Izvorna jezična inačica ove stranice de nedavno je izmijenjena. Naši prevoditelji trenutačno pripremaju jezičnu inačicu koju vidite.

Sljedeći jezici: es već su prevedeni.

Swipe to change

španjolski

Optuženik (kazneni postupak)

Austrija

U ovim informativnim člancima objašnjeno je što se događa kad je netko osumnjičen ili optužen za kazneno djelo za koje se vodi postupak pred sudom. Prema austrijskom pravu kazneno djelo može se počiniti samo kršenjem određene pravne norme koja je na snazi u vrijeme počinjenja kaznenog djela. Država ima pravo provoditi kazneni progon. Javno tužiteljstvo, pod njegovim vodstvom kriminalistička policija te sudovi dužni su utvrditi činjenice i razjasniti sve okolnosti važne za ocjenu činjenica.

Prava optuženika u kaznenom postupku

U ovim informativnim člancima objašnjeno je što se događa kad je netko osumnjičen ili optužen za kazneno djelo za koje se vodi postupak pred sudom. Prema austrijskom pravu kazneno djelo može se počiniti samo kršenjem određene pravne norme koja je na snazi u vrijeme počinjenja kaznenog djela. Država ima pravo provoditi kazneni progon. Javno tužiteljstvo, pod njegovim vodstvom kriminalistička policija te sudovi dužni su utvrditi činjenice i razjasniti sve okolnosti važne za ocjenu tih činjenica.

U sljedećim informativnim člancima saznat ćete koja prava imate kao optuženik ako se protiv vas vodi kazneni postupak u Austriji. Imate različita prava u različitim fazama postupka. Najvažnije faze postupka sažeto su opisane kako biste brzo mogli doći do potrebnih informacija.

Kratak opis kaznenog postupka

Kazneni postupak u Austriji sastoji se u osnovi od tri faze:

istrage

suđenja

žalbenog postupka.

Detaljnije informacije o pojedinim fazama kaznenog postupka i svojim pravima možete pronaći u informativnim člancima. Ove informacije nisu zamjena za pravni savjet, nego samo smjernice.

Ako ste žrtva kaznenog djela, ovdje možete pronaći sve informacije o svojim pravima.

Kliknite na poveznice u nastavku kako biste pronašli potrebne informacije

Moja prava za vrijeme istrage

Moja prava za vrijeme suđenja

Moja prava nakon suđenja

Posljednji put ažurirano: 01/06/2023

Verziju ove stranice na nacionalnom jeziku održava odgovarajuća država članica. Prijevode je napravila služba Europske komisije. Moguće promjene u originalu koje su unijela nadležna nacionalna tijela možda još nisu vidljive u drugim jezičnim verzijama. Europska komisija ne preuzima nikakvu odgovornost za informacije ili podatke sadržane ili navedene u ovom dokumentu. Pogledajte pravnu obavijest kako biste vidjeli propise o autorskim pravima države članice odgovorne za ovu stranicu.

1 - My rights during the investigation

A. If I am a foreign national, does it affect the investigation?

No, in principle, this does not affect the investigation.

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 do not have to and 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 dealings with the assigned defence counsel (but not with a lawyer of your choice).

If you are notified 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.

B. What are the stages of an 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 the accused.

The court must take certain steps in the investigation. It must reconstruct the offence and conduct what are 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 interrogations, as well as establishing the identity of persons, seizing property, conducting searches of a person’s clothing and any items in his/her possession, 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 prosecute the accused. In all other cases where the facts have been sufficiently determined, the prosecuting authorities must file an action 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 sentence of more than five years (as a rule).

i. Evidence gathering phase / Power of investigators

The court must take certain steps in the investigation. It must reconstruct the offence and conduct what are 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 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.

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 the accused, 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 to it (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.

ii. Police custody

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 interrogations, as well as establishing the identity of persons, seizing property, conducting searches of a person's clothing and any items in his/her possession, etc.

iii. Questioning

iv. Pre-trial detention

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).

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.

The decision concerning your pre-trial detention must be read out to you, if necessary with the help of an interpreter. You must be given 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.

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.

C. What are my rights during the investigation?

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

Investigation and taking of evidence

Arrest and pre-trial detention

Criminal charges

Preparation for trial by the defence

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 an investigation is being conducted against you, of the offence of which you are suspected and of your main 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. 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 offenders with mental health issues, 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.

i. What is my right to an interpreter and translations?

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 do not have to and 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 dealings with assigned defence counsel (but not with a lawyer of your choice).

If you are notified 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.

ii. What are my rights to information and access to the case-file?

As an accused person you have the right to consult your file. In this way you will learn more 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.

iii. What is my right of access to a lawyer and to have a third party informed of my situation?

You do not have to have 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 in your dealings 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 directly or through the police. If you do not know any defence lawyers, you can use the standby service of the bar association.

iv. What is my right to legal aid?

During every stage of the proceedings you have the right to defence counsel of your choice or to apply for legal-aid defence counsel. 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 in which it is a requirement, 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.

v. What is important to know regarding:

a. Presumption of innocence

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 action with the competent court.

b. Right to remain silent and not to incriminate oneself

Persons have the right to remain silent if, for example, they would otherwise expose themselves or a relative (Section 156(1)(1) of the Code of Criminal Procedure (*Strafprozeßordnung*)) to a risk of criminal prosecution or, in connection with criminal proceedings brought against them, to a risk of incriminating themselves more than in their previous testimony.

vi. What are the specific safeguards for children?

If children or minors have themselves been victims of or witnessed violence, they have the right to psychosocial and judicial assistance.

D. What are the legal time limits during the investigation?

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 action with the competent court.

Last update: 22/06/2018

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2 - My rights during the trial

A. Where will the trial take place?

The trial will take place 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.

B. Can the charges be modified? If so, what is my right to information in this regard?

Once charges have been filed against you, it is no longer possible to restrict access to the files. From this point on, at the latest, you have access to the entire file made available to the court. The court will make preparations for the trial.

You may request evidence that will help you prepare for the trial, if you wish. In particular, you can ask to question witnesses. In your request for evidence, you must indicate which facts you wish to prove by means of the evidence in question. You may also be asked to state the reason why you believe that the evidence you have requested is appropriate.

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.

C. What are my rights during the court appearances?

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 to 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, the services of 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 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.

i. Am I required to be present in the court? What are the conditions for me to be absent during the court case?

You are not under any obligation to remain in Austria for the whole of the investigation. If you wish, you can also ask your lawyer to ensure your rights are protected during the investigation.
In principle, you will need to come to Austria for any questioning. During the investigation, a video link can only be used if the Austrian prosecuting authorities make a request to that effect, you agree to this procedure and your country provides for the questioning of accused persons via video link. However, the accused cannot be questioned by telephone.

ii. What are my rights to an interpreter and translated documents?

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

iii. Do I have the right to a lawyer?

In a trial before a lay judges' court or before a jury court, you must be represented by defence counsel, whereas, for 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.

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3 - My rights after the trial

A. Do I have the right to appeal the court's decision?

A defendant may appeal to a higher court against any court decision to convict. In the case of judgments by district courts and by single judges in 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 invalidity, in which you may claim errors in procedure in the grounds 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.

B. What other recourse options do I have?

A defendant may appeal to a higher court against any court decision to convict. In the case of judgments by district courts and by single judges in 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 invalidity, in which you may claim errors in procedure in the reason for the decision and errors in law.

C. What are the consequences if I am sentenced?

i. Criminal record

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 foreign nationals 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.

v. Execution of sentence, transfer of prisoners

It is possible to serve your sentence in your home country 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).

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