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Dispute Resolution

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Law Business Research

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Litigation

1 Court system

What is the structure of the civil court system?

In Austria, 141 district courts (*Bezirksgerichte*) and 20 regional courts (*Landesgerichte*) decide on civil matters as first-instance courts. The district courts have jurisdiction, as a general rule, for cases with an amount in dispute of up to €10,000 and for a number of matters irrespective of the amount in dispute, such as claims arising from tenancy agreements concerning immoveable property, claims of family law (divorce, alimony, parentage, civil partnership disputes, etc), curatorship and a number of other subjects.

Regional courts have, in general, jurisdiction for claims with an amount in dispute exceeding €10,000 and for a number of matters irrespective of the amount in dispute, such as claims brought by a judge or against a judge, government liability claims, nuclear liability claims and several other subjects. The regional courts also have exclusive jurisdiction on labour and social benefit disputes. In Vienna, there is a separate Labour and Social Court. The district and regional courts have specialised departments for commercial disputes. However, in Vienna there is a separate Court of Commerce for claims exceeding €10,000 and a District Court for Commercial Disputes for smaller claims.

Appeals against decisions of a district court are decided by a regional court, whereas appeals against decisions of the regional courts go to the courts of appeal (*Oberlandesgerichte*). There are four courts of appeal in Austria (Vienna, Linz, Graz, Innsbruck), plus the Supreme Court.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

Austrian procedural law does not provide for juries in civil proceedings. Judges are career judges (with only a few exceptions). After graduating from the law faculty, the prospective judges get on-the-job training and additional education for approximately five years, first as court trainees (*Rechtspraktikanten*) and then as assistant judges (*Richteramtsanwärter*). Having passed the exam, they are appointed judges by the minister of justice or the president and can apply for their first position, usually at a district court.

Labour disputes are usually decided by a three-judge panel chaired by a career judge, with two lay judges assisting him or her. Usually, one lay judge is chosen by the chamber of labour and the other by the chamber of commerce or another professional body of employers. In commercial disputes, if a three-judge panel were to decide on the case, such panel would include one judge from a business profession and two career judges.

Judges have an inquisitorial role in civil proceedings. Usually, they would interrogate the parties and witnesses first, and only then would the party or witness be left to be examined by the attorneys. The judge may appoint a court expert, summon witnesses and order the parties to produce documents, in order to establish the relevant facts of the case.

3 Limitation issues

What are the time limits for bringing civil claims?

A defence based on the statute of limitations must be raised by the defendant.

The periods of limitation are deemed to be a matter of substantive, not procedural law. Therefore, Austrian courts would apply the period of limitation provided for by the applicable substantive law, either foreign or Austrian. The Austrian Civil Code provides for a long limitation period of 30 years, or 40 years if the claimant is a legal entity. This long, or ordinary, limitation period would apply unless special provisions provide for a shorter limitation period. However, the short limitation period of three years applies to most everyday claims, such as claims for the delivery of goods or performance of works or services, claims for the payment of rent and claims for the fees of doctors, veterinarians, midwives, private teachers, attorneys, notaries, patent attorneys and some other professions, damage claims (unless resulting from certain criminal offences, which would be subject to the long limitation period), claims for interest and a number of other claims. The limitation period begins when the claim or right in question could first be exercised. Therefore, the limitation period for money claims commences on their due date.

Different periods of limitation apply to slander or libel actions (one year), certain claims of insurance law (two years) and of corporate law (five years).

The debtor cannot waive the defence of the statute of limitation in advance or agree on a longer limitation period than provided for by law, but he can interrupt the running of the limitation period thereby causing the limitation period to start anew.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

It is usual for a prospective plaintiff, but not required by law, to send an attorney's letter before action and to give the prospective opponent a chance to meet his obligations before going to court. There is no pretrial discovery and it is neither usual nor required to exchange documents or other evidence before the trial.

It is highly recommended to collect and analyse all relevant evidence before starting a legal action, since the possibility of obtaining additional evidence through the court are rather limited. (See also question 34.)

5 Starting proceedings

How are civil proceedings commenced?

Civil proceedings are commenced by submitting a written claim form to the competent court. The claim form should set out the relevant facts giving rise to the claim and the relief sought. The claim form should include an offer of evidence, but it is not necessary to submit evidence at this stage. If not obvious, the claim form should contain arguments as to the jurisdiction of the court.

A court fee for the first-instance proceedings, which depends on the amount in dispute and can be substantial, must be paid at this stage.

Once the claim form has reached the competent court, the period of limitation is interrupted.

6 Timetable

What is the typical procedure and timetable for a civil claim?

If the judge, at a regional court, accepts, on the basis of the plaintiff's allegation, his court's jurisdiction, he would send the statement of claim to the defendant and order him to submit a statement of defence within four weeks, failing which a default judgment may be made against him. The statement of defence should contain the facts and the evidence on which the defendant is relying. It should also contain any objections raised by defendant. The judge would then set a date for a hearing. In civil proceedings, several hearings are usually needed in order to take the relevant evidence. The judge would then close the trial and give judgment, usually in writing. The proceedings before the district courts are somewhat different.

According to data published by the Ministry of Justice for 2010, the average duration of civil proceedings before the court of first instance is 8.7 months for the district courts, and 15.3 months for the regional courts. Only 3.2 per cent of proceedings took more than three years. These data do not include proceedings where defendants have not raised objections, thereby allowing the court to issue a default judgment or a payment order, which usually takes six to eight weeks.

7 Case management

Can the parties control the procedure and the timetable?

In principle, the judge controls the procedure and its timetable. Sometimes, the defendant manages to considerably delay the proceedings by applying for additional (preferably unavailable) witnesses to be heard and expert opinion to be obtained. The judge can dismiss such applications for protraction of the lawsuit.

When a hearing is adjourned, the judge will usually agree the date of the next hearing with the parties and/or their attorneys.

The parties can apply to have a court hearing postponed or a time limit extended. Finally, the parties can agree to suspend the proceedings for at least three months, eg, to conduct settlement negotiations.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no general obligation to keep documents which are or may become relevant in a court proceeding. However, entrepreneurs have an obligation to keep their records, correspondence, commercial books, inventories, financial accounts, etc for seven years, or longer if they are relevant to pending court or administrative proceedings. In addition, some tax and administrative laws do contain specific preservation periods. Such preservation periods do not imply an obligation to submit the documents in court proceedings.

It is, of course, in a party's vital interest to keep all documents in support of its allegations or which might eventually become relevant in the course of proceedings (eg, to invalidate objections of the opposing party). The parties have no general obligation to preserve or to share evidence that is unhelpful to their case. Documents submitted to the court as evidence must be shared with the opposing party.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Communications with attorneys or in-house lawyers are not privileged as such.

Austrian procedural law does not provide for discovery. The parties can apply for a court order directing the opponent to submit specific documents. The documents' content must be described in detail. However, the opposing party can refuse the submission ofdocuments provided that:

- they concern family life;
- a duty of honour would be breached by their submission;
- they would expose the opponent or a third party to criminal prosecution or disgrace;
- their submission would breach a legally recognised confidentiality obligation, or a technical or business secret; or
- for other equally important reasons.

There are, however, three categories of documents that have to be submitted regardless of the above grounds for refusal, namely:

- if the opposing party has itself referred to the document for the purpose of tendering evidence;
- if the opponent has an obligation under civil law to hand over the document; or
- documents that have been issued on behalf of both parties or which reflect their mutual legal relations.

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

It is neither required nor usual to exchange any evidence prior to trial. There is no pretrial discovery.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Copies of the relevant documents are usually submitted in writing to the court and the opposing attorney. If their authenticity is questioned, the court may order the submission of the original document. The parties and witnesses would usually appear before the court and give oral evidence. Written witness statements are, in general, not admitted. Experts are usually requested to submit a written opinion. The expert can be asked additional questions either in writing or at a hearing.

12 Interim remedies

What interim remedies are available?

In support of money claims, the court can grant interim remedies if there is reason to believe that the debtor would prevent or impede the enforcement of a (subsequent) court decision by damaging, destroying, hiding or carrying away his assets (including prejudicial contractual stipulations). Interim remedies can also be granted if a (subsequent) court decision would need to be enforced in a country that is not party to the Brussels or Lugano Conventions.

The following remedies are available:

- to place money or moveable property into the court's custody;
- a prohibition to alienate or pledge moveable property;
- a garnishment order with respect to the debtor's claims (including bank accounts);

- the administration of immoveable property; and
- a restraint on the alienation or pledge of immoveable property, which is to be registered in the land register.

In support of non-pecuniary claims, the court can grant interim remedies to prevent imminent violence or irretrievable damage and under certain conditions similar to those mentioned above in relation to money claims. Interim remedies are often granted in unfair competition disputes and sometimes in media disputes. Search orders are not available in civil cases.

Interim remedies are also available in support of foreign proceedings, if a subsequent foreign court decision would in principle be enforceable in Austria.

Finally, injunctions given by a foreign arbitral tribunal (article 593 Code of Civil Procedure) or by a foreign court can be enforced in Austria under certain circumstances. The enforcement measures, however, must be compatible with Austrian law.

13 Remedies

What substantive remedies are available?

Available remedies include orders for specific performance, orders for a declaratory judgment, orders for a constitutive judgment and cease-and-desist orders. Orders for specific performance are certainly the most frequent, such as money claims (including claims for damages), claims to deliver goods or perform services. In claims for a declaratory judgment, the court may have to decide on the validity of a contract or the authenticity of a document. In proceedings for a constitutive judgment, the court can, by virtue of its decision, create, change or cancel a legal relationship.

Austrian law does not provide for punitive damages.

The statutory interest rate of civil law claims is of 4 per cent. If both parties are entrepreneurs, then a variable interest rate published every six months by the Austrian National Bank would apply. It is currently 8.38 per cent. Bills of exchange are subject to an interest rate of 6 per cent.

14 Enforcement

What means of enforcement are available?

If the debtor does not comply with an enforceable court decision, an application for enforcement can be filed with the competent district court. Available enforcement measures include the attachment, and eventual sale, of the debtor's moveable or immoveable property, the garnishment of the debtor's claims against third parties. This would include the attachment of salary and the attachment of a bank balance. The court can also order the compulsory administration of immoveable property or of a business.

An obligation to desist from certain behaviour can be enforced by imposing increasing fines and eventually imprisonment of a party who is not complying.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Austrian civil procedure provides for public court hearings. The judge can exclude the public in certain cases, eg, if it would endanger public order or morals. The court file is not public, but the parties have a right to inspect the file.

16 Costs

Does the court have power to order costs?

The successful party is entitled to reimbursement of its costs, including court fees, legal fees, and possibly travel expenses and expenses for court experts and interpreters, etc. The legal fees are calculated according to the attorneys' tariff, which can be lower than the hourly fees agreed between the attorney and his client. If a party was only in part successful, he may claim partial reimbursement of costs. The court's decision as to the costs is given together with its decision on the merits.

Defendant can request a court order directing the plaintiff to pay a security for the defendant's costs. However, such order cannot be granted in a number of cases, including if the plaintiff has his place of residence inside the EU or in a country which would enforce Austrian decisions or if he has sufficient immoveable property in Austria. Therefore, such orders are rather rare.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

An agreement between an attorney and his client to the effect that the former would obtain a share of any proceeds of the amount awarded (pactum de quota litis) is illegal under Austrian civil law. However, other kinds of success fee agreements, such as a higher hourly fee or a lump sum in the event of success, are permitted.

The prohibition of pacta de quota litis does not apply, however, to litigation funding companies, according to a recent court decision (published in ecolex 2012, 315), but it remains to be seen whether this decision will be upheld by higher courts. There are a few litigation funding companies in Austria. The usual agreement would provide for the funding company to bear all the costs and the liability to reimburse opponent's costs. If successful, the funding company would recover all its expenses and would be entitled to a substantial share of any proceeds of the claim.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance is available and would usually cover the litigation costs of the insured person and his potential liability for his opponent's costs. The insurance would cover the fees as calculated according to the attorneys' tariff, which can be lower than the hourly fees agreed between an attorney and his client. The insurance would provide coverage only for facts which occurred after the insurance contract was entered into. Some insurance classes require a waiting period of up to six months.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Austrian law at present provides only for legal actions taken by certain associations (*Verbandsklage*), such as the Federal Economic Chamber, the Federal Chamber of Labour and, most notably, the Association for Consumer Information (VKI). These associations and corporations under public law are entitled to bring actions on behalf or in the interest of their members, eg, they can apply for a declaratory judgment to have certain clauses used in general terms and conditions declared invalid.

Efforts to introduce class actions in Austrian procedural law failed a few years ago. The Ministry of Justice apparently does not plan to propose any new legislation concerning class actions for the moment.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Judgments issued by a court of first instance can be appealed against on the grounds of:

- nullity (ie, the most serious procedural irregularities);
- (other) procedural irregularities (eg, an important witness has not been heard);
- the incorrect assessment of facts; or
- incorrect legal assessment.

If the amount in dispute is below €2,700, an appeal cannot be brought against the court's findings of fact or on the grounds of a procedural irregularity. The courts of second instance have a tendency to uphold the lower court's assessment of facts; it is very rare that the second-instance court would hear evidence again.

A further appeal to the Austrian Supreme Court is possible both in cases originating from the district courts or from the regional courts. However, this further appeal (*Revision* or *Revisionsrekurs*) is restricted in several ways. The Supreme Court's purpose is to provide for a uniform interpretation and development of the law. An appeal to the Supreme Court can be brought only in order to decide legal questions; the lower courts' findings of fact cannot, in principle, be challenged before the Supreme Court. The basic requirement for all appeals to the Supreme Court is an essential question of substantive or procedural law that needs to be decided by the Supreme Court, in particular if the Supreme Court has not yet dealt with that legal question, if its rulings are at variance or if the appeal courts have departed from precedent established by the Supreme Court. Further, an appeal to the Supreme Court is excluded (with only a few exceptions) if the amount in dispute is below €5,000. If the amount in dispute is between €5,000 and €30,000, the court of second instance has to grant leave to appeal to the Supreme Court. These thresholds do not apply for labour and social benefit disputes, legal actions brought by a consumer protection association and certain tenancy and family disputes.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments can be enforced in Austria on the basis of the European Jurisdiction and Enforcement Regulation, of bilateral or multilateral enforcement treaties or if the Ministry of Justice has issued a decree confirming reciprocal enforcement with another country. Without such legal basis, the judge does not have discretion whether to grant enforcement. Thus judgments from EU countries, from Switzerland, Liechtenstein, Norway, Iceland, Turkey, Israel, Canada and from a few additional countries are enforceable. However, Russian and US judgments are in general not enforceable. Most treaties provide only for the enforcement of specific kinds of judgments, eg, on civil and commercial matters, or of maintenance orders.

The enforcement proceedings are for the most part in writing. Usually, one would apply at the same time for the declaration of enforceability of the foreign judgment (exequatur) and for an order granting specific enforcement measures and the competent district court can grant both requests at once. The judgment debtor's assets can be attached pending appeal against the declaration of enforceability and against the enforcement order.

European Enforcement Orders can be enforced without the need for an exequatur.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

International legal assistance is granted on the basis of the Evidence Regulation (EC Regulation No. 1206/2001), the Hague Convention on Civil Procedure of 1954 and on the basis of a number of bilateral treaties to which Austria is a party. Available legal assistance includes both oral and documentary evidence.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Arbitration law is contained in the last part of the Code of Civil Procedure (CCP) (articles 577 to 618). Arbitration law was the subject of a major reform that took effect on 1 July 2006. That reform brought the law into line with the UNCITRAL Model Law. When amending the law, Austria drew upon the experience gathered in Germany, when German arbitration law was brought into line with the UNCITRAL Model Law with effect from the beginning of 1998.

The last part of the CCP comprises 10 chapters. The first eight chapters follow the structure of the UNCITRAL Model Law. There are then two further chapters concerning court proceedings and special provisions relating to consumers.

The form requirements for an arbitration agreement are less strict than those in the UNCITRAL Model Law, as arbitration agreements can also be contained in e-mails or other forms of communication between the parties which preserve evidence of a contract.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must:

- sufficiently specify the parties (they must at least be determinable);
- sufficiently specify the subject matter of the dispute in relation to a defined legal relationship (this must at least be determinable and it can be limited to certain disputes or include all disputes). The subject matter of the dispute can be a pecuniary claim that falls within the jurisdiction of the courts, or a non-pecuniary claim where the parties are capable of concluding a settlement concerning the matter. Family law matters, contracts which are at least partly subject to the Landlord and Tenant Act or the Non-profit Housing Act, and claims in connection with cooperative apartment ownership are not arbitrable. In contrast, most shareholder disputes are arbitrable;
- sufficiently specify the parties' intent to have the dispute decided by arbitration, thereby excluding the state courts' competence; and
- be contained either in a written document signed by the parties, or in faxes, e-mails or other communications exchanged between the parties which preserve evidence of a contract.

An arbitration agreement can be validly concluded in the form of a separate agreement or as a clause within a contract.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

An arbitral tribunal must consist of an uneven number of arbitrators. If the parties have not determined the number of arbitrators, an arbitral tribunal with three arbitrators decides the case.

Each party has to appoint one arbitrator. The arbitrators have then to appoint the chairman by mutual consent. The courts are competent to make the necessary default appointments if the parties do not agree on another procedure and if:

- one party fails to appoint an arbitrator; or
- the arbitrators fail to appoint the chairman.

An arbitrator can be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed to by the parties.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the rules of procedure (for example, by reference to specific arbitration rules) within the limits of the mandatory provisions of the CCP. Where the parties have not agreed on any set of rules, or set out rules of their own, the arbitral tribunal must, subject to the mandatory provisions of the CCP, conduct the arbitration in such manner as it considers appropriate. Mandatory rules of Austrian arbitration procedure include that the arbitrators must be, and remain, impartial and independent. They must disclose any circumstances likely to give rise to doubts about their impartiality or independence. The parties have the right to be treated in a fair and equal manner, and to present their case. Further mandatory rules concern the arbitral award which must be in writing (see also question 29).

27 Court intervention

On what grounds can the court intervene during an arbitration?

A court can only intervene in arbitrations if this is expressly provided for in the CCP. In particular the court can (or must):

- grant interim or protective measures;
- appoint arbitrators;
- decide on the challenge of an arbitrator if:
  - the other party does not agree to the challenge;
  - the challenged arbitrator does not withdraw from his office; or
  - the challenge procedure agreed upon, or the challenge before the arbitral tribunal, is not successful;
- enforce an interim or protective measure issued by an arbitral tribunal under certain circumstances; and
- conduct judicial acts where the arbitral tribunal is not authorised to do so, including requesting foreign courts or authorities to conduct such acts.

28 Interim relief

Do arbitrators have powers to grant interim relief?

An arbitral tribunal can (unless the parties have agreed otherwise) grant interim or protective measures considered necessary to the subject matter of the dispute provided that:

- the enforcement of the claim would be frustrated or considerably impeded without the measures; or
- there is a danger of irreparable harm without the measures.

Interim or protective measures can only be granted upon the request of one party once the other party has been heard on the matter.

29 Award

When and in what form must the award be delivered?

The CCP does not provide for a time period within which the award must be rendered.

The award, which must be in writing, signed by at least the majority of the members of the arbitral tribunal and be reasoned, unless the parties have agreed otherwise.

30 Appeal

On what grounds can an award be appealed to the court?

Austrian courts are not entitled to review an arbitral award on its merits. There is no appeal against an arbitral award. However, it is possible to bring a legal action to set aside an arbitral award (both awards on jurisdictions and awards on merits) on very specific, narrow grounds, namely:

- the arbitral tribunal accepted or denied jurisdiction although no arbitration agreement, or a valid arbitration agreement, exists;
- a party was incapable of concluding an arbitration agreement under the law applicable to that party;
- a party was unable to present its case (for example, it was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings);
- the award concerns matters not contemplated by, or not falling within the terms of the arbitration agreement, or concerns matters beyond the relief sought in the arbitration; if such defects concern a separable part of the award, such part must be set aside;
- the composition of the arbitral tribunal was not in accordance with articles 586 to 591 CCP or the parties' agreement;
- the arbitral procedure did not, or the award does not, comply with the fundamental principles of the Austrian legal system (*ordre public*);
- if the requirements to reopen a case of a domestic court in accordance with article 530(1), Nos. 1 to 5 of the CCP are fulfilled, for example:
  - the judgment is based on a document which was initially, or subsequently, forged;
  - the judgment is based on false testimony (of a witness, an expert or a party under oath);
  - the judgment is obtained by the representative of either party, or by the other party, by way of criminal acts (for example, deceit, embezzlement, fraud, forgery of a document or of specially protected documents, or of signs of official attestations, indirect false certification or authentication or the suppression of documents); or
  - the judgment is based on a criminal verdict which was subsequently lifted by another legally binding judgment; or
- the award concerns matters which are not arbitrable in Austria.

Furthermore, a party can also apply for a declaration for the existence or non-existence of an arbitral award.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Domestic arbitral awards are enforceable in the same way as domestic judgments (without the need for an exequatur). Foreign awards are enforceable on the basis of bilateral or multilateral treaties which Austria has ratified, namely the New York Convention, the Convention on the Execution of Foreign Arbitral Awards (Geneva, 26 September 1927) and the European Convention on International Commercial Arbitration (Geneva Convention), as well as bilateral treaties with British Columbia, Liechtenstein, Slovenia, Croatia, Serbia, Montenegro, Kosovo, Bosnia-Herzegovina and Macedonia. The enforcement proceedings are essentially the same as for foreign judgments (see question 21).

32 Costs

Can a successful party recover its costs?

The arbitral tribunal is granted discretion in the allocation of costs, but must take into account the circumstances of the case, in particular the outcome of the proceedings. As a rule of thumb, costs follow the event and are borne by the unsuccessful party, but the tribunal can also arrive at different conclusions if this is appropriate in the circumstances of the case.

Where costs are not set off against each other and, as far as possible, the arbitral tribunal must, at the same time as it decides on the liability for costs, also determine the amount of costs to be reimbursed.

Update and trends

The Austrian Civil Procedure, the Arbitration Law and the Civil Law Mediation Act, which regulates the profession of mediators, were all extensively amended or adopted in the past decade (in 2002, 2006 and 2003, respectively). Therefore the Ministry of Justice deems that there is at present no need for reform in this field.

However, there is a continuing public debate as to the introduction of proper class actions in Austrian law (please see question 19).

It should also be mentioned that litigation funding and mediation are becoming increasingly popular.

It might be useful to know that a number of Austrian statutes have been translated into English and are online at www.ris.bka.gv.at/Englische-Rv/

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation is often used in disputes concerning divorce, child custody, and other family-related matters, but is currently also gaining ground in other areas: in schools, older students are trained and supervised by teachers to act as peer mediators in conflicts between younger students. With respect to public projects, mediation is being used to deal with the concerns of residents. Business and workplace mediation can also be mentioned. At several courts in Vienna (Court of Commerce, Civil Court and Labour and Social Court) and beyond, a project is being promoted to refer suitable cases to mediation, with the parties' consent. Judges may invite a mediator to a court hearing, present the advantages of mediation and encourage the parties to have their case mediated. Other forms of ADR, such as mini-trial, last-offer arbitration, early neutral evaluation or adjudication, are new territory in Austria.

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Neither in arbitration nor in litigation is there a requirement to consider or to engage in ADR before or during the proceedings, with only few exceptions. Certain disputes concerning tenancy agreements and cooperative apartment ownership must be brought before a conciliation panel (*Schlichtungsstelle*), if such a panel has been set up by the local authority. However, these conciliation panels are in fact just specialised offices of the local administrative authority that conduct administrative proceedings. Despite their misleading name, they can hardly qualify as ADR. If the conciliation panel has not decided within three months, one party can bring the matter before the local district court.

Further, in disputes between neighbours concerning the deprivation of light or air by trees or plants, the party wishing to start litigation is required to either file an application according to article 433 CCP (see below), or to submit the case to a registered mediator or a conciliation board (article III of the fourth civil legislation amendment act, Art III 4.ZivRÄG, BGBl I 91/2003).

Finally, before starting civil litigation, it is possible to have the prospective defendant summoned before the district court with local jurisdiction for his place of residence, in order to discuss the potential for an amicable settlement before the court (article 433 CCP), thus compelling the prospective defendant to participate in a settlement hearing. This provision actually dates back to 1914.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

In most cases, civil litigation in Austria would lead to a fair or at least comprehensible decision at a reasonable price. By international standards, the average duration of civil proceedings is good.

In international arbitration, the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC) has gained acceptance and respect for its independence and the quality of its proceedings.

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