

Efforts of arbitration agencies in cases of laws governing tenancy in Vienna Survey and interpretation

Empirical study conducted by

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Summary

If there is a litigation concerning laws governing tenancy (Mietrecht) in Vienna (and in some other cities in Austria) between the tenants and the landlords, there has to be a proceeding of the case at a special arbitration agency (Schlichtungsstelle in Mietrechtsangelegenheiten). Only after a decision of this agency the party who does not agree has the possibility to go to the court.

The aim of the study is to describe and to analyse the efforts of the arbitration agency in cases of laws governing tenancy in the year of 2000.

All cases of the arbitration agencies of Vienna are stored in the data bank PAM3. In the year of 2000 10.973 cases has been stored and in 8.518 cases we could identify whether the side of the tenants or the other side of the landlords went to the agency. The study shows that in 9 out of 10 cases (89 %) the tenants make an application (Antrag) to the arbitration agency.

There are great differences in the decisions concerning the applications: If tenants are the applicants, the agency decides in about four out of ten cases in the cause ("Entscheidung in der Sache") and in another 25 % the arbitrators find an (amicable) arrangement (einen "Vergleich") between the parties. Decision of the cause means that in 70 % (from 25 %) the applicants or part of them will be sustained, in another 23 % the decision is negativ and in 8 % the arbitrators dismiss the case.

If the landlords are the applicants the agency decides in 8 out of 10 cases (80 %) in the cause, 90 % from these cases will be sustained and another 7 % will be dismissed; the (amicable) arrangement is only a marginal option (only in 0,2 % of the cases).

There are also differences between tenants and landlords with regard to the length of the process. For example about 20 % of the processes of the tenants are settled after three months in comparison with 63 % on the part of the landlords.

With regard to all cases per year we can say that landlords are more successful than tenants are and that their processes last shorter than these of the tenants.

The next step of the analyses refers to proceedings focused on Euro-amounts gained by the parties. These are litigations about the amount of the rent, refund of money payed in advance ("Zurückzahlung von Ablösen"), value of work in order to improve the apartment etc.

Our sample comprises 2017 cases.

The opposing party of tenants are in 37 % of these cases the community of Vienna ("Wiener Wohnen"), in 60 % private landlords and the rest are "atypical landlords" (like the Red Cross, Caritas etc.).

If tenants are the applicants against private landlords the causes are pleaded more frequent by barristers (“Rechtsanwälte”) or the “Mietervereinigung” (70 % of all cases) than in proceedings against the community of Vienna (as the landlord) (less than 10 %).

Like in all cases tenants are in these proceedings also less successful than the landlords are: As opposing party of landlords they lose in nine out of ten cases, landlords as opposing party lose only in six out of ten (community of Vienna) or in seven out of ten cases (private landlords). But it is to take note of the fact that the relief sought (Begehren) of tenants and landlords are mostly different so that a comparison of the success of both sides is not easy.

An other question was about the frequency of proceedings at the court after the decision of the arbitrary agency. In 2007 cases we could answer this question and we found out that in 14 % of all cases one party went to the court. The proceedings against private landlords were more frequent than proceedings against the community of Vienna or against tenants.

A central question of the study concerns the amount of money which has been adjudicated by the arbitrary decisions. The average Euro-amount adjudicated to tenants in the year of 2000 was about € 2.125.00; in the average the city of Vienna had to pay about € 239.00 per decision, private landlords about € 4. 403.00.

Finally we tried to estimate the amount of money all losing parties had to pay in 2000. Due to two models we have calculated the city of Vienna payed between € 240.435.00 and € 161.890.00 (minimum) and € 720.385.00 and € 528.589.00 (maximum) to tenants. Private landlords had to pay to tenants between € 1.021.028.00 and € 4.131.584.00 (minimum) and € 13.732.831.00 and € 9.523.189.00 (maximum).

The most relevant results of the study for the side of the tenants are as follow:

- The overwhelming majority of the user of the arbitration agencies in causes of laws governing tenants in Vienna are private tenants
- Tenants are in all cases less successful than landlords are
- If tenants are the applicants their proceedings last longer than proceedings of landlords
- If tenants are the applicants the likelihood to succeed in the proceeding is higher if supported by barristers than without
- The city of Vienna agrees more frequent to a settlement out of the arbitration agency than private landlords do
- Tenants as applicants gain more money from private landlords than from the city of Vienna as opponents

The main function of the analysed agencies defined by law is to serve as a filter before the courts. If we take into account that per year nearly 11.000 cases come to the arbitration agencies and that about 2.100 cases per year come to the courts we have a good argument to maintain that these agencies accomplish the legal function.