

## AUSTRIA

- **Do you share our analysis concerning the current state of the settlement of disputes of a private character to which an international organisation is a party?**

Austria shares the analysis that the perceived shortcomings in the settlement of disputes of a private character to which an international organisation is a party merit attention. It is open to a discussion of these issues, but wishes to point out that two different objectives must be taken into account: the need to provide redress to private persons for damage caused by international organisations, on the one hand, and the need to ensure the independence and proper functioning of the organisations, on the other hand.

- **What is your experience with the settlement of disputes of a private character to which an international organisation is a party in your legal system?**

Several attempts to institute proceedings before Austrian courts against international organisations in private law disputes (i.e. employment and other contractual disputes) have been made. Until 2022, the immunity of the organisations was upheld by the courts in all these cases and, accordingly, the claims failed or the case was eventually dismissed. The organisations’ immunity was based in particular on the headquarters and seat agreements between Austria and the relevant organisations (see e.g. Supreme Court decisions OGH 5 N 502/90 of 6 March 1990; 8 Ob A 78/98y of 30 March 1998; 10 Ob 53/04y of 14 December 2004; Administrative Court judgment VwSlg 16669 A/2005).

A particular solution was negotiated with NATO for the transit of IFOR troops to Bosnia and Herzegovina where NATO was required to have appropriate insurance coverage and to provide compensation for damage or injury to private persons or any property inflicted by NATO personnel and vehicles during the transit through Austria. Claims for damage or injury to private persons or property had to be submitted by Austrian governmental authorities to the designated NATO representatives (see Pt. 11 of the relevant agreement, Austrian Federal Law Gazette 869/1995).

Headquarters and seat agreements between Austria and international organisations obligate the organisations to make provision for appropriate methods of settlement of disputes arising out of contracts and disputes of a private law character to which the organisations are a party (see e.g. Article XIV Section 45 of the Agreement between the Republic of Austria and the United Nations regarding the Seat of the United Nations in Vienna, Austrian Federal Law Gazette III 99/1998). Accordingly, the contracts concluded by the organisations contain an arbitration clause referring e.g. to the UNCITRAL rules of arbitration.

Furthermore, a number of headquarters and seat agreements exclude immunity from jurisdiction and enforcement in the case of civil actions brought by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the organisation, or in respect of any infringement of regulations governing the keeping, operation and use of motor vehicles (see e.g. Article 6 (1)(b) of the Agreement between the Republic of Austria and the International Commission for the Protection of the Danube River regarding the headquarters of the International Commission for the Protection of the Danube River, Austrian Federal Law Gazette III 227/2001).

- **In particular, are there examples in your legal system of perceived shortcomings in the settlement of disputes of private character to which an international organisation is a party leading claimants to turn to the member States?**

If cases concerning employment disputes between international organisations and their staff members are not satisfactorily settled inside the organisation, staff members sometimes turn

to Austrian courts where their claims are regularly dismissed because immunity is not waived by the organisation.

In 2022, the Austrian Constitutional Court rendered a landmark decision (VfGH SV 1/2021-2 of 29 September 2022) denying for the first time the constitutionality of two Articles of the Headquarters Agreement between the Republic of Austria and the Organization of the Petroleum Exporting Countries (OPEC), which provided for the inviolability of OPEC's headquarters seat (Article 5) and the immunity of OPEC and its property from every form of legal process (Article 9). The Court was not satisfied with the independence of OPEC's existing internal review mechanism for labour law cases, which would have justified the Organisation's immunity in the light of the jurisprudence to the European Court of Human Rights regarding the right to an effective remedy pursuant to Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

A further question relates to service of documents in court cases, since immunity prevents direct service of such documents to international organisations unless they waive their immunity.

- **Do you consider that the strengthening of the settlement of disputes of a private character to which an international organisation is a party merits attention?**

As mentioned above, Austria agrees that this issue merits attention. Austria welcomes that the International Law Commission of the United Nations has started working on the topic "Settlement of disputes to which international organizations are parties", which it considers to be of great practical value for both host states and member states of international organizations. We congratulate Special Rapporteur Professor August Reinisch for his first report which he submitted in 2023.

In general, Austria recommends a careful approach, as the independence and proper functioning of international organisations need to be ensured. Different categories of disputes may require different solutions: employment disputes, disputes relating to private law contracts with persons or entities outside the organisation, disputes relating to traffic accidents or other damage caused by acts of the organisation. Appropriate solutions for some of these categories of disputes do not necessarily imply a departure from the principle of immunity enjoyed by international organisations – other mechanisms like the establishment of ombudspersons may be feasible. However, there will always be a core area of the mandate of the organisation where full immunity has to be preserved. In any case, the different character of international organisations could also require different solutions.

- **Specifically in respect of settlement of private claims in UN peace operations, how do you see the merits of the possible measures described above?**

Austria is in favour of a careful further examination of these issues. This would include a cost/benefit analysis and an analysis of the applicable law, with the purpose of avoiding major divergences between various jurisdictions. In these two specific areas, the Hague Conference on Private International Law could be of assistance. In certain areas, relaxing the immunity rules for international organisations could be considered, e.g. concerning traffic accidents (for Austrian examples see above).