

Arbitration and Public Policy under Austrian Law

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European Handball Court of Arbitration

Austrian Arbitration Law (§§ 577-618 ZPO)

Basic Framework

- Constitutes a private alternative to state courts
- Requires a valid arbitration agreement between the parties

Key Characteristics

- Parties may determine the arbitrators and procedural rules themselves
- Proceedings are typically confidential and more flexible than court litigation
- The arbitral tribunal renders an arbitral award, which generally has the same legal effect as a court judgment

Enforcement of Arbitral Awards

- Arbitral awards are enforceable in Austria.
- Enforcement is carried out through state courts.
- International arbitral awards are generally recognized and enforced under the New York Convention (1958).

Judicial Control of Arbitral Awards

- State courts do not review the merits of the decision
- Judicial control only through an action to set aside the award (§ 611 ZPO)
- Competent court: Austrian Supreme Court (Oberster Gerichtshof - OGH)
- Time limit: 3 months after notification of the award
- Only limited grounds for annulment

Main Grounds for Annulment

- no valid arbitration agreement exists
- a party was not properly heard
- the arbitral tribunal exceeded its jurisdiction
- the composition of the tribunal or the procedure violated the parties' agreement or mandatory law
- the award violates Austrian public policy (ordre public)
- the subject matter of the dispute is not arbitrable

Public Policy, Penalty Clauses and Interest under Austrian Law

Public Policy

- An arbitral award may be set aside if it violates Austrian public policy (ordre public).
- This refers to fundamental principles of the Austrian legal system, such as:
 - fair trial principles
 - equality of the parties
 - fundamental values of civil law
- Courts apply this test very restrictively – not every legal error leads to annulment.

Penalty Clauses

- Penalty clauses are generally permitted under Austrian law (§ 1336 ABGB)
- Courts have the power to reduce excessively high penalties (judicial moderation)
- An arbitral award may raise concerns if an obviously disproportionate penalty is granted without proper review.

Interest under Austrian Law

- Statutory interest rate in civil law: 4% per year (§ 1000 ABGB)
- Higher default interest rates apply in commercial transactions under Austrian commercial law
- Arbitral tribunals must apply the mandatory rules on interest when Austrian law governs the dispute.

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