

Herbert Beran  
Bezirksgericht Wiener Neustadt  
Austria  
email: [herbert.beran@justiz.gv.at](mailto:herbert.beran@justiz.gv.at)  
Tel.: +43/2622/21510/600

Fragments of Austrian civil  
procedure  
(Trier, 2013-05-13)

## Courts:

### District court (Bezirksgericht)

subjekt of matter until € 15.000.-

1.1.2016: € 25.000.- ,  
all tenancy cases

generally one judge

### Regional Court (Landesgericht)

All other Cases,

One judge,

subjekt of matter more than € 100.000.- senate of three judges possible

(only on demand of one litigant) Normally no demand for senate

All Cases employee/employer Senate of 3 judges (Judge, employee,  
employer)

Normally no clerk, no security in courtroom,  
dictaphone

Security only at buildings entrance (now at all courts)

Law demands judges to wear robes during all hearings.

Practise is different:

In Criminal matters judges normally wear robes,

in Civil Cases some judges wear robes, some not,

In family cases judges normally dont wear robes

Reason: Symbol of robe makes it more difficult to achieve settlements

No problem for administration of justice (Important are only fast and fair proceedings,)

According to usual european standards:

the principle of orality, Practise: protocol: *„In consent all parts of file are considered to be pleaded,, or „Claimant pleads as in complaint, defendant pleads as in protest to order for payment“*

the principle of immediacy,

the principle of publicity,

the principle of procedural concentration or efficiency

the principle of the right to be heard.

Modified inquisitorial system of Austrian civil procedure:

Primarily it is up to the parties to claim their rights, to allege all necessary facts for their point of view and to offer evidence.

But: The judge has to ascertain the truth. For that purpose he is entitled to take evidence not requested by any of the parties. (witnesses, experts, files from police, hospitals, other authorities)

If both litigants object: Judge must not hear the witness and must not read the file

principle of ex officio proceedings

(citations, dates of hearing, prorogation of hearing)

All claims and defences have to be presented in first instance, it is prohibited to raise new facts or to bring new evidence in second instance  
(German: *Neuerungsverbot*)

The reason is to ensure ending of a litigation within reasonable time.



Preliminary Hearing

Default judgement?

Judgement by consent?

Defence of lack of jurisdiction only in Preliminary Hearing

Court discusses relevant points of law with the parties

Settlement?

Which means of evidences are to be used in what order?

At district courts: Taking of evidence afterwards in same hearing is possible

In first instance parties everytime may bring forward new facts, new request and new evidences

Court has to reject allegations and evidences as untimely if these allegations are raised in order to unduly delay the proceeding. ( § 179 ZPO)

requirement: gross negligence **and** suspected long delay

Subject of matter more than € 5000.-: lawyer obligatory (Some exceptions)

Duty of judge to instruct both parties (lawyers as well!) ( § § 182, 182a ZPO)

Court must not overtake parties with legal point of view

Very important in practice (parties without lawyer)

Successfull argument in appeal :„*Court did not instruct my lawyer, that ...*“

order for payment: obligatory € 75.000.-,

Court has only to prove conclusiveness (Alleged facts justify the complaint),  
no evidence taken

Time for objection: four weeks

Very similar to Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (Verordnung (EG) Nr. 1896/2006 des Europäischen Parlaments und des Rates vom 12. Dezember 2006 zur Einführung eines Europäischen Mahnverfahrens)

93% orders for payment become final without objections, Very fast (electronic data processing)

Non-appearance of a litigant - default judgment  
(Court has only to prove conclusiveness ( Alleged facts justify the complaint),  
no evidence taken

Settlement: Many settlements; possible at any time ( § 204 ZPO);

Austrian judges normally encourage settlements.

## Kurzstatistik - Überblick Zivil

Berichtszeitraum 01.2012 bis 12.2012

234 Bezirksgericht Wiener Neustadt

GA	Gattz	Richter	am Anfang des BRZ übernommen gesamt	am Anfang des BRZ übernommen streitig	im BRZ angefallen gesamt	im BRZ angefallen streitig	im BRZ erledigt gesamt	im BRZ erledigt streitig	im BRZ erledigt Urteil	am Ende des BRZ offen gesamt	am Ende des BRZ offen streitig	anh. verbl. und früher			Anhängig- keitsdauer (Median)	Urteile ausständig 2 Monate	Urteile ausständig 6 Monate
												2011	2010	2009			
001	C		18	6	93	40	98	42	26	13	4	2	1	1	1,7	1	0
002	C		157	38	840	62	885	78	39	112	22	6	2	0	1,3	1	0
007	C		238	48	1641	112	1577	112	39	302	48	9	2	0	1,3	6	0
008	C		256	43	1425	82	1397	78	41	284	47	23	7	4	1,6	4	0
009	C		19	6	83	43	83	43	33	19	6	2	2	1	3,0	0	0
014	C		170	19	949	56	955	57	16	164	18	10	2	1	1,4	0	0
017	C		13	4	76	50	81	52	26	8	2	1	0	0	4,2	0	0
018	C		244	25	1410	90	1452	89	29	202	26	11	3	3	1,1	3	0
029	C		22	7	-4	0	17	6	5	1	1	1	0	0	22,1	0	0
Sum	C		1137	196	6513	535	6545	557	254	1105	174	65	19	10	1,4	15	0

# Kurzstatistik

Berichtszeitraum 01.2012 bis 12.2012

LG 239 Landesgericht Wiener Neustadt

Geschäftsgattung	am Anfang des BRZ übernommen	im BRZ angefallen	im BRZ erledigt	am Ende des BRZ offen	anh. verbl. und früher			Anhängig- keitsdauer (Median)
					2011	2010	2009	
					Jv gesamt	56	5.301	
Cg gesamt	1.739	1.490	1.555	1.674	1.132	98	43	14,7
streitig	399	877	604	672				
Urteil			265					
gekürzte Urteile			9					
Mahnsachen	387	960	996	351	75	27	4	4,1
Diplomrechtspfleger			2					
rechtswirksame Einsprüche		333						
Verkehrssachen	54	21	43	32	22	13	6	17,3
Sonstige	1.392	623	657	1.358	1.058	56	20	14,8
Lieferung/Kaufpreis	47	99	96	50	11	7	4	5,6



Judgment immediately after closing the trial

or court reserves the judgement, then court has to deliver a written judgement (4 weeks)

## Mediation

according to DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 21 May 2008 on certain aspects of mediation in civil and commercial matters (RICHTLINIE 2008/52/EG DES EUROPÄISCHEN PARLAMENTS UND DES RATES vom 21. Mai 2008 über bestimmte Aspekte der Mediation in Zivil- und Handelssachen)

not very popular (expensive, slow)

## Court – Fees:

### 1. Instance.

until 150 Euro: 21 Euro

150 Euro - 300 Euro: 41 Euro

.

.

.

2 000 Euro - 3 500 Euro: 155 Euro

3 500 Euro – 7 000 Euro: 285 Euro

7 000 Euro - 35 000 Euro: 673 Euro

.

.

.

.

140 000 Euro- 210 000 Euro: 3 969 Euro

.

.

English Literature:

Walter H. Rechberger: Civil Procedure in  
Austria,  
published by Kluwer Law International,  
PO Box 316, 2400 AH Alphen aan den Rijn,  
The Netherlands