

The nuts and bolts of Austrian litigation



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Austria is a relatively small jurisdiction, with about 7 million inhabitants, but its court system is astonishingly sophisticated. There are separate supreme courts for constitutional and administrative matters, as well as one Supreme Court for civil and criminal cases (the *Oberste Gerichtshof*). Within the civil judicial system, there are four appellate courts (*Oberlandesgerichte*) which have jurisdiction over a number of regional (*Landesgerichte*) and district courts (*Bezirksgerichte*). Only the latter two types act as courts of first instance in civil cases. This structure is complemented by special courts for commercial matters (in Vienna only – *Handelsgericht*), for labour cases (*Arbeits- und Sozialgericht*) and for competition matters (*Kartellgericht*).

The judiciary is independent and judges are appointed until retirement. The appointment procedures balance the influences of the judiciary and the government. Ethical standards are high and corruption is limited to isolated cases on clerical levels. Most cases are decided by one judge only at the first-instance level, and by a single panel upon specific application by either party. Appeals panels are composed of three judges, whereas the Supreme Court regularly decides in panels of five judges.

The Bar consists of around 5,000 attorneys, with around 2,200 practising in Vienna. Attorneys are authorized to plead before all courts in Austria, and there is no distinction between barristers and solicitors nor any disparity as regards training or seniority. Litigation is part of the everyday professional life of most professional attorneys; litigation specialists can be found in the larger law firms and in small numbers of litigation boutiques.

Court procedures

Procedures before civil courts are usually reasonably efficient. Most of the procedural terms are short (two to four weeks) and cannot be extended. Service of process is carried out by the courts, and the term to file a statement of defence is only four weeks. For smaller monetary claims, the statement of claims can be filed electronically and a payment order is then issued within one or two days. If the defendant objects to the claim, the court first holds a case management meeting, which should also be attended by representatives of the parties in order to facilitate a settlement. This hearing is usually held one to three months after the filing of the defence. The real bottleneck then is the hearing calendar of most judges, who often break up the evidence proceedings into a number of hearings, sometimes with several months between hearing dates.

Unexpected delays may occur if the defendant disputes the jurisdiction of the court selected by the claimant. This is a reflection of the complex court structure and the correspondingly intricate competence rules that can lead to these frequent decisions denying jurisdiction or competence. Some defendants, particularly in trans-national cases, make use of this outcome to significantly delay a case. Aside from these conflicts, a standard commercial litigation case can be expected to be terminated in the first-instance court within one or two years after the filing of the complaint. Appeals proceedings up to the Supreme Court may take anything from one to three years. Taken altogether, a final and binding decision can typically be obtained within three to five years.

The hearings are usually short, with around 30 minutes for case management hearings and between a half and a whole day for hearings in which evidence is taken. The minutes are summary notes dictated by the judge in the presence of the parties and counsel; court reporters and *verbatim* minutes are not permitted.

As regards evidence, there is no discovery available, and orders instructing a party to disclose documents are limited to very specific cases. When questioning witnesses, the

court takes the lead and counsel can only ask additional questions; there is no real cross-examination. Experts are always appointed by the court, and are likely to follow the joint recommendations of the parties involved.

Costs

Court fees are calculated as a percentage of the value of the dispute and amount to 1.2% for first-instance proceedings, 1.8% for the appeals proceedings and 2.4% for appeals to the Supreme Court. Court fees are payable by the plaintiff when instituting proceedings, or the applicant when filing an appeal.

Attorneys' fees are regulated by a non-binding tariff. Many specialized litigators do not consider the tariff appropriate to calculate their fees because it is not cost-effective (for example, the fee for drafting a submission is the same as for the first hour of each hearing). As an alternative, hourly rates are becoming more popular in litigation. In high-value disputes, the total litigation cost – that is court fees and attorneys' fees together – would typically be in the range of 5 to 10% of the amount claimed.

Reimbursement of costs is awarded to the successful party for the amount of actual expenses (the loser pays). Only with regard to legal fees are compensation costs always awarded according to the tariff. Therefore, the costs awarded may be lower or even higher than a party's actual expenses.

Austrian courts have jurisdiction to order interim relief in support of domestic and foreign litigation procedures, as well as in support of arbitrations. Interim and protective measures can be ordered *ex parte* before or during a proceedings on the merits. They are generally limited to preserving the status quo and, unlike in most common law jurisdictions, there are no disclosure or freezing orders available that cover all of a defendant's assets.