

## Rights of defendants in criminal proceedings - Austria



Naši prevoditelji trenutno pripremaju jezičnu inačicu koju vidite.  
Sljedeći jezici: [de](#) već su prevedeni.

These factsheets explain what happens when a person is suspected or accused of a crime which is dealt with by a trial in court.

Under Austrian law you commit an offence only when you violate a specific legal provision in force at the time the act was committed. The right of prosecution is a right of the state. The prosecuting authorities, directing the criminal investigation department, as well as the courts must determine the facts and clear up all circumstances that are of importance when assessing the facts.

In the following factsheets, you will learn about your rights as a defendant if criminal proceedings are brought against you in Austria. You have different rights during the different stages of the proceedings. The most important stages in the proceedings will be explained in summary form so that you can quickly access the information that you need.

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### Summary of the criminal process

In principle, the criminal process in Austria comprises three procedural stages:

- preliminary proceedings
- trial
- appeal

Details on all of these stages in the criminal process and about your rights can be found in the factsheets. This information is not a substitute for legal advice and is intended to be for guidance only.

For information on road traffic offences, which are usually dealt with by a fixed penalty like a fine, go to [Factsheet 5](#).

If you are the victim of a crime, you can find full information about your rights [here](#).

### Role of the European Commission

Please note that the European Commission has no role in criminal proceedings in Member States and cannot assist you if you have a complaint. Information is provided in these factsheets about how to complain and to whom.

### Click on the links below to find the information that you need

[1 - Getting legal advice](#)

[2 - My rights during the investigation of a crime](#)

- Investigation and taking of evidence
- Arrest and pre-trial detention (including the European Arrest Warrant)
- Criminal charges
- Preparation for trial by the defence

[3 - My rights during the trial](#)

[4 - My rights after the trial](#)

[5 - Minor offences](#)

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## 1 - Getting legal advice



Izvorna jezična inačica ove stranice [de](#) nedavno je izmijenjena. Naši prevoditelji trenutno pripremaju jezičnu inačicu koju vidite.

Getting independent legal advice is very important when you are involved in some way with criminal proceedings. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay.

### Finding a lawyer

In Austria, only lawyers can defend you in court (with a few exceptions). The Austrian Federal Bar Association keeps an electronic register of lawyers, which you can access [here](#).

If you learn that investigations leading to criminal proceedings are being conducted against you in Austria, you should choose a lawyer and arrange a meeting with him/her to discuss the matter. If possible this should be done before you are questioned for the first time.

When arrested, persons have the right to contact a lawyer before they are questioned. If you do not know a lawyer, you can contact the [lawyers on standby duty](#). The police or the prosecuting authorities must allow you to contact this service.

### Paying for a lawyer

If you appoint a lawyer for your defence you must generally pay for his/her services yourself. If there is no agreement on fees, the lawyer may ask to be paid a reasonable remuneration. The rates listed in the [General Fee Criteria](#) (AHK) may be taken as a basis for calculating the fee.

If paying for your defence puts the maintenance for yourself or for your family at risk, taking into account your income and assets, and if defence counsel is required, you must be assigned defence counsel free of charge. In such cases, you will also receive free copies of the criminal file. You can apply for assignment of a legal-aid defence counsel by using this [form](#).

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## 2 - My rights during the investigation of a crime and before the case goes to court



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The purpose of criminal investigation is to determine the facts so that the prosecuting authorities can decide whether charges should be brought or the case should be closed. If charges are brought the preliminary proceedings are also intended to facilitate the swift completion of the trial.

What are the stages of the criminal investigation?

- The purpose of criminal investigation is to determine whether a criminal offence has been committed and if so by whom.
- Once investigations are conducted against a person suspected of a specific offence, that person is deemed to be accused.
- The court must take certain steps in the investigation. It must reconstruct the offence and conduct what is known as adversarial proceedings. The public prosecutor and the accused, together with his/her defence counsel, are present during these proceedings and have the right to put questions to the person under interrogation. The prosecuting authorities may also request the court to take further evidence, if they consider this necessary in the public interest.
- The prosecuting authorities and/or the criminal investigation department may take most investigative steps on their own initiative without the consent of the court. These steps include, in particular, inquiries and interrogation, as well as establishing the identity of persons, searches, etc.
- A court order is required to impose and to extend pre-trial detention. The same applies to the use of coercive measures in connection with fundamental rights (e.g. searching places protected by householder's rights, accessing bank accounts, telephone tapping, or analysing phone data).
- The prosecuting authorities must discontinue the investigation if no criminal offence has been committed, or if the established facts are insufficient to convict the accused. In all other cases where the facts have been sufficiently determined, the prosecuting authorities must file an indictment with the competent court.
- The prosecuting authorities may withdraw from further prosecution ([↗ diversion](#)) in cases that cannot be discontinued, but where sentencing does not appear to be necessary because the accused (in most cases) pays a fine. Diversion is not possible if the offence resulted in the death of a person or if it falls within the jurisdiction of a lay judges' court or a jury court, in other words in cases carrying a prison term of more than five years (as a rule).

## My rights during the investigation

You have different rights depending on the various steps and stages of the investigation:

- [Investigation and taking of evidence \(1\)](#)
- [Arrest and pre-trial detention \(2\)](#)
- [Criminal charges \(3\)](#)
- [Preparation for trial by the defence \(4\)](#)

In any event you have the following rights irrespective of the specific stage of the proceedings:

- You must be informed as early as possible of the fact that investigations are being conducted against you, of the offence of which you are suspected and of your principal procedural rights.
- During every stage of the proceedings you have the right to defence counsel of your choice or to apply for legal-aid defence counsel (see [↗ Factsheet 1](#)). If the facts or the legal issues are complex, you may ask for legal-aid defence counsel to be assigned to you for the entire proceedings. In criminal proceedings against foreigners, unfamiliar with the Austrian legal system, this will most likely be the case. In all cases requiring what is known as [↗ mandatory defence](#), defence counsel will be assigned to you in any event if you do not appoint one yourself. If you are not represented by legal-aid defence counsel, you must bear the cost of the assigned defence counsel.

The most important stages where you must have defence counsel are: the entire period of pre-trial detention, throughout proceedings for the institutionalisation of mentally abnormal offenders, proceedings before a lay judges' court or a jury court, or trial before a single judge if the offence may carry a prison sentence of more than three years.

- To consult your file;
- To comment on the allegations raised against you, or to remain silent;
- To request the taking of evidence;
- To appeal against measures taken by the prosecuting authorities or the criminal investigation department, as well as against court decisions;
- To be assigned a translator/interpreter.

## Investigation and taking of evidence (1)

### Who carries out the investigations?

The prosecuting authorities directing the criminal investigation department are responsible for conducting investigations. The criminal investigation department will start the investigation on its own initiative, if a third person files a report with the police, or by order of the public prosecutor.

### **What information will I receive?**

The prosecuting authorities or the criminal investigation department must inform you in every case that you are under investigation and why. Moreover, you must be informed that as an accused person you are not obliged to make a statement and that if you do make a statement it may be used in evidence against you.

If you have committed the offence, of which you are accused and if you confess (if you plead guilty), this will be an important mitigating factor when the court decides on your sentence. However, a plea of guilty will not affect the course of the trial.

### **What happens if I don't speak German?**

If you cannot communicate adequately in German, you have the right to request an interpreter who will be appointed free of charge during your interrogation. You need not and you should not answer any questions if the interpreter is not present. The interpreter will interpret the questions put to you into a language you can understand. The interpreter will also interpret your answers back into German.

The interpreter must in any case interpret the information and the instructions on points of law which you are required to be given by law. If you so wish the interpreter will also assist you in your contacts with assigned defence counsel (not a lawyer of your choice).

If you are informed of an order by the prosecuting authorities or of a court decision, you may also request assistance in having these documents translated. If you wish to consult your file, a translator will only assist you if you do not have defence counsel and it is unreasonable to expect you to arrange for the translation of the relevant parts of the file yourself.

### **Are you allowed to contact a lawyer?**

You do not require a lawyer, except in cases requiring representation by defence counsel. However, irrespective of whether you are being detained or not, you have the right to consult a lawyer at any time, if you wish. An interpreter must also be made available for your contacts with the assigned defence counsel.

If you are arrested and know the name of a lawyer whom you wish to defend you, you may also contact him/her direct or through the police. If you do not know any defence lawyer, you can use the standby service of the bar association ([📄 Factsheet 1](#)).

### **Will they take my fingerprints or DNA samples?**

The police have the right to search your clothes and any objects in your possession. The consent of the court and a subsequent order by the public prosecutor is required for any further physical examination.

The police may take your fingerprints if necessary to establish your identity. The criminal investigation department may take a saliva smear for the purpose of DNA analysis. The consent of the court is required to conduct the DNA analysis itself.

### **Can my home, my office, my car, etc. be searched?**

Places and objects may be searched if it can be assumed that suspicious persons are present or that evidence may be secured there. The consent of the court is required to search places protected by householder's rights. The police may search other places and objects by order of the public prosecutor.

### **Will I receive information about evidence against me?**

As an accused person you have the right to consult your file. In this way you will learn about the evidence against you. In exceptional cases, individual parts of the file may not be accessible for consultation. You have the right to present your own evidence at any time.

### **What legal remedies do I have during investigation proceedings?**

You may defend yourself against any measure taken by the criminal investigation department or the prosecuting authorities during the investigation procedure by filing an objection (not subject to deadline), if you consider that any of your rights have been violated.

The court will rule on your objection unless the prosecuting authorities confirm your opinion. An appeal may be filed against a court decision to the Higher Regional Court. The objection must be filed with the prosecuting authorities.

You have the right to appeal against court decisions to the Higher Regional Court, especially those showing an impact on basic rights.

Appeals may be filed both with the prosecuting authorities and the court of first instance within a period of 14 days.

### **Do I have to be present during the investigations?**

There is no obligation for you to remain in Austria throughout the entire investigation procedure. Your counsel can also ensure that your rights are observed during the investigation (if you wish him/her to do so).

You must travel to Austria for interrogation. There is no provision for video transmission of the investigation procedure; nor is it technically feasible.

## **Arrest and pre-trial detention (including the European Arrest Warrant) (2)**

### **Why might I be taken into custody?**

You may only be taken into pre-trial detention if you are strongly suspected of having committed an offence, and if there is also a reason for detention (risk of absconding, risk of evidence being destroyed, or risk of committing an offence). The consent of the court is required for your arrest (by criminal investigation department officers) (unless you are caught in the act, or there is imminent danger).

Pre-trial detention must be imposed by the court and it must be enforced in a prison. The criminal investigation department may detain you for a maximum of 48 hours before transferring you to the court without undue delay.

The law does not specify whether and how you may inform your family or friends about your detention. Social services are available in every prison to assist you in such matters.

### **What information must I be given if I am taken into pre-trial detention?**

The decision concerning your pre-trial detention must be read out to you, if necessary with the help of an interpreter. You must be handed a written copy of this decision. The decision must state the nature of the offence of which you are strongly suspected. It must also mention all facts which in the opinion of the court justify your detention.

You must be represented by defence counsel throughout the full period of your pre-trial detention. If you do not appoint one yourself, counsel will be assigned to you.

The decision of the court to impose pre-trial detention is taken during an oral hearing.

Within a period of three days, you may appeal to the Higher Regional Court against the decision to impose or later extend pre-trial detention.

### **How long can I be kept in pre-trial detention?**

Any decision concerning pre-trial detention is for a limited period of time. The decision to impose pre-trial detention is effective for fourteen days. The decision extending your pre-trial detention for the first time is effective for one month. Any subsequent decision extending your detention is effective for two months.

Pre-trial detention should not be longer than six months in total, but it may be extended owing to the seriousness of the offence. You will find more information [here](#).

### **Can I receive visits during pre-trial detention, will I obtain medical treatment?**

Every person detained in pre-trial custody has the right to receive visitors twice per week. Your lawyer may visit you at any time during your detention irrespective of the ruling on visitors.

Medical services are available in every prison. The law states that you may receive treatment by medical specialists as required.

### **May I contact my embassy as a citizen of another country?**

You have the right to contact your embassy and you will find its address [here](#). The police and the prosecuting authorities are obliged to contact your diplomatic representative if you so wish.

### **What happens if I am taken into custody subject to a [European Arrest Warrant](#)?**

If a Member State issues a [European Arrest Warrant](#), you may be arrested in another Member State and extradited to the country issuing the arrest warrant. Austrian law requires that you are kept in custody until extradited. A court will issue an order to this effect. You are entitled to defence counsel and, if necessary, to an interpreter at that hearing.

### **Criminal charges (3)**

After conducting investigations, the prosecuting authorities may conclude that conviction is likely. If so, charges will be brought against you before the competent court.

The charges must be brought in the form of a reasoned bill of indictment to a lay judges' court or a jury court if the offence with which you are charged carries a prison sentence of more than five years. For offences carrying shorter sentences, the prosecuting authorities must only file charges in writing without giving reasons with a single judge at a regional court or with the district court.

#### **How can I defend myself against the charges?**

You may file an objection against a bill of indictment within fourteen days after it has been served. The Higher Regional Court will decide on your objection (You will find further details on the grounds to object [here](#)). You may file your objection in written or oral form.

If the Higher Regional Court considers your objection to be justified, it may suspend criminal proceedings or instruct the prosecuting authorities to continue investigations.

If your objection is overruled, or if you do not file an objection, the charges against you become effective and the court seized of the matter must prepare the trial.

If the action against you is brought in the form of criminal charges, you cannot file an objection. However, the law requires the court seized of the matter to assess the validity of the charges. If the court holds that the charges are not justified on one of the grounds mentioned in the law it may decide to discontinue criminal proceedings.

### **Preparation for the trial by the defence (4)**

#### **What happens before the trial?**

Once charges have been brought against you, it is no longer possible to restrict access to the files. At this point at the latest you have access to the complete file which is also available to the court. The court prepares to conduct the trial.

If you wish you may request evidence to help you to prepare for the trial. In particular, you may request the hearing of witnesses. In your request for evidence you must indicate the facts you wish to prove with the evidence in question. You may also be asked to state the reason why you think the evidence you request is appropriate.

#### **How should I cooperate with my defence counsel?**

If a bill of indictment is issued you must be represented by defence counsel during the trial. In this case you will be assigned counsel if you do not appoint one yourself.

In trials before single judges or at district courts involving criminal charges it is not mandatory to appoint counsel. However, you may be represented by counsel of your choice at any time, or request the assignment of defence counsel if the case is a difficult one. As a rule, this will be the case with foreign defendants, who are not familiar with the Austrian legal system.

You should inform your defence counsel of any evidence you think you have available to clear you of the charges. Your counsel will then file the necessary requests for evidence in the appropriate manner.

#### **What happens if I have been previously convicted or acquitted of the offence with which I am now charged in another Member State?**

If a court in a Member State has already taken a final decision on the same charges, those charges cannot be brought against you a second time in another Member State.

You should file the necessary requests on this fact as early as possible (during the investigation). Conversely, if you have been convicted or acquitted of an offence in Austria you may not be taken to court again for the same offence in any other Member State.

#### **Related links**

[Pre-trial detention](#)

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### 3 - My rights during the trial



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#### Where will the trial be held?

The trial will be held at the court where the prosecuting authorities filed the final charges. As a rule this will be the court with local jurisdiction where the criminal offence was committed. Trials are public with a few exceptions.

Depending on the nature of the penalty, the decision will be taken by a single judge, a lay judges' court or a jury court. Lay persons also sit in lay judges' courts or jury courts.

#### Can the charges be changed during the trial?

If you are accused of a further offence during the trial the prosecuting authorities may extend the charges against you and the trial may be extended to include the new charges unless they carry a harsher sentence than the original charges.

In its decision the court is only bound by the facts described in the bill of indictment and not by any legal assessment given by the prosecuting authorities. The court may qualify the offence with which you have been charged differently from the classification given by the prosecuting authorities in the bill of indictment.

#### What are my rights during the trial?

As throughout the entire criminal proceedings you also have the right to remain silent during the trial. You do not have to comment on the charges brought against you.

If you admit the charges during the trial, this will also have a mitigating effect when the sentence is determined. However, an admission of guilt will not change the course of the trial. You will not be punished if you do not tell the truth.

Lay judges' courts and jury courts may not conduct proceedings in your absence. Furthermore, you must also always be represented by defence counsel in such proceedings. There are no provisions for trial by video-conference.

If you do not sufficiently understand German, an interpreter must be engaged for the trial. The interpreter will interpret the main events during the trial into a language that you understand.

During the trial you also have the right to submit requests, especially requests for evidence.

In a trial before a lay judges' court or before a jury court you must be represented by defence counsel, whereas for the other types of proceedings the appointment of defence counsel is optional.

You may change your defence counsel of choice at any time. However, this must not unreasonably prolong the proceedings.

#### What are my rights in relation to the evidence against me?

Only evidence taken directly during the trial provides the basis for the court's decision. You have the right to comment on any individual item of evidence taken.

Witnesses must be heard in person. Their evidence cannot be read out unless the prosecution and the defence agree. You have the right to question co-defendants and witnesses or have your defence counsel ask them questions.

Exploratory evidence is not allowed. That is evidence the results of which you do not know in advance. If you request the taking of evidence you must be in a position to explain the results the evidence will bring or what conclusive fact it will prove.

You can also present evidence directly during the trial, for example evidence obtained by private detectives. It is up to the court to assess the evidence.

### Can information about my criminal record be provided during the trial?

The [Code of Criminal Procedure](#) states that information concerning a criminal record can be obtained even from abroad. The information concerning your criminal record will be read out during the trial.

If you are convicted, and have previous convictions of the same type this may mean that you receive a more severe sentence.

### What happens at the end of the trial?

After all evidence has been taken, and the prosecution and the defence have made their closing statements, the court will take its decision. This concludes the proceedings before the court of first instance.

If the necessary requirements are met, the court may decide to order a type of [diversion](#). In all other cases, the court decides whether it considers you to be guilty of the charges against you, or if you are acquitted.

In the event of a conviction, the court must also decide on the sentence. The sentence may be a fine or a term of imprisonment. The enforcement of the sentence may be suspended for a [conditional probation period](#).

### What is the role of the victim during the trial?

The victim of a criminal offence is entitled to be present during the trial and may also be represented by a lawyer. The victim has the right to put questions to the defendant, the witnesses and expert witnesses during the trial, as well as to be heard in connection with his/her claims.

As with the defendant, the victim may also be assisted by an interpreter during the trial, if he/she is not sufficiently familiar with the German language.

If the victim was subjected to particular stress by the offence on trial he/she may receive socio-psychological and legal [court assistance](#) if necessary to protect his/her procedural rights.

Victims who claim compensation for damage suffered by the offence or compensation for infringement of their rights are known as a [private party to the case](#). If victims participate in the proceedings as private parties they also have the right to request evidence.

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## 4 - My rights after the trial



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### Can I appeal?

A defendant may appeal to a higher court against any court decision of conviction. In the case of judgments by district courts and by single judges at regional courts, a full appeal may be lodged. Its purpose is to challenge both the verdict of guilty and the decision on the sentence. In these proceedings, you may also request that new evidence be taken, or you may present new evidence.

In the case of judgments by lay judges' courts or jury courts you may only appeal against the sentence, but not the verdict of guilty. These judgments may only be challenged by an appeal for nullity, in which you may claim errors in procedure, in the reason for the decision and errors in law.

You cannot challenge the judge's assessment of the evidence. No new evidence may be entered.

You must announce your intention to appeal against a judgment either immediately, when the judgment is pronounced, or within a maximum of three days. The court will then issue the judgment in writing and serve it upon you or your defence counsel. Your counsel must then file the appeal in writing within four weeks

The prosecution has the same right of appeal.

### **What are the steps in the appeal procedure?**

The opposite party to the proceedings (defendant or prosecution) has the right to reply to the appeal. The court then forwards the file to the court of appeal. The Supreme Court always decides on pleas for nullity.

After an oral hearing on the appeal, a decision will be taken. The Supreme Court may also decide on appeals for nullity without an oral hearing.

If the Supreme Court grants the appeal for nullity, it will usually set aside the judgment which is being challenged and the matter must be referred back to the court of first instance. In appeals against verdicts of guilty, the court of appeal may first take any evidence it considers necessary and then decide on the merits.

By announcing and filing an appeal or an appeal for nullity, the judgment which is being challenged is suspended and cannot yet be enforced. However, if you are in pre-trial detention your appeal will not lift the detention.

It is not possible to file a further appeal against a decision by a court of appeal.

### **What happens after the appeal proceedings?**

If your appeal is granted (partly or in full) there may be a second trial before the court of first instance. It is also possible for the court of appeal to take its own decision on the basis of your arguments.

If an appeal is rejected, or if the decision by the court of appeal confirms the conviction, the judgment must be executed once it has become final and enforceable.

Unless you are given a conditional sentence, you will receive instructions to either pay the fine or start serving your prison sentence.

If you are effectively cleared of the charges brought against you, and if you have been detained during the proceedings, you are entitled to compensation for your time spent in custody, in accordance with the [Criminal-law compensation act](#).

### **Can I serve my sentence in my Member State of origin?**

This is possible if you so wish or if you agree. You will find the applicable rules in the [Convention on the Transfer of Sentenced Persons](#) (in particular Article 3).

### **Is my conviction entered in a register?**

The Federal Police Directorate in Vienna maintains a [criminal register](#) for the whole of Austria. It contains, in particular, the following information:

- all final convictions by Austrian criminal courts;
- all final convictions by foreign courts of Austrian citizens and such persons who are domiciled or resident in Austria; as well as
- all decisions by national and foreign criminal courts relating to these convictions.

No appeal is possible against entries in the criminal register. Depending on the seriousness of the crime, entries in the criminal register are deleted after a [certain period of time](#).

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## 5 - Minor offences



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### How are minor road-traffic offences dealt with?

In Austria, the courts do not deal with minor road-traffic offences. This is a task for the administrative authorities. The courts only deal with road-traffic offences that result in accidents with physical injury (negligent bodily injury).

Traffic misdemeanours are penalized by [fixed penal orders](#), [summary penal orders](#) or [penal orders](#).

A [fixed penal order](#) imposes a fine up to 36 euros for a misdemeanour (e.g. parking offences). If the fine is not paid, you will be reported to the administrative authority. A higher fine may then be imposed during the subsequent proceedings.

A [summary penal order](#) is not issued against a specific person, but it is served on the person (e.g. car owner) whom the authority assumes to know or who can easily identify the offender.

A fine of up to 220 euros may be imposed by summary penal order (e.g. minor speeding offences, exceeding the speed limit by 10 to 20 km/h). If the fine is not paid within four weeks, the summary penal order ceases to be valid, and proper administrative penal proceedings are initiated against the driver of the vehicle.

If an authorized official reports a misdemeanour (e.g. more than a minor speeding offence), and/or the offence is identified by automatic surveillance (e.g. section control), the authority may assess a fine of up to 365 euros by [penal order](#). You may file a written or oral objection against the penal order within two weeks.

You must file your [objection](#) with the [authority](#) issuing the penal order.

On 1 July 2005 a registration system for traffic offences (measures against high-risk drivers) entered into force. It lists 13 types of high-risk [registration offences](#).

A ban on driving in Austria is imposed on foreign drivers for whom a third [registration offences](#) has been entered.

Since 1 March 2008, the [Law on enforcing administrative penalties throughout the EU](#) has been in force, whereby penalties for road-traffic offences can be enforced throughout the EU.

### How are other minor offences dealt with?

Misdemeanours are generally penalized in accordance with the [Law on administrative penal offences](#). These are the possible types of penalties: [fine](#) (most frequent type) and [imprisonment](#) (under certain circumstances). The [competent authority](#) is the one with local and material responsibility ([instances](#) under administrative law).

For general information about possible legal protection against a decision by an administrative authority click [here](#).

### Will these offences appear in my criminal record?

In Austria penalties imposed under administrative law are not recorded in the [criminal register](#).

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