

[Home](#) > ... > [Find a Legal Professional](#) > [Types of Legal Professions](#) > Austria

# Types of legal professions

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Austria

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This page gives an overview of legal professions in Austria.

## Legal professions – Introduction

Currently (as at 2023) around 1 850 professional judges are employed in the area of ‘ordinary courts’, i.e. civil, criminal, labour and social law cases (figure representing active full-time equivalents, including at the Supreme Court). Some 700 judicial practitioners are responsible for a substantial part of the judiciary. There are also around 600 professional judges in the administrative courts.

In addition, lay persons are assigned to specific cases and work on a voluntary basis. These include lay judges or jury members in criminal cases and associate judges with special expertise working on commercial, labour and social law cases as well as certain administrative proceedings.

There are around 480 prosecutors (as at 2023, figure representing active full-time equivalent positions, including at the Procurator General’s Office but excluding the central authority).

3 799 people are employed in the prison system (figure as at 1 September 2019, representing active full-time equivalent positions, including members of the Prisons Directorate); this figure includes a total of 3 214 prison wardens (including those in the training service).

## 1. Judges

### Training and appointment of judges

At least 4 years’ legal experience and successful completion of the judicial office examination following the completion of law studies are the requirement for appointment as a judge in the ordinary courts.

Part of the professional experience is a traineeship in the court of at least 7 months (court practice, formerly called ‘court year’) to which female graduates are entitled and which is also a prerequisite for all those wishing to become a lawyer or notary. The remaining mandatory professional practice is usually acquired through special judicial preparation as a trainee judge in the course of judicial training, but this may also be acquired in another legal activity, for example as a trainee lawyer.

Around 100 trainee lawyers are admitted to preparatory training every year. Judicial preparation service (including the court traineeship) lasts 4 years in principle and is carried out at district courts, regional courts, public prosecutors’ offices, prisons, centres for victim protection or assistance, or at the offices of a lawyer, notary, or the Financial Prosecutor’s Office. Part of this training can also be completed at the Higher Regional Court, the Supreme Court, the Federal Ministry of Justice, the Prisons Directorate, probation service centres, associations of legal trustees or youth welfare offices, the office of the commissioner for legal protection, or in the financial sector (for example, in suitable undertakings). Judicial preparation service concludes with the judicial office examination. For people changing their career path after acquiring professional experience in other legal professions, the training period is reduced accordingly. A person who has already passed a lawyer or notary examination must sit only a supplementary examination and not the judicial office examination.

Following successful completion of the judicial office examination, a vacant position as a judge or public prosecutor must be applied for.

There is no judicial preparation service in the administrative courts; however, administrative judges must have at least 5 years' prior professional experience (e.g. in service with an administrative authority) and do not sit an examination.

Ordinary court judges can switch to the administrative courts. Administrative court judges, too, can be appointed as ordinary court judges after 5 years of service in the administrative courts.

Appointments to the position of judge or public prosecutor are usually made by the Federal Minister for Justice. The right to make appointments is reserved for the Federal President only for certain functions. By contrast, Regional Administrative Court judges are appointed by the respective provincial government. Only Austrian citizens may be appointed as judges or public prosecutors.

## Judges' status

Judges appointed to federal ordinary and administrative courts are federal civil servants. Apart from the Federal Constitutional Act (*Bundes-Verfassungsgesetz (B-VG)*), the main legal source for the training and professional status of judges is the Judge and Public Prosecution Service Act (*Richter- und Staatsanwaltschaftsdienstgesetz (RStDG)*). The Act lays down many provisions (including, for example, disciplinary law and service descriptions) for both judges and public prosecutors.

Judges appointed to Regional Administrative Courts (*Landesverwaltungsgerichte*) are civil servants of the respective province. Their professional status is regulated in the Federal Constitutional Act and in specific provincial legislation.

All professional judges are appointed for an unlimited period of time and retire at the end of the month in which they reach the age of 65.

According to Articles 87 and 88 of the Federal Constitutional Act, judges act as independent agents of the state in interpreting the law and adjudicating cases. This independence is expressed in the judges' freedom from instruction (material independence) and in the fact that they cannot be removed or transferred to another position (personal independence). Judges are bound only by the law and decide on the basis of their own legal convictions. Likewise, they are not bound by earlier decisions of other courts on similar legal issues (precedents).

Apart from when they retire after reaching the statutory age limit, judges can be removed from office or transferred to another position or retired against their will only in the circumstances and in the manner provided for by law and on the basis of a formal judicial decision (Article 88 of the Federal Constitutional Act).

Judges enjoy a special constitutional status only in the exercise of their judicial functions (when undertaking all judicial activities assigned by law and the allocation of cases), not in the area of the administration of courts, which is also carried out by judges. An exception applies to judicial administrative cases to be dealt with in chambers or commissions (e.g. allocation of cases, proposals for appointments). Otherwise, they are bound by instructions from their superiors. The fixed allocation of judicial business ensures that the legal right to a judge, established by the constitution, is upheld.

## Role and duties

Judges are responsible for adjudicating civil and criminal law cases. In administrative and constitutional law matters, they act as a check on the administration and as guardian of the constitution.

## Responsibility before the law

Disciplinary Court: judges who culpably contravene their professional and ethical obligations are answerable to the disciplinary court. For ordinary court judges, the disciplinary court is established at the Higher Regional Court or the Supreme Court and consists solely of judges. The disciplinary court is also competent in matters of misconduct by public prosecutors. The same disciplinary regulations, with a few exceptions, apply to judges of federal administrative courts. In contrast, disciplinary rules for Regional Administrative Court judges are laid down in the relevant provincial legislation.

Criminal Court: judges (and public prosecutors) who, in culpable breach of their professional obligations, also commit a criminal offence are answerable to the criminal court (for example, in the event of abuse of official power).

Civil Court: parties who have suffered a loss as a result of unlawful and culpable conduct by a judge (or a public prosecutor) can enforce a claim for the loss against the State. The State can have recourse against the judge (or the public prosecutor) in cases of intentional acts or gross negligence.

## 2. Public prosecutors

### Organisational structure

In general, the hierarchical organisation of the public prosecutor's office corresponds to the courts' organisation.

There is a public prosecutor's office at each of the 16 first-instance courts with jurisdiction over criminal cases. In addition, there is the Public Prosecutor's Office for Combating Economic Crime and Corruption (*Wirtschafts- und Korruptionsstaatsanwaltschaft*) with competence throughout Austria. There is a senior public prosecutor's office at each higher regional court, and a Procurator General's Office at the Supreme Court. The senior public prosecutors' offices and the Procurator General's Office are directly subordinate to the Federal Minister for Justice.

### Training and appointment of public prosecutors

Public prosecutor training corresponds to that of professional ordinary court judges.

Only those who also fulfil the requirements for appointment to the position of judge can be appointed as a public prosecutor.

Vacant permanent positions for public prosecutors, like permanent positions for judges, must be advertised publicly to be filled. The Federal President has the right to appoint public prosecutors but, as in the case of judges, the President will have delegated the right of appointment to the Federal Minister for Justice for most permanent public prosecutor positions.

### Public prosecutors' status

Public prosecutors' offices are separate, but not independent, judicial authorities. They have a hierarchical structure and are bound by the instructions of the senior public prosecutor's office and ultimately of the Federal Minister for Justice.

There are precise statutory rules governing the right to issue instructions. Instructions from a senior public prosecutor's office or from the Federal Minister for Justice may be issued only in written form and must be accompanied by a statement of reasons. Moreover, instructions received have to be recorded in the criminal case file. Before issuing an instruction, the Federal Minister must consult the advisory council on instructions (*Weisungsrat*). The Federal Minister for Justice bears ministerial responsibility and is accountable – and obliged to provide information – to the Parliament.

Staff members of the individual public prosecutors' offices must comply with instructions given by the office director. However, if they consider an instruction to be contrary to the law, they may demand a written instruction and may even arrange to be released from handling the criminal case in question.

### Role and duties

Public prosecutors' offices are special bodies separate from the courts. Their role is to safeguard the public interest in the administration of criminal justice. This includes being in charge of criminal investigation proceedings. They are also responsible for filing and presenting the indictment in criminal proceedings. They are therefore also called indictment agencies.

Public prosecutors are responsible for filing and presenting indictments, both before the Regional Court and before the district courts of the respective Regional Court district. As a rule, district prosecutors will present the

indictment before the district courts. These are officials with special expertise, but they are not required to have an academic degree.

A special position is occupied by the Public Prosecutor's Office for Combating Economic Crime and Corruption, whose country-wide jurisdiction primarily extends to the fields of malfeasance by civil servants and economic crimes involving amounts in excess of EUR 5 000 000. Also falling within its competence are financial crimes involving amounts of more than EUR 5 000 000, aggravated cases of social fraud, aggravated fraudulent bankruptcy offences (*kridaträchtiges Verhalten*), and, inter alia, offences under the Law on Public Limited Companies or the Law on Private Limited Companies committed at correspondingly large undertakings (with a share capital of at least EUR 5 000 000 or more than 2 000 employees).

Senior public prosecutors' offices are hierarchically superior to public prosecutors' offices and are established at the Higher Regional Courts in Vienna, Graz, Linz and Innsbruck. In addition to presenting indictments before the Higher Regional Court, they are also responsible for supervising all public prosecutors' offices in their district and are directly subordinate to the Federal Minister for Justice.

The Procurator General's Office, established at the Supreme Court, in turn occupies a special position. This reports directly to the Federal Minister for Justice and does not itself have the right to issue instructions to public prosecutors' offices and senior public prosecutors' offices. Nor does it present indictments; rather, it is charged with supporting the Supreme Court. It is authorised primarily to lodge appeals for nullity to ensure that the law is upheld in criminal matters in which the parties have no (further) possibility of appeal. The Procurator General's Office thus performs an important function in that it preserves the unity of the law and ensures legal certainty in criminal law matters.

## Responsibility before the law

The disciplinary, criminal and civil responsibility of public prosecutors is regulated in the same way as that of ordinary court judges.

## 3. Registrars

### Organisational structure

In Austria, registrars (*Diplomrechtspfleger\*innen*) are an essential pillar of the judicial system. Today, more than 80% of all first-instance court decisions in civil cases are taken by more than 700 registrars.

### Registrar training

Only persons who have passed the school leaving examination or gained a professional qualification are admitted to training as a registrar. The training takes 3 years and comprises court work including the preparation of dispositions in the relevant work area, participation in a general and work-area-specific training course, and passing the relevant examinations. After passing the registrar's examination, provided that the other requirements listed in Section 3 of the Registrars Act (*Rechtspflegergesetz*) have been met, the candidate registrar receives a diploma from the Federal Minister for Justice. The diploma must specify the work area. Upon receiving this diploma, the candidate registrar is authorised to carry out judicial business coming within their work area within the federal territory, and can therefore work as a registrar.

The presiding judge of the Higher Regional Court must subsequently determine the court at which the relevant court official is to be employed as a registrar and, if applicable, for what period. Within the court determined by the presiding judge, the registrar is allocated by the management body (the president or head of the court) to a court department managed by a judge or, if applicable, to a number of court departments.

### Registrars' status

Registrars are specially trained court officials to whom the handling of specifically circumscribed business in civil matters at first instance may be transferred on the basis of Article 87a of the Austrian Federal Constitutional Act and the Registrars Act. In this function they are bound only by the instructions of the judges responsible for the case according to the allocation of court business. Judges may at any time reserve the handling of the case for themselves or seize it themselves. Decisions taken by registrars may be contested, just like judges' decisions.

In practice, registrars mostly work independently. Instructions from the judge are not usual and are issued extremely rarely.

## Role and duties

Registrars are appointed in the following work areas:

- civil procedure, enforcement and insolvency matters (debt settlement proceedings);
- non-contentious matters;
- land register and ship register matters;
- companies register matters.

Each of these work areas requires special training and special appointment as a registrar in respect of the relevant work area.

## Division of responsibilities between judges and registrars

A registrar's sphere of activity does not include all work and decisions in the above-mentioned work areas. The business that comes within the registrar's sphere of activity is specifically set out in the Registrars Act, and the extent of the sphere of activity varies from one work area to another.

The Registrars Act lays down spheres of activity for the individual work areas which assign specific responsibilities to registrars (for example, the sphere of activity in insolvency cases comprises bankruptcy cases before the district courts). Of course, certain responsibilities are reserved for judges. In addition, each sphere of activity comprises, among other things, carrying out 'order for payment' procedures, confirming the legal effect and enforceability of court rulings in the given work area, decisions on applications for legal aid in registrar proceedings, and performing official functions on the basis of a request for judicial assistance by a domestic court or a domestic authority.

# 4. Lawyers

## General

Lawyers are qualified and authorised to represent parties in all court and out-of-court proceedings in all public and private matters before all courts and public authorities of Austria.

No official appointment is required for those wishing to practise as a lawyer in Austria; however, professional practice is conditional upon the requirements set out below.

The main legal bases are the Lawyers' Code (*Rechtsanwaltsordnung (RAO)*), Imperial Law Gazette (RGBl.) No 96/1896; the Disciplinary Statute for lawyers and trainee lawyers (*Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter (DSt)*), Federal Law Gazette (BGBl.) No 474/1990; the Federal Law on the Tariff of Lawyers (*Bundesgesetz über den Rechtsanwaltsstarif (RATG)*), BGBl. No 189/1969; the Law on the examination of lawyers (*Rechtsanwaltsprüfungsgesetz (RAPG)*), BGBl. No 556/1985; and the Federal Act on the freedom to provide services and the establishment of European lawyers and the provision of legal services by internationally active lawyers in Austria (*Bundesgesetz über den freien Dienstleistungsverkehr und die Niederlassung von europäischen Rechtsanwältinnen und Rechtsanwälten sowie die Erbringung von Rechtsdienstleistungen durch international tätige Rechtsanwältinnen und Rechtsanwälte in Österreich (EIRAG)*), BGBl. I No 27/2000.

## Requirements for professional practice

Those wishing to exercise the profession of lawyer must first have studied Austrian law and then prove that they have spent a total of at least 5 years engaged in professional legal work, of which at least 7 months must be spent working at a court or a public prosecutor's office and 3 years at the office of an Austrian lawyer as a candidate lawyer.

The lawyers' examination, which candidates must pass to be able to practise, can be taken after practical employment of 3 years, of which at least 7 months must be spent working at a court and at least 2 years at the office of a lawyer. In order to sit the examination, candidates must also take part in the mandatory training

courses prescribed for candidate lawyers by the bar association.

Those who meet the requirements can be entered in the list of lawyers of the bar association in whose judicial district their practice is to be located.

Under certain circumstances, foreign lawyers who are citizens of a European Union Member State, another State party to the Agreement on the European Economic Area, or Switzerland, may also:

- carry out activities as a lawyer on a temporary basis in Austria;
- apply to be entered in the list of lawyers of the responsible bar association (after sitting an aptitude examination); or
- set up a practice in Austria immediately without any prior aptitude examination under the professional title used in the country of origin and become fully integrated into the Austrian legal profession after 3 years' effective and regular professional practice in Austria.

Under certain circumstances, a member of a bar association of a GATS Member State can also carry out certain precisely delimited lawyer activities on a temporary basis in Austria.

## Responsibility before the law

Lawyers who breach professional obligations or bring the profession into disrepute are answerable to a disciplinary council selected by the local bar association. The penalties that may be imposed by the disciplinary council extend to the striking of the person concerned off the list of lawyers. Decisions at second instance are made by the Supreme Court in four-person divisions consisting of two judges from the Supreme Court and two lawyers.

Additionally, lawyers are, of course, also subject to criminal and civil liability.

## Bar Association, Austrian National Bar Association

All lawyers in a given province who are entered in that province's list form a bar association (*Rechtsanwaltskammer*). Bar associations are bodies governed by public law and autonomous self-governing bodies.

At federal level, the interests of Austrian lawyers in general are represented by the Austrian National Bar Association (*Österreichischer Rechtsanwaltskammertag*). This is composed of Austria's nine bar associations, and its Representatives' Meeting is formed of delegates from the bar associations (<http://www.rechtsanwaelte.at/>).

## 5. Notaries

### General

Notaries, as an independent and impartial institution of preventive justice, are available to the law-seeking public for the purposes of regulating their private legal relationships.

Their main duty is to participate in legal processes and to provide legal assistance to the public. Notaries draw up public deeds, hold third-party property in trust, draw up private deeds and represent parties, especially in non-contentious matters. Notaries are also responsible for work as agents of the court in non-contentious proceedings. In particular, they are consulted as 'court commissioners' to conduct probate proceedings.

Notaries ensure that a deceased person's assets are secured and passed to the persons entitled to receive them. This work requires special knowledge of inheritance law and of non-contentious proceedings, which also means that notaries are constantly consulted by the public to assist in drafting wills and in general to give advice and provide representation in inheritance matters.

Notaries hold a public office but are not civil servants. They bear the commercial risk of running the office of the practice but do not run a business. They are similar to persons practising a liberal profession, but as court commissioners they are judicial officers. Work as a notary is a main occupation and cannot be combined with work as a lawyer.

Changes in the number of notarial positions and in the locations of their offices are made by regulation of the Federal Minister for Justice. There are currently 536 notarial positions in Austria (as at April 2023).

The fundamental legal bases for this activity are contained in the Notaries Code (*Notariatsordnung (NO)*), RGBl. No 75/1871; the Notarial Deeds Act (*Notariatsaktsgesetz*), RGBl. No 76/1871; the Notary Tariff Act (*Notariatstarifgesetz (NTG)*), BGBl. No 576/1973; the Notarial Examination Act (*Notariatsprüfungsgesetz (NPG)*), BGBl. No 522/1987; the Court Commissioners Act (*Gerichtskommissärsgesetz (GKG)*), BGBl. No 343/1970; and the Court Commissioner Tariff Act (*Gerichtskommissionstarifgesetz (GKTG)*), BGBl. No 108/1971.

## Training

Those who have completed their law studies (in Austrian law) and are interested in the profession of notary must look for a notary who will accept them as an employee and have their name entered in the list of candidate notaries.

Entry in the list of candidate notaries maintained by the responsible chamber of notaries is permissible only if the relevant person has had 7 months' court practice as a legal practitioner at a court or in a public prosecutor's office and has not yet reached the age of 35 when first entered in the list of candidates.

In order to be admitted to the notarial examination, the candidate notary must attend the mandatory training events prescribed by the chamber of notaries.

The notarial examination must be sat in two parts:

- The candidate notary can sit the first part of the examination after 18 months' candidacy, but no later than at the end of the 5th year of candidacy; otherwise, their name is removed from the list of candidate notaries.
- The second part can be sat following further practical employment of at least 1 year as a candidate notary. The second part of the notarial examination must be passed at the latest before the end of 10 years of candidacy; otherwise, the candidate's name is removed from the list of candidate notaries.

## Appointment

Notarial positions that have become vacant or that have been newly created must be advertised publicly before they are filled. The law (Section 6 of the Notaries Code) requires, inter alia, that applicants for a notarial position:

- be citizens of an EU or EEA Member State or of Switzerland;
- have successfully completed studies in Austrian law;
- have passed the notarial examination; and
- be able to prove 7 years of employment in the legal profession, including at least 3 years as a candidate notary after sitting the notarial examination.

These basic requirements do not, however, give the right to be appointed as a notary. In the recruitment procedure, the applicants are assessed and ranked by the chamber of notaries with territorial jurisdiction, and subsequently by the staff panels of the responsible regional court and of the higher regional court, the length of practical employment being of decisive importance. The chamber of notaries and the two staff panels each submit a shortlist of three applicants to the Federal Minister for Justice. Though not bound by these, in practice the Minister appoints only shortlisted applicants.

A notary may practise until 31 January of the calendar year following their 70th birthday. An official transfer of a notary to a different notarial position is not permissible.

## Supervision of notaries; responsibility before the law

Because of their duties in drawing up public deeds and as court commissioners, notaries are subject to particular supervision. The supervision of notaries is the responsibility of the Federal Minister for Justice, the judicial administration and, directly, the chambers of notaries.

Notaries are subject to a special disciplinary law. Disciplinary offences are punished at first instance by the Higher Regional Court as the disciplinary court for notaries, and at second instance by the Supreme Court as the

disciplinary court for notaries. The divisions that hear cases must also each have notaries as members. The list of penalties that can be imposed by the disciplinary court extends to removal from office. Penalties for mere administrative offences are imposed by the chamber of notaries.

In addition to their disciplinary liability, notaries are, of course, also liable under criminal and civil law.

Where notaries act as court commissioners, they are deemed to be civil servants for criminal law purposes and are therefore liable for malpractice, which includes in particular the abuse of official power. Their liability under civil law is regulated differently. Where notaries act as court commissioners, they are subject to the same liability provisions as judges and public prosecutors. Therefore, claims cannot be brought directly against them by the parties, who must instead direct their claims for compensation to the State. The State can take recourse in the event of intentional acts or gross negligence. Apart from their activity as court commissioners, notaries are directly answerable to the parties under civil law.

## Boards of notaries, Austrian National Chamber of Notaries

Notaries who have their practice in a federal province or who are entered as candidate notaries in that federal province's list of candidate notaries constitute a board of notaries. The federal provinces of Vienna, Lower Austria and Burgenland have a joint board, as do the federal provinces of Tyrol and Vorarlberg.

The board is responsible for preserving the honour and dignity of the profession and for representing its interests.

Each board of notaries must elect a chamber of notaries from among its members. A chamber of notaries consists of one notary as president, and six notaries (12 in Vienna) and three candidate notaries (six in Vienna) as members.

The Austrian National Chamber of Notaries ([Österreichische Notariatskammer](#)) is composed of the provincial chambers of notaries. The Austrian National Chamber of Notaries is qualified to represent notaries and to defend their rights and concerns in matters concerning Austrian notaries as a whole or in matters whose scope extends beyond that of an individual chamber of notaries.

## Related links

[Legal professions – Austria](#)

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