

Kluwer Arbitration Blog

Amendments to Austrian Arbitration Law Abbreviate the Proceeding to Challenge an Arbitration Award

Michael Nueber (Schönherr) · Thursday, October 24th, 2013

Introduction

On 01 January 2014, a government bill (ErläutRV 2322 BlgNR 23. GP) introducing changes to the Austrian Arbitration Law will come into force (SchiedsRÄG 2013). Mainly Sec. 615 and 616 of the Austrian Code of Civil Procedure (ACCP), which regulate the procedural levels for challenging an arbitration award in front of an Austrian state court, will be changed. As of the start of next year, the Austrian Supreme Court will be both the first and the last instance to decide about such claims.

History of the Legislation

Based on the work of a group composed of several arbitration practitioners and academics, a ministerial draft bill (351/ME, SchiedsRÄG 2012) issued in February 2012 envisioned shortening the procedure for challenging an arbitration award to **one instance**, namely the **Austrian Supreme Court**. Until the decision to implement the draft bill into Austrian Law was made, more than one year passed by. In the meanwhile the reform has been named SchiedsRÄG 2013. (See for further information Michael Nueber, *OGH als einzige Instanz (rechts)politisch möglich?*, ZfRV 2012/11, 73 [English summary included]).

Anyways, major reaction to this draft bill was predominantly positive. For instance, both the Austrian Bar Association and the Austrian Federal Economic Chamber welcomed the draft as improvement for both “Austrian” arbitrations and Austria as a business location.

After this long time of discussions, the Austrian parliament – in June 2013 – decided in favour of the government bill.

Overview About the Amendments

The **main changes** introduced by the amendments are as follows:

Instead of three procedural levels (Court of first instance, Court of appeal, Supreme Court), Sec. 615 ACCP will be changed so that the decision about a claim challenging an arbitration award is made by **just one judicial instance**, the Austrian Supreme Court. The previous provisions had been considered as a principal disadvantage for promoting Austria as place of arbitration.

Sec. 616 para. 1 ACCP stipulates that the same procedural rules as applied in front of the courts of first instance are applicable to proceedings on claims challenging an arbitration award or claims regarding the declaration on the existence or inexistence of an arbitration award. This means in fact that the **Austrian Supreme Court** - for instance, in the context of taking evidence - **has to apply the same procedural rules as a court of first instance**. Due to this revised Sec. 616 para 1 ACCP the Austrian Supreme Court has the possibility to act as a venue for determining facts. This is in the context of the rest of the ACCP a remarkable change in law.

For disputes about the formation of the arbitral tribunal, the provisions of the Austrian Act on Non-Contentious Matters (“Außerstreitgesetz”) are applicable.

The amendments also add four new paragraphs to Sec. 617 ACCP (special provisions for consumers). In **disputes involving a consumer**, the **current procedural levels remain in force**; such cases will continue to involve three instances. This applies also for procedures regarding the recognition and enforcement of foreign arbitration awards.

Additionally, the amendments also adapt the regulation on **the court fees** for claims challenging an arbitration award, which, as of 1 January 2014, is five per cent of the value in dispute (with a minimum fee of EUR 5,000).

Evaluation and Future Perspectives

In sum, the reforms introduced by these amendments should be viewed as a **major success for promoting Austria as place of arbitration** and prove that the country’s legislation can be regarded as absolutely up-to-date and “arbitration-friendly”. In addition, Austria has highly increased its competitiveness by this change in law. As in the recent past competition between places of arbitration became more relevant, Austria, and especially Vienna, herewith strongly closes up to its direct competitors like Switzerland.

Within the Austrian Supreme Court plans to form a separate Arbitration senate which is solely dealing with setting aside proceedings are developing. Indeed, such a senate would combine two advantages. Firstly, the judges involved are or will become experts in this field, which will have a major impact to the judiciary regarding annulment proceedings. Secondly, in the context of the first advantage, setting aside proceedings will become proportionally faster the longer such a senate exists.

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