Small claims

Rakúsko

1 Existence of a specific small claims procedure

1.1 Scope of procedure, threshold

There is no small claims procedure as such in Austrian law. However, the Austrian Code of Civil Procedure (ZPO) provides for a simplified procedure or specific procedural rules in certain matters brought before the District Courts.

Some of these specific procedural rules apply only to small claims of up to EUR 1,000 (see point 1.5) or EUR 2,700 (see point 1.9).

1.2 Application of procedure

The specific rules for small claims under Austrian procedural law are mandatory and the parties cannot opt out of them.

Thus neither the court nor the parties can transfer the claim to ‘ordinary’ proceedings.

1.3 Forms

As there is no small claims procedure as such in Austria, there are no particular forms for such claims.

1.4 Assistance

Legal representation is not compulsory in Austria for amounts in dispute of up to EUR 5,000. Judges must provide assistance to parties with no legal representation, i.e. they must advise the parties of their procedural rights and obligations and of the legal consequences of their acts and omissions. Parties with no legal representation are also able to register their claims orally before the District Court with jurisdiction or the District Court in their place of residence. If a written submission by a party with no legal representation is inadequate, the judge must give that party an appropriate explanation and guidance. The judge’s impartiality must not be compromised by this.

1.5 Rules concerning the taking of evidence

In the case of claims of EUR 1,000 or less, the court can disregard the evidence offered by the party if full clarification of all the relevant circumstances would be disproportionately difficult. Here too, however, the judge must make a non-arbitrary decision in good faith, based on the outcome of the proceedings as a whole. This decision may be reviewed at successive stages of appeal.

1.6 Written procedure

Austrian law does not allow proceedings to be conducted entirely in writing. For example, in civil procedure law, by virtue of the principle of immediacy (*sachlicher Unmittelbarkeitsgrundsatz*: direct evidence of the facts must be given preference over merely indirect sources of evidence), written witness statements submitted as documentary evidence are not admissible.

1.7 Content of judgment

Under the Austrian Code of Civil Procedure, if a judgment is pronounced orally, less stringent requirements apply to the written copy of the judgment, irrespective of the amount in dispute. If a judgment was pronounced orally in the presence of both parties and neither party appealed against it in time, the court can issue an ‘abbreviated copy of the judgment’ confined to the main grounds for the decision.

1.8 Reimbursement of costs

Under Austrian law, costs in civil cases are generally reimbursed in proportion to the degree of success. Both court costs and legal fees are linked directly to the amount in dispute. As a rule, therefore, a smaller amount in dispute will result in lower court costs and legal fees. As costs are laid down in acts and regulations in the form of tariffs, costs can be kept down for small claims. However, there are no special cost rules for this type of claim.

1.9 Possibility to appeal

Austrian law only allows limited rights of appeal in small claims proceedings. Appeals in proceedings on claims of up to EUR 2,700 at first instance are only allowed on grounds of incorrect appraisal of the legal merits of the case or on grounds of invalidity (extremely serious procedural errors). Other serious procedural errors cannot be challenged. Neither can materially inaccurate findings of fact made by the court of first instance (based on, for example, incorrect assessment of evidence). Otherwise, the rules for the ‘ordinary’ procedure apply.

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