

# Questionnaire on the topic “Settlement of international disputes to which international organizations are parties”

## Replies by Austria

### 1) What types of disputes/issues (cf. paras. 6 and 7 above) have you encountered?

From a host country perspective, Austria has mostly encountered disputes between international organisations and states (i.e. Austria) as well as disputes between private parties and international organisations. Disputes between two or more international organisations are rare.

Disputes between Austria and international organisations usually emanate from differences concerning the interpretation of agreements, including but not limited to headquarters agreements, and often involve issues such as privileges and immunities of officials of international organisations or government representatives, cost sharing, etc.

In addition, Austria has also encountered a number of disputes between international organisations and private parties, many of them being labour disputes with present or former employees of international organisations as well as disputes concerning the rental of premises or traffic accidents. Most of the labour disputes deal with the alleged unfair termination of employment or remuneration issues, some of them also involve discrimination, harassment, mobbing, etc.

### 2) What methods of dispute settlement (cf. para. 9 above) have been resorted to in cases of disputes with other international organizations, states or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?

Disputes between **Austria as a host country and international organisations** are usually settled through negotiations. However, all headquarters agreements contain specific clauses for the settlement of disputes which provide for obligatory arbitration in cases that cannot be solved through negotiations.

For disputes between **international organisations and private parties**, headquarters agreements obligate the international organisations to make provision for the appropriate settlement of disputes arising from contracts or other issues of a private law character as well as of disputes with officials or experts on mission, who by reason of their official position, enjoy immunity if such immunity has not been waived.

More recent headquarters agreements foresee the possibility of arbitration between international organisations and private parties, if no other settlement mechanism has been agreed. Labour disputes must be settled by an independent and effective dispute settlement mechanism protecting the rights of the employees in line with the European Convention on Human Rights, which is not only a directly applicable treaty obligation for Austria under international law but also enjoys the status of Austrian constitutional law.

In addition, recent headquarters agreements also foresee exceptions from immunity for disputes concerning motor vehicles operated by or on behalf of an international organisation, making it possible for individuals to go to court in case of damages or for the Austrian authorities to issue fines.

The Government’s approach towards the new headquarters agreements was confirmed by a judgment of the Austrian Constitutional Court of 29 September 2022, in which the Court, for the first time,

declared unconstitutional parts of a headquarters agreement that lacked provisions for the settlement of labour disputes through an independent mechanism, thus violating the employees' rights to a fair trial according to Article 6 of the European Convention on Human Rights (Judgment No. SV 1/2021-23). The Court decided that the relevant provisions shall not be applied any more after 30 September 2024, giving the Government a timeframe of two years to negotiate an amendment of the headquarters agreement.

In practice, most of the disputes between international organisations and private parties are settled through negotiations.

**3) In your dispute settlement practice, for each of the types of disputes/issues arising, please describe the relative importance of negotiation, conciliation or other informal consensual dispute settlement and/or third-party dispute resolution, such as arbitration or judicial settlement.**

Disputes between Austria and international organisations are usually settled through negotiations. The possibility for arbitration, as contained in all headquarters agreements (see question no. 2), has not been used.

When it comes to disputes between international organisations and private parties, negotiations are the preferred mode of settlement as well. However, in case of labour disputes employees may use the independent mechanisms provided by the international organisation in question if the negotiations fail. Arbitration between private parties and international organisations hardly ever occurs due to the high costs involved.

In very rare cases, when individuals allege a violation of their constitutional rights, including those enshrined in the European Convention on Human Rights, they may address the Austrian Constitutional Court which may declare international agreements or parts thereof unconstitutional (see question no. 5). In addition, individuals may file an application with the European Court of Human Rights in relation to any alleged violations of the European Convention on Human Rights after domestic remedies have been exhausted.

**4) Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement (cf. para. 9 above) for different types of disputes/issues (cf. paras. 6 and 7 above).**

Austrian headquarters agreements usually foresee the possibility of negotiations or arbitration for the settlement of disputes between Austria and the international organisation. For disputes between private individuals and international organisations (with a few exceptions, such as labour disputes or disputes involving motor vehicles), the more recent agreements usually offer the possibility for arbitration if no alternative mechanism can be agreed. However, with reference to questions no.3, negotiations and to a lesser extent arbitration are considered to be the most useful tools for dispute settlement.

**5) From a historical perspective, have there been any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used?**

Over time, Austrian headquarters agreements are being updated and brought in line with the European Convention on Human Rights and the evolving case law of the European Court of Human Rights concerning disputes between international organisations and private individuals (see question no. 2).

The Austrian Constitution contains the possibility for the Austrian Constitutional Court to declare treaties or parts thereof unconstitutional, including for violations of human rights guaranteed by the European Convention on Human Rights, which itself forms part of the Austrian Constitution. This remedy was further facilitated by the introduction, as of 1 January 2015, of the right of a party to a law suit decided by an ordinary court of first instance to challenge the constitutionality of a treaty

provision on the occasion of an appeal filed against that court decisions (so-called application to the Constitutional Court by a party to a law suit).

Several litigants have since made use of this possibility, claiming the unconstitutionality of some headquarters agreements which provided for immunity from Austrian jurisdiction. Whereas the Constitutional Court has rejected such applications at previous occasions as inadmissible for procedural reasons, the first judgment which examined such an application on the merits and declared provisions in a headquarters agreement unconstitutional was delivered by the Constitutional Court on 29 September 2022 (see question no. 2).

**6) Do you have suggestions for improving the methods of dispute settlement (that you have used in practice)?**

Austria is occasionally updating its headquarters agreements in line with the newest developments of its international and constitutional obligations.

**7) Are there types of disputes that remain outside the scope of available dispute settlement methods?**

Generally all types of disputes between the Government and international organisations emanating from headquarters agreements as well as between private parties and an international organisation are covered by the dispute settlement mechanisms foreseen in the headquarters agreements. However, exceptions might exist depending on the individual headquarters agreement and the date of its conclusion.

In addition, agreements other than headquarters agreements between Austria and international organisations might foresee different modes of dispute settlement.

**8) Does your organization have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or an equivalent treaty? How in practice has your organization interpreted and applied the relevant provisions?**

Austria is bound by its obligations under constitutional and international law, such as the European Convention on Human Rights, which is a directly applicable treaty obligation under international law and enjoys the status of Austrian constitutional law, or the Charter of Fundamental Rights of the European Union, which is also directly applicable. These obligations are reflected in the provisions for the settlement of disputes in the more recent headquarters agreements. One such example emanating from the European Convention on Human Rights is the need to include provisions for an independent mechanism for the settlement of labour disputes into headquarters agreements (see question no. 2).

In addition, the Austrian Headquarters Act of 2021 stipulates that dispute settlement provisions must be included in headquarters agreements. Article 10 para. 2 of that Act provides that agreements granting privileges and immunities to international organisations foresee that the organisation waives immunity if it considers that such immunity would impede the normal course of justice and that it can be waived without prejudice to the interests of the organisation.

Article 10 para. 3 regulates that headquarters agreements must not run counter to Austria's obligations under international law and human rights and therefore have to foresee effective redress mechanisms in the case of disputes.

Article 10 para. 5 stipulates that disputes that are exempt from Austrian jurisdiction must be dealt with by arbitration.

**9) Are there standard/model clauses concerning dispute settlement in your treaty and/or contractual practice? Please provide representative examples.**

### ***Immunity from jurisdiction and other actions***

*(1) The ORGANIZATION shall enjoy immunity from jurisdiction and enforcement, except:*

- (a) to the extent that the ORGANIZATION shall have expressly waived such immunity in a particular case;*
- (b) in the case of civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the ORGANIZATION, or in respect of any infringement of laws and regulations governing the keeping, operation and use of motor vehicles;*
- (c) in the case of attachment, pursuant to a decision by the judicial authorities, of the salary, emoluments or indemnities owed by the ORGANIZATION to an employee of the ORGANIZATION, unless the ORGANIZATION informs the Authorities within 14 days of the date on which it is notified of said decision by the Authorities that it does not waive its immunity.*

*(2) Without prejudice to paragraph 1, the property and assets of the ORGANIZATION, wherever situated, shall be immune from any form of seizure, confiscation, expropriation and sequestration or any other form of judicial or administrative restraint.*

*(3) Any dispute between the ORGANIZATION and a private party shall be finally settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration in accordance with the relevant Optional Rules for Arbitration Involving International Organizations and Private Parties. The tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the tribunal shall apply such rules of international law and general principles of law as may be applicable. Matters concerning the interpretation of the Agreement on the Establishment of the ORGANIZATION, shall not be within the competence of the tribunal. Employment disputes between the ORGANIZATION and its employees shall be settled by an effective dispute resolution mechanism that protects the rights of the employees in accordance with the European Convention on Human Rights, pursuant to the ORGANIZATION's internal regulations.*

### ***Purpose of privileges and immunities***

*(1) The privileges and immunities provided for in this Agreement are not designed to give personal advantages to the persons to whom they are accorded. They are granted solely to ensure that the ORGANIZATION is able to perform its official activities unimpeded at all times and that the persons to whom they are accorded have complete independence. The ORGANIZATION shall engage to encourage its officials to comply with their legal obligations.*

*(2) The ORGANIZATION shall waive immunity where it considers that such immunity would impede the normal course of justice and that it can be waived without prejudicing the interests of the ORGANIZATION.*

### ***Settlement of disputes***

*Unless the Parties decide otherwise, any dispute concerning the interpretation or application of the present Agreement which cannot be settled by negotiation shall be submitted to arbitration by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration in accordance with the relevant Optional Rules for Arbitration Involving International Organizations and States, as in force on the date of signature of this Agreement. Such arbitration shall be final and binding. Each Party may however request the Secretary General of the Permanent Court*

*of Arbitration to immediately appoint such an arbitrator to examine a request for provisional measures to protect its rights under the present Agreement. The place of arbitration shall be Vienna and the language to be used in the proceedings of the tribunal shall be English.*

**10) Does “other disputes of a private law character” (see 8) above) encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for “other disputes of a private law character” and what has been regarded as the applicable law?**

The wording used in Austrian headquarters agreements (such as “*any dispute*” or “*disputes arising out of contracts and disputes of a private law character*”) usually encompasses all kinds of disputes between private parties and an international organisation, not limited to disputes arising from contracts. Special provisions exist for labour disputes, which must be dealt with by mechanisms that protect the rights of the employees in accordance with the European Convention on Human Rights pursuant to the organisation’s internal regulations. In addition, special provisions occasionally also exist for damages caused by motor vehicles.

**11) Have you developed a practice of agreeing ex post to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, e.g. because no treaty/contractual dispute settlement has been provided for?**

For disputes between Austria and international organisations emanating from a headquarters agreement, the settlement methods are clearly defined in the agreement itself. Agreeing on modes of dispute settlement ex-post has therefore not been necessary. As stated above, up to now, all such disputes have usually been solved through negotiation.

In case of disputes between international organisations and private parties, Austria provides the necessary framework through its headquarters agreements, which leave sufficient leeway for the parties to choose their preferred way of settlement, but at the same time ensure that the rights of individuals are protected in line with Austria’s constitutional and international obligations. The method of settlement or the ex-post change thereof remains at the discretion of the parties. The headquarters agreements provide a fall back option in case the parties cannot agree on a preferred method.

However, in its judgment of 29 September 2022 the Austrian Constitutional Court declared parts of a headquarters agreement unconstitutional and therefore inapplicable in the specific case that gave rise to the procedure before it, thus opening the way for court litigation in this specific case only.