Which country's court is responsible?

Austria

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 as a rule 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 a separate District Court for Commercial Matters (Bezirksgericht fûr Handelssachen), a separate Commercial Court (Handelsgericht) and a separate Labour and Social Court (Arbeits- und Sozialgericht).

The factsheet on 'Judicial systems' shows how subject-matter jurisdiction is divided between the District and Regional Courts, and between the courts hearing cases involving commercial matters and labour and social security law.

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 in principle divided between the courts on the basis of the type of lawsuit (subject-matter jurisdiction) and, for all matters not assigned in this way to District or Regional Courts, depends on the amount in dispute. The nature of the case always takes precedence over the value criterion.

District Courts have jurisdiction based on the type of lawsuit, for example in most family law or lease disputes. Regional Courts have jurisdiction based on the type of lawsuit for example in disputes under the Atomic Liability Act (Atomhaftpflichtgesetz), the Public Liability Act (Amtshaftungsgesetz), the Data Protection Act (Datenschutzgesetz) and competition and copyright law. District Courts have jurisdiction in cases where the amount in dispute is up to EUR 15 000, Regional Courts have jurisdiction in cases where the amount in dispute is above EUR 15 000.

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 an ordinary place of jurisdiction (allgemeiner Gerichtsstand) based on their personal connection with a court district. As a rule, lawsuits are filed in the defendant's ordinary place of jurisdiction. The ordinary place of jurisdiction of a private individual usually depends on the place of their legal address (Wohnsitz) or habitual residence (gewöhnlicher Aufenthalt); a person may have more than one ordinary place of jurisdiction. The ordinary place of 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 be filed either in the defendant's ordinary place of jurisdiction or at another court of choice or 'elective venue' (Wahlgerichtsstand). 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 and various claims under property law, and other elective venues of a procedural kind. For example, it could be the court of the place of performance or of the place stated on an invoice, the court of the place where the subject matter of the dispute is located (forum rei sitae), the court of the place where the harm was caused, or the court at which a counterclaim is filed. Venue rules can differ considerably from those under European law or the national law of other Member States.

For example, 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 where under the terms of the agreement between the parties the defendant is to perform the contract . The agreement must be proved by documentary evidence.

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

For claims for damages: disputes seeking compensation for damages 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 conduct that caused the damage took place. In addition, a claim for damages as a result of a criminal offence may also be filed alongside the criminal proceedings against the offender.

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

For custody petitions: see the factsheet 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 ordinary place of jurisdiction and any elective venues. Such a place is termed an 'exclusive place of jurisdiction' (ausschließlicher Gerichtsstand). An exclusive place of jurisdiction which cannot be changed, even by agreement between the parties, is a 'compulsory place of jurisdiction' (Zwangsgerichtsstand). A compulsory place of jurisdiction must be provided for in a specific rule. Exclusive places of jurisdiction exists mainly (but not only) in matrimonial and family law. Examples of exclusive places of jurisdiction are the places of jurisdiction for disputes between spouses or registered partners or disputes in matters of inheritance. Examples of compulsory places of jurisdiction are the places of jurisdiction for disputes arising from bonds or from the affairs of an association. Venue rules can differ considerably from those under European law or the national law of other Member States.

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

Unless there is a compulsory place of jurisdiction (see point 2.2.2.2 above), the parties may expressly agree to submit disputes to one or more courts of first instance in named places, or to exclude courts that would otherwise have jurisdiction. The agreement must refer either to a particular dispute or to disputes arising from a particular dispute or legal relationship. There are no requirements as to the form of jurisdiction agreements; however, it must be possible to prove the agreement with documentary evidence if it is disputed during the course of the proceedings.

This enables the parties to change the legal jurisdiction (based on subject matter or place) which would otherwise apply. Such agreements may be made before proceedings commence or at the start of proceedings. Where a court of first instance would have jurisdiction on the basis of the amount in dispute, a transfer of the subject-matter jurisdiction may be agreed from the court of first instance to the District Court, as well as between the ordinary jurisdiction and the commercial jurisdiction.

Territorial jurisdiction can be changed, unless this is expressly ruled out. There is a compulsory place of jurisdiction if a law states that jurisdiction cannot be changed. For instance, territorial jurisdiction cannot be changed or can be changed only 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 and the Vienna Commercial Court , and a specialist civil court for cases involving labour and social security, namely the Vienna Labour and Social Court . In all other districts, commercial cases and cases involving labour and social security law are heard by the ordinary courts. Territorial jurisdiction in commercial cases and cases involving labour and social security law is generally regulated by the ordinary rules of civil procedure.

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