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Austria

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In 2006, Austria's arbitration law was the subject of a major reform. Austria adopted a new Arbitration Act (as part of the Austrian Code of Civil Procedure, ZPO) to replace its original law from 1895. The Vienna International Arbitral Centre also adopted a revised version of the Vienna Rules, on 3 May 2006,¹ in order to ensure that the Vienna Rules remain compatible with the statutory framework in which they typically operate.² These reforms cement Austria's reputation as an arbitration-friendly country and as perhaps the most prominent jurisdiction for arbitration in Central and Eastern Europe.

In the four years since these major reforms took effect, the first cases applying the new law have progressed through the Austrian court system and arrived at the Austrian Supreme Court. This article examines three of these cases, decided in the years 2009 and 2010, because of their potential interest to international users of arbitration in Austria.

The article first discusses a recent case regarding the extension of arbitration agreements to non-signatories, in which the Austrian Supreme Court continues a now veritable line of case law confirming the binding effect of arbitration agreement on non-signatory parties in certain circumstances. Next, this article looks at the particular features of Austrian arbitration law as it relates to consumers in the context of enforcement under the New York Convention and Austrian *ordre public*. Finally, this article addresses a recent decision of June 2010, in which the Supreme Court has considerably extended the notion of the right to be heard by granting the challenge of an award because an oral hearing did not take place despite a party's request.

The extension of arbitration to non-signatories

On 30 March 2009, the Austrian Supreme Court dealt once again with the extension of an arbitration agreement to a non-signatory.³ This case arose from a public tender process. In order to participate in this tender, which was for the acquisition of a large energy-producing company (V), a company (C) set up a special purpose vehicle (C-SP) with the sole function of participating in the tender. The members of C's executive board were also instituted as the directors of C-SP.

In the course of the tender, the executive board of C signed a confidentiality agreement with the target company and its seller. C-SP did not sign that agreement.

The confidentiality agreement stated that all information provided by V in the context of the tender to C, its organs, managers, employees, affiliated companies, representatives, advisers and institutional financiers must remain strictly confidential. Among other things, the confidentiality agreement also contained several representations and warranties, providing, however, that neither V nor its representatives would assume any liability for the accuracy or completeness of such confidential information passed on to C. The confidentiality agreement, which was governed by German law, contained an ICC arbitration clause.

When the tender was awarded to another company, C-SP initiated a law suit against the seller of V before the Austrian

courts, claiming that it had received misleading information in the tender process. However, the seller asked the Austrian courts to compel C-SP to initiate arbitration under the confidentiality agreement regulating the tender process. C-SP argued in turn that it never became a party to the arbitration agreement contained in the confidentiality agreement, which it had never signed and which was instead only signed by its parent C. In its decision, the Austrian Supreme Court dismissed the law suit and referred the dispute to arbitration.

The Austrian Supreme Court noted that the C-SP was a special purpose vehicle employed by C for the sole purpose of participating on C's behalf in the tender process. It also noted that there was full identity in the decision-making processes of C-SP and its parent C, in that C-SP's directors were at the same time C's executive board members. C's will was therefore directly and immediately implemented within its fully controlled subsidiary, C-SP.

On that basis, the Austrian Supreme Court noted that C-SP participated in the tender necessarily under C's control and in full knowledge of the obligations that C itself had assumed in relation to the tender process, including under the confidentiality agreement containing the arbitration clause. On the basis of the specific facts, the Supreme Court therefore came to the conclusion that C-SP's conduct in the tender process meant that C-SP had assumed, for all intents and purposes, the obligations of C arising under the confidentiality agreement. C-SP was deemed a "third-party beneficiary" of the confidentiality agreement when it participated in the tender on C's behalf. As a result, the fact that only C had signed the confidentiality agreement containing the arbitration clause did not prevent C-SP from being bound by that arbitration clause.

This case is the latest in a long-standing line of cases in which the Austrian Supreme Court, relying on principles of legal succession and third-party beneficiary status, has extended an arbitration agreement to a non-signatory.⁴ This line of cases has its origin in a decision compelling a legal successor to arbitrate when it assumes the legal position of one of the original signatories of the arbitration agreement.⁵ The rationale for this follows obvious precepts of good faith and estoppel: the legal successor has to accept the legal position, and all attending rights and obligations, as they were originally created and as he finds them.⁶ Where those rights and obligations contain the obligation to arbitrate, the legal successor is therefore bound by an existing arbitration clause without ever having signed it.⁷

More recent Austrian case law takes the rationale that binds a legal successor further. In case 4 Ob 533/95, 13 June 1995, the Austrian Supreme Court held, for the first time, that an arbitration agreement has a binding effect on a non-signatory third party if that party exercises rights under the contract that contains the arbitration clause.⁸ In the words of the Austrian Supreme Court:

[t]he reasons for extending the arbitration agreement to a third party beneficiary are essentially the same as for the legal successor. Both take

a legal position, which was created without their own active conduct; hence, such parties have to accept this position as it was contractually concluded. (...) Arbitration agreements and the granting of a right [to a third party] are not divisible; the third party cannot reject one [the arbitration agreement], but accept the other [the granted right].⁹

This position has been confirmed by subsequent decisions¹⁰ and has been extended to apply to lease agreements.¹¹

The rationale applied in these cases is compelling and follows from obvious precepts of good faith and estoppel. Where a party assumes the legal rights and obligations of another, by whatever legal mechanism, it must accept those rights and obligations as it finds them. It would be abusive for a party to pick and choose certain advantages of the legal position that it enters, but to reject the obligations and disadvantages that attend that legal position. On that basis, the Austrian Oberster Gerichtshof (Supreme Court) held that a third party, which chooses to benefit from rights contained in a contract with an arbitration clause, must accept “the rights afforded to it jointly with all their contractual properties”.¹² As a result, the third party is bound by an arbitration clause contained in the contract: the third party “assumes a legal position which was created without [its] contribution; [it] must accept that legal position as it exists, including the contractual dispute resolution mechanism”.¹³

This decision expressly rejected the traditional Austrian rule¹⁴ that, because of the strict formal requirements of a written arbitration agreement, the arbitration clause can have no effect against a non-signatory third party. As the Oberster Gerichtshof has recognised, the protective purposes that attend the requirement of written arbitration agreements are fully satisfied in the case of third-party beneficiaries.

Conceptually, the findings of the Oberster Gerichtshof are also important because they underscore that the consent to arbitrate need not be express consent (much less consent expressed in writing). Although the third-party beneficiary never expressly (let alone in written form) consents to arbitration, that consent is implied – it is deemed to have consented because it voluntarily decided to exercise rights under the contract in question. That voluntary choice is sufficient to bind the third party to the effects of the arbitration clause.

Arbitration agreements with consumers

A particular feature of the new Austrian arbitration law relates to arbitration agreements with consumers, which can validly be concluded only under a limited set of circumstances, following the very strict regime of section 617 ZPO.¹⁵ To begin with, this provision stipulates that “arbitration agreements between an entrepreneur and a consumer may validly be concluded only for disputes that have already arisen”. In other words, section 617 ZPO allows for submission agreements with respect to existing disputes, but prevents the valid conclusion with consumers of an arbitration agreement for future disputes.

A special form requirement, obligatory for all consumers, has also been introduced, stating that “[a]rbitration agreements with the participation of a consumer must be contained in a document which has been personally signed by the consumer. This document may not contain any agreements other than those that refer to the arbitration proceedings.”¹⁶ Additionally, the new law requires the entrepreneur, prior to the conclusion of the arbitration agreement, to advise the consumer in writing on the substantial differences between arbitration proceedings and proceedings before a court of law.¹⁷ This precondition has been given particular importance as the lack of such information now constitutes a separate ground to set aside the award.¹⁸ To protect

consumers from having to participate in an arbitration sited in an inconvenient or distant place, possibly at great cost, section 617(4) ZPO mandates that the seat of the arbitration must be determined in the arbitration agreement; and that the tribunal may only meet at a different place (for an oral hearing or the taking of evidence) if the consumer has consented, or if considerable difficulties prevent the parties from meeting at the location stipulated in the agreement.¹⁹ Indeed, if the consumer, at the time the arbitration agreement is concluded or when the arbitration is initiated, does not have his domicile, habitual place of residence or place of employment in the jurisdiction where the arbitration has its seat,²⁰ the arbitration agreement “shall be of relevance only if the consumer invokes it”. Finally, section 617(6) ZPO broadens the grounds for challenging an award in an arbitration with a consumer, to include violations of mandatory provisions of Austrian law that cannot be waived through the choice of law of the parties even in a case with international relevance, and the application of section 595 ZPO, which concerns the grounds for reopening court proceedings in civil matters.²¹

The new arbitration law makes it practically impossible to conclude an arbitration agreement with a consumer. This reflects the prevailing trend, at least in Europe, to understand international arbitration as a dispute resolution mechanism primarily established for commercial users.²²

Yet the peculiar features of section 617 ZPO may have implications for many commercial transactions as well. According to the statutory definition in the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*, KSchG), a commercial enterprise is a permanent organisation of independent commercial activity even if it is not for profit – and a consumer is defined as anyone who is not a commercial enterprise.²³ The application of the KSchG is also extended to transactions that a natural person concludes to commence a commercial enterprise (“founding transaction” or *Gründungsgeschäfte*),²⁴ which may entail the conclusion of an arbitration agreement. This can be relevant, for example, where a natural person acts as a shareholder or partner (including as a silent partner or equity holder) within an incorporated or private company.²⁵ In some of these cases, Austrian jurisprudence has treated such a person as a consumer because of the lack of managing authority or effective supervisory power, even if the capital investment was clearly made for the purpose of profit.²⁶

In its decision of 22 July 2009, the Austrian Supreme Court had occasion to address the Austrian consumer provisions in the context of enforcement proceedings under the New York and European Conventions. In that case, a Danish company had concluded a commercial agreement containing an arbitration clause with an Austrian company A and two Austrian individuals, B (who solicited the commercial transaction on A’s behalf) and C (who was A’s managing director). Both B and C assumed liability for A’s obligations regarding the Danish company by virtue of a guarantee.

Following the break down of the commercial relationship, the Danish company obtained an award under the arbitration clause, providing for arbitration in Copenhagen, and then sought to enforce the award against A, B and C in Austria under the New York and European Conventions.

In the enforcement proceedings, B and C relied on their alleged status as consumers under Austrian law, which in their view would prevent enforcement against them.²⁷ Specifically, B and C argued that their capacity to validly conclude an arbitration agreement was restrained by virtue of Austrian law, which imposed a series of strict conditions on such agreements being concluded with consumers, pursuant to section 617 of the ZPO. In their view, given the special protection afforded to consumers

under Austrian (arbitration) law, the award also violated the Austrian *ordre public* and was therefore not enforceable according to article V(2)(a) of the New York Convention.

In this regard, the Supreme Court noted that section 577 ZPO specifically excludes the application of section 617 for arbitrations that have their seat outside Austria. Further, the Supreme Court held that section 617 did not form part of the Austrian *ordre public*. In the court's own words, and despite the onerous provisions governing arbitration agreements with consumers, "the conclusion of an arbitration agreement [with a consumer] as such cannot violate those fundamental values of the Austrian legal order. This is indeed evidenced by the legislative choice to include section 617(6)(1) in the new arbitration act, which provision would be superfluous if mandatory provisions of consumer law were automatically to form part of Austrian *ordre public*."

This decision provides a welcome clarification that the new provisions on arbitration with consumers, although mandatory in Austria, do not form part of the Austrian *ordre public* and therefore do not, in and of themselves, justify the refusal to enforce an international award. However, the outcome of this case may well have been different, had the arbitration had its seat in Austria (in which case section 617 ZPO would have been applicable) and if B and C had filed a timely challenge to the tribunal's jurisdiction.²⁸ At least for cases that have their seat outside Austria, but where enforcement is subsequently sought in Austria under the New York Convention, the decision makes clear that the somewhat parochial provisions of Austrian consumer law that were incorporated into section 617 ZPO, are neither directly applicable (as section 577 ZPO provides) nor do they rise to the level of *ordre public* protections.

The right to be heard

In Austrian arbitration law, the right to be heard is recognised, and protected, in several ways. In regulating how arbitrators may conduct proceedings, section 594(2) ZPO provides, different from the UNCITRAL Model Law,²⁹ that "[e]ach party has the right to be heard".³⁰ Section 598 ZPO requires the arbitrators to hold an oral hearing if one party so requests; and section 599(2) ZPO mandates that "[t]he parties are to be timely informed of every hearing and of every meeting of the arbitral tribunal for the purpose of taking of evidence". Further, section 599(3) ZPO requires that "[a]ll written submissions, written documents and other communications which are submitted to the arbitral tribunal by a party are to be brought to the attention of the other party. Expert opinions and other evidence to which the arbitral tribunal may refer in its decision are to be brought to the attention of both parties."

In addition to these specific rules, a violation of the right to be heard constitutes, under certain circumstances, a ground for setting aside the award. Section 611(2) No. 2 states that "[a]n arbitral award shall be set aside if (...) a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable for other reasons to present his means of attack and defence". As a textual matter, and unlike section 594(2), this provision does not refer to the "right to be heard" in general terms, but appears to provide a narrative catalogue of what this right entails for the purpose of setting aside an award.³¹

- a failure to be notified of the appointment of an arbitrator;
- a failure to be notified of the arbitral proceedings altogether; or
- a failure for other reasons to present one's case.

The resulting difference between section 594(2) ZPO (which expressly refers to the broader concept of the "right to be

heard")³² and section 611 (governing the challenge of an award under the arguably narrower concept of a party not being permitted to presenting its case) is striking. Some authors therefore argue for a consistent standard to govern both the arbitral procedure under sections 594(2), 598, and 599 ZPO and the challenge of an award under section 611(2) No. 2.³³

In its recent decision dated 30 June 2010, the Austrian Supreme Court has for the first time addressed the (textual) divergence between the specific rules of sections 594(2), 598, and 599 ZPO, on the one hand, and the standard for setting aside under section 611(2) No. 2. In that case,³⁴ an arbitrator had given the parties the opportunity to address disputed issues in writing (which they did), but then proceeded to an award without a hearing despite an express request by one party. The party whose request for a hearing was ignored challenged the award on the basis of section 611(2) No. 2. The other side opposed the challenge, arguing that, by being permitted to make extensive written submissions, both sides were given the opportunity "to present their means of attack and defence". Section 611(2) No. 2 only requires such an opportunity, but does not require that an oral hearing be held.

The Austrian Supreme Court granted the challenge. It held that section 598 ZPO, which expressly requires the arbitrators to hold an oral hearing if one party so requests, is a mandatory provision of Austrian law, that restrains the arbitrator's discretion to conduct the proceedings and that constitutes a particular expression of the general "right to be heard" stipulated in section 594(2) ZPO. In the words of the Supreme Court:

[t]his particular legislative mandate, which was introduced in the 2006 reform and thus changes previous arbitration law vesting the arbitrator with unfettered discretion in this respect, cannot be ignored and must have consequences. When interpreting statutory law, it must not be assumed that a (mandatory) provision is supposed to remain without purpose or function or practical consequence. It is therefore inappropriate to assume a legislative design that imposed a mandatory duty to hold an oral hearing, but then left this mandate without sanction. If the 2006 reform is supposed to have any relevance in this regard, then ignoring a request to conduct an oral hearing by the arbitrators must – contrary to the law prior to the reform – typically constitute a ground for setting aside the award pursuant to section 611(2) No. 2.

Thus, the Supreme Court relied specifically on the 2006 reform, which introduced with section 594 duties that previously had not existed, to justify a departure from its existing case law. Under the traditional approach of Austrian law,³⁵ parties must have been able to present to the arbitrators all elements of their case,³⁶ and to comment on the other side's factual allegations.³⁷ However, as long as the opportunity to present one's case was sufficient, the means of presentation – ie, whether by written submission or oral hearing, or both – were a matter of discretion to be exercised by the arbitrator. Now, it is clear that a party is not deemed "able to present its means of attack or defence" within the meaning of section 611(2) No. 2 if it is deprived of an oral hearing that it had requested.

Notes

- 1 The amendment on 3 July 1991 gave the former Rules of Arbitration and Conciliation its present name.
- 2 See Schwarz and Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria* (Kluwer Law International, forthcoming).
- 3 See Austrian Supreme Court in 7OB266/08F.
- 4 See D Busse, *Die Bindung Dritter an Schiedsvereinbarungen* [2005] SchiedsVZ, 118, 121. The leading case on the "group of companies

- doctrine" is *Dow Chemical v Isover St Gobain*. See Interim Award in ICC Case No. 4131 of 1982, *Dow Chemical France et al v Isover Saint Gobain* (France), (1984) IX YB Comm Arb, 131 and (1993) JDI, 899 et seq.
- 5 OGH, 18 March 2004, 2 Ob 53/04i.
 - 6 OGH, 26 April 2001, 8 Ob 179/00g.
 - 7 OGH, 13 June 1995, 4 Ob 533/95.
 - 8 OGH, 13 June 1995, 4 Ob 533/95.
 - 9 OGH, 13 June 1995, 4 Ob 533/95.
 - 10 OGH, 05 August 1999, 1 Ob 79/99w.
 - 11 OGH, 28 August 2003, 7 Ob 96/03y. Note that in cases where the parties to the arbitration agreement require certain prerequisites, it is debatable if the arbitration agreement is effectively applicable in case of assignment. See P Rummel, *Schiedsvertrag und ABGB* [1986] RZ, 146.
 - 12 OGH, 13 June 1995, 4 Ob 533/95.
 - 13 OGH, 13 June 1995, 4 Ob 533/95.
 - 14 D Girsberger and C Hausmaninger, *Assignment of Rights and Agreement to Arbitrate* (1992) 8(2) Arb Int, 121; G Backhausen, *Schiedsgerichtsbarkeit unter besonderer Berücksichtigung des Schiedsvertragsrechts* (Vienna, Manz, 1990), p62 et seq; P Rummel, *Schiedsvertrag und ABGB* [1986] RZ, 146;
 - 15 See Explanatory Notes to section 617 ZPO.
 - 16 Section 617(2) ZPO.
 - 17 The nature and depth of the required advice is unclear. See J Power, *The Austrian Arbitration Act A Practitioner's Guide to sections 577-618 of the Austrian Code of Civil Procedure* (Vienna, Manz, 2006), section 617, para. 8.
 - 18 Section 617(7) ZPO.
 - 19 Section 617(4) ZPO.
 - 20 Note that the ECJ as reported in AE Appelton and BU Graf, *Elisa María Mostaza Claro v Centro Móvil Milenium: EU Consumer Law as a Defence against Arbitral Awards*, ECJ Case C-168/05" (2007) 25(1) Bull ASA, 48 quite recently ruled that the invalidity of an arbitration agreement can be invoked by a consumer at the stage of setting aside proceedings even if no explicit objection has been raised against the arbitral tribunal's jurisdiction in the arbitration. See also P Landolt, *Limits on Court Review of International Arbitration Awards Assessed in light of States' Interests and in particular in light of EU Law Requirements*" (2007) 23(1) Arb Int'l, 63; N Reich, *More clarity after Claro?* (2007) 3(1) ERCL, 41; R Jordans, *Anmerkungen zu EuGH Rs. C-168/05 Elisa Maria Mostaza Claro gegen Centro Movil Milenium SL* [2007] GPR, 48; W Hau, *Zur Entwicklung des Internationalen Zivilverfahrensrecht in der Europäischen Union in den Jahren 2005 und 2006* [2007] GPR, 93.
 - 21 According to this provision, by reference, an award can (additionally) be set aside if a party (i) has found or been put in a position to use an earlier binding decision that establishes the law between them concerning the same claim or legal relationship; or (ii) has learned of new facts or evidence or has been put in a position to use evidence that would have influenced the decision in a favourable manner to him. See J Power, *The Austrian Arbitration Act A Practitioner's Guide to sections 577-618 of the Austrian Code of Civil Procedure* (Vienna, Manz, 2006), section 618, para. 17.
 - 22 It bears emphasis that on 12 July 2007 a bill seeking to amend the US Arbitration Fairness Act was introduced in both houses of US Congress. If enacted, the bill would invalidate pre-dispute agreements to arbitrate "employment", "consumer" or "franchise" matters as well as disputes "arising under any statute intended to protect civil rights or to regulate contracts or transactions between parties of unequal bargaining power". See M. Miller, "Contracting out of process, Contracting out of Corporate Accountability: An Argument against Enforcement of Pre-Dispute Limits of Process" (*Tennessee Law Review* Spring 2008), online publication, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1081709; M. J. Lockerby and K. J. Shur, "Arbitration Fairness Act of 2007: a trial lawyer's dream, a client's nightmare", *Franchising World*, November 2007, online publication http://goliath.ecnext.com/coms2/summary_0199-7310455_ITM.
 - 23 Section 1 KSchG.
 - 24 H. Krejci in *Kommentar zum ABGB II/2*, P. Rummel (ed.) (3rd edn, Vienna, Manz, 2002), Section 1 KSchG, paras 1 and 47 et seq. It is disputed whether an association (Verein) may be qualified as

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- an entrepreneur. See H.Krejci, 36*Zum Ministerialentwurf einer HGB Reform*", [2003] VR, 218; H. Krejci, "Zum Mitglieder- und Gläubigerschutz nach dem VerG 2002" [2003] JBl, 713; P. Mayr, "Schiedsklauseln in Vereinsstatuten" [2007] RdW, 331.
- 25 See a more recent analysis on the qualification of shareholders as consumer in B. Terlitzka and M. Weber, "Zur Schiedsfähigkeit gesellschaftsrechtlicher Streitigkeiten nach dem SchiedsRÄG 2006" [2008] (2) ÖJZ; E. Joeinig, "Alternative Streitbeilegungsmöglichkeiten für Verbraucher in Österreich" [2006] ZAK, 366.
- 26 A. Reiner, "Schiedsverfahren und Gesellschaftsrecht" [2007] GesRZ, 151, 165 et seq. with reference to OGH, 11 February 2002, 7 Ob 315/01a, OGH, 25 June 2003, 3 Ob 141/03m, OGH, 24 November 2005, 3 Ob 58/05h; also N. Aburumieh, C. Koller and E. Pöltner, "Formvorschriften für Schiedsvereinbarungen" [2006] ÖJZ, 439; M. Fellner, "Das neue österreichische Schiedsrecht" [2007] NetV, 10.
- 27 B and C also relied on articles V(1)(a) and (c) of the New York Convention, arguing that they had not signed the arbitration agreement. The Austrian Supreme Court confirmed that this issue, like any issue of jurisdiction, should have been raised by B and C at the first opportunity in the arbitration, pursuant to article V(2) of the European Convention (which applied alongside the New York Convention in this case). Since B and C failed to do so in time, they were not precluded to contest the tribunal's jurisdiction in the enforcement stage.
- 28 Notably, although section 577(1) and (2) exclude the application of the consumer provisions of section 617 for arbitrations that have their seat outside Austria, some of the restrictions contained in section 617 might still apply, as a matter of conflicts of law, to the extent
- 29 Article 18 UNCITRAL Model Law refers to each parties' "full opportunity of presenting the case".
- 30 The parties' right to be represented by persons of their choosing under section 594(3) ZPO can also be viewed as an expression of the parties' right to be heard in the sense that proper representation by counsel is an important safeguard to ensure a reasonable opportunity to present one's case.
- 31 In this, section 611(2) No. 2 follows article 34(2)(a)(ii) UNCITRAL Model Law and section 1059(2)(1b) German ZPO. P. Oberhammer, *Entwurf eines neuen Schiedsverfahrensrechts* (Vienna, Manz, 2002), p. 132; B. Kloiber and H. Haller in *Das neue Schiedsrecht Schiedsrechts-Änderungsgesetz 2006*, B. Kloiber, P. Oberhammer, W.H. Rechberger and H. Haller (Vienna, Manz, 2006), pp. 11, 58; W.H. Rechberger and W. Melis in *Kommentar zur ZPO*, W.H. Rechberger (ed.) (3rd edn, Vienna/New York, Springer, 2006), section 611, para. 5.
- 32 P. Oberhammer, *Entwurf eines neuen Schiedsverfahrensrechts* (Vienna, Manz, 2002), p. 92.
- 33 P. Oberhammer, *Entwurf eines neuen Schiedsverfahrensrechts* (Vienna, Manz, 2002), p. 132. Riegler criticizes this formulation as "an unfortunate and ambiguous wording", as every violation of the "right to be heard" in its legal sense certainly constitutes a reason for setting aside (even though this might indeed not encompass the every-day use of the expression), and, thus, the only relevant question must be to determine the scope of the right to be heard. See S. Riegler in *Arbitration Law of Austria: Practice and Procedure*, S. Riegler, A. Petsche, A. Fremuth-Wolf, M. Platte and C. Liebscher (eds) (Huntington, Juris Publishing, 2007), section 611, pp. 523 et seq. See also Explanatory Notes to section 611.
- 34 7 Ob 111/10i.
- 35 OGH 27 October 1926, Ob III 768, ZBl 1927/60; OGH 6 September 1990, 6 Ob 572/90; OGH, 5 May 1998, 3 Ob 2372/96m; OGH, 1 September 1999, 9 Ob 120/99h.
- 36 For a general discussion, see C. Liebscher, *The Healthy Award* (The Hague, Kluwer Law International, 2003), p. 244; H.W. Fasching, *Lehrbuch des österreichischen Zivilprozeßrechts* (2nd edn, Vienna, Manz, 1990), para. 2207; W.H. Rechberger and W. Melis in *Kommentar zur ZPO*, W.H. Rechberger (ed.) (3rd edn, Vienna/New York, Springer, 2006), section 594, para. 4; A. Reiner, "Schiedsverfahren und rechtliches Gehör" [2003] ZfRV 52, 52 et seq.
- 37 C. Liebscher, *The Healthy Award* (The Hague, Kluwer Law International, 2003), p. 244.



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