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How to bring a case to court



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European Judicial Network
(in civil and commercial
matters)

1 Do I have to go to court or is there another alternative?

It might be better to use alternative dispute resolution before going to court.

2 Is there any time limit to bring a court action?

Time limits vary from case to case. You should obtain legal advice on time limits.

3 Should I go to a court in this Member State?

See '[Which country's court is responsible?](#)'.

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

See '[Which country's court is responsible? - Austria](#)'.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

See '[Which country's court is responsible? - Austria](#)'.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

In civil and commercial cases to be settled through the courts, claims filed at district courts (*Bezirksgerichte*) – which as a rule deal with claim values of up to EUR 15 000 – must be signed by a lawyer if the value of the claim exceeds EUR 5 000. This obligation to be represented by a lawyer does not apply to cases which must be filed with a district court irrespective of the claim value (i.e. even if it exceeds EUR 15 000); such cases include disputes between spouses, civil partners and family members, disputes over land boundaries, trespassing disputes, disputes over property tenure, disputes arising from contracts between seafarers, carriage men and publicans/hoteliere/restaurateurs and their contract-givers, passengers or guests, and disputes over defective livestock.

Nor does the obligation to be represented by a lawyer apply to claims made in non-contentious proceedings (i.e. declaratory proceedings under civil law that are more flexible and less formal than contentious proceedings under the Code of Civil Procedure [*Zivilprozessordnung* – ZPO]), in particular non-contentious proceedings between spouses or civil partners or with regard to children's rights, the rights of adults without legal capacity, inheritance matters, land- and property-register and company-register matters, undisputed residence rights, etc.

Where legal representation before a district court is not compulsory, anyone can submit to a court in writing a claim or an application for proceedings to be initiated.

In civil and commercial cases to be brought before the courts, claims filed with a regional court (*Landesgericht*) must always be signed by a lawyer. Regional courts deal with all claims outside the jurisdiction of a district court and irrespective of the claim value – in particular, disputes concerning industrial-property law and unfair competition, and also injunction requests submitted by consumer-protection associations.

There is no need for a lawyer to sign claims under labour or social-security law that are to be dealt with by a regional court under the Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz – ASGG*). This applies in particular to claims arising from their contract of employment that employees submit against employers.

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

Written claims must be sent to the court's address for correspondence. A party wishing to file a claim with the court in person may deposit it at the court's reception desk or in the letterbox installed for that purpose.

If there is no obligation to be represented by a lawyer and the party is not so represented, a claim may also be registered orally on any court open day (*Amtstag*) at the district court with jurisdiction in the case or at the district court within whose geographical purview the party is currently residing.

On the possibility of electronic submission, see question 8.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

The official language in all courts is German. Slovenian, Croatian or Hungarian is also accepted as an official language before certain courts.

Claims or applications for proceedings to be initiated must be filed in writing with a handwritten signature. If there is no obligation to be represented by a lawyer and the party is not so represented, a claim may also – as explained under Question 7 above – be made orally at the district court with jurisdiction. Claims may be filed online via the closed system of the Austrian e-Justice (ERV) platform. Use of the platform is conditional upon registration, which is cost-effective only for those filing large numbers of claims before the Austrian courts. Claims may not be filed by email and a claim submitted by email cannot be rectified after the deadline. Nor do claims submitted by fax satisfy the Code of Civil Procedure (ZPO) requirements. But if a claim is submitted by fax the original may be filed later, and will be deemed to have met the deadline.

Submissions and attachments may also be sent to courts and public prosecutors' offices electronically by means of 'ID Austria' and the online forms available on the website <https://justizonline.gv.at>.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

The only forms available are ones used for seeking a conditional payment order (a *Mahnklage*). All payment claims up to EUR 75 000 must be filed as a *Mahnklage* (an application for a payment order) under the relevant procedure (the *Mahnverfahren*). The appropriate forms may be obtained from a court or printed out from the Federal Ministry of Justice website <https://justizonline.gv.at>.

There are optional forms for a court order terminating a residential tenancy agreement or a commercial lease for one or more sets of business premises.

As a rule, any claim may be accompanied by appropriate supporting documents (to be filed in the same number of copies as the claim itself, see Question 12). Any written agreements on the place of jurisdiction or domestic judicial authority (agreements on judicial competence) may be enclosed with the claim. The same applies to written agreements on the place of performance of a contract if the claimant wishes the case to be dealt with in

that place of jurisdiction, and to other particular facts relevant to judicial competence or special procedures (for example, the procedure for enforcing payment of a bill of exchange).

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

Court fees are payable when a civil claim is filed with a court; they are intended to cover the overall cost of the lawsuit at first instance. Fees are usually graduated in accordance with the value of the claim. They are to be paid when the action is brought, ideally by authorising the deduction of the amount concerned (e.g. by indicating 'fee payment' as the purpose of the payment and providing an IBAN code, together with a BIC code in the case of an international payment) on the very first page of the claim.

How lawyer's fees are paid is a matter to be agreed between the individuals concerned; this also applies to the amount of those fees (unless payment has been agreed in accordance with the Legal Fees Act [*Rechtsanwaltstarifgesetz*] or General Fee Guidelines [*Allgemeine Honorar-Kriterien*]). Reimbursement commensurate with the outcome of the case can normally be requested from the opposing party only once a final decision has been issued.

11 Can I claim legal aid?

Legal aid is granted to persons who cannot afford the cost of the proceedings. An application for legal aid may be filed orally or in writing with the court before which the proceedings are being or are to be conducted. If that court lies outside the geographical purview of the district court responsible for the place of permanent or temporary residence, the application may also be registered orally at that district court.

If the financial and substantive requirements are met, legal aid may be requested in advance for the purpose of filing the claim and/or in respect of the entire subsequent proceedings.

Additional information on legal aid is available under 'Service' (Helpdesk) on the Federal Ministry of Justice website <http://www.justiz.gv.at>. The relevant application forms containing additional information and advice may also be downloaded from the website.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

A claim is considered to have been filed when it is received by the court with (at least theoretical) jurisdiction. A claim is considered to have been duly filed if it is not immediately rejected or corrected by the court (in other words, if it appears to be a claim which can be dealt with in accordance with the rules of procedure). Written claims must be filed in as many copies as there are parties to the proceedings (one copy for each opposing party and one copy for the court). If the claim contains errors of form and/or content, the court will probably issue instructions for it to be corrected. Those instructions will indicate the consequences of failure to make the corrections by the required date. Confirmation that a claim has been received is issued only on request unless it was filed via the Austrian e-Justice platform, in which case confirmation is automatic.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

In payment-order proceedings (*Mahnverfahren*), the claim form already contains an application for an enforceable copy of the payment order. The claimant therefore automatically receives either an enforceable copy of the payment order (writ of execution – *Exekutionstitel*) or a copy or notice of any objection filed within a stipulated deadline by the other party, usually together with a summons to an oral hearing (which initiates ordinary proceedings). There is as yet no minimum period for the summons in proceedings before a district court, whereas in proceedings before a regional court it is at least 3 weeks.

In proceedings relating to a court order terminating a residential- or commercial-tenancy agreement, an enforceable copy of the termination order must be applied for separately. If the person being evicted files an objection within a four-week deadline, the landlord is automatically informed (and is usually sent a summons to the hearing).

Except in special procedures such as those relating to an order for payment, payment of a bill of exchange or a landlord's notice of termination, receipt of a claim (and completion of any correction procedure) in cases before the district court with jurisdiction usually triggers a process whereby the claim and a summons to the hearing are served automatically on the defendant. At the same time the claimant is sent a summons to the hearing. In cases before a regional court, the defendant is automatically asked to respond in writing to a claim that has been served, and is reminded that such response must be signed by a lawyer. If the defendant fails to respond within the stipulated deadline, a default judgment is issued if the claimant so requests – otherwise proceedings are suspended. If a response is received in good time, the claimant is sent a copy thereof – often accompanied by a summons to the hearing.

At the preparatory meeting (the first session in the oral proceedings), the subsequent timing and order of the proceedings are discussed with the parties (who must normally attend in person unless their representative is sufficiently informed of the facts) and then decided by the court. The timing and order of the proceedings are also included as the case timetable in the record of proceedings. A copy of the record of proceedings must be sent to the parties (or their representatives). Changes to the case timetable must be notified to the parties and, where appropriate, discussed with them at a convenient time.

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