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German

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## Types of legal professions

Austria

This page provides an overview of the legal professions in Austria.

### Legal professions – Introduction

At present there are 1 693 professional judges for whom the Austrian Federal Ministry of Justice is responsible (data as per 1 November 2012, representing active full-time equivalent positions, including at the Supreme Court).

Judges are also appointed outside the justice system, for example to the Administrative Court (approximately 63) and the Asylum Court.

In addition, lay persons are assigned to specific cases and work on a voluntary basis. They act as lay judges or jury members in criminal cases and as associate judges with special expertise in commercial, labour and social law cases.

There are 375 public prosecutors (data as per 1 November 2012, representing active full-time equivalent positions, including at the office of the director of public prosecutions) and 4 864 officials and contract staff (data as per 1 November 2012, representing active full-time equivalent positions, including at the Supreme Court and the office of the director of public prosecutions), who help maintain the proper operation of the courts and the offices of public prosecution.

Altogether 3 631 people are employed in the penitentiary system (data as per 1 November 2012, representing active full-time equivalent positions, including members of the Prisons Directorate); this figure includes a total of 3 098 prison wardens (including 127 responsible for teaching prisoners).

### 1. Judges

#### Education and appointment

After completing their law studies, followed by court practice within the framework of judicial preparation service, judges undergo their practical training. Every year, about 60 - 80 candidate judges are appointed. Judicial preparation service (including court practice) lasts in principle for four years and is carried out at district courts, regional courts, a public prosecutor's office, a prison or a centre for victims' protection or assistance, or at the office of an attorney at law, a notary or a prosecutor representing the Federal Ministry of Finance. Part of the training service can also be completed at the Higher Regional Court, the Supreme Court, the Federal Ministry of Justice, the Prisons Directorate, probation services centres, associations of legal trustees or youth welfare offices, the office of the citizens' rights ombudsman or appropriate undertakings, or in the financial sector. Judicial preparation service concludes with the judicial office examination.

Once they have passed the judicial office examination, candidate judges can apply for vacant permanent positions as judges.

Appointments as judges are made by the Federal President who, where most positions are concerned, will have delegated this task to the Federal Minister for Justice. Only Austrian nationals can be appointed judges.

Lay persons on the bench must be distinguished from professional judges. They do not need any legal training and work on a voluntary basis. They may be either lay judges or jury members in criminal proceedings, or associate judges with special expertise in labour and social law cases.

#### Status of judges

Professional judges have a public-law employment relationship with the Federal State. In addition to the Federal Constitutional Act, the Judges Service Act is the main legal source for the training and professional status of judges. (The full name of this legal source is Judges and Public Prosecution Service Act; in particular, numerous provisions to which judges and public prosecutors are subject and that govern, for example, disciplinary procedures and service descriptions are determined similarly.)

Professional judges are appointed for an unlimited period of time and retire at the end of the year in which they reach the age of 65.

According to Articles 87 and 88 of the Federal Constitutional Act, judges act as independent agents of the state in interpreting the law and adjudicating cases. This independence is expressed in judges' freedom from instruction (material independence) and in the impossibility of removing them or transferring them to another position (personal independence). Judges are bound only by the law and decide on the basis of their own legal convictions. Likewise, they are not bound by earlier decisions of other courts on similar legal issues (precedents).

Apart from when they retire permanently after reaching the statutory age limit, judges can be removed from office or transferred to another position or retired against their will only in the circumstances and in the manner provided for by law and on the basis of a formal judicial decision (Article 88 of the Federal Constitutional Act).

The special status of judges under the Constitution comes into play only in the exercise of their judicial office (in conducting all judicial business allocated by law or under the system of allocation of business). An exemption exists for 'administration of justice' matters (measures to maintain the operation of the judicial system). But in such cases, judges are independent only if they deal with these matters (such as the allocation of judicial business and proposals for appointments to judicial positions) on panels or in commissions. Otherwise, they are bound by instructions from above. The fixed allocation of judicial business ensures that the right to a judge under the legal system, which is guaranteed by the constitution, is upheld.

#### Role and duties

Judges are responsible for adjudicating civil and criminal law cases. In administrative and constitutional law matters, they act as a check on the administration and as guardian of the constitution.

#### Responsibility before the law

Disciplinary Court: A judge who culpably contravenes his professional obligations is answerable to the disciplinary court, which is established at the Higher Regional Court or the Supreme Court and consists solely of judges (the disciplinary court is also competent in the matter of misconduct by public prosecutors).

Criminal Court: A judge who, in culpable breach of his professional obligations, also commits a criminal offence is answerable to the criminal court (for example, in the event of abuse of official power).

Civil Court: A party who has suffered a loss as a result of unlawful and culpable conduct by a judge (or, if applicable, a public prosecutor) can assert this loss only against the State. The State can have recourse against the judge (or, if applicable, a public prosecutor) in the event of intentional acts or gross negligence.

## **2. Public prosecutors**

### **Organisation**

Basically, the hierarchical organisation of the public prosecutor's office corresponds to the courts' organisation.

At each of the trial courts with jurisdiction over criminal cases (i.e. 17 courts in all) there is a public prosecutor's office. In addition, there is a Central Service for the Prosecution of Economic Crimes with competence for the whole of Austria. At each Higher Regional Court there is a senior public prosecutor's office, and the office of the director of public prosecutions is at the Supreme Court. The senior public prosecutor's offices and the office of the director of public prosecutions are directly subordinate to the Federal Minister for Justice.

### **Education and appointment**

The education of a public prosecutor corresponds to that of a professional judge.

Anyone who fulfils the requirements for appointment to the position of judge can also be appointed a public prosecutor.

Vacant permanent positions for public prosecutors, like permanent positions for judges, must be advertised publicly to be filled. It is the Federal President who has the right to appoint public prosecutors but, as in the case of judges, he will have delegated the right of appointment in respect of most permanent positions for public prosecutors to the Federal Minister for Justice.

### **Status of public prosecutors**

Public prosecutor's offices are judicial authorities separate from, but not independent of, the courts. They have a hierarchical structure and are bound by the instructions of senior public prosecutor's offices and ultimately of the Federal Minister for Justice.

There are precise statutory rules governing the right to issue instructions. Instructions from a senior public prosecutor's office or from the Federal Minister for Justice may be issued only in written form and must be accompanied by a statement of reasons. Moreover, instructions received have to be recorded in the criminal case file. The Federal Minister for Justice bears ministerial responsibility and is thus obliged to provide information to Parliament, to which he or she is accountable.

Staff members of individual public prosecutor's offices must comply with instructions given by the office director. However, if they consider an instruction to be contrary to the law, they may demand a written order concerning the instruction and may even arrange to be released from handling the criminal case in question. Public prosecutor's offices are therefore hierarchically organised with subordinate and superior levels. This is also necessary on account of the fact that – contrary to court rulings – their decisions cannot be contested by means of any legal remedy.

### **Role and duties**

Public prosecutor's offices are special bodies separate from the courts. Their role is to safeguard the public interest in the administration of criminal justice.

This primarily involves laying charges against persons and presenting the indictment in criminal proceedings. They are therefore also called indictment agencies. In criminal proceedings they are also in charge of preliminary proceedings.

Public prosecutors are responsible for filing and presenting indictments, both before the regional court and before the district courts of the respective regional court district. As a rule, district prosecutors will present the indictment before the district courts. District prosecutors are officials with special expertise, but they are not required to have an academic degree.

A special position is occupied by the Central Service for the Prosecution of Economic Crimes, whose country-wide jurisdiction now extends to the fields of malfeasance by civil servants and economic crimes involving amounts in excess of EUR 5 000 000. Also falling within its competence are financial crimes involving amounts of more than EUR 5 000 000, eligible cases of social fraud, action by a debtor that is detrimental to the creditors, and offences under the Law on Public Limited Companies or the Law on Private Limited Companies committed at correspondingly large undertakings (with a share capital of at least EUR 5 000 000 or more than 2 000 employees).

Senior public prosecutor's offices are hierarchically superior to public prosecutor's offices and support the Higher Regional Courts in Vienna, Graz, Linz and Innsbruck. In addition to acting for the prosecution before the Higher Regional Court, they are also responsible for supervising all public prosecutor's offices in their district and are directly subordinate to the Federal Minister for Justice.

The office of the director of public prosecutions, established at the Supreme Court, in turn occupies a special position. It is directly responsible to the Federal Minister for Justice and does not itself have the right to issue any instructions to public prosecutor's offices and senior public prosecutor's offices. Nor does it issue any indictments, but is in charge of supporting the Supreme Court. It is especially authorised to lodge what are known as nullity appeals for observance of the law in criminal matters in which the parties have no (further) possibility of appeal. The office of the director of public prosecutions thus performs an important function in that it preserves the unity of the law and ensures legal certainty in criminal law matters.

### **Responsibility before the law**

The disciplinary, criminal and civil responsibility of public prosecutors is regulated in the same way as that of judges.

## **3. Registrars**

### **Organisation**

In Austria, registrars are an essential pillar of the judicial system. More than 80% of all trial court decisions in civil law cases are now taken by the 662 registrars (data as per 1 November 2012, representing active full-time equivalent positions, including in the staff deployment group).

### **Education**

To be admitted for training as a registrar, the candidate has to have passed the diploma examinations and/or obtained the school-leaving certificate, or been awarded the vocational school-leaving certificate (in other words, be in possession of the secondary school leaving certificate). The examinations concerned may be replaced by an apprenticeship or by the successful completion either of studies at a technical academy or of studies for the university entrance examination.

Before being admitted for training as a registrar, the relevant person must work in the court office for at least two years and must pass the court office examination intended for court office employees, as well as the specialist service examination. Only then is it possible for the court employee to be admitted for training as a registrar by the presiding judge of the higher regional court.

The training to become a registrar lasts three years and includes the following:  
employment at one or more courts, preparing to deal with matters in the intended work area  
taking part in a basic course and a work area course and  
taking the registrar's examination, to be passed in two parts.

After passing the registrar's examination, the candidate registrar receives a diploma issued by the Federal Minister for Justice.

This diploma must be distinguished from the registrar's certificate, which is only issued after the three-year training programme and confirms the authorisation to practise the profession of registrar. The registrar's certificate gives the relevant court officer the fundamental authorisation to deal with the judicial business that comes within his or her area of activity in respect of the federal territory.

The presiding judge of the Higher Regional Court must subsequently determine the court at which the relevant court officer is to be employed as a registrar and, if applicable, for what period. Within the court concerned, the registrar is allocated by the court manager to a court department managed by a judge or, if applicable, to a number of court departments. Within the court department, the relevant judge is responsible for the allocation of business.

#### **Status of registrars**

Registrars are specially trained court officials to whom the handling of specifically circumscribed business in civil matters at first instance has been transferred on the basis of the Austrian Federal Constitutional Act (Section 87(a)) and the Austrian Registrars Act. They are bound only by the instructions of the judge responsible for the case according to the allocation of court business. The judge may at any point and at any stage re-assign the handling of the case to him- or herself. Registrars may issue only court orders. Judges may grant leave to appeal against these orders. The legal remedy of requiring submission of the case to a judge also exists.

In practice, registrars work independently to the greatest possible extent. Instructions from the judge are not usual and are issued extremely rarely.

#### **Role and duties**

Registrars are used in the following work areas:

Civil procedure, enforcement and insolvency matters ('debt settlement proceedings')

Non-contentious matters

Land register and ship register matters

Companies register matters.

Each of these work areas requires special training and special appointment as a registrar in respect of the relevant work area.

#### **Division of responsibilities between judges and registrars**

A registrar's sphere of activity does not include all work and decisions arising in the above-mentioned work areas. The business that comes within the registrar's sphere of activity is specifically set out in the Austrian Registrars Act, and the extent of the sphere of activity varies widely from one work area to another.

The scope of competences of registrars comprises, inter alia:

default actions

the confirmation of the legal effect and enforceability of rulings by judges in their field of work

decisions on applications for legal aid in court-clerk proceedings

the performance of official acts on the basis of a request for judicial assistance by a domestic court or a domestic authority.

### **4. Attorneys at law**

#### **General points**

Attorneys at law are called upon and authorised to represent parties in all court and out-of-court proceedings in all public and private matters before all courts and public authorities of the Republic of Austria.

No official appointment is required by anyone wishing to practise as an attorney at law in Austria; however, professional practice is conditional upon the requirements set out below.

The substantive legal bases comprise the Austrian Code of Lawyers, Imperial Law Gazette No 96/1896, the Disciplinary Statute for Attorneys at Law and Candidate Attorneys at Law, Imperial Law Gazette No 474/1990, the Federal Act on the Lawyers' Tariff, Imperial Law Gazette No 189/1969 and the Law on the Examination for Lawyers, Imperial Law Gazette No 556/1985.

#### **Requirements for professional practice**

After studying Austrian law, anyone wishing to enter the profession of attorney at law has to prove that he or she has spent a total of at least five years engaged in professional legal work, of which at least five months are to have been spent at a court or a public prosecutor's office and three years at the office of an Austrian attorney at law as a candidate attorney at law.

The attorney at law examination, the passing of which is a condition of being able to practise, can be taken after practical employment of three years, of which at least five months are spent at a court and at least two years at the office of an attorney at law. In order to sit the examination, it is also a requirement to take part in the training courses mandatorily prescribed for candidate attorneys at law by the Chamber of Lawyers.

A person who meets the stated requirements can arrange to be entered on the list of those Chambers of Lawyers in whose area his or her practice is to be.

Under certain circumstances, a foreign attorney at law, a citizen of a Member State of the European Union or of another contracting state of the European Economic Area Convention or of Switzerland may, in Austria:

carry out work as an attorney at law on a temporary basis

apply to be entered on the list of attorneys at law of the responsible Chamber of Lawyers, after sitting an aptitude examination, or

set up a practice in Austria immediately without any prior aptitude examination under the professional title used in the country of origin and become fully integrated into the Austrian legal profession after a three-year 'effective and regular' professional practice in Austria.

Under certain circumstances, a member of a Chamber of Lawyers of a GATS member state can temporarily perform certain precisely delimited work as an attorney at law in the Republic of Austria.

#### **Responsibility before the law**

Attorneys at law who breach professional obligations or bring the profession into disrepute are answerable to a disciplinary council selected by the local Chamber of Lawyers. The penalties that may be imposed by the disciplinary council extend to the striking of the individual concerned off the list of attorneys at law. Decisions at second instance are made by the Supreme Appeal and Disciplinary Committee in four-person divisions consisting of two judges from the Supreme Court and two attorneys at law.

Additionally, attorneys at law are obviously also subject to criminal and civil liability.

#### **Bar Association, Austrian National Bar Association**

A federal province's attorneys at law and candidate attorneys at law entered on the list concerned together form a bar association. Bar associations are corporations governed by public law and autonomous self-governing bodies.

For the purpose of coordinating their tasks, delegates from the bar associations of the individual federal provinces form a joint representative body at federal level, the Austrian National Bar Association (<http://www.rechtsanwalte.at/>).

### **5. Notaries**

#### **General points**

Notaries, as an independent and impartial institution of the precautionary administration of justice, are available to the law-seeking public for the purposes of regulating their private legal relationships.

Their main duty is to participate in legal processes and to provide legal assistance to the public. Notaries execute public deeds, keep third-party objects safe, draw up private deeds and represent parties, mainly in the non-contentious area. Notaries are additionally responsible for work as agents of the court in non-contentious procedure. In particular, they are consulted as 'court commissioners' to conduct probate procedures.

Notaries must ensure that a deceased person's assets are secured and passed to the persons entitled. This work requires special knowledge of the law of inheritance and of non-contentious procedure, which also means that notaries are constantly consulted by the public to assist in drafting wills and especially to give advice and provide representation in inheritance matters.

Notaries hold a public office, but are not civil servants. They bear the commercial risk of running the practice's office, but do not run a business. They are similar to persons practising one of the liberal professions, but as court commissioners they are judicial officers. Work as a notary is a main occupation and cannot be combined with work as an attorney at law.

Changes in the number of notarial positions and in the locations of their offices are made by regulation of the Federal Minister for Justice. At present there are 490 notarial offices in Austria.

The substantive legal bases for this activity comprise the Code of Notaries, Imperial Law Gazette No 75/1871, the Law on Notarial Deeds, Imperial Law Gazette No 76/1871, the Law on Notaries' Fees, Imperial Law Gazette No 576/1973, the Law on the Examination for Notaries, Imperial Law Gazette No 522/1987, the Law on Commissioners of the Courts, Imperial Law Gazette No 343/1970 and the Law on the Fees of Notaries as Commissioners of the Courts, Imperial Law Gazette No 108/1971.

### Education

Anybody who has completed his or her law studies (studies of Austrian law) and is interested in the profession of notary must look for a notary who will accept them as an employee and have their name entered on the list of candidate notaries.

Entry on the list of candidate notaries maintained by the responsible Chamber of Notaries is permissible only if the relevant person has had five months' court practice as a legal practitioner at a court or in a public prosecutor's office and has not yet reached the age of 35 when first entered in the list of candidates.

In order to be admitted to the notarial examination, the candidate notary must attend training events mandatorily prescribed by the Chamber of Notaries.

The notarial examination must be sat in two parts.

The candidate notary can sit the first part of the examination after 18 months' candidacy, but must pass the first part no later than at the end of the fifth year of candidacy; otherwise, his or her name is to be removed from the list of candidate notaries.

The second part can be sat following further practical employment of at least a year as a candidate notary. The second part of the notarial examination must be passed no later than before the end of a ten-year candidacy; otherwise, the candidate's name is removed from the list.

### Appointment

Notarial positions that have become vacant or that have been newly created are to be advertised publicly before they are filled. The law (Section 6 of the Austrian Rules for Notaries) requires, inter alia, that applicants for a notarial position are:

citizens of an EU or other EEA Member State or of Switzerland

have successfully completed studies in Austrian law

have passed the notarial examination and

are able to prove seven years of employment in the legal profession, including at least three years as a candidate notary after sitting the notarial examination.

These basic requirements do not, however, give any right to be appointed as a notary. In the appointment procedure, the applicants are assessed and ranked by the Chamber of Notaries that has geographical jurisdiction, and subsequently by the personnel divisions of the responsible Regional Court and of the Higher Regional Court, the length of the practical employment being of decisive importance. The Chamber of Notaries and the two personnel divisions each submit a three-person proposal to the Federal Minister for Justice. Although the Minister is not bound by the proposals, he or she in practice appoints only one of the ranked applicants.

He or she can practise as a notary until 31 January of the calendar year following his or her 70th birthday. An official transfer of a notary to a different notarial position is not permissible.

### Supervision of notaries; Responsibility before the law

Because of their duties in drawing up public documents and as court commissioners, notaries are subject to particular supervision. The supervision of notaries is the responsibility of the Federal Minister for Justice, the Justice Administration Department and, directly, the Chambers of Notaries.

Notaries have their own disciplinary law. Disciplinary offences are punished at first instance by the Higher Regional Court as the disciplinary court for notaries, and at second instance by the Supreme Court as the disciplinary court for notaries, and the tribunals that hear the cases must in each case also have notaries as members. The list of penalties that can be imposed by the disciplinary court extends to removal from office. Penalties for ordinary infringements of the rule of law are imposed by the Chamber of Notaries.

In addition to their disciplinary liability, notaries are obviously also liable under criminal and civil law.

Where notaries act as court commissioners, they are deemed to be civil servants for criminal law purposes and are therefore liable for 'crimes of office', which include in particular the abuse of official power. Their liability under civil law is regulated differently. If they act as court commissioners, they are subject to the same liability provisions as judges and public prosecutors. Claims cannot therefore be brought directly against them by the parties, who must instead direct their claims for compensation to the State. The State can bring a recourse action in the event of intentional acts or gross negligence. Apart from their activity as court commissioners, they are directly answerable to the parties under civil law.

### Bar Associations, Austrian National Bar Association

Notaries who have their practices in a federal province or who are entered as candidate notaries in that federal province's list of candidate notaries constitute a Bar Association. The federal provinces of Vienna, Lower Austria and Burgenland have their joint Association, as do the federal provinces of Tirol and Vorarlberg.

The Association is responsible for preserving the honour and dignity of the profession and for representing its interests.

Each Bar Association has to elect a Chamber of Notaries from among its members. The Chamber of Notaries consists of a notary as President and of six other notaries (twelve in Vienna) and three candidate notaries (six in Vienna) as members.

**The Austrian National Bar Association (<http://www.notar.at/>) is formed from the federal provinces' Chambers of Notaries.** The Austrian National Bar Association is called upon to represent notaries, and to defend their rights and concerns, on matters concerning Austrian notaries as a whole or on matters whose scope extends beyond that of an individual Chamber of Notaries.

### Related links

#### Legal professions – Austria

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