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Aan de vertaling in het Nederlands wordt momenteel gewerkt.
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National legislation

Oostenrijk

Introduction – This page provides information on the Austrian legal system and an overview of Austrian law.

Sources of law

Types of legal instruments - description

Austrian law is primarily written (*gesatztes*) law.

Under Austria's Constitution, each of the **nine provinces** (*Bundesländer*) is subject to its own **provincial constitutional law** in addition to federal constitutional law. Provincial constitutional law must not be inconsistent with federal constitutional law, and is therefore **subordinate** to it. But in principle there is no such order of precedence between federal laws and the laws of the provinces. Since 1988, the provinces have also been able to conclude international treaties on matters falling within their jurisdiction. In foreign affairs, however, the federal government continues to enjoy supremacy.

Status of customs and case law

Customary law plays only a very limited role.

The judgments of the highest courts provide valuable guidance on the application of the law and are of major importance. However, case-law is not formally recognised as a source of law.

Measures taken by local authorities

Sovereign acts with state authority (i.e. prescriptive legal acts of the authorities) encompass laws (legislative acts), administrative acts (acts of the executive) and judicial decisions (judicial acts).

The laws must specify which administrative acts the administrative authorities are empowered to perform. Administrative authorities may, for example, be given powers to issue decisions (individual legal acts) or to adopt regulations (general rules of law). They may also be given powers to issue direct orders or to use direct force if, for example during a police operation, immediate action by the authorities is required in order to avert danger.

International sources of law and European Union law

The Austrian **Constitution** (*Bundes-Verfassungsgesetz* - Federal Constitutional Law) declares that the generally recognised rules of international law form part of Austrian federal law and provides for the incorporation of **international treaties** into Austrian law (with or without specific legislation). The ranking of treaty provisions within the domestic legal system is determined by their content.

In order to be approved in the Nationalrat (the lower house of the Austrian Parliament), international treaties that amend or supplement the Constitution require the same enhanced majorities as decisions concerning federal constitutional laws. Treaties that amend or supplement laws must meet the same requirements as apply when laws are passed.

International treaties are concluded by the Federal President on the instruction of the federal government or of a federal minister so empowered by the government. Political treaties that amend or supplement laws require the prior approval of the Nationalrat. The Federal President may confer upon the federal government or the relevant members of the federal government the power to conclude certain categories of international treaties which are not political and do not amend or supplement laws.

Since **Austria's accession to the European Union** on 1 January 1995, Austria's essential basic legal order has no longer been determined by Austrian constitutional law alone but also by EU law (**dual constitution**). The prevailing view is that **EU law takes precedence over domestic law** and thus over ordinary federal constitutional law, but not over the guiding principles of the Constitution.

Most important acts/legislation

Civil law

In civil matters, first-instance jurisdiction is as a rule exercised by district courts (*Bezirksgerichte*) and regional courts (*Landesgerichte*). Outside Vienna, commercial cases were heard also by district courts and regional courts. In addition, the regional courts hear labour and social security cases. Only Vienna has a separate district court for commercial matters (*Bezirksgericht für Handelssachen Wien*), a separate commercial court (*Handelsgericht Wien*) and a separate labour and social court (*Arbeits- und Sozialgericht Wien*).

Jurisdiction is shared out between the courts according to 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.

On the basis of the type of lawsuit, district courts have jurisdiction, for example, in most family-law or lease disputes, whilst the regional courts have jurisdiction, for example, in disputes under the Nuclear Liability Law (*Atomhaftpflichtgesetz*), the Public Liability Law (*Amtshaftungsgesetz*), the Data Protection Law (*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.

Everyone has an ordinary place of jurisdiction (*allgemeiner Gerichtsstand*) on the basis of 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 their place of domicile (*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.

Commercial law

Only Vienna has specialised civil courts for commercial matters, namely the Vienna District Court for Commercial Matters (*Bezirksgericht für Handelssachen Wien*) and the Vienna Commercial Court (*Handelsgericht Wien*), and a specialised civil court for labour and social security cases, namely the Vienna Labour and Social Court (*Arbeits- und Sozialgericht Wien*). In all other districts, commercial cases and cases involving labour and social security law are heard by the 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.

Administrative law

In broad terms administrative law, being ‘public’ law, regulates the organisation and procedure of administrative bodies and authorities. However, it also regulates relations between the State and its citizens, the obligations of the addressees of the legislation with regard to conduct, and substantive decision-making criteria for public administration. Some examples of the numerous specific areas of administrative law are the law on citizenship and foreign nationals, police law and building law.
Administrative criminal law regulates not only criminal conduct that is punishable by a court but also administrative infringements that are penalised under that law.
Other sub-areas of administrative law contain provisions on administrative procedure and (administrative) legal protection. Decisions of administrative authorities, e.g. administrative decisions (*Bescheide*), can be challenged before an administrative court (*Verwaltungsgericht*) by means of an appeal.
Hierarchy of legal instruments
Federal constitutional legislation must be passed by a majority of two thirds of the votes cast in the Nationalrat, with at least half the members being present. In addition, the legislation thus created must be expressly designated as a ‘constitutional law’ or ‘constitutional provision’.
By contrast, a valid resolution on a federal law requires the presence of at least one third of the members of the Nationalrat and an absolute majority of the votes cast.

1. Guiding principles of the Constitution

The guiding principles (*Grundprinzipien*) of the Austrian Constitution are the most important foundations for the law of Austria:
the democratic principle
the principle of the separation of powers
the principle of the rule of law
the republican principle
the federal principle and
the liberal principle.
Together, these guiding principles form the **basic constitutional system**.
They are of exceptional constitutional importance. If an amendment to the Constitution results in the abandonment of any of the guiding principles or fundamentally changes the relationship between those principles, this is deemed to be a **fundamental reform** (*Gesamtänderung*) and **a referendum must be held**.

2. Primary and secondary EU law

Austria's accession to the European Union on 1 January 1995 constituted a fundamental reform of the Austrian Constitution. Since accession, Austria’s essential basic legal order has no longer been determined by Austrian constitutional law alone but also by EU law (**dual constitution**). The prevailing view is that **EU law takes precedence over domestic law** and thus over ordinary federal constitutional law, but not over the guiding principles of the Constitution.

3. ‘Ordinary’ federal constitutional law

Constitutional law lays down the rules for political action, as it specifies:
the legislative process,
the position of the highest bodies within the State,
the relationship between the federal government and the provinces in the legislative process and the application of the law, and
the control of government action by the courts of public law.

4. Federal laws

Under the fundamental principle of the rule of law enshrined in the Constitution, all application of a law (by public administration and in the courts) must be in accordance with that law. The Constitution divides legislative powers between the federal government and the provinces.

5. Regulations

Regulations (*Verordnungen*) are **general legal provisions made by the administrative authorities** which bind all persons subject to the law equally. The Constitution confers a general authorisation to make implementing regulations fleshing out the rules laid down in more general provisions, usually laws. Regulations may amend or supplement laws only where there is express authorisation in the Constitution.

6. Decisions

Decisions (*Bescheide*) are primarily administrative acts applying the law which are addressed only to the persons named in those decisions.

Legislative process

Legislative initiative

Draft laws may be presented to the Nationalrat in the following ways:
In addition, a citizens’ initiative must be presented to the Nationalrat for discussion if it is signed by more than 100 000 voters, or by one sixth of the voters in each of three provinces.
In practice, most legislative initiatives originate from the federal government. Federal government bills must be approved by the federal government (in cabinet) unanimously. They are drafted by the relevant minister and comments are invited from other bodies (such as the provinces and other stakeholders) before they go to the federal government for approval.

Adoption of the law

After being passed by the Nationalrat, draft laws require the assent of the Bundesrat (the upper house of the Austrian Parliament). (Federal finance laws do not have to be presented to the Bundesrat – federal sovereignty of the Nationalrat.) The Chancellor then presents the law to the President for certification.
The Nationalrat may resolve that a referendum is to be held on a draft law. A referendum may also be required by a majority of the members of the Nationalrat. In such cases, the draft law which has already passed the Nationalrat must then be approved by referendum before it is certified.
A referendum is also required for any fundamental reform of the Constitution.
The President certifies that a law has been passed in accordance with the Constitution by signing it. That certification must then be countersigned by the Chancellor.
A law can be repealed either expressly (formal derogation) or by the passing of a new federal law whose content is inconsistent with the earlier provision (material derogation), without a formal order that the earlier provision cease to apply (*lex posterior derogat legi priori*). Specific laws take precedence over general laws (*lex specialis derogat legi generali*). Furthermore, the period for which a law will be valid may be limited from the outset.

Promulgation, publication and entry into force

Once a federal law has been signed by the President (to certify that it has been passed in accordance with the Constitution) and countersigned by the Chancellor, it is promulgated in the Federal Law Gazette (*Bundesgesetzblatt*).
A law enters into force at the end of the day on which it is promulgated in the Federal Law Gazette unless the law itself provides otherwise (retroactive effect or deferral).

Means of resolution of conflicts between different legal sources

As an expression of the fundamental principle of the rule of law, the Constitutional Court (*Verfassungsgerichtshof*) has the power to review the constitutionality of laws and the legality of regulations (judicial review).

The Constitutional Court also rules on 'conflicts of jurisdiction', for example between courts and administrative authorities or between provincial and federal bodies when both parties either claim jurisdiction or refuse it in the same matter.

Under its 'power to determine jurisdiction' (*Zuständigkeit zur Kompetenzfeststellung*), the Constitutional Court can also make a binding determination as to whether a law-making act or an application of the law falls within the competence of the federal government or the provinces.

There are no priority rules for resolving conflicts between different higher-ranking laws.

Legal databases (with appropriate links)

Can it be accessed free of charge?

Yes. Legislation and case-law can be accessed free of charge online via the Legal Information System of the Republic of Austria (*Rechtsinformationssystem des Bundes* (RIS)) at https://www.ris.bka.gv.at/.

In which languages is it available?

The database is essentially available only in German. However, some general information and selected legislation are available in English via an English-language access page (see link: RIS Legal Information System (bka.gv.at)).

What are the available search criteria?

The database underlying RIS is divided into various applications, e.g. 'Bundesrecht konsolidiert' (consolidated federal law), 'Landesrecht konsolidiert' (consolidated provincial law), 'Bundesgesetzblatt authentisch ab 2004' (authentic Federal Law Gazette from 2004), 'Staats- und Bundesgesetzblatt 1945 - 2003' (Federal Law Gazette 1945-2003), and other applications. In addition to providing information on the law of the Republic of Austria (e.g. consolidated federal and provincial law, case-law), RIS is also used to give legally binding public notice of, among other things, federal law gazettes (since 2004) and provincial law gazettes (since 2014/2015).

Each application has its own search form with search fields tailored to the application in question. In the most frequently used application 'Bundesrecht konsolidiert' (consolidated federal law), for example, it is possible to search by keyword, title / abbreviated title, publishing body, type of legislation, legislative index number, in-force date, date range, and other criteria. A full-text search in the whole data corpus (where in German) is also possible.

A number of manuals on the various applications are available under 'Hilfe/Kontakt' (Help/Contact). For example, an RIS search manual (see HandbuchBgblAuth.pdf (bka.gv.at)) is provided to assist with searches for federal law gazettes in their legally binding ('authentic') published version.

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