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German

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Court fees concerning European Payment Order procedure

Austria

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Regulatory framework governing fees of legal professions

Lawyers

Generally speaking, according to the **Austrian Lawyers' Code** (*Rechtsanwaltsordnung*), fees to be paid to lawyers for services rendered can be **freely agreed** between lawyer and client.

Fees may be calculated based on an **hourly rate** or as a flat-rate fee. A flat-rate fee does not vary with the individual services rendered or the amount of time involved. If no fee is expressly set, a reasonable level of remuneration is deemed to have been agreed on the basis of the scales of fees set out in the **Scales of Legal Fees Act** (*Rechtsanwaltstarifgesetz*) or the **General Fee Criteria** for Lawyers (*Allgemeinen Honorar-Kriterien für Rechtsanwälte*).

The Austrian Code of Civil Procedure (*Zivilprozessordnung – ZPO*) and the Scales of Legal Fees Act provide that in **civil proceedings** the court is to determine the share of the costs that the losing party must reimburse to the successful party. These costs are based on the value of the dispute and the duration and nature of the service provided.

In **criminal proceedings**, the general rule is that anybody who has hired a lawyer to act on their behalf (a defendant, a party bringing a private prosecution, or a party asking that a civil claim be joined to the criminal proceedings) must also bear the resulting costs. This is also the case where the defence counsel was appointed by the court, unless the conditions for the granting of legal aid are satisfied. Costs regularly vary according to the type and composition of the court involved (e.g. a district court, a regional court with one judge sitting, a court with lay assessors, or a jury court).

Bailliffs

The remuneration that court bailiffs (*Gerichtsvollzieher*) receive for their activities is laid down in the **Execution Fees Act** (*Vollzugsgebührengesetz*).

Specifically, the law provides for an **execution fee** that the applicant creditor has to pay when the application for execution is submitted, together with a **flat-rate fee** as set out in the **Court Fees Act** (*Gerichtsgbührengesetz -GGG*).

The execution fee ([§ 2 Execution Fees Act](#)) forms part of the costs of the execution proceedings. When awarding costs, the court may order the debtor to reimburse the execution fee if the creditor so requests.

The bailiff is also entitled to remuneration for taking receipt of payments. This may be deducted from the amount collected ([§ 11 Execution Fees Act](#)).

Fixed Costs

Fixed costs in civil proceedings

Fixed costs for litigants in civil proceedings

The court fees payable for using the services of the courts take the form either of a **flat fee** or a **proportional fee of the basis of assessment**. The amount depends on the nature of the case and the value of the dispute (which is determined by the monetary value of the claim) and the number of parties. For more than two parties, a multi-party surcharge may be applied, in accordance with § 19a of the Court Fees Act (from 10–50 %).

Stage of the civil proceeding where fixed costs must be paid

For **civil proceedings at first instance** a flat-rate fee must be paid when lodging the application. The fee is **payable only once**, irrespective of the progress of proceedings at this stage and regardless of whether the action contains more than one claim or relates to more than one person, and covers the entire proceedings at first instance. If the relief sought is extended during the course of the proceedings, additional fees may be incurred. These become payable when written pleadings are filed. Where the relief sought is extended during a hearing, the fee is due when this is placed on record. At **second or third instance**, the fee becomes payable when the **notice of appeal is filed** (§2(1) of the Court Fees Act). By way of exception, in non-contentious proceedings, a **decision fee** rather than a claim fee is sometimes payable.

Fixed costs in criminal proceedings

Fixed costs for litigants in criminal proceedings

A fee has to be paid under Item 13 of the Court Fees Act only in the case of a private prosecution.

Stage of the criminal proceeding where fixed costs must be paid

Fixed costs must be paid at the beginning of proceedings, and when the notice of appeal is filed.

Fixed costs in constitutional proceedings

Fixed costs for litigants in constitutional proceedings

Under § 17a(1) of the Constitutional Court Act (*Verfassungsgerichtshofgesetz – VfGG*), the fee is EUR 220.

Stage of the constitutional proceedings where fixed costs must be paid

Fixed costs must be paid at the beginning of proceedings.

Prior information to be provided by legal representatives

Rights and obligations of the parties

In general terms, the lawyer is under an **obligation** to inform his or her client how fees will be calculated and what costs the client can expect to incur. §50(2) of the Guidelines on Practising as a Lawyer and the Supervision of Lawyers' Obligations (*Richtlinien für die Ausübung des Rechtsanwaltsberufs und für die*

Überwachung der Pflichten des Rechtsanwalts – RL-BA) recommends that when taking on a new case the lawyer should inform the client of the basis on which the fee will be charged and of the lawyer's entitlement to interim payments. Unless a flat-rate fee has been agreed, the client is entitled, at reasonable intervals, to request an interim statement of account or a statement of services already rendered, or, where a time-based fee has been agreed, a statement of time already spent. Likewise, before the lawyer is appointed an agreement should be entered into concerning the commencement and frequency of interim payments.

Cost sources — legal bases

Where can I find information on legal fees in Austria?

The statutory rules on liability for costs in contentious civil proceedings (including commercial matters) can be found in §§ 40-55 of the Code of Civil Procedure. Non-contentious proceedings (for example proceedings relating to family matters, in particular divorce by mutual consent, or disputes over custody, access rights or maintenance claims) are subject to separate rules on liability for costs. The general rules are set out in § 78 of the **NonContentious Proceedings Act** (*Außerstreitgesetz – AußStrG*). **Exceptions** to these general rules apply, inter alia, in proceedings relating to custody and access disputes and proceedings concerning maintenance claims for minors. Costs in **criminal proceedings** are regulated by §§ 380-395 of the **Austrian Code of Criminal Procedure** (*Strafprozessordnung – StPO*). The court fees (flat-rate fees) are set out in the Court Fees Act.

An outline of the fees lawyers are entitled to charge is given in an **online information leaflet** on the homepage of the **Austrian Bar Association** (*Österreichischer Rechtsanwaltskammertag*). General information can also be obtained via the homepage of the **HELP service for foreign citizens living in Austria** [*Amtshelfer für Österreich*] via the link: [Leben in Österreich > Zivilrecht > Zivilverfahren](#) [Living in Austria > Civil Law > Civil Procedure].

This website **HELP service for foreign citizens living in Austria** provides general information on court fees. The texts of laws (such as the Court Fees Act and the rules on scales of fees) are available free from the **Legal Information System of the Republic of Austria** (*Rechtsinformationssystem des Bundes*) on the homepage of the Federal Chancellor's Office (*Bundeskanzleramt*).

In what languages can I obtain information on cost sources in Austria?

In German.

Where can I find information on mediation?

A list of mediators (maintained by the Austrian Ministry of Justice) is available to the general public from a **webpage** dedicated to mediation.

With regard to restorative justice in criminal proceedings, information on defendant-victim mediation is available on the **NEUSTART** homepage (also in English).

Where can I find additional information on costs?

Online information on procedural costs

General information on the Austrian judicial system, legal costs and the Federal Ministry of Justice can be found on the **Austrian Justice website** and on the website of the **HELP service for foreign citizens living in Austria**, which provides reader-friendly information.

The **Legal Information System of the Republic of Austria** provides the text of the following laws:

The Court Fees Act (*Gerichtsgebührengesetz – GGG*)

The Fees Entitlement Act (*Gebührenanspruchsgesetz – GebAG*)

The Lawyers' Code (*Rechtsanwaltsordnung – RAO*)

The Scales of Legal Fees Act (*Rechtsanwaltstarifgesetz – RATG*)

The text of the General Fee Criteria for Lawyers (*Allgemeine Honorar-Kriterien für Rechtsanwälte – AHK*) is available from the portal of the **Austrian Bar Association**.

Where can I find information on the average length of time that different procedures take?

Please contact the Austrian Ministry of Justice directly for this kind of information.

Where can I find information on the average aggregate cost for a particular proceeding?

Court fees payable for each kind of proceeding are established in advance (by the **Court Fees Act**). They may change if the value of the dispute goes up or down. In civil proceedings, the court determines which fees and costs (lawyers' fees, experts' fees, interpreting/translation costs) are to be paid by the losing party to the winning party. The court makes its order on the basis of the **Scales of Legal Fees Act** (for lawyers' fees) and the **Fees Entitlement Act** (for experts' and interpreters/translators' fees). The costs are based largely on the expenditure involved and the time spent. Therefore, a specific figure cannot be given in advance. In principle, the fee to be paid by the client to the lawyer can be freely agreed upon between them.

Value Added Tax

Where can I find information on VAT? What are the applicable rates?

Lawyers' services are subject to **value added tax**. VAT in Austria is **20%**. Like other expenses, this must be paid to the lawyer separately, as stipulated in **§ 16 of the Scales of Legal Fees Act** and **§ 17 of the General Fee Criteria for Lawyers**. The scales of fees set out in the Scales of Legal Fees Act and the General Fee Criteria do not include value added tax.

Legal aid

Applicable income threshold in the area of civil justice

Eligibility for legal aid (*Verfahrenshilfe*) is **not based on a statutory income threshold**. In civil proceedings (and in commercial matters), legal aid is governed by the **Austrian Code of Civil Procedure**. The provisions of the Code of Civil Procedure apply *mutatis mutandis* in noncontentious proceedings. The decision to grant legal aid is taken by the **court of first instance**.

Legal aid is granted to a party only if his or her income, financial circumstances and maintenance obligations are such that he or she cannot afford the cost of legal proceedings without encroaching on the level of resources necessary to maintain a modest standard of living. Legal aid shall not be granted if the intended legal action or defence appears manifestly vexatious or devoid of any prospects of success. The court decides which of the benefits listed below are to be granted in each individual case.

In Austria, legal aid may comprise:

temporary exemption from payment of court fees, fees of witnesses, experts and interpreters or translators, the cost of any necessary public announcements, the costs of a trustee and any out-of-pocket expenditure incurred by the representative or lawyer designated by the court **representation by a lawyer**.

Within three years after the proceedings have been concluded parties in receipt of legal aid may be required to **repay** the sum, in whole or in part, if their financial position changes and they are now in a position to make those payments without encroaching on their necessary level of resources.

Applicable income threshold for defendants and victims in the area of criminal justice

No fixed financial threshold is used to determine whether a defendant, victim of crime or civil claimant is entitled to legal aid. Maintenance above the minimum living wage and below an appropriate maintenance level are the guiding criteria. The minimum living wage is regularly re-evaluated and the current rate is published on the [Austrian Justice](#) website.

Conditions attached to the granting of legal aid to victims

Where there is no entitlement to judicial assistance (*Prozessbegleitung*) under §66(2) of the Austrian Code of Criminal Procedure (*Strafprozessordnung – StPO*), a civil claimant is entitled to legal aid if

he or she cannot afford representation by counsel without encroaching on his or her necessary level of resources (see the statements on the necessary level of resources above), **and**

representation by counsel is in the **interests of the administration of justice**, and especially in the interests of proper enforcement of claims in order to avoid subsequent civil proceedings.

Conditions attached to the granting of legal aid to defendants

Aside from the **financial conditions**, legal aid must be **in the interests of the administration of justice, and especially in the interests of proper defence**.

Assignment of defence counsel is in any event considered to be in the interests of the administration of justice where

there is a case of imperative defence (*notwendige Verteidigung*) under § 61(1) of the Code of Criminal Procedure (see below),

if the defendant is blind, deaf, dumb, or handicapped in some other way or does not have **sufficient knowledge** of the language used by the court, in appeal proceedings,

if the case involves **complex factual and legal circumstances**.

In cases of imperative defence a defendant **must** be represented by **defence counsel**. § 61(1) of the Code of Criminal Procedure gives an exhaustive list of the cases where defence is imperative, as set out by law:

where and as long as the defendant is being held in pre-trial detention;

throughout the entire proceedings for confinement in an institution for mentally unwell offenders;

in trial proceedings for confinement in an institution for addicted offenders in need of rehabilitation or in an institution for dangerous reoffenders;

in trial proceedings before a regional court when it is sitting with lay assessors or a jury;

in trial proceedings before a regional court when a single judge is sitting, if the sentence which may be imposed amounts to more than three years' imprisonment, except in the cases of burglary referred to in § 129(1)–(3) of the Austrian Criminal Code (*Strafgesetzbuch – StGB*) and receiving stolen goods referred to in § 164(4) of the Criminal Code;

in adversarial interrogation (§ 165), where this forms part of the imperative defence in trial proceedings in accordance with points 3 to 5, in an appeal against a judgment of a court sitting with lay assessors or a jury;

for the lodging of an application for a retrial and any public hearing on the application.

Cost-free court proceedings

In order to protect the rights of a victim in criminal proceedings, **psycho-social assistance or judicial assistance are available on application, free of charge**, to victims of violent acts, dangerous threats or sexual offences, and the spouse, life partner, relative in the direct line, brother or sister of a person whose death may have been caused by a criminal offence, or other relatives who were witnesses to the criminal offence. Victims of sexual offences under 14 years of age are entitled to assistance free of charge in all cases, without having to submit an application. Psycho-social assistance covers the preparation of the victim for the proceedings and the emotional burden caused by the proceedings. Psychosocial and judicial assistance are provided by victim support organisations contracted by the Federal Ministry of Justice under **§ 66 paragraph 2 of the Code of Criminal Procedure**.

In **non-contentious proceedings, no fees** are payable for the **appointment of a trustee** (*Sachwalter*) or in custody and access proceedings. Nor are any fees due for proceedings under the Institutional Confinement Act (*Unterbringungsgesetz*) or the Residential Care Act (*Heimaufenthaltsgesetz*). Where a party has a low income and limited assets, in relation to the fees to be paid, legal aid may be granted in the form of provisional exemption from fees. The scale of the exemption granted depends on the application and is at the court's discretion.

When does the losing party have to pay the winning party's costs?

Contentious proceedings

Costs in civil proceedings (including commercial cases) are governed by the **Austrian Code of Civil Procedure**. This provides that, generally, each party must initially pay the costs incurred by their involvement in the proceedings. Mutually incurred costs are initially to be equally split between the parties. When the court decides the case it makes an order as to costs. The principle is that costs are awarded to the successful party. A party who loses a dispute in every respect must **compensate** the other party for all the fees and costs that were necessary for the proper prosecution or defence of the case. If the parties have succeeded in some of their claims and failed in others, the costs are mutually offset or shared proportionately.

Departure from the principle that costs are awarded to the successful party is justified in certain cases:

in the case of defeat on a relatively minor point, if the part of the action that is dismissed has occasioned no particular costs;

if the amount of the claim is determined by experts, or is at the court's discretion, and where costs are to be offset against each other;

if the defendant's conduct has given no cause for bringing the action and he or she has acknowledged the claim at the first opportunity;

if one of the parties has caused the proceedings to be cancelled or to be declared null and void, that party may be required to pay the full costs.

Non-contentious proceedings

Family law matters (maintenance, access rights and custody proceedings and divorce by mutual consent) are dealt with in non-contentious proceedings. The general rules on costs in non-contentious proceedings can be found in § 78 of the Non-Contentious Proceedings Act. But exceptions to these rules are made for many kinds of proceedings. Here, too, the principle normally applies that costs should be awarded to the successful party, but may be awarded differently on grounds of equity. If no compensation is claimed, out-of-pocket expenses (e.g. fees for experts) must be paid in proportion to the share in the case. If this share cannot be determined, they must be divided equally.

Details for the various types of proceeding (maintenance, access rights and custody proceedings and divorce):

As regards divorce proceedings, a distinction must be made between contested divorce and divorce by mutual consent.

Contested divorce: Special provisions of the Austrian Code of Civil Procedure apply to contested divorces. If neither party is found to be at fault in the divorce, costs must be mutually offset. If the ground for divorce is breakdown of the marriage, and if the judgment contains a ruling on responsibility for the breakdown, the guilty party must pay the other's costs.

Divorce by mutual consent: The rules of non-contentious proceedings apply to divorce by mutual consent. In this case, spouses submit two identical applications to the court. Since there are no adversarial proceedings there is no award of costs. Out-of-pocket expenses must be borne equally by the parties. Custody and access proceedings are also non-contentious proceedings. By virtue of an exemption clause (§ 107(5) of the Non-Contentious Proceedings Act), no costs are awarded in this kind of proceedings.

By virtue of another exemption clause (§ 101(2) of the NonContentious Proceedings Act), no costs are awarded in proceedings concerning maintenance claims for children who are still minors.

Criminal proceedings

In criminal proceedings, every person who is represented by defence counsel or another representative has to bear the costs himself or herself, even if the lawyer was appointed by the court (§ 393(1) of the Code of Criminal Procedure).

A judgment convicting the defendant must also order the defendant to pay the costs of the criminal proceedings (§ 389(1) of the Code of Criminal Procedure). Pursuant to [§ 381\(1\) of the Code of Criminal Procedure](#) the following costs may be incurred in criminal proceedings:

a flatrate fee as a share of costs of the criminal proceedings not further detailed below, including the costs of investigation and of instructions issued by the public prosecutor or by the court to conduct official acts, which Section 381(3) limits to the following maximum amounts: in proceedings before the regional court sitting with a jury, from EUR 500 to EUR 10 000; in proceedings before the regional court sitting with lay assessors, from EUR 250 to EUR 5 000; in proceedings before the regional court sitting with a single judge, from EUR 150 to EUR 3 000; and in proceedings before the district court, EUR 50 to EUR 1 000;

experts' fees and in general also interpreters' fees;

costs for information, reports or opinions provided by public authorities;

costs for the transport of the defendant or witnesses from abroad;

costs due to a freezing order and costs for information on bank accounts, for the seizure of letters, for information on telecommunication data, and for the interception of telecommunication;

costs relating to the enforcement of the sentence, including costs of transferring prisoners to a domestic or foreign penal system, excluding the costs of enforcing a custodial sentence;

court fees relating to the criminal proceedings;

costs of defence counsel or other representatives;

a flatrate fee in respect of costs for assistance given to the victim, up to EUR 1 000.

With the exception of the costs listed under the third, seventh and ninth points above, these costs are advanced by the federal authorities. When deciding on the flatrate fee under Section 381(1)(9), the court takes account of the economic capacity of the person liable. Costs for the services of an interpreter do not have to be repaid by the defendant.

§ 391(1) of the Code of Criminal Procedure, however, provides that the costs of the criminal proceedings are to be recovered from the convicted person only provided this does not endanger the resources necessary for the convicted person and their family to maintain a modest standard of living or their ability to pay compensation for the damage caused. If the costs cannot be recovered because of the convicted person's lack of means, the court may declare the costs unrecoverable. If the court finds that the costs will become recoverable in the future, but are not recoverable for the time being, the economic capacity of the person concerned has to be re-examined after a certain period. The statutory limitation period applicable to the recovery of costs is five years after the delivery of the final decision in the proceedings. If the court decides that the convicted person has to bear the costs of the proceedings and it subsequently emerges that he or she is not in a position to do so, the authorities may extend the payment deadline, permit payment by instalments, or reduce the costs. If the convicted person is obliged by the judgment of the criminal court to pay at least partial compensation to a civil claimant, he or she also has to reimburse the costs incurred by the civil claimant in the criminal proceedings.

According to § 393a of the Code of Criminal Procedure, a defendant who is acquitted may request a contribution from the federal authorities to his or her defence counsel's costs. This covers necessary cash expenditure actually incurred and a flatrate fee in respect of defence counsel costs. The flatrate fee is determined in light of the extent and complexity of the defence and the scope of the necessary and proper services provided by the defence counsel, and may not exceed the following amounts: in proceedings before the regional court sitting with a jury, EUR 10 000; in proceedings before the regional court sitting with lay assessors, EUR 5 000; in proceedings before the regional court with one judge sitting, EUR 3 000; and in proceedings before the district court, EUR 1 000.

Where criminal proceedings are initiated by a private prosecution or on the application of a civil claimant under § 72 of the Code of Criminal Procedure, and do not lead to a conviction, the person bringing the private prosecution or the civil claimant is obliged to pay all costs caused by the bringing or continuation of the action. If the criminal proceedings end with a settlement (*Diversion*)(§§ 198 to 209 of the Code of Criminal Procedure), the civil claimant does not have to pay the costs.

Experts' fees

In contentious civil proceedings (including commercial cases), expert's fees are mutually offset or divided proportionally according to the extent of a party's success or failure (§ 43(1) of the Code of Civil Procedure).

In contested divorce proceedings where the judgment makes no ruling on responsibility, out-of-pocket expenses must be mutually offset. If one party has paid more than half of the cash outlay, the other must refund the excess. But if one spouse is found to be at fault, that party must reimburse the other party's expert's fees.

In the following proceedings, any expert's fees initially paid out of official funds must be reimbursed to the court by the parties who occasioned them or in whose interests the official action was taken: proceedings for divorce by mutual consent, custody and access proceedings, and proceedings concerning maintenance claims for children who are still minors. If several persons are obliged to reimburse the costs, they are jointly liable (§ 1(5) of the Court Payments Act (*Gerichtliches Einbringungsgesetz – GEG*) in conjunction with Section 2(1) of the same Act).

The amount of experts' fees is governed by the Fees Entitlement Act. Each specific case depends essentially on the content and scope of the report requested by the court.

In criminal proceedings, experts' fees form part of the court costs (§ 381(1) of the Code of Criminal Procedure) which according to § 389(1) of the Code of Criminal Procedure must be borne by the convicted person. Experts' fees are determined by the court or the public prosecutor and are paid by the federal authorities.

Translators' and interpreters' fees

The explanation given above also applies to translators' and interpreters' fees.

Related documents

[Study on the transparency of costs: Country report: Austria](#)  (829 Kb) 

Related links

[§ 32 of the Court Fees Act](#)

Last update: 27/01/2020

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