


Ordinary courts - Austria

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In the following section you will learn about Ordinary Courts in Civil and Criminal matters in Austria.

Ordinary courts - Introduction

The system of ordinary courts is organised in four levels. At present (November 2014), **legal cases** can be adjudicated by the following courts:

- 116 district courts (*Bezirksgerichte*)
- 20 regional courts (*Landesgerichte*)
- 4 higher regional courts (*Oberlandesgerichte*)
- the Supreme Court (*Oberster Gerichtshof*).

From the start of 2013 the number of district courts was gradually reduced, by amalgamating district courts in Upper Austria, Lower Austria and Styria, and since 1 July 2014 it has stood at 116. A further reduction has already been decided upon for 1 July 2016, when only 115 district courts will remain.

Prosecutor's offices exist to uphold the public interest in criminal matters; there are:

- 16 public prosecutor's offices (*Staatsanwaltschaften*),
- a central public prosecutor's office (*Zentrale Staatsanwaltschaft*) to prosecute economic crimes and corruption,
- 4 senior public prosecutor's offices (*Oberstaatsanwaltschaften*),
- the Procurator General's Office (*Generalprokuratur*).

There are 27 prisons to enforce **sentences of imprisonment**.

A. Organisation of the courts: civil and criminal courts

Disputes are assigned at first instance to either the district courts or the regional courts. In civil cases the court with jurisdiction is determined essentially by the nature of the dispute (*Eigenzuständigkeit*); for all other matters it is determined by the value of the claim in dispute (*Wertzuständigkeit*). The nature of the case always takes precedence over the value criterion.

In criminal cases, jurisdiction is decided on the basis of the severity of the penalty attached to the offence.

District courts (first level)

District courts are courts of first instance responsible for:

- adjudicating civil-law disputes **involving claims of up to EUR 15 000** (*Wertzuständigkeit*),
- ruling on certain types of case irrespective of the amount of the claim (*Eigenzuständigkeit*), especially **family, tenancy and enforcement cases**,
- ruling on some **criminal cases** where the offence carries merely a fine, a fine plus a prison sentence of not more than one year, or a prison sentence of not more than one year only (e.g. negligent physical injury, theft).

Regional courts (second level)

Regional courts, **also known in civil cases as 'courts of justice of first instance'** (*Gerichtshöfe erster Instanz*), have jurisdiction:

- to adjudicate at **first instance** on all legal matters which are not reserved to the district courts; on the basis of the nature of the case, to try disputes involving nuclear liability law, administrative liability law and data protection law, and competition and intellectual property cases;
- to rule **on appeals** against the decisions of district courts.

Higher regional courts (third level)

The higher regional courts, also known as '**courts of justice of second instance**' (*Gerichtshöfe zweiter Instanz*), form the third organisational level. They sit in Vienna (covering Vienna, Lower Austria and Burgenland), Graz (covering Styria and Carinthia), Linz (covering Upper Austria and Salzburg) and Innsbruck (covering the Tyrol and Vorarlberg).

In both **civil and criminal cases these courts deal only with appeals** (i.e. at second instance).

They also play a special role in the **administration of the judicial system**. The president of a higher regional court is the head of the administration of all courts in the area within the court's jurisdiction. In this function, the president of a higher regional court is responsible only to the Federal Minister for Justice.

The Supreme Court (fourth level)

The Supreme Court in Vienna is the **court of final appeal in civil and criminal cases**. Alongside the Constitutional Court (*Verfassungsgesicht*) and the Administrative Court (*Verwaltungsgericht*), it is one of the 'highest courts' in the country (*Höchstgerichte*). This means that no further domestic remedy is possible against its decisions.

The judgments of the Supreme Court play an essential role in preserving the **uniform application of the law** throughout the country.

Although the lower courts are not legally bound to follow precedent, as a rule they will be guided by the judgments of the highest courts.

B. The civil court system

Civil justice can be subdivided into ordinary civil proceedings, employment cases, commercial cases and non-contentious proceedings (*Außerstreitverfahren*).

Civil-law matters are adjudicated in ordinary civil proceedings when they are not under the jurisdiction of the commercial or labour courts and are not to be dealt with in non-contentious proceedings.

C. Appeals

C.1. Appeals in civil cases

In **ordinary civil proceedings** there are in principle two different sequences of courts, each of which may be divided into three stages. Disputes are assigned at first instance to either the district courts or the regional courts.

If the court of first instance is a district court, any appeal has to be lodged with the regional court, where it will be decided by an appeals division (*Berufungssenat*).

If the court of first instance is a regional court, any appeal has to be lodged with the higher regional court, where it will be decided at second instance by an appeals division.

The courts of second instance only review the first-instance judgment. This means that in principle they decide the matter only on the basis of the motions for judgment available at the conclusion of the oral proceedings in the court of first instance and the facts submitted at that point. The court of second instance may decide the case itself, to uphold or vary the judgment. In order to do so - within the framework defined by the motions and submissions in the court below - the court of second instance may repeat or extend all or some of the proceedings; or it may quash the decision of the court of first instance and instruct it to retry the matter; or it may dismiss the appeal.

For cases that require a decision on legal issues of fundamental importance, a further appeal may be brought before the Supreme Court.

The Supreme Court decides only on legal issues, and is therefore bound in its judgment by the facts previously established. It decides only on the correctness of the judgment made on the basis of the established facts, though it may identify points that are invalid and, to a limited extent, procedural errors in the previous proceedings. The Supreme Court does not only quash the judgments of lower courts: it too may decide the matter itself, to uphold or vary the judgment; or it may quash the previous decisions and instruct the courts of first or second instance to retry the matter; or it may dismiss the action.

In the first instance, the vast majority of cases are tried by a single judge (or by a panel of three judges, but only in disputes over EUR 100 000 and at the request of one of the parties). In the second instance, cases are tried by a panel of three judges, or in the Supreme Court five judges. Where the case involves a legal issue of fundamental importance (such as a change to established case-law), the Supreme Court convenes an augmented panel of eleven judges.

C.2. Appeals in criminal cases

Judgments in criminal trials may be appealed against once.

If the court of first instance is a district court, an appeal may:

- seek the annulment of the judgment; or
- challenge the conviction and the terms of the sentence.

The appeal will be considered by a three-judge division of the regional court.

If the case is decided at first instance by a single judge of a regional court (this happens in regional court cases where the defendant is charged with an offence carrying a maximum sentence of five years' imprisonment, such as, for example, giving false testimony in court), an appeal may likewise:

- seek the annulment of the judgment; or
- challenge the conviction and the terms of the sentence.

The appeal will be then considered by a three-judge division of the higher regional court.

If the case is decided at first instance by a regional court sitting with lay assessors (*Schöffengericht*) or with a jury (*Geschworenengericht*), any application for annulment has to be lodged with the Supreme Court. If the appeal relates only to the terms of the sentence, however, it must be brought before the higher regional court.

D. Forms of appeal

In **ordinary civil proceedings**, first-instance judgments may be challenged by means of an appeal on points of fact and law (*Berufung*). An appeal on points of fact and law may be lodged in all cases on the grounds of invalidity or mistaken legal assessment, and such an appeal may be lodged in some specific matters or in any case above a value in dispute of EUR 2 700 on the grounds of procedural errors or incorrect findings of fact.

Second-instance judgments may be challenged by means of an appeal to the Supreme Court only on points of law (*Revision*). This form of appeal is, however, subject to various restrictions, depending on the matter in question. In principle the Supreme Court adjudicates only on legal issues of considerable importance, and the presence of such issues is a prerequisite for the Supreme Court accepting an appeal on points of law. In any event, in certain matters appeals against second-instance judgments are not allowed below a value in dispute of EUR 5 000, while, if the value in dispute does not exceed EUR 30 000, the appeal on points of law to the Supreme Court may also need to be authorised by the court of second instance (directly or by means of a fresh application).

E. Legal databases

The Austrian Justice website (<http://www.justiz.gv.at/>) provides general information on the Austrian judicial system.

Is access to the database free of charge?

Yes, access to the Austrian Justice website is free.

Related links

[Jurisdiction of the courts - Austria](#)

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