limits of Section 3 of the Fiscal Constitutional Act mentioned earlier, revenue sharing is provided by the Fiscal Equalisation Act. The most important taxes are shared taxes, levied by the federation. The revenue is shared between the federation, the *Länder,* and the municipalities.

3. Most relevant institutions resolving intergovernmental conflicts have already been mentioned, namely the Constitutional Court, the *Länder* conferences, and the liaison office of the *Länder*. The Federal Council should rather not be mentioned in this context since it does not really represent *Länder* interests in practice. In the context of European integration, there are several working groups where the tiers closely co-operate and exchange information at the national level.

An important new body was founded in 1999 when the federation, the *Länder* and (after the necessary express constitutional authorisation) the municipalities concluded a formal agreement on a so-called "consultation mechanism": Every time one of these tiers plans a draft law or decree that would impose financial burdens on the other tiers, this plan has to be discussed in a consultation committee that consists of equal numbers of representatives of all three tiers. If no consensus is reached, the tier that proposes the plan has to bear the financial burden. Although the consultation mechanism is not applied very frequently, its very existence seems to advise the tiers to negotiate certain laws informally at an earlier date.

4. The civil service of the federation is separate from the civil services of the *Länder*. According to Article 21 B-VG, each is responsible for the laws regulating their own civil servants and public employees, including those of the municipalities and municipal associations. While a rigid "principle of homogeneity" applicable to the pertinent law of the federation and the *Länder* was repealed in 1999, a "lighter version" of this principle still exists.

According to Article 21 para 4 B-VG, public employees are guaranteed at all times the possibility of alternating service among the federation, the *Länder*, the municipalities and the municipal associations. Legal provisions that vary the weight accorded to terms of service depending on whether they were served with the federation, a *Land*, a municipality or a municipal association are inadmissible. In order to enable each tier's service code, staff representation regulations and employee protection scheme to develop along equal lines, the federation and the *Länder* have to inform each other about their plans in these matters.

5. Apart from the "modern minorities" (including mostly migrant workers from Turkey, the Balkan States and Northern Africa), there are six indigenous national minorities (Croatian, Slovenian, Hungarian, Czech, Slovakian and Roma) that enjoy a specific status of legal recognition (primarily certain language rights) due to their ethnic and linguistic distinctiveness. There are, however, neither racial nor religious nor any other social cleavages in the federation that would be of importance in the present context.

The national minorities just mentioned live in the South and East of Austria, but, apart from having lived there for a long time, they do not have a particular relationship to the legal status of a *Land* and certainly are not concentrated in a political subdivision of their own.

Austria is a rather symmetric federal state, and there are no extreme disparities between the *Länder*, although each of them has a distinctive geography. Small as the country is, there are no significant natural

resources such as oil and gas, but water (of an excellent quality) is available in enormous quantities and also used for producing hydraulic power. Education is mainly the same across the country, since most matters pertaining to schools and education fall under the federal competence; not all *Länder*, however, have a university of their own. The small Western *Länder* are richer and more developed than at least some of the regions in the East and South of Austria, with the exception of Vienna which is the capital and a *Land* at the same time, and which enjoys a privileged status also with regard to fiscal equalisation.

V. CONCLUSION

Due to the highly centralistic nature of Austrian federalism, full unification surely is the predominant feature since the federation is exclusively competent for an extremely ample catalogue of matters in which thus no harmonization is needed. Since the allocation of powers, yet unreformed as it is, is highly fragmented and complex, there nevertheless remain many fields where harmonized legislation (to be adopted by the federation and the *Länder*, each with regard to different aspects of the same matter) is useful, and the co-operative way of concluding voluntary agreements under Article 15a B-VG is a particularly commendable tradition. Still, the question of a reform of the federal system and of the allocation of powers in particular has been on the table for many years. The problem was aggravated by Austria's EU membership, which revealed all the weaknesses of the system of allocation of power when "harmonic" implementation of EU law is necessary. The Constitutional Court helps to overcome some of these difficulties, e.g., through the development of the "principle of mutual consideration" or through various shapes of the "principle of homogeneity". At the same time, however, application of these principles is based on a narrow understanding of *Länder* autonomy. Even though this does not lead to outright centralization, it leads to uniformity of legislation.

Given this situation, why have a federal system with an inherent allocation of powers at all? Why have an allocation of powers if it is uniformity that is wanted in so many fields? These are the essential questions which have not found their answer yet. The proposals made during the Austrian Constitutional Convention (2003-2005) as well as the ideas suggested by the members of the Special Parliamentary Committee and the small expert group that were established afterwards were highly controversial and it is unlikely that the deep gap between the political parties and between the federation and the *Länder* will be bridged in the near future.[2]

[2] The aforementioned expert group presented a draft for the reform of the federal state on 11 March 2008, which was opposed by the *Länder* and thus failed to be realized.