

***\*MODEL FOR MEDIATION - A tool for equal opportunities on the  
labour market***

# **Mediation in Austria**

## **COUNTRY REPORT**

Austria

**Tanja Vicas**  
**Austrian Trade Union Federation, ÖGB**

***November 2008***



**\*This project is financed with the help of the European Commission.**

# Mediation in Austria Country Report

## Table of Contents

<b>Part One</b>	<b>Page</b>
Mediation in Austria – main aspects of Austrian Legislation	03
The Advisory Council on Mediation as per Section II of ZivMediaG	03
Rights and Duties of a Mediator as per Section IV of ZivMediaG	03
“Compulsory” mediation attempts	04
Training for certified mediators as per Section VII of ZivMediaG	05
Costs of mediation	05
<b>Part Two</b>	<b>Page</b>
Conflicts at the workplace: In-company Mediators	08
Best practice example, the ÖGB company agreement “Co-operative and Fair Conduct at the Workplace”	08
Training measures and costs	09
Guidelines concerning the duties of in-company mediators	10
Outlook – importance of mediation	11

## Part One

### Mediation in Austria – main aspects of Austrian legislation

Mediation is a form of alternative dispute resolution – its purpose is to assist two disagreeing parties, or disputants, to come to an agreement with the help of a third party – the mediator. As per Austrian legislation on mediation and civil law (“Bundesgesetz über Mediation und Zivilrechtssachen” – “ZivMediaG”) from June 6, 2003, mediation is defined as “a voluntary activity of two parties in which a professionally trained arbitrator (mediator) facilitates communication with accredited methods between the two parties so as to help both parties accept and take responsibility for the solution of their conflict.” The law continues with “Mediation in civil law issues is the resolution of conflicts under the jurisdiction of the civil courts.” This means, as stated in §3 that this legislation covers mediation in civil law disputes.

When referring to a mediator, the text defines “mediator” as being a certified mediator (official list of certified mediators provided by the Ministry of Justice).

This federal law governs all areas of mediation: the formation and management of an advisory council for mediation, the requirements and the process of registering mediators in the official list, the management of this list; the requirements and the process of registering an educational institution and course of study for mediation and civil processes, the management of this list; the rights and duties of certified mediators and the forestalling of expiry dates in civil court cases.

### The Advisory Council on Mediation as per Section II of ZivMediaG

The Advisory Council on Mediation which is comprised of 12 members, informs the Minister of Justice on all topics concerning mediation and manages the official list of mediators. This council is made up of members from the Association of Austrian Psychologists; the Association of Austrian Psychotherapists, the Federation of Austrian Judges; the Ministry of Education, Sciences and Culture; the Ministry of Health and Women; the Ministry of Social Security, Generations and Consumer Protection; the Ministry of Economy and Labour; the Chamber of Labour, the Chamber of Commerce; the Chamber of Austrian Notaries; the Austrian Bar Association; the Chamber of Tax Accountants and Business Auditors; and, the Chamber of Architects and Engineers. The Advisory Council must also form a committee for mediation which provides expert advice on the performance of mediators which may be taken from the official list.

### Rights and Duties of a Mediator as per Section IV of ZivMediaG

Certified mediators must be 28 years of age or older, must have the proper training, be trustworthy and have a general liability insurance in the sum of at least €400.000,--. A mediator may not give or receive remuneration for the conveyance or referral of persons to mediation. Any legal activities following such a referral are null and void. Payments resulting from such legal activity may be reclaimed.

Anyone involved in a certain conflict in any way is unable to act as a mediator for that conflict. A mediator is only able to act as such with the permission of both disputing parties

and must inform these parties of the legal consequences of the mediation session in civil law. A mediator must be neutral, must give the disputing parties any legal advice that they may require and must indicate in which form the results of the mediation will be recorded. The mediator must keep a complete record of the mediation sessions – should the disputing parties so wish – also in written form and must keep this record for at least seven years. The mediator is obligated to the utmost discretion of the facts given during session. Any papers drawn up in the process must be also be treated with the utmost confidentiality. The same applies to any assistant or apprentice employed by the mediator. A mediator must be able to provide proof of liability insurance at all times and is obligated to inform the Minister of Justice of any events that may lead to the termination or to any restriction of their liability insurance. They must also inform the Minister of Justice of any events pertaining to their certification such as further training (50 hours) for which they are obliged to engage in every five years.

Concerning the forestalling of expiry dates for the enforcement of rights and claims through mediation, both parties are also able to agree (in writing) on further forestalling of rights and claims normally not affected by the mediation.

## “Compulsory” mediation attempts

Mediation aims at coming to a future-oriented solution as opposed to finding out who is “guilty” of the conflict. Should the attempt at mediation fail, the disputants are free to pursue a court trial.

As mentioned earlier, mediation must be voluntary – otherwise whoever is forced to engage in mediation will not be candid enough and could dodge issues as well as obfuscate once concrete positions of the matter at hand. It is very unlikely that a sustainable solution will be reached if one or both parties are pressured into mediation.

Even so, according to the applicable labour acts, mediation *attempts* are compulsory for cases of conflict or discrimination against disabled people and in the case of an employer wishing to terminate the work contract of an apprentice. Mediation in these two areas also follow quite different procedures.

The basic idea behind a “compulsory” mediation *attempt* in the case of apprentices is that they complete their education. Should a mediator be desired by both parties, this must be provided for by the employer. Should mediation not be desired, the case would go to court. Even if the unlawfully dismissed apprentice did win the court case, they would still lose - they might have financial compensation but have no diploma (and no learned skill of how to solve conflicts in a peaceful way)<sup>1</sup>. On the emotional side, they would also be left with deep feelings of humiliation for having suffered injustice.

In the case of the disabled, should mediation be desired, a mediator is provided by the Federal Agency for Social Affairs which also deals with issues concerning the disabled. Most often, there is no real conflict, only an issue relating to the question of which duties and responsibilities a disabled person is able to carry out at the workplace. “Traditional” mediation can help resolve conflicts at the workplace that may have other origins such as the disabled employee taking “suspicious amounts” of sick leave. Here, mediation can help achieve lasting improvements in the behaviour and working relationship of both parties.<sup>2</sup>

---

<sup>1</sup> René Schindler, *Mediation in der komplexen Struktur des Arbeitslebens – ein neuer „Zugang zum Recht“ für ArbeitnehmerInnen? vom Sozialpolitik ist Gesellschaftspolitik*, (Wien, Manzsche Verlags-und Universitätsbuchhandlung, 2001), 648-649.

<sup>2</sup> Schindler, 649.

## Training for certified mediators as per Section VII of ZivMediaG

The Austrian Civil Law – Mediation Act (“ZiviMediaG”) also stipulates the formal training requirements of mediators. According to the suggestions of the Advisory Council, the Minister of Justice has determined the following prerequisites in order to receive the qualification as a certified mediator which are divided into theoretical and practical training segments.

The theoretical segment provides

- 1) an introduction to the history and development of mediation including the basic principles and overall approach;
- 2) procedures, methods and phases of mediation keeping the solution-oriented approach in mind;
- 3) the fundamentals of communication, especially communication, question and negotiating techniques;
- 4) an analysis of conflicts;
- 5) areas of application for mediation;
- 6) in-depth information on the personality theory and forms of intervention;
- 7) questions of ethics concerning mediation – in particular the role of the mediator;
- 8) legal issues, in particular those pertaining to civil law, conflicts which are relevant for mediation.

The practical training segment includes

- 1) seminars on experiences and practices in exercising mediation techniques using role plays, simulation and reflection as learning tools;
- 2) work in peer groups;
- 3) casework and participation in practice-oriented supervision in mediation.

The duration of mediation training consists of 342 training units and takes approximately two years. Eight training units are dedicated to the further education of mediators. The topics focus on the methodical view and context of mediation and conflict management (source: [www.bfi-wien.at](http://www.bfi-wien.at)). This training is aimed at professionals with a psychosocial background (i.e. social worker, psychotherapist) or with a legal background.

## Costs of mediation

According to the “Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters”, mediation, through its processes which adapt to the needs of the disputants, can provide a more cost-effective and quick extrajudicial resolution of disputes than formal litigation processes.

Originally, mediation was used in cases pertaining to family law in order to relieve the courts from the build up of pending cases. For this reason, the costs referred to in this report are that of mediation in family disputes.

In this case, an hour of mediation costs €182,00 per mediator team. A team consists of two certified mediators – one, as mentioned previously, with a psychosocial background (therapist, social worker, etc) and one with a background in law. The costs of the mediation are subsidised by the Ministry for Social Security, Generations and the Consumer Protection

and the deductible the disputants must pay is determined by their net income (as provided with a pay slip). The ministry has publicised the following table for the amount of the deductible:

**\*FEDERAL MINISTRY FOR  
SOCIAL SECURITY, GENERATIONS AND CONSUMER PROTECTION**  
Project Family Mediation  
**Rate for Deductibles 2005**  
**An Hour of Mediation Costs:**

Pay Level	Income	Deductible per Hour of Mediation					
		0 children	1 child	2 children	3 children	4 children	5 children
A	up to € 1.000,-	€ 10,-	0	0	0	0	0
B	from € 1.000,- to € 1.500,-	€ 20,-	€ 8,-	0	0	0	0
C	from € 1.500,- to € 1.900,-	€ 50,-	€ 14,-	€ 8,-	0	0	0
D	from € 1.900,- to € 2.200,-	€ 80,-	€ 40,-	€ 14,-	€ 8,-	0	0
E	from € 2.200,- to € 2.500,-	€ 120,-	€ 60,-	€ 40,-	€ 14,-	€ 8,-	0
F	from € 2.500,- to € 2.800,-	€ 164,-	€ 100,-	€ 60,-	€ 40,-	€ 14,-	€ 8,-
G	from € 2.800,- to € 3.000,-	no subsidy	€ 140,-	€ 100,-	€ 60,-	€ 40,-	€ 14,-
H	from € 3.000,- to € 3.200,-	no subsidy	no subsidy	€ 140,-	€ 100,-	€ 60,-	€ 40,-
I	from € 3.200,- to € 3.400,-	no subsidy	no subsidy	no subsidy	€ 140,-	€ 100,-	€ 60,-
J	from € 3.400,- to € 3.600,-	no subsidy	no subsidy	no subsidy	no subsidy	€ 140,-	€ 100,-
K	from € 3.600,- to € 3.800,-	no subsidy	no subsidy	no subsidy	no subsidy	no subsidy	€ 140,-
	more than € 3.800,-	no subsidy	no subsidy	no subsidy	no subsidy	no subsidy	no subsidy

\* source: [http://www.bmsg.gv.at/cms/site/attachments/1/1/6/CH0140/CMS1056977805966/richtlinien\\_.pdf](http://www.bmsg.gv.at/cms/site/attachments/1/1/6/CH0140/CMS1056977805966/richtlinien_.pdf)

Lawyers can negotiate either a lump sum fee or an hourly rate. Should an hourly rate be arranged, the costs for a lawyer start from net €200,00 to €450,00 according to <http://www.anwalt-zanier.at/01/honorare.htm> (another source: €220,00 + 20% tax, from: <http://www.ra-hautzinger.at/index.php?id=49>).

**But not only the monetary rate plays a role – mediation also takes less time. Pursuing a case in court may take years. Most forms of mediation take approximately one day. An exception would be divorce mediation that can take weeks which is still much less time than a complicated divorce proceeding would take.**

## Part Two

### Conflicts at the workplace: In-company mediators

As mentioned previously, the idea of mediating was originally borne in civil law cases, especially in family law. Where the workplace is concerned, mediation *attempts* are compulsory when dealing with apprentices and with the disabled. But also other areas of conflict at the workplace can greatly benefit from mediation – even when many jurists argue that mediation does not take into consideration the unequal placement of power which the labour law does.

Although the balance of power does tip towards the employer, many forms of conflict involving communication can be solved by mediation. One area in which mediation is especially useful is the **pay scale classification** of employees. What seems to be a mere question of company cost structure vs. fair remuneration can actually have more emotional components that may be solved with mediation – more often the element of reciprocal appreciation plays a larger role than one likes to think.<sup>3</sup>

Another example of mediation being useful for conflicts arising between personal life and the workplace – questions of **taking time off work** for important personal errands as well as regulating when an employee takes **vacation** can all be solved with improved communication between the two parties.<sup>4</sup>

Mediation has also proven to be quite effective in the area of diversity management (migrant workers in companies). The European funding programme Equal co-financed many projects dealing with diversity ([http://www.isop.at/eu\\_projekte/ikap.htm](http://www.isop.at/eu_projekte/ikap.htm)).

Most often, **mediation** is done by the **works councils** on company level. But since the year 2003, there have been a growing number of so-called “amateur mediators” (“Konfliktlotsen” – “Conflict Pilots”) whose duty it is to resolve conflicts within the company before they become formal grievances. They are employees from the respective company or organisation and can be either chosen from the works councils or from the management but need to be accepted by both; and, should be a person who has much knowledge of the company’s or organisation’s processes. Employees from all hierarchical levels may seek confidential mediation from these individuals but these individuals may also make independent suggestions for areas which they may perceive as areas for developing conflict. In-company mediators also enjoy employment protection and they carry out conflict-solving duties during their normal working hours. Each year, they must write a detailed (people involved remaining anonymous) report for the works council and management. There may be one or more in-company mediators depending on the size of the company. Regulations regarding and the responsibility for and of the in-company mediators are stated in a company agreement between works councils and management called, “Cooperative and Fair Conduct at the Workplace.”

### Best practice example, the ÖGB company agreement “Co-operative and Fair Conduct at the Workplace”

ÖGB has a panel which is made up of ten in-company mediators. They must represent the portion of women to men in the trade union confederation and must come from the various

---

<sup>3</sup> Schindler, 652-653

<sup>4</sup> Schindler, 653



departments and branches of the organisation. This panel is coordinated by the works council although they report to both management and workers' representatives. An in-company mediator must voluntarily offer their services to the organisation and is able to resign from this function at any time without any given reason. In the same vein, they may be relieved of their function at any time without any given reason. The employee given this function is guaranteed enough time off work as well as employment protection when carrying out their duties as an in-company mediator (up to four weeks after the end of a "case" – this has proven to be quite necessary in special cases such as harassment and bullying at the workplace). Should they so require, they are able to consult with external specialists (including professional mediators). They must carry out their duties without disrupting the normal processes of the organisation and they are not allowed to give orders which would change these processes.

In order to carry out their duties, the in-company mediators are to be provided with proper training by the organisation during working hours.

## **Training measures and costs**

Unlike that of a certified (external) mediator, in-company mediators must not have any prior related experience in order to carry out their function. The training measures they receive are also carried out on a much smaller but intensive scale. ÖGB offers training to all employees, all members and non-members which consists of modules that are divided into three 2 ½ day sessions:

### Module I: 2 ½ days

- Definition of conflict, types of conflict, the dynamics of conflict, escalation of conflict
- Definition of a pattern in conflict
- Classification of bullying and harassment at work
- Harassment and bullying: process, effects, prevention and legal measures
- Methods of conflict intervention
- Best practice examples and supervision of current cases

### Module II: 2 ½ days

- Stress, burn-out, harassment and bullying, personal turmoil/crisis
- Methods on coping with stress
- Dealing with victims
- Exchange of experience

### Module III: 2 ½ days

- Basic principles of communication
- Harvard Negotiation Project
- First contact in counselling
- Role of the in-company mediator
- Exercises and practical examples

The training programme on conflict management costs the organisation approximately €1.500,-- (including seminar costs, travel, accommodation and meals).

The company agreement on “Cooperative and Fair Conduct at the Workplace” states that the main duty of an in-company mediator is the prevention of harassment and bullying at work and to suggest measures to the management on the elimination of factors which lead to harassment and bullying at work. As mentioned, the costs for training measures for in-company mediators can run up to approximately €1500. When compared to the costs for the organisation for the first year that an employee has been harassed and bullied, the training programme proves to be a more cost-effective investment.

Costs involved in the first year for an employee that has been harassed or bullied\*:

Productivity of the harassed person drops by 40% €11,280.--  
(on the basis of a €1500 salary: 1500x12 +40% additional costs)

6 “bullies” use 5% of their time to harass victim €8,460.--  
(€1500x12x6 +40%)

Demand on supervisor, human resources, works council, physician (60 hours @ €60) €3,600.--

Required assistance and/or overtime for completion of work missed by victim due to sick leave (50 days @ €120/day) €6,000.--

Lower motivation, less productivity, general absences, production errors, necessary training, poor image due to conflict, negative working atmosphere €36,000.--

Costs for physician, medication, therapy €4.000,--

Utilisation of service centres, travel costs, telephone, etc. €2.000,--

**Total costs in the first year: €71,340,--**

\* source: ÖGB Service Centre in Styria for Harassment and Bullying at Work

## **Guidelines concerning the duties of in-company mediators**

The company agreement clearly states which steps an in-company mediator must take to resolve a conflict and to prevent it from escalating as well as the first steps which need to be taken in the case of harassment and bullying.

In the case that an employee seeks counselling due to bullying and harassment, the following conditions must be met:

- a) Utmost confidentiality. Further steps can only be determined by the person affected.
- b) The in-company mediator must do their best to tackle the problem in a positive way. They must inform the person affected of further services which may help them.
- c) Other colleagues, if so desired by the person affected, may be asked to participate in the resolution of the conflict.

- d) The in-company mediator and the management (or representatives of the management) must find a solution of the conflict together.
- e) In-company mediators must make the person affected aware that they are able to take advantage of special services (i.e. therapist, lawyer) in the case of harassment and bullying and that the costs are covered by a particular insurance package of ÖGB ( up to €200 for trade union members).
- f) Should all other resources used to resolve the conflict have been exhausted, the person affected is able to call on the expertise of an external, certified mediator. Moreover, it must be noted that all parties must voluntarily agree to formal mediation.

One of the core statements of this company agreement is that in keeping with their duty to ensure the welfare of all employees, the management is obliged to apply all suitable measures and to give their full support to the resolution of the conflict. Every employee has the right to seek counselling from an in-company mediator during their working hours. The following *case study* illustrates which challenges in-company mediators may have to face:

*In this particular case, the in-company mediator was asked to help solve a conflict that a colleague had with her supervisor in a department of a large company. She had been at the company for a very long time and always had good reviews from her supervisors. The company structure changed slightly and her department had to work more closely with other departments. It was then that everything she did was criticised in a very destructive way – everything that went wrong in the department was blamed on her. Even though direct management had not been accepted by the staff, this colleague followed procedure and reported the conflict to her direct supervisor. Her supervisor ignored her complaint. She turned to an in-company mediator for advice and support. The in-company mediator made everyone involved aware of the problem – first with the colleague’s direct supervisor which had unfortunately no effect on the situation. The in-company mediator then went to the next level to report the conflict. The in-company mediator showed that the conflict was due to the situation and in doing so, managed to take the burden away from the individual. The direct supervisor received specialised social skills training aimed at managing employees and received help and support to resolve the conflicts in the department from the next level.*

## **Outlook – Importance of Mediation**

Conflicts and disputes are a part of everyday life. Without them, there would be no further development. Dealing with conflict and the positive processing of conflicts are a gain to both disputing parties in every situation – whether it is a case in civil law or case at the workplace. Especially in times where rapid changes in the market lead to ever-changing company structures i.e. in the context of mergers: this is the breeding ground for conflicts. From the employer’s point of view, if these are not handled in a positive way, conflicts can lead to a considerable decrease in productivity and efficiency; and, lead to a poor company image. From the trade unions’ point of view, mediation can also help solve core issues that lead to conflict in the workplace system. Simply stated, conflict leads to stress and stress leads to health problems. Mediation allows disputants to actively solve their conflict and agreements resulting from mediation are most likely to preserve amicable and sustainable relationships – and this is a pre-requisite for a “healthy” workplace.