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How to bring a case to court

Autriche

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 'Jurisdiction – Austria'.

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 'Jurisdiction – 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 'Jurisdiction – 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 the District Courts (Bezirksgerichte), which as a rule have jurisdiction for amounts in dispute of EUR 15 000 or less, must be signed by a lawyer if the amount in dispute is over EUR 5 000. This obligation to be represented by a lawyer does not apply to cases which must be filed with the District Courts irrespective of the amount in dispute (i.e. even if it exceeds EUR 15 000); such cases include disputes between spouses, civil partners and family members, disputes over land boundaries, disputes about interference with possession, disputes over tenure of property, disputes arising from contracts between mariners, carriers and innkeepers and their principals, passengers or guests, and disputes over livestock defects.

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 residential occupation rights, etc.

Where legal representation before the District Courts is not compulsory, anyone can file a written claim or application initiating proceedings with the court.

In civil and commercial cases to be brought before the courts, claims filed with the Regional Courts (Landesgerichte) must normally always be signed by a lawyer. The Regional Courts have jurisdiction for all claims for which the District Courts do not have jurisdiction, irrespective of the amount in dispute, such as disputes concerning industrial property law, unfair competition and action for injunctions brought by consumer protection associations.

There is no need for a lawyer to sign claims under labour or social security law (proceedings under the Labour and Social Courts Act – ASGG) to be brought before the Regional Courts. This applies in particular to claims by employees against employers arising from their contract of employment.

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. If one of the parties would like to file a claim with the court themselves, they must deliver it to the reception area of the court or post it in the inbox provided by the court.

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

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. Some courts also allow use of Burgenland Croatian, Hungarian or Slovenian as official languages for minority language groups.

Claims or applications to initiate proceedings 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 represented by a lawyer, the claim may also be made orally at the District Court with jurisdiction, as explained under Question 7 above.

Claims can be filed online via the closed system of the Austrian e-Justice (ERV) platform, for which it is necessary to register (this is only financially viable for those filing large numbers of claims before the Austrian courts). Claims cannot be filed by email and a claim submitted by email cannot be rectified after the deadline. Claims submitted by fax do not satisfy the requirements of the Code of Civil Procedure (ZPO) either. But if a claim is submitted by fax the original may be filed later, and will be deemed to have met the deadline.

Since the beginning of 2013, submissions and attachments can be lodged with courts and the public prosecution service online using the citizen's card (Bürgerkarte) function (chip card or mobile phone signature) with the online forms available on Austria's Federal Ministry of Justice website ('Elektronische Eingaben an Gerichte und Staatsanwaltschaften', <https://justizonline.gv.at/jop/web/formulare>).

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 compulsory forms available are for applications for conditional payment orders (Mahnklagen). All payment claims up to EUR 75 000 must be filed in the form of an application for a payment order under this procedure (Mahnverfahren). The appropriate forms can be obtained from the court or printed out from the Federal Ministry of Justice website (<http://www.justiz.gv.at/>). The appropriate forms can be obtained from the court or printed out from the Federal Ministry of Justice website (<http://www.justiz.gv.at/>).

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

As a rule, every claim may be accompanied by any documents (exhibits) which support the claim (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 forum (jurisdiction agreements) may be enclosed with the claim. The same applies to written agreements on the place of performance of a contract, if the claimant wishes to rely on that place of jurisdiction, and other particular facts relevant to jurisdiction 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 the court; they are intended to cover the overall cost of the lawsuit at first instance. Fees are usually graduated depending on the amount in dispute. They are to be paid when the action is brought, and this is best done 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, and, in international payments, a BIC code as well) on the very first page of the claim.

How lawyer's fees are paid is a matter for individual agreement; the same applies to the amount to be paid in lawyer's fees (unless payment has been agreed in accordance with the Legal Fees Act (Rechtsanwaltstarifgesetz) or General Fee Guidelines (Allgemeine Honorar-Kriterien)). Reimbursement can normally be demanded from the opposing party only once final judgment has been delivered, always depending on how successful the lawsuit was.

11 Can I claim legal aid?

Legal aid is granted to persons who cannot pay the cost of the proceedings without endangering their livelihood. 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 the seat of that court is outside the district of the District Court in which the person is permanently or temporarily resident, the application may also be registered orally at the District Court in their place of residence. If the financial and substantive conditions are satisfied, legal aid may be applied for before a claim is filed, for the purpose of filing the claim and/or 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>). Application forms, which contain additional information and advice, can 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 received by the court with (at least theoretical) jurisdiction. A claim is considered to have been duly filed if it does not give grounds for immediate rejection or correction 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 of receipt of a claim is normally only issued 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 on time 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 the District Courts; however, in proceedings before the Regional Courts, it is at least 3 weeks.

In proceedings for a court order terminating a tenancy agreement for residential premises or a commercial lease, the landlord must apply separately for an enforceable copy of the termination order. If the person being given notice files an objection on time (within four weeks), the landlord is automatically informed (usually together with a summons to the hearing).

Except in special procedures (such as procedures to obtain an order for payment of a debt, payment of a bill of exchange or a landlord's notice of termination), once a claim has been received (and any correction procedure completed) in cases before the District Court with jurisdiction, the court usually serves the claim on the defendant automatically, together with a summons to the hearing and, at the same time, sends the claimant a summons to the hearing. In cases before the Regional Courts, the defendant is automatically asked to file a written defence to the claim (and reminded that it must be signed by a lawyer) when the complaint is served. If the defendant fails to defend the claim on time, a default judgment is issued at the claimant's request; otherwise proceedings are suspended. If the defence is received on time, the claimant is sent a copy of it, often together with a summons to the hearing.

At the preparatory meeting (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 is also included in the record of proceedings, as the case timetable. A copy of the record of proceedings is to 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 when convenient.

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