

The International Comparative Legal Guide to:

Class & Group Actions 2009

A practical insight to cross-border Class and Group Actions work



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1 Class/Group Actions

1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

a. Planned "Group Action"

A draft bill was published by the Austrian Ministry of Justice concerning an amendment of the Austrian Civil Procedural Code, to implement a so-called "Gruppenklage" ("Group Action"). However, this new law is currently only under intensive discussion. It is not foreseeable whether this process, which was initiated some years ago, will be completed in the next governmental period.

The existing legal provision actually offers several tools that permit the bundling of a series of related claims or proceedings. These tools enable a group of claimants to bring their claims against a single respondent:

b. Linking of Proceedings

The court may decide at its own discretion to link two or more separate but related and pending civil proceedings, in order to speed up the proceedings and to reduce overall costs.

It is merely the proceedings that are linked. With regard to their respective claims, the parties remain autonomous, and the actions of one party have no legal influence on the other parties' claims. Though a decision in one case does not serve as a legally binding precedent for the other linked proceedings, it will have a factual influence on the outcome of the other cases. Also, the court may separate the proceedings at its own discretion and at any time.

c. Joinder of Parties

Two or more plaintiffs (holding one or more claims) against a single respondent may initiate civil proceedings as joint plaintiffs so long as they constitute a material or formal joinder of parties. This option is available where the parties are considered joint holders of one claim or where the facts underpinning each claim are identical (i.e. material joinder of parties), or where the claims are related and the same court is competent for all proceedings (i.e. formal joinder of parties). A formal joinder of parties would be the appropriate procedural tool where the claimants seek to bring a series of related claims (see question 1.6 b. for details). The concept of joinder of parties is intended to promote uniform decisions and to expedite proceedings.

In the case of a formal joinder of parties, merely the parties are joined together. The claims themselves remain individual and separate. With regard to their claims, the parties remain autonomous and, with a few (procedural) exceptions, the actions of one party have no legal influence on the other parties' claims. Additionally, a decision in one case does not serve as a legally

binding precedent for the other claims, but it will have a factual influence on the outcome of the remaining cases.

d. Austrian Collective Action

The development of the "Austrian Collective Action" proves that the Austrian Civil Procedural Code's long existing tools can be successfully applied and further developed to fit today's procedural needs, without having to jeopardise or abandon the general legal principles of Austrian jurisprudence (see question 1.3).

Under certain conditions, the Austrian Civil Procedural Code allows for one plaintiff to file one action containing several claims against one respondent. In 2000, the Austrian Consumer Information Association made use of this procedural provision to bundle the claims for damages of 110 tourists against a single tour operator.

In this case, several hundred guests of a Turkish resort suddenly (and nearly simultaneously) came down with grave combined cases of diarrhoea and vomiting. The assumption that the lack of hygienic measures was to blame was close at hand.

According to general provisions and special consumer protection legislation, the tourists were eligible for compensation for damages including damages for injuries to good health as well as compensation for lost holiday enjoyment. But weighing the individual claims (of only a few thousand Euros each) against the potential costs of civil proceedings (especially the costs for expert witnesses), the risk of litigation would have deterred most of the tourists from bringing their claims in court individually. This led to the development of the "Austrian Collective Action".

The injured tourists assigned their individual claims to the Austrian Consumer Information Association, which in turn filed an action containing all 110 claims, as the sole claimant, against the tour operator. From a strictly procedural point of view, only two legal entities were parties to the proceedings (the Austrian Consumer Information Association and the tour operator). From an economic point of view, the Austrian Consumer Information Association represented 110 claimants and their individual claims in one action against the tour operator. The bundling of these claims and the consequent value in dispute were of interest to a third party financier, who decided to assume the costs and risk of the litigation.

While the claims can be brought in one action, they remain separate and will be decided separately by the court. Thus, a decision in one case does not serve as a legally binding precedent for the other claims, but it will have a substantial factual influence on the outcome of the other cases.

The concept was later used by other groups of claimants - in most cases in combination with third party financing - and was heavily discussed amongst scholars. After differing decisions in first and second instance courts concerning the admissibility of the Austrian

Collective Action, the concept was approved by the Supreme Court in 2005.

1.2 Do these rules apply to all areas of law or to certain sectors only e.g. competition law, security/financial services. Please outline any rules relating to specific areas of law.

The above mentioned tools can be applied in all civil proceedings and in all areas of private law. For certain claims of public interest (e.g. consumer protection), specific associations (e.g. the Consumer Protection Association or Chamber of Labour) are entitled to file a "Representative Action", but for declaratory and/or injunctive relief, only (as opposed to monetary compensation).

1.3 Does the procedure provide for the management of claims by means of class action (whether determination of one claim leads to the determination of the class) or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group?

The tools described above are designed to manage claims or proceedings together; such that a decision in one claim will have a factual influence on the other claims, but where such decision does not automatically create a binding precedent.

Only the representative action referred to in question 1.2 will usually create a binding effect for further proceedings initiated by individuals.

1.4 Is the procedure "opt-in" or "opt-out"?

The concept of the government's draft of an Austrian Group Action is based on an "opt-in" model. However, it is not yet in place. In general, a court decision will only have a legally binding effect on the parties directly involved in the proceedings that led to the decision.

1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

Presently no. If the concept of an Austrian Group Action comes into force, the number will most likely be about 30, and perhaps 50 claims.

1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?

a. Linking of Proceedings

The claims need not be related in order to link proceedings pending before the same court. The only preconditions are that two or more separate civil proceedings must be pending before the same court and that one party must be involved in the same role (as the respondent or the plaintiff) in all proceedings. However, in order to facilitate the concept's objectives (which are to simplify and accelerate the proceedings and to reduce costs) the courts will, in most cases, only link proceedings regarding related claims.

In cases of personal injury or material damages, the court may also link proceedings pending before one court, with proceedings pending before another court, if the bases of the claims arise from the same event and the questions of fact and law are essentially the same. In this case, proceedings may be linked even if neither party is part of the other proceedings.

b. Joinder of Parties

The most important difference between a formal and a material joinder of parties is the question of court competence. A formal joinder of parties requires the same court to be competent for all claims, whereas in a material joinder of parties, when one court is competent for one claim, it becomes competent for all claims. In cases involving a series of claims, a formal joinder of parties would be the relevant procedural tool.

A material joinder of parties is comprised either of parties that are considered to be a group of creditors under the substantive law, or parties who form a legal association or alliance (*Rechtsgemeinschaft*, persons who share the same right). The claimants may collectively bring their claims in any one of the courts that is competent for any one of the claimants.

A formal joinder of parties is constituted by claimants who base their claims on the same (but not necessarily identical) factual matrix. If one court is competent for every individual claim, the claimants may bring their claims collectively. A "competent" court, under the general rule of competency, is the court at the seat or domicile of the respondent. Thus, in the majority of cases where a series of claims have been brought against one person, a single court will be competent for all claims, and the claimants may bring their claims as a formal joinder of parties.

c. Austrian Collective Action

From a substantive point of view, the holders of the rights or claims must first assign their claims to another person or legal entity. Subsequently, this person or legal entity then procedurally functions as the sole claimant.

An Austrian collective action may be brought if the bases of the claims, as well as the questions of fact and law, are essentially the same or of similar kind, and the same procedure is applicable (differentiating, for example, between proceedings before civil and commercial courts). Identity of the facts of the case or the questions of law is not a condition.

The concept of the potential future Austrian Group Action is - according to the present draft - primarily the same.

1.7 Who can bring the class/group proceedings e.g. individuals, group(s) and/or representative bodies?

Except for Representative Actions (see section 2) there are no procedural limitations as to who may bring the claims described above.

Thus far, most Austrian Collective Actions have been brought by the Austrian Consumer Information Association and the National Chamber of Labour.

1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?

As far as the present tools are concerned, the court has no obligation to inform other potential claimants because the court's ultimate decision will have no effect on other claimants' rights of action, or on their claims.

In practice, those associations, who intend to file a Collective Action, invite further parties to join the group of claimants by advertising (so long as such advertising is not overly aggressive).

- 1.9 How many group/class actions are commonly brought each year and in what areas of law e.g. have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law.**

There are no statistics regarding the number of Austrian collective actions brought each year. Generally, by 2005, more than 50 Austrian Collective Actions had been brought, representing more than 4,000 individual claims.

Austrian collective actions have been brought in cases pertaining to mass tort claims, financial services claims, and shareholders' claims, among others.

- 1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?**

There are no special remedies available for such claims. Also, there are no limitations on remedies for the above mentioned claims.

2 Actions by Representative Bodies

- 2.1 Do you have a procedure permitting collective actions by representative bodies e.g. consumer organisations or interest groups?**

The various laws, such as the Austrian Consumer Protection Act and the Act Against Unfair Competition, permit selected representative bodies to bring actions for declaratory or injunctive relief in the interest of the faction they represent (*Verbandsklage* "Representative Action").

Generally, the right of action is limited to actions for injunction arising from general terms and conditions or certain business practises in the general interest of the faction represented by the body exercising its right of action. The action may not serve mere individual interests.

The representative bodies listed in question 2.2 below may also have individual claims assigned to them, in order to launch such claims in court as test cases, so long as the case is relevant to or representative for the represented faction. The restrictions on the admissibility of appeals are not applicable to test cases to ensure that a Supreme Court decision can be reached in a test case. Although precedents are not legally binding, a Supreme Court decision in a test case has a factual influence on similar cases.

- 2.2 Who is permitted to bring such claims e.g. public authorities, state appointed ombudsmen or consumer associations? Must the organisation be approved by the state?**

The applicable statutes specify the representative bodies that are permitted to bring the respective collective action. In many cases they include e.g. the Austrian Chamber of Commerce, the National Chamber of Labour, the Austrian Trade Union Federation, and the Austrian Consumer Information Association. Except for the Austrian Trade Union Federation, these bodies are either bodies with compulsory membership by occupation or profession and/or are installed as publicly funded statutory pressure or lobbying groups.

Other consumer protection organisations within the European Union are entitled to bring certain collective actions where, *inter*

alia, the source of the violation is located within Austrian territory and the organisation is published in the list of "qualified entities" according to article 4 para. 3 of the Directive on injunctions for the protection of consumers' interests (98/27/EC).

- 2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law e.g. consumer disputes.**

The right of action is intended to be exercised only in the general interest of the faction represented by the body exercising its right of action and is limited to the following circumstances:

a. General Terms of Business

An injunctive action may be brought against any person or legal entity using general terms and conditions in their conduct of business where the general terms and conditions contain provisions that contravene statutory prohibitions or that violate moral principles. The right of action is not limited to commercial conduct involving consumers. The action can also be brought against non-Austrian persons or legal entities if they use general terms and conditions in their conduct of business within Austrian territory.

b. Business Practises

Any person or legal entity may be sued for injunction if his or her business practises violate statutory orders or prohibitions, thus impairing the general interest of consumers. This injunctive action is limited, however, to (i) business conduct involving consumers in connection with doorstep transactions, (ii) consumer loan relationships, (iii) package tour arrangements, (iv) time-share relationships, (v) distance sales, (vi) the agreement of unfair terms, (vii) legal or commercial warranty for the purchase or manufacturing of moveable tangible assets and (viii) IT services in e-commerce transactions.

c. Test Cases

Test cases may be brought to court by the above mentioned representative bodies if the holder of the right has assigned his or her claim to the representative body and the outcome of the test case is relevant or representative for the faction they represent. A test case, however, which is intended to serve mere individual interests, may not be brought to trial.

d. Unfair Competition

An injunctive action may be filed in cases of unfair, aggressive, or misleading business practices as well as in certain cases of comparative advertising.

e. Other

Actions by representative bodies are also available in cases of unfair conditions of payment, changes of insurance rates, and in cases of discrimination against people suffering from a disability.

- 2.4 What remedies are available where such claims are brought e.g. injunctive/declaratory relief and/or monetary compensation?**

a. General Terms of Business

The court may order the respondent to refrain from using the provisions, or from invoking them, in other court proceedings. During the course of the proceedings, the court may also issue a provisional injunction or other provisional measures.

The court may allow the successful party to publish (parts of) the judgment at the unsuccessful party's expense. Monetary compensation may only include the legal costs of the successful party and the costs of publishing the judgment. Persons claiming to have suffered damages resulting from provisions contained in

general terms and conditions, or from business practises, must bring individual and separate claims.

b. Business Practises

The court may order the respondent to refrain from making use of certain business practises. The court may also exercise the measures described above (see a).

c. Test Cases

The (Supreme) court will render a "regular" judgment deciding on the merits of the individual case. Although precedents are not binding, the Supreme Court and its decisions function as a guideline within the Austrian judicial system. Thus, the outcome of a test case will have a factual influence on similar cases.

f. Other

In cases of discrimination, the court will render a declaratory judgment; but in the other cases described above, the court may issue injunctive relief.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

Austrian civil proceedings do not rely on jury trials, as professional judges (single judges or panels) preside over civil courts. However, lay judges are appointed to sit in panels of specialised courts with at least one professional judge (i.e. proceedings in labour and social matters as well as in commercial matters).

3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

There are no specialist judges and no special proceedings for managing the above mentioned procedural tools.

3.3 How is the group or class of claims defined e.g. by certification of a class? Can the court impose a 'cut-off' date by which claimants must join the litigation?

The question of how to define a class is not applicable to Austrian procedural law because all court decisions only have a legally binding effect on the parties involved in the proceedings that led to the decision (see questions 1.3 and 1.4).

The court is not permitted to impose a cut-off date by which claimants must join the litigation. The parties to a civil proceeding are determined by the claimant's action and, except for intervening parties, there are no legal grounds for parties to join the proceedings at a later point in time.

3.4 Do the courts commonly select 'test' or 'model' cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can order preliminary issues do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

The court may choose one of the claims or proceedings and rule on it or resolve a preliminary question of law or fact regarding the one claim or proceeding. The final decision made on a preliminary issue has a binding effect between the parties. Depending on the relatedness of the claims, the final decision of a 'test' case or a preliminary issue will usually have a factual influence on the

outcome of the other claims but it does not serve as a legally binding precedent for the other claims or proceedings.

3.5 Are any other case management procedures typically used in the context of class/group litigation?

No, there are not.

3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Expert witnesses are appointed either upon a party's request or their own initiative to substitute what the court lacks in expert knowledge. The court decides at its own discretion on both the necessity and the actual person of the expert witness. The parties merely have a procedural right to be heard on these questions and may reject the expert witness on the grounds of bias.

The court may only consider an expert opinion in relation to the facts of the case. With the exception of foreign laws if applicable, the court is not permitted to ask for legal expertise.

The parties may present a private expert opinion but courts consider a private expert opinion only to be proof of the author's opinion. A private expert opinion might serve to raise doubt of the court appointed expert's opinion.

3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

In Austrian proceedings, taking (expert) evidence is considered to be a sovereign act performed by the court upon the parties' requests in the course of the main proceedings.

There are no discovery proceedings.

Pre-trial proceedings can only take place prior to the main proceedings under certain and rather limited circumstances, for instance, in order to secure evidence that might otherwise be lost.

3.8 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

There are no pre-trial (discovery) proceedings in Austria. In the course of the main proceedings and upon one party's request, the opponent is obligated to disclose documents if:

- the opponent has referred to the document in the course of the proceedings;
- the opponent is required to hand them over according to substantive law; or
- the documents are qualified as 'conjoint deed' between the parties.

The above stated rules also apply to the disclosure of documents by a third or non-party. Under certain conditions, the opposing party may refuse to disclose documents.

3.9 How long does it normally take to get to trial?

Depending on the complexity of the case, it normally takes between 3 to 9 months to get to trial, and this time period is usually divided into several court sessions spread over several months.

3.10 What appeal options are available?

There are three instances in civil proceedings with the Supreme Court being the court of last instance. The admissibility of appeals is largely dependant on the amount in dispute. Specifically, if the value in dispute does not exceed EUR 2,000.00 the admissibility of appeal to the court of second instance is limited to grounds of nullity and incorrect application of the law and an appeal to the third instance (to the Supreme Court) is out of the question if the amount in dispute does not exceed EUR 4,000.00 (with the exemption of test cases which are not subject to the restrictions by amount in dispute).

The court must decide each claim individually and, consequently, it has been argued that the admissibility of appeals should be decided for each claim individually, and on the basis of the amount in dispute. Following this line of reasoning, the appeal option of each claim would have to be decided individually.

Regarding Austrian collective actions brought by representative bodies, the representative bodies can use a procedural 'trick' and simply qualify the individual claim as a test case, thus not subject to the restrictions by amount.

Scholars argue that an exemption from restrictions by amount should be extended to all cases of Austrian collective actions whether they are brought by a representative body or another organisation. Further developments regarding the appeal options of Austrian collective actions - either by the legislature or by the Supreme Court - are to be expected.

4 Time Limits

4.1 Are there any time limits on bringing or issuing court proceedings?

Yes, there are.

4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the Court have a discretion to disapply time limits?

Civil claims are subject to a statute of limitations. For damage claims, there is - in general (see question 4.3) - a period of 3 years after notice of the damage and knowledge of the tortfeasor (calculated from the point in time at which the causal link between the damage and the wrongful behaviour of the tortfeasor became obvious or had to become obvious to the damaged party). Contractual claims may get time barred from 3 to 30 years after the contract has been signed. For all other claims, the statute of limitations period is also 3 to 30 years.

Minors are exempt from time limits only in very specific - mostly academic - cases, e.g. if they have no legal representative(s). The condition of a claimant may only have an effect on time limits if he/she is in such a condition that necessitates the appointment of a legal representative.

It is the respondent's responsibility to claim that the action is statute-barred because there is no *ex officio* consideration of time limits given by Austrian courts. While courts are not permitted to disapply time limits, the question of whether a claim is statute-barred is for the court to decide.

4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Civil claims for damages resulting from intentional criminal actions

having a penalty of more than one year of imprisonment are subject to an extension of the statute of limitations period, that being from otherwise 3 to 30 years after notice of the damage and knowledge of the tortfeasor.

5 Remedies

5.1 What types of damage are recoverable e.g. bodily injury, mental damage, damage to property, economic loss?

There are no special rules regarding limiting the types of actual damages recoverable by a group of claimants or a series of claims. However, punitive damages are never awarded.

5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

In order to recover such costs, it would be necessary to establish proof that the product has a 'failure' or does not comply with medical standards.

5.3 Are punitive damages recoverable? If so, are there any restrictions?

No, punitive damages are not recoverable.

5.4 Is there a maximum limit on the damages recoverable from one defendant e.g. for a series of claims arising from one product/incident or accident?

The court must award damages for each claim individually. There are no special provisions stipulating a maximum limit for a series of claimants.

5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

There is no special scheme to divide damages amongst the claimants since each claim must be decided and quantified individually by the court.

5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?

There are no special rules applicable to the settlement of a series of claims.

6 Costs

6.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

The 'loser pays' rule applies. During the course of the proceedings, every party must bear its own legal costs and the winning party will be awarded its costs by the court according to statute bound tariffs - proportional to the outcome.

In cases of settlements, neither party will be awarded compensation for its legal costs by the court. If the plaintiff withdraws its claim, the respondent will be awarded 100% of its costs according to the aforementioned tariff.

6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?

The court will award costs for each claim individually according to the above described scheme. In regard to an Austrian collective action, the court will only award costs between the procedural claimant (i.e. the assignee of the rights/claims) and the respondent. The final distribution of costs of the action is not set out by procedural provisions but rather by agreement between the assigners and the assignee of the claims.

6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

In the course of a pending proceeding, a claim may only be discontinued or withdrawn without the defendants consent if the claimant waives its claim. As a cost consequence, the court will award the respondent with its legal costs for opposing the withdrawn claim.

6.4 Do the courts manage the costs incurred by the parties e.g. by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

Costs are awarded according to a tariff that is linked to the amount in dispute. An assessment of costs by the court is necessary in so far as to determine whether the claimed costs comply with the tariff system. The court is not permitted to impose a cap on costs or manage the costs incurred by the parties. However, the tariff itself imposes a cap if the amount in dispute exceeds certain (high) levels. In cases of non-monetary claims in which the claimant determines the value in dispute the court can influence the reimbursable costs of legal representation by decreasing or increasing the value in dispute (which is the key factor in statute bound tariffs).

Costs are awarded at the end of the proceedings.

7 Funding

7.1 Is public funding e.g. legal aid, available?

No special provisions exist regarding legal aid for proceedings involving multiple claimants. Generally, legal aid is available for claimants if the costs of pursuing civil proceedings would jeopardise the claimant's livelihood.

When an Austrian Collective Action is brought by a representative body its management is publicly funded indirectly as most representative bodies are publicly funded.

7.2 If so, are there any restrictions on the availability of public funding?

See question 7.1 above.

7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Austrian lawyers (i.e. private practitioners) are not permitted to agree upon a fee that is a percentage or an amount of what the client is awarded by the court. In addition, Austrian lawyers are not permitted to take on (a portion of) a matter in dispute or litigation. However, if a third private party is involved, this party may act on contingency fee arrangements (see question 7.4).

7.4 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Third party funding (by persons other than lawyers) is permissible. Third party funding is usually provided at a rate of 30 to 50% of the total amount awarded by the court.

8 Other Mechanisms

8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

Yes, see question 2.1 for details.

8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

A professional commercial claimant may purchase the rights to individual claims within the boundaries of general contract law and consumer protection law. Only transferable claims can be bought by and assigned to a professional commercial claimant.

The concept of assigning (not selling) several claims to one legal entity was used in the development of the Austrian Collective Action (see question 1.1 d.).

8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

The Austrian Criminal Procedural Code aims to secure and - as far as possible - settle their civil claims against the offender. Without special criminal procedural provisions for managing a series of civil claims, criminal proceedings that lead to a verdict can be utilised as means to pursue civil damages on behalf of a series of claimants. Firstly, criminal proceedings that result in a conviction hinder the related civil claims from becoming time-barred. Secondly, a criminal conviction is one of the rare cases that serve as a legally binding precedent for civil courts. Thirdly, damages can be directly awarded by a criminal court if the court determines that it is competent to decide upon the civil claim. However, this is usually only the case if the suspect leaves the claim undisputed.

8.4 Are alternative methods of dispute resolution available e.g. can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

Alternative methods of dispute resolution (e.g. arbitral decisions) are both available and enforceable but the court is not permitted to refer the matter to another institution, except in the case of divorce matters. The court is, however, always encouraged, and even required at the first court session, to engage the parties into

settlement negotiations and/or to try to reach a settlement between the parties.

A mediation carried out by an 'officially registered mediator' prohibits the claim from getting time barred throughout the course of a mediation that is being properly carried out.

8.5 Are statutory compensation schemes available e.g. for small claims?

No. However, compensation claims for physical pain are awarded according to schemes (i.e. by calculating minor/medium/severe pain per day), which have been developed by jurisprudence.

8.6 What remedies are available where such alternative mechanisms are pursued e.g. injunctive/declaratory relief and/or monetary compensation?

See question 8.4 above.

9 Other Matters

9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict 'forum shopping'?

Claims can be brought by residents from other jurisdictions. Persons and legal entities from outside the European Union may be ordered to make a security deposit for legal costs upon the respondent's request.

An Austrian court is not permitted to initiate proceedings if proceedings between the same parties involving the same matter are already pending at another court in Austria or within the European Union. The effect of proceedings pending in courts outside the European Union is a question of bi- or multilateral treaties (and vice-versa).

9.2 Are there any changes in the law proposed to promote class/group actions in Austria?

A draft bill was published by the Austrian Ministry of Justice and was discussed intensely but a political consensus was not reached. With elections coming up at the time of the drafting this article (late summer 2008), future legislative developments cannot be foreseen. It remains to be seen whether the next government will choose to implement a special procedure for class/group actions or a series of claims.