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Free Access to Legal and Legislative Information: the Austrian Approach

The postulate of the Codex iustinianus in accordance to which “leges ab omnibus intellegi debent” has traditionally been implemented within the Austrian legal system, too (in particular, by section 2 of the Civil Code and section 9 of the Penal Code). It has, however, been recognized that the amount of norms as well as the normative language makes it difficult for the citizens to know and “understand” the laws in force. The Constitutional Court, in his standing judicature, has established minimum qualitative demands on structure and language of laws. The quantity of laws is, however, continuously growing; legal informatics, in the past decades, has started to be a retention pond for the “flood of norms”. The focus of legal informatics, in this connection, is slowly shifting from information management to knowledge management.

Since legal and legislative information was first made available through the Internet by the responsible organs of the Republic of Austria, in particular by the Federal Chancellery and by the Parliamentary Administration, free access has been granted, the mentioned organs being aware of the obligation resulting from the above-mentioned legal framework. Though professional information service providers exerted some pressure to have the freely accessible public information services restricted, free access to the Federal Chancellery’s Legal Information System was even laid down in the law. When, however, in 2002, this legal provision was foreseen to be repealed, a passionate public discourse broke out, the vast majority of whose participants were in favour of upholding free access; finally, they were successful. In the course of this discourse, nearly all classical free access arguments were presented. Thus, an analysis of this public discourse may let it appear as a good representation for the free access debate, even beyond the national borders of Austria.