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Find an expert

Austria

## I. Lists and registers of experts

In Austria, persons who are available to work as experts in a judicial procedure or an investigation by the public prosecutor's office are entered in the list of court experts maintained by the presidents of the regional courts for the respective regional court districts, with entries broken down by specialist field.

The registers are publicly available [here](#).

Experts have to make an application and pass an examination in order to be included in the list of court experts.

## II. Experts' qualifications

Applicants who wish to be appointed by courts must prove professional experience in their area of expertise. Experts must have substantial knowledge of the most important principles of Austrian procedural law, know how to write an expert opinion and must furnish proof of 10 or 5 years of professional work during the period immediately preceding their entry in the list (if they have a relevant university degree or have completed a course of study at a higher-level vocational school) in the specialist field in question. In addition, they must have full legal capability and be trustworthy. To be trustworthy, experts must be beyond reproach in their overall conduct, as a guarantee of their impartiality and the quality of their work.

The application for inclusion in the register of 'sworn and certified' experts (as a 'recognised expert', in the wording of the European Expertise and Experts Institute (EEEI)) must be submitted to the president of the regional court in the district where the applicant habitually resides or conducts their professional activity.

In the course of the registration procedure, the president responsible for the registration will charge a commission with preparing an expert opinion on whether the registration requirements have been fulfilled.

Experts must swear an oath before being registered.

If they meet all the above requirements, they will be appointed by the president responsible for registration for a period of 5 years. They must reapply after each 5-year period. If experts continue to meet all the requirements at this time, their registration on the list of court experts is extended (generally without the need to sit another examination).

Experts can be removed from the register of court experts if they so wish, if they no longer meet the requirements, or if the president responsible for the registration so decides. Decisions to remove or refuse to recertify an expert must be duly reasoned and may be appealed against.

There is a code of ethics (*Ethikkodex* – link [here](#)) published by the Austrian Association of Sworn and Certified Experts.

## III. Remuneration of experts

### III.1 General information

Experts' fees are governed by the Austrian Act on Entitlement to Fees (*Gebührenanspruchsgesetz* – link [here](#)). That Act contains general rules applicable to experts. It also includes a specific compensation system for doctors, anthropologists, dentists, veterinarians, experts on chemical analysis and experts on motor vehicles.

### III.2 Fees

Fees usually depend on the complexity of the opinion. A specific compensation system exists in criminal proceedings and family court proceedings, inter alia, for certain experts (see Section III.1).

### III.3 Payment

Experts must submit an invoice for their fees to the court within 4 weeks of giving their opinion. Fees are generally paid via bank transfer.

#### III.3.1 Civil proceedings

In civil proceedings, before an expert starts to work on their opinion, the court generally orders that both parties must make an advance payment (*Kostenvorschuss*) to the court. The amount of this payment depends on the complexity of the case and the extent of the opinion the expert has to render. The remuneration is generally calculated on the basis of the number of hours spent by the expert on the case multiplied by an hourly rate. Expenses and VAT are also included. The court orders the amount the parties must deposit on the basis of its experience. If the amount deposited is not sufficient, a further advance payment can be ordered.

#### III.3.2 Criminal proceedings

In criminal proceedings, the State pays the experts' remuneration and, in the event of a conviction, the person sentenced must reimburse the costs.

#### III.3.3 Family court proceedings

In family court proceedings, the expert's remuneration is generally paid by the State.

### III.4 Legal aid cases

In general, legal aid is granted to people who are unable, in part or in whole, to meet the costs of proceedings, including the costs of experts, as a result of their economic situation. The recipients of legal aid must refund the fees, in whole or in part, if their financial situation has substantially improved within 3 years of the proceedings taking place. It should be noted that the losing party always has to cover the fees of the winning party.

### III.5 Reimbursement of experts' fees

The court makes the decision on the expert's costs in an autonomous fee decision or in the context of its judgment. The costs awarded are therefore enforceable.

## IV. Liability of experts

Experts are held liable according to general contract and tort law. They are obliged to cover their possible liability via professional indemnity insurance.

## V. Additional information about expert proceedings

The website of the Austrian Association of Sworn and Certified Experts (*Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs* – link [here](#)) provides detailed information about costs (sample fees) and the conditions for entry in the list of court experts. The website is very informative and easily accessible to the public.

### V.1 Legal foundations

The main legal provisions applicable to judicial expertise in Austria are:

Articles 351-367 of the Austrian Code of Civil Procedure (*österreichische Zivilprozessordnung (ZPO)*) – link [here](#))

Article 31 of the Uncontested Matters Act (*Außerstreitgesetz*) – link [here](#))

Articles 52-53a of the 1991 Austrian Code of Administrative Procedure (*Allgemeines Verwaltungsverfahrensgesetz*) – link [here](#))

Articles 104, 112, 112a and 125-128 of the 1975 Austrian Code of Criminal Procedure (*österreichische Strafprozessordnung*) – link [here](#)).

## **V.2. Appointment of experts**

Experts can be appointed by the court but not by the parties involved. The appointment of experts in administrative proceedings is similar to that in civil proceedings. In criminal investigation proceedings, the expert can be appointed by the prosecutor.

### **V.2.a. Appointment by a court**

The civil court has discretionary power to appoint an expert, either of its own motion or at the express request of a party to the proceedings, unless the facts of the case can be resolved otherwise. The court is free to appoint any person it considers suitable to act as an expert. The expert must report any conflict of interest to the court. Court-appointed experts have access to the relevant documents of the court file.

### **V.2.b. Appointment by the parties**

In Austria, private experts are chosen by the parties. Their reports must be asserted and submitted by the parties, otherwise they will be rejected as unacceptable. If these requirements are met, the court examines and assesses the expert's opinion. The report is considered as an element of proof but cannot annul the report of a court-appointed expert. Rather, it underpins the legal basis of a party's argument.

The court can decide whether or not to base the reasoning in its judgement on the opinion of the expert appointed by the party.

## **V.3 Procedure**

### **V.3.a. Expert report**

The expert report can be submitted in writing or orally. There are no stipulations governing the way an expert report should be structured.

If the court considers the report to be incomplete, or in the event of unjustified misconduct on the part of the expert, the court can, of its own motion or at the request of the parties, order a new or supplementary report to be drawn up. The court can also order the expert to pay the court fees because of the expert's unjustified misconduct.

The parties may attempt to render invalid or contest the expert's report by means of a relevant submission or a counter-opinion.

In civil proceedings, the parties are closely involved in the work of experts. They must cooperate with them and provide them with whatever documents they request. They may directly question them during adversarial proceedings and require them to comment on their remarks.

### **V.3.b. Court hearing**

In the case of submission of a written report, whether and to what extent the expert's participation in court hearings is necessary (at the request of the parties, where applicable) is decided by the court.

*The information presented here was gathered during the 'Find an Expert' project from contacts in each country selected by the [European Expertise & Experts Institute](#).*

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