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Find an expert

Austria

I. Lists and registers of experts

In Austria, experts are registered by specialization. The registers of experts are kept by the Regional court of First Instance (“Landesgericht”). The registers are publically available [here](#).

Experts have to apply and to pass an exam in order to be listed on the register.

II. Expert’s qualifications

Applicants who wish to be appointed by courts must prove professional experience in their area of expertise. Moreover, the expert must have substantial knowledge of the most important principles of Austrian procedural law, know how to write an expert’s opinion and must furnish proof of either five years of professional work during the period immediately preceding registration if they have a master’s degree, or 10 years professional experience in their area of expertise without a master’s degree. Moreover, they must have full legal capability and be trustworthy. To be trustworthy, experts must be beyond reproach in their overall conduct so that their impartiality and the quality of their work is granted.

The application for registration in the register of “sworn and certified” experts (in the wording of the EEEI acknowledged expert) must be submitted to the president of the Regional court of First Instance in the district of the applicant’s regular residence or place of professional activity.

In the course of the registration proceedings, 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 experts meet all requirements mentioned above, they are appointed for five years by the president responsible for the registration. experts have to re-apply to be registered every five years. If experts still meet all requirements, they get reappointed (though they do not need to take another exam).

Experts can be removed from the register: if they wish, if they do not meet the requirements anymore or if the competent authority decides to do so. The decision to not re-register an expert has to set out the reasons for the denial to re-register the expert and may be contested.

There is a [code of ethics](#) published by the Austrian Association of Sworn and Certified experts.

III. Remuneration of experts

III.1 General information

The [Austrian Act on Entitlement of Fees](#) (“Gebührenanspruchsgesetz” 1975) is applicable to experts’ fees. This regulation contains general rules which are applicable for experts. Moreover, it includes a specific compensation system for doctors, anthropologists, dentists, veterinarians, experts for chemical analysis and experts for motor vehicles.

III.2 Fees

Usually fees depend on the complexity of the opinion. A specific compensation system exists in criminal proceedings and family court proceedings for certain experts (see above II.1).

III.3 Payment

The expert must invoice his note of fees to the court within 14 days after he has finished giving his opinion. In general, the fees are paid via bank transfer.

III.3.1 Civil proceedings

In civil proceedings, before the expert starts to work on his opinion, the court generally orders that both parties have to make an advance payment (“Kostenvorschuss”) to the court. The amount of the advance payment depends upon the complexity of the case and the scale 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 part of the expert’s remuneration. The judge orders, in accordance with his experience, the amount the parties have to deposit. If the deposited amount is not sufficient a further advance payment can be ordered.

III.3.2 Criminal proceedings

In criminal proceedings, the state pays the expert’s remuneration.

III.3.3 Family court proceedings

In family court proceedings, usually the state pays the expert’s remuneration.

III.4 Legal aid cases

In general, legal aid is granted to persons who are partly or totally unable 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 three years after the proceedings. Please note, the losing party always has to cover the fees of the winning party.

III.5 Reimbursement of experts’ fees

The court renders the (proportioned) cost decision as part of the judgement. Thus, the awarded costs are enforceable.

IV. Liability of experts

Experts are held liable according to the 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](#) provides detailed information about costs (sample fee notes), how to become an acknowledged expert. This 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:

Art. 351-367 of the [Austrian Code of Civil Procedure](#) (“Zivilprozessordnung” - ZPO)

Art. 31 of the [Uncontested Matters Act](#) (“Außerstreitgesetz“)

Art. 52-53a of the [Austrian Code of Administrative Procedure](#) (“Allgemeines Verwaltungsverfahrensgesetz 1991“)

Art. 104, 112, 125-128 [Austrian Code of Criminal Procedure](#) (“Strafprozessordnung 1975“).

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 the one 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 ex officio or according to a litigant's explicit request if the relevant facts cannot be established otherwise. The only limit to this power is the adversary principle. The court is free to appoint any person it considers suitable to act as an expert. The expert has to report any conflict of interest to the court. court-appointed experts have access to the relevant elements of the file.

V.2.b. Appointment by the parties

In Austria, a private expert is chosen by a party. His report has to be invoked and submitted by the parties, otherwise it would be rejected as inadmissible. If those requirements are fulfilled, the court freely 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. It is rather linked to the legal foundation of litigant's arguments.

The court can decide whether it is going to base the reasoning in its judgement on the party-appointed expert's opinion.

V.3 Procedure

Court-appointed experts can be cross-examined by the parties' lawyers.

V.3.a. Expert report

In Austrian expertise proceedings a preliminary expert report is not required. The main report can be delivered in writing or orally. The expert does not have to follow a certain structure when providing his report.

If the court considers the report to be incomplete or in case of the expert's unjustified misconduct, the court can order the drafting of a new or an additional report ex officio or upon request of the parties. The court can also order that the expert has to pay the court fees because of the expert's unjustified misconduct.

The expert's report can be challenged by the parties' statements and a counter-expertise.

In civil proceedings, the parties are highly involved in the expert's operations. They have to cooperate and to answer all requests for documents from the expert. They may directly question the expert during adversarial meetings and require the expert to comment on their remarks.

V.3.b. Court hearing

The court only orders the expert to attend the hearings in exceptional cases.

The information presented here was gathered during the Find an Expert Project from contacts per country selected by the [European Expertise & Experts Institute EEEI](#).

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