

Jurisdiction - Austria


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TABLE OF CONTENTS

- [1 Should I apply to an ordinary civil court or to a specialised court \(for example an employment labour court\)?](#)
- [2 Where the ordinary civil courts have jurisdiction \(i.e. these are the courts which have responsibility for such cases\) how can I find out which one I should apply to?](#)
 - [2.1 Is there a distinction between lower and higher ordinary civil courts \(for example district courts as lower courts and regional courts as higher courts\) and if so which one is competent for my case?](#)
 - [2.2 Territorial jurisdiction \(is the court of city/town A or of city/town B competent for my case?\)](#)
 - [2.2.1 The basic rule of territorial jurisdiction](#)
 - [2.2.2 Exceptions to the basic rule](#)
 - [2.2.2.1 When can I choose between the court in the place where the defendant lives \(court determined by the application of the basic rule\) and another court?](#)
 - [2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives \(court determined by the application of the basic rule\)?](#)
 - [2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?](#)
- [3 Where specialised courts have jurisdiction how can I find out which one I have to address?](#)



1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

In civil cases, jurisdiction is at first instance exercised by District Courts (*Bezirksgerichte*) and Regional Courts (*Landesgerichte*). Outside Vienna, District Courts and Regional Courts also hear commercial cases. In addition, Regional Courts hear cases involving labour and social security law. Only Vienna has its own District Court for commercial matters, its own Commercial Court (*Handelsgericht*) and its own Labour and Social Court (*Arbeits- und Sozialgericht*).

The fact sheet on the 'Organisation of the courts' shows how subject matter jurisdiction is divided between the District and Regional Courts, the courts hearing cases involving labour and social security law and those hearing commercial matters.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

Jurisdiction is basically divided between the courts based on the type of lawsuit (subject matter jurisdiction) and depends in all other respects on the amount in dispute. Jurisdiction based on the type of lawsuit always takes precedence over jurisdiction based on the amount in dispute.

District Courts have jurisdiction in cases where the amount in dispute is EUR 15 000 or less (since 1 January 2013; this will rise to EUR 20 000 as from 1 January 2015 and EUR 25 000 as from 1 January 2016). District Courts have jurisdiction on the basis of the type of lawsuit for example in most cases involving family law or tenancy law.

Regional Courts have jurisdiction in cases where the amount in dispute is over EUR 15 000 (since 1 January 2013; this will rise to EUR 20 000 as from 1 January 2015 and EUR 25 000 as from 1 January 2016). Regional Courts have jurisdiction based on the type of lawsuit, for instance, in disputes under the Atomic Liability Act (*Atomhaftpflichtgesetz*), the Public Liability Act (*Amtshaftungsgesetz*), the Data Protection Act (*Datenschutzgesetz*) and competition and copyright law.

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

2.2.1 The basic rule of territorial jurisdiction

Everyone has a place of general jurisdiction based on their personal connection with a court district. As a rule, lawsuits are filed in the defendant's place of general jurisdiction. The place of general jurisdiction of a private individual usually depends on their place of domicile or habitual residence and one person may have several general places of jurisdiction. The place of general jurisdiction of a legal entity usually depends on the location of its registered office.

2.2.2 Exceptions to the basic rule

2.2.2.1 *When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?*

In some cases, lawsuits may either be filed in the defendant's place of general jurisdiction or a different forum may be selected (elective venue). For civil proceedings alone, the Austrian law on jurisdiction recognises more than twenty different elective venues for dealing with contractual and non-contractual obligations in different situations, various claims under property law, as well as elective venues of a procedural kind. These might include the forum of the place of performance or of the place stated on an invoice, the forum in which the subject matter of the dispute is located (*forum rei sitae*), the forum in which the harm was caused or the forum in which a counterclaim is filed. Venue rules may vary considerably from other European or national rules on jurisdiction.

Austrian law provides for the following places of jurisdiction for the following claims:

For claims arising from contracts (other than employment contracts): lawsuits to determine whether a contract exists, lawsuits seeking performance or cancellation of a contract and claims for damages for non-performance or improper performance of a contract may be filed with the court of the place in which the parties agreed the defendant would perform the contract (forum of the place of performance). That agreement must be proved by documentary evidence.

For maintenance claims: see the fact sheet on 'Maintenance claims – Austria'.

For claims in tort: disputes seeking compensation for damage for death or injury to one or more persons, for false imprisonment or for damage to tangible property may also be brought before the court in whose district the harm was caused (forum of the place where the harmful event occurred).

For claims for damages under civil law as a result of criminal acts: claims for damages under civil law as a result of criminal acts can be brought before the court at which criminal proceedings are pending.

For divorce petitions: see the fact sheet on 'Divorce – Austria'.

For custody petitions: see the fact sheet on 'Parental responsibility – Austria'.

2.2.2.2 *When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?*

In some cases there is a particular place of jurisdiction in which the lawsuit must be filed, which excludes both the place of general jurisdiction and elective venues. The term 'compulsory place of jurisdiction' (*Zwangsgesicht*) is used to denote an exclusive place of jurisdiction which cannot be changed, even by means of a jurisdiction agreement between the parties (this must be expressly provided for). Exclusive places of jurisdiction exist mainly (but not only) in matrimonial and family law. For example, the place of jurisdiction for marital disputes or in matters of inheritance might be an exclusive place of jurisdiction and the place of jurisdiction for disputes arising from bonds or the affairs of an association might be a compulsory place of jurisdiction. Compulsory jurisdiction rules may vary considerably from other European or national rules on jurisdiction.

2.2.2.3 *Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?*

If there is no compulsory place of jurisdiction (see point 2.2.2.2 above), the parties may expressly agree to submit to one or more courts of first instance in named places or exclude courts that would otherwise have jurisdiction. The agreement must either refer

to a particular dispute or to disputes arising from a particular dispute or legal relationship. There is no compulsory formal requirement for jurisdiction agreements; however, it must be possible to prove the agreement with documentary evidence if it is disputed during the course of the proceedings.

A jurisdiction agreement allows the parties to change the legal jurisdiction (based on subject-matter and/or place) which would otherwise apply. Such agreements may be made before proceedings commence or at the start of proceedings. An agreement changing subject-matter jurisdiction from the Court of First Instance to the District Court is allowed, provided the Court of First Instance has jurisdiction based on the amount in dispute, and within general and commercial jurisdiction.

Territorial jurisdiction can be changed, unless this is expressly ruled out. A compulsory place of jurisdiction applies if a law states that jurisdiction cannot be changed. For instance, territorial jurisdiction cannot be changed or can only be changed to a limited extent where jurisdiction is determined under Section 14 of the Consumer Protection Act (KSchG), Section 83a or Section 83b of the Rules on Jurisdiction (JN), Section 532 of the Code of Civil Procedure (ZPO), Section 9 of the Labour and Social Courts Act (ASGG), Section 51 of the Income Compensation Regulations (EO) or Section 253 of the Bankruptcy Code (IO).

3 Where specialised courts have jurisdiction how can I find out which one I have to address?

Only Vienna has specialist civil courts for commercial cases, namely the District Court for Commercial Matters (*Bezirksgericht für Handelssachen*) and the Vienna Commercial Court (*Handelsgericht Wien*), and a specialist civil court for cases involving labour and social security, namely the Vienna Labour and Social Court (*Arbeits- und Sozialgericht Wien*). In all other districts, commercial cases and cases involving labour and social security law are heard by the general courts. Territorial jurisdiction in commercial cases and cases involving labour and social security law is therefore regulated under the general rules of civil procedure.

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