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Austria

An Introduction to Dispute Resolution: Litiation

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Court System and Costs

Austria is one of the leading European countries in providing fast and efficient court proceedings. In international comparison, Austria's civil procedure system has many similarities with most major continental European systems. The federal civil court system covers three instances with evidentiary proceedings primarily focusing on the first instance (district courts, regional courts, specialised courts). The appellate courts of second instance (nine regional courts and four higher regional courts) and the Austrian Supreme Court generally only review decisions. Access to the Supreme Court is furthermore limited to matters of significant importance.

Court proceedings trigger total court fees of approximately 5.4% of the value in dispute (1.2% first instance, 1.8% second instance and 2.4% third instance). Legal fees for attorneys can be based on the Attorney's Tariff but also on individual agreements, which commonly apply hourly rates. Costs are generally allocated to the losing party in relation to the outcome, whereby the reimbursement of legal fees is based on the Attorney's Tariff, irrespective of the individual agreement.

Legal Resources

[The Legal Information System of the Republic of Austria](#) is a platform and database providing information on Austrian law, including case law, as well as a selection of Austrian laws translated into English. Specific courts also provide online access to case law, such as the [Austrian Supreme Court](#). The two major online databases relied on for research are the [Rechtsdatenbank](#) and [LexisNexis](#). In addition, Austrian law is documented, commented and analysed by a richness of commentaries, handbooks, textbooks, journals, blogs and newsletters.

Class Actions

Austria is at the forefront of collective redress. Since 2005, Austrian case law recognises the so-called "Austrian-style collective claim", permitting the assignment of claims for collection to one single claimant. These claims are then being dealt with (procedurally joined but in substance individually) in one single proceeding. Prerequisites of the collective claim are the concurrence of (i) jurisdiction, (ii) type of proceedings, (iii) cause of action, and (iv) factual or

legal issues. The Austrian collective claims model has meanwhile gained significant practical relevance, among others for the *Dieseltgate* claims.

With the European Class Action on the horizon, Austrian courts are well prepared for the next level of collective redress. Particularly, the broad and vague rules of the EU Directive on Collective Redress of 25 November 2020 (to be implemented until the end of 2022) should permit Austria to model the EU rules into its current system. Among others, the safeguard to prevent misuse by permitting only qualified entities, that are non-profit organisations, to file representative actions should be achievable by existing bodies currently pursuing collective claims.

Third Party Funding

Traditionally only used in small claims, third party funding has evolved in the last years and becomes more and more popular also in larger proceedings and portfolios, especially in the just addressed Austrian-style collective claims. While not all legal issues surrounding third-party funding have yet been clarified by case law, the concept is nevertheless accepted and generally recognised. Most third-party funders active in Austria are headquartered outside Austria.

COVID-19 Related Issues

As the challenges of the COVID-19 pandemic currently continue to exist, the Austrian legislator has postponed the cut-off date for various COVID-19 related measures. Contractual penalties for non-fulfilment, for instance, are invalid until 30 June 2022 if the debtor cannot fulfil its obligations due to COVID-19 related issues (if the contract was concluded prior to 1 April 2020). Also, the laws which were passed to maintain the access to justice and the operability of the judicial system, including a framework for the conduct of remote oral hearings by video conference tools, are still in place until 30 June 2022. Notably, contrary to arbitration, remote court hearings generally require the consent of all parties.

Recent COVID-19 driven legislation sought to prevent a dramatic increase of bankruptcy cases but these provisions were not prolonged and are no longer in force. Although the impact of COVID-19 lockdowns on Austrian businesses was severe, the number of insolvencies in the year of 2020 was the lowest since 1990. This was also backed by the COVID-19 Assistance Fund, securing liquidity by issuing government guarantees for loans and non-repayable grants. Experts are concerned that these laws and financial aids have concealed a tsunami of insolvencies that will now rush over us in the year 2022.

Recently, the Austrian Supreme Court has determined in two rulings that tenants of business premises do not have to pay rent during the lockdown period if the premises are completely unusable. This has far-reaching implications for the financial aids and loss compensations granted. It is to be expected that the COVID-19 Assistance Fund will claim back a significant amount of these granted financial aids. As certain prerequisites must be met for being entitled to reclaim financial aids and companies may refrain from paying back the received aids, an increase of cases before the Austrian civil courts could be expected.

New Warranty Laws

Austria has recently implemented the “Digital Content Directive” and the “Sale of Goods Directive” and the laws passed came into force on 1 January 2022. While most of these new laws apply to B2C relations, some provisions also apply in the B2B area.

In general, the new laws provide more legal certainty for goods with digital elements and enhance the legal position of consumers. For instance, an obligation for the supplier of digital services to provide their buyers with updates has been implemented. After the expiration of the two-year warranty period, the claimant now has an additional three months to file a warranty claim. This provision also applies in the B2B area.

In B2C relations, the time period for the reversal of burden of proof has been extended from 6 months after the handover to one year.