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# AMICABLE DISPUTE RESOLUTION AT COURT: CONCILIATION HEARINGS, THE AUSTRIAN AND GERMAN PERSPECTIVES[1]

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**Abstract.** Both the Austrian and German civil procedures deploy an intra-court conflict resolution proceeding that follows the principles of a mediative conciliation process. The decisive difference between the two institutions cannot be found in the name, but in the fact that the German initiative is already legally enshrined, whereas in Austria, it is still assumed to be a project. For this reason, contrasts between the two approaches can be found in the legal qualification and the procedure of court conciliation, as well as in the legal classification, role and function of the conciliation judge. In both cases, however, conciliation proceedings at court convey the idea that there is a hidden solution in almost every conflict that is profitable for all parties. It is never too late to seek such a solution in any phase of conflict management, even in the judicial environment. A conciliation hearing at court brings movement into deadlocked conflicts by the conciliation judge gathering facts together with the parties and trying to shed light on the underlying interests to facilitate comprehensive conflict management tailored to the parties involved, and thus finally solving the overall conflict. Judges take on this role of a conciliation judge in addition to their in-court settlement work in standard proceedings. This article aims to compare the legal situation in the two countries, address the two approaches of introducing the method of the conciliation process at court, analyse the scope of their legal regulation, as well as to discuss questions about their successful practical implementation in the organisational framework and to reveal the role, standing, and training of conciliation judges.

**Keywords:** Conciliation judge, legitimacy, adjournment, (court) settlement, mediation.

## Introduction

In almost every conflict, there is a profitable hidden solution for all parties. It is never too late to seek such a solution in any phase of conflict management, even in the judicial environment. Thus, the conciliation hearing can bring movement into deadlocked conflicts by the conciliation judge gathering facts together with the parties and trying to shed light on the underlying interests in order to facilitate comprehensive conflict management tailored to the parties involved to finally resolve the overall conflict. This conveys the idea that mediately trained judges, in addition to their work on in-court settlements in standard proceedings, can also take on the role of a conciliation judge. In a separate procedural step, they accompany the parties in finding an independent, interest-based solution and, if necessary, work with them on the overall conflict beyond the limits of a legal claim. However, the conciliation hearing and the role of the judges in this process are somewhat different. Therefore, the purpose of this article is an examination of the method of the conciliation hearing at court, the scope of its legal regulation, and its practical application in Austria and Germany. What is necessary for successful implementation, and what are the ways of gaining a high level of acceptance for this method of amicable dispute resolution within the affected groups? Finally, a dogmatic and comparative law approach was taken to answer these questions.

To facilitate understanding and entry into the topic, a brief scenario: the applicant sought that the defendant immediately ceased causing specific noise effects emanating from the flat above, namely that children were almost

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constantly, but especially late at night, running through the flat, screeching and banging on the floor with their toys. The undue noises substantially impaired the customary use of the flat.

It was impossible to settle in the oral hearing, but the parties accepted the offer of a conciliation hearing. In the conciliation discussion, it turned out that the applicant was seriously ill. The party underwent treatment approximately once a month, which was very painful, and she was sensitive to noise and in need of rest afterwards. The given information was important for the case, as the applicant regularly did not stay in the flat for many days, instead spending time at her friend's place.

The solution of the parties was as follows: firstly, they exchanged mobile phone numbers; secondly, the sick party notified the family when she was due to receive her treatment, at which time the family spent time outdoors or with relatives; thirdly, the rest of the month there were no restrictions.

The apparent points of contention (noise, children, different cultures) dissolved when the parties came to talk about their interests. A solution adapted to the living situation was found, which could not have come in the form of a judgement. Mediation was out of the question because the parties had no other financial means (RIV Fachgruppe Einigung, unpublished).

Now, how does this method of amicable dispute resolution work in court? The conciliation hearing is a voluntary, non-public procedure in which an independent judge without decision-making authority, i.e., the "conciliation judge", who is specially trained in communication, mediation, and conflict management, assists the parties in working out an amicable solution to their problems themselves (Eisenreich-Graf & Rill, 2019; Moritz, 2021). This is an intra-court alternative dispute resolution procedure embedded in the civil procedure system, linking the civil process and ADR (Hammerl, 2017).

**1. The development of court conciliation in Austria**

For almost a decade now, judges trained as mediators, or judges who have completed additional training in conflict resolution and settlement, have been working in the Higher Regional Court District of Vienna, at individual district courts, and at the Vienna Regional Court to reach settlements in conflict disputes that have become pending in court. The conciliation procedure is currently in project status, dealing with civil, family, or tenancy law cases. Judges do this work voluntarily and receive no unique benefit (Eisenreich-Graf & Rill, 2019; Meisinger, 2021) – they are credited in the schedule of responsibility, but only for the sake of clarity.

At present, some of the involved judges are also mediators, but most of them voluntarily complete a modular program of 100 hours, including a theory and a practical part on conflict resolution (Janitsch, 2014c). In this training, the participants are introduced to the basics of settlement and communication as well as self-perception and perception of others. They learn about the individual phases of settlement: from a successful opening to working out interests and needs as a basis for successful settlement to finding solutions and, in the end, a successful conclusion. In addition, the procedure of a conciliation hearing is dealt with specifically, and, among other contents, it is clarified which cases are suitable for such a hearing in the first place. It is also explained how to ensure the parties' voluntariness to participate in the conciliation procedure. In the long term, the necessary additional training to become a conciliation judge should be included in the general training of judges in Austria (RIV Fachgruppe Einigung, unpublished).

One point of contention in Austria in executing the project around conciliation judges is the legitimacy and the legal basis on which the conciliation hearing is carried out. The conflict arena has already been extended to court, and the conciliatory work has been delegated to a judge. The legal basis for this project situation is primarily § 204 Austrian Code of Civil Procedure (Zivilprozessordnung – ZPO, 1895) and the idea conveyed by EU Mediation Directive 2008/52/EC (2008). Specifically, § 204 ZPO offers two connecting factors for the use of conciliation judges. These are, on the one hand, § 204 para 1 sentence 2, according to which, if it appears suitable, reference is to be made to institutions that are suitable for the amicable resolution of disputes. On the other hand, § 204 para 2 sentence 1 can also be considered. According to this, to attempt a settlement, the parties may, if they agree, be referred to a requested judge (Eisenreich-Graf & Rill, 2019; Moritz, 2021).

This is not the judge responsible for the proceedings. Therefore, with the parties' consent, the trial judge can refer conflictual cases, in which mediating appears more practical than judging, to a specially trained colleague judge. Within the time frame of an average of half a day, or two sessions of approximately two hours each, this judge assists the parties in working out an amicable solution using the methods of conflict management (Eisenreich-Graf & Rill, 2019; Meisinger, 2021; Thau, 2016). Of course, the procedural principle of neutrality also applies in this phase.

At what point do the trial judges refer the parties, for whom they consider such a procedure helpful, to the conciliation judge? In principle, this already happens in the preparatory hearing, occasionally also at a later stage of the proceedings. Ideally, when the trial judges refer the parties to the conciliation judge, they assign the next hearing date. So, if the parties will not settle, the court proceedings are not delayed (Eisenreich-Graf & Rill, 2019). In any case, the settlement hearing does not constitute grounds for an adjournment of the next hearing according to § 134 ZPO (Mayr, 2012). For the duration of the conciliation proceedings, no taking of evidence is carried out in the judicial contentious or non-contentious proceedings (Schmidt, 2016). Finally, as explained later in this article, it can be stated that there is no sending away of the parties; the conflict resolution remains within the court.

Furthermore, in matters of non-contentious proceedings (e.g., matters of custody and contact rights), the instrument of interruption is available pursuant to § 29 Non-Contentious Proceedings Act (Außerstreitgesetz – AußStrG, 2003). This provision serves to pause the proceedings to enable an amicable settlement, particularly with the support of an appropriate body (Mayr, 2012; Schmidt, 2016). Further examples of an interruption of the proceedings are the suspension of proceedings and consensual interruption. Such procedural steps help the judges, as the pending case is temporarily removed from their annual statistics.

A not inconsiderable legal issue arises from the lack of an explicit confidentiality protection provision. However, such can be created through judicial activity and can be procedurally implemented through § 320 n. 3 ZPO (Hammerl, 2017). In this case, the offence of maintaining official secrecy applies to the judges. The problem here is the possible release from the duty by the president of the Higher Regional Court. In practice, furthermore, the contractual confidentiality clause is used by agreeing on confidentiality in the conciliation hearing so that facts that become known may neither be brought forward nor used in any subsequent contentious or non-contentious proceedings. In addition, the conciliation judge may not be called as a witness (Hammerl, 2017; Schmidt, 2016). However, whether these agreements are legally valid is unclear, as the ZPO does not recognise such exclusion-of-evidence arrangements. The same applies to an indemnity clause, so the latter measure could remain toothless.

What happens in the event of a decision in favour of a conciliation hearing? If all involved parties agree to conduct judicial conciliation proceedings, the conciliation judge schedules the first hearing. In principle, all parties to the proceedings take part in this non-public hearing. However, a representation system may be necessary in exceptional cases where many parties are involved (e.g., in condominium cases). It is also conceivable that third parties are involved. Of course, the participation of legal representatives is permissible, although – as known from mediation – the judge has to ensure procedural clarity and equal opportunity (Schmidt, 2016).

The conciliation judges are responsible for the proceedings and are thus judges with special training in communication, mediation and conflict management, but without decision-making authority. In comparison, it is unclear whether they are allowed to propose non-binding solutions. Conciliation judges assist the parties to resolve the conflict, which has led to court proceedings, by themselves in an amicable and future-oriented manner (Moritz, 2021).

The essential point is that in cases where the conflict has little to do with the subject matter of the legal dispute, the court proceeding is the wrong choice. In contrast, in the conciliation hearing, like in mediation, the parties are guided to recognise each other's needs behind the conflict to shift away from their often rigid positions and standpoints and move towards a common goal. The conciliation judge does not give legal information or advice, and unlike court proceedings, a conciliation hearing is never conducted from the judge's table (Hammerl, 2017). This difference is already evident in the settings. While in the courtroom, there is a fixed seating arrangement in accordance with the hierarchy; this is entirely free and variable in the conciliation hearing. The parties should be able to meet each other at eye level (Eisenreich-Graf & Rill, 2019).

The conciliation proceedings run through three phases. In the beginning, the parties should open up by presenting their point of view and perceiving the other's point of view (open mind). In the second phase, the judge should enable the parties to show feelings and meet the other's feelings with appreciation (open heart). In the third phase, they should openly discuss their ideas of a future-oriented solution (open will). A conciliation hearing will be successful if and as long as the parties are constructively interested in and work to solve the problem. Therefore, it can be terminated at any time by the parties and the conciliation judge if the preconditions for this are not (or are no longer) given (Eisenreich-Graf & Rill, 2019). The conciliation hearing must consequently also be terminated if no progress can be seen in the conciliation process.

The conciliation hearing seems to be something like a short-term mediation, as essentially the same issues are worked through – from conflict management to conflict resolution – and the settlement judge does not make any decisions themselves. However, there is no obligation for the conciliation judge to comply with the provisions of the Mediation Act in a conciliation hearing (Janitsch, 2014c). A procedure before the conciliation judge allows the parties to find an interest-based agreement in a different ambience than the adversarial climate of the courtroom, without being sent away by the court, for example, to an external mediator (the conflict resolution remains with the court) and without incurring additional costs. However, the judicial conciliation procedure is not suitable for all cases, so the value of out-of-court mediation in many highly contentious conflicts should not be denied. Certain cases can only be dealt with via classical mediation (Janitsch, 2014b).

At the end of the conciliation process, it is possible to reach an agreement on the further proceedings before the conciliation judge. This agreement will be documented informally for the parties, again similarly to mediation, such as via a flipchart protocol. In any case, the parties are advised to discuss an agreement with their legal representative before concluding it. If the parties are unrepresented, the conciliation judge will ask the parties to seek legal advice or switch to the trial proceedings before entering into an agreement. The conciliation judge does not assume any substantive responsibility (Janitsch, 2014a; Hammerl, 2017).

Only thereafter it should be decided whether the agreement reached should be concluded either out of court or in the next hearing before the trial judge as a court settlement. The latter approach makes it possible to create a court settlement filled with the content agreed upon in the conciliation hearing and thus an enforceable execution title. Sometimes, however, the parties agree to suspend the proceedings.

On the other hand, if they do not reach an agreement or only a partial settlement, the court proceedings continue seamlessly. If the parties need more time to deal with the conflict on their own, they can be referred to mediators outside the court or other experts whenever they wish (Eisenreich-Graf & Rill, 2019).

As far as the costs for the conciliation proceedings are concerned, these are already covered by the court fees (legal costs). Thus, there are no additional costs for the parties. However, representation costs, travel costs and expenses, e.g., for a translator, are not reimbursed, and must therefore be borne by the parties themselves. Low-threshold assistance, such as a grandson acting as a translator, is permissible due to the informality of the process (Eisenreich-Graf & Rill, 2019; Schmidt, 2016; Thau, 2016).

As already mentioned, an entry is also made in the schedule of responsibility for conciliation proceedings, but, at present, there is no case-related discharge for the conciliation judges when they are used. The only purpose of the record is to provide transparency for all parties involved. In addition, it reinforces the statement that the work as a conciliation judge is also a task by the court. In summary, it can be stated that the judges active in the project primarily enjoy being able to provide very individual and cost-saving support to parties seeking help in dealing with their conflict.

## 2. The development of court conciliation in Germany

The situation in Germany is somewhat different. First of all, the conciliation hearing has been legally enshrined since 2013 with the creation of the German Mediation Promotion Act (Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung – MediationsG, 2012). Before that, model projects since 2002 have tested whether there is a possibility for mediation within courts by an appointed judge, other than

the one responsible for the trial's decision and with the appropriate training as a mediator. These projects proved that with a communicative negotiation approach that follows the principles of mediation, considerable settlement successes could be achieved even in conflicts that are already pending in court (Greger, 2017). However, pilot projects met in some cases with approval from legal science and practice representatives, but also with scepticism or even decisive rejection in others. Proponents emphasised the sustainable conflict solutions through in-court mediation, the higher satisfaction of those seeking justice and the associated higher reputation of the judiciary in society. In addition to this, they pointed out the internal relief effect for the judiciary and the positive impact of in-court mediation as a door opener for out-of-court mediation. On the other hand, critics are of the opinion that the judicial mediator, as a judge, enjoys a "natural authority". Even if judges are trained as competent mediators through additional training, there is a danger that the parties, out of a subjectively perceived inferiority, accept a conflict solution that counteracts the voluntary consensus characteristic of mediation. Furthermore, they believe the offer of in-court mediation has a particular "luring effect". This means that when a lawsuit is filed at court, the application for judicial mediation is filed at the same time. This creates a competitive advantage in favour of in-court mediation, which is reinforced by the fact that no additional costs are incurred. Out-of-court mediation at the usual market prices thus becomes unattractive from an economic point of view (Eberhard, 2012). The introduction of the Mediation Promotion Act primarily put an end to this discussion about in-court mediation and judge-mediators. This was not intended. Instead, the institution of the conciliation judge was created, who can use all methods of conflict resolution, including mediation, when appointed by the trial court to conduct a conciliation hearing (Greger, 2017; Saenger, 2021).

By now, in a pending case, pursuant to § 278 German Code of Civil Procedure (deutsche Zivilprozessordnung – dZPO, 2005), the trial court can choose the conciliation judge from several options for consensual conflict resolution. The parties may be referred to a conciliation judge in any procedural situation without their consent by order of the trial court, as provided for by § 278 para 5 dZPO (also § 36 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction [Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG, 2008] and § 54 Labour Courts Act [Arbeitsgerichtsgesetz – ArbGG, 1979]) (Prütting, 2020; Steiner, 2015).

The conciliation judges act as organs of the administration of justice with complete judicial independence (§ 21e para 1 sentence 1 Courts Constitution Act; Gerichtsverfassungsgesetz – GVG, 1975). They are, therefore, "real" judges who must, in principle, be included in the business allocation plan. They are judges of another panel, not another court (Saenger, 2021). Conciliation judges are explicitly free to apply all methods of conflict resolution, including mediation, in conciliation proceedings, but may not make any substantive decisions (Dürschke, 2013; Greger, 2016; Prütting, 2020). It is thus quite possible that either a phase-structured mediation can take place or merely a conflict moderation in which mediative communication and creativity techniques are used. Interviewed judges spoke, for example, of the "possibility of conducting mediation in a narrower sense" (Greger, 2007). For these reasons, it is clear that it is nearly impossible to distinguish between the conciliation procedure and out-of-court mediation (Bushart, 2021). Even if the conciliation judges are allowed to mediate, they are not bound by the restraints concerning the proceedings and tasks of a mediator according to § 2 German Mediation Promotion Act. For instance, Saenger therefore considers a legal assessment and the presentation of a proposed solution by the conciliation judge – different than in Austria – to be permissible (Saenger, 2021; different view Steinbeiß-Winkelmann, 2021).

Apart from that, the personal appearance of the parties at the hearing is to be ordered by § 278 para 3 dZPO. Whether the judges use this possibility is at their discretion (Meisinger, 2021). If one party does not appear, a conciliation hearing cannot occur. If both parties fail to attend, the proceedings are suspended (para 4). However, constructive participation cannot be enforced (mark of voluntariness); neither does it trigger any additional procedural costs. Generally, the parties do not incur additional court fees for the proceedings before the conciliation judge. Representation by a lawyer is also not required under procedural law (Greger, 2012; Prütting, 2020), although the granting of legal aid by the trial judge is possible in principle (Schneider, 2020). It remains controversial, though, whether the termination of proceedings is subject to the obligation to be represented by a lawyer (e.g. Steiner, 2015; different view Prütting, 2020). The confidentiality of judges is ensured by the statutory duty of confidentiality (§ 46 German Judiciary Act [Deutsches Richtergesetz – DriG, 1972]), which is also safeguarded by procedural law (§ 383 para 1 n. 6 dZPO). Furthermore, the requirement of publicity does not

apply. From the parties' perspective, the confidentiality of the conciliation hearing can only be achieved by contract.

As far as the duration of the conciliation proceedings is concerned, the time limit in the pilot projects was mostly set at two or three hours. Practice has shown, however, that the parties need more time than this (Greger, 2016). On average, around five hours of judicial working time were needed to conclude a procedure (Greger, 2007). During the proceedings, the conciliation judge documents the hearings in the form of a record if both parties agree to this. If they reach an agreement at the end, it must be clarified whether it should be written down. This depends solely on the parties' will (Greger, 2016). The final agreement can then be notarised by the conciliation judge within the framework of a court settlement pursuant to § 794 para 1 n. 1 dZPO, whereby a title is created by the conclusion of an enforceable settlement (Schneider, 2020; Saenger, 2021). Furthermore, the proceedings can be terminated by a concordant declaration of settlement and by the withdrawal of the action. If the parties do not reach a result, the proceedings before the conciliation judge are terminated, and the trial judge continues the process (Prütting, 2020; Greger, 2012, 2016).

## 3. Comparison of Austrian and German models of court-conciliation: The search for the most effective solution

Before comprising the final findings, it seems fruitful to summarise the main legal differences of both concepts on conciliation proceedings in Austria and Germany, starting with the fact mentioned so often that the conciliation procedure has been legally established in Germany but is still a project in Austria. For this reason, contrasts can also be found in the legal classification of the conciliation judge. In Austria, the judges work on a voluntary capacity; in Germany, they function as organs of the administration of justice. In both cases, though, they are not acting as extrajudicial mediators. Furthermore, the conciliation judges in Germany can give legal advice and propose solutions. This is not provided for in Austria. What is common, however, is that the conciliation judges in both countries have no decision-making authority. In addition, judges in Austria and Germany must be trained mediators or complete appropriate training in order to be allowed to act as conciliation judges. Similarities can also be found in the proceedings themselves. The average duration is around half a day, the judges can use all methods of conflict resolution, representation by a lawyer is not required, and there are no additional costs for the parties to the proceedings.

These previous remarks may assume that conciliation judge proceedings are a mass phenomenon, but Germany's case figures show the contrary (Masser et al, 2018). However, undoubtedly the offer is perceived as sympathetic (Meisinger, 2021), and the process-ending conclusion frequency of such proceedings is quite solid if the parties agree to initiate the conciliation hearing in advance; albeit, there is a mere order to refer the parties to the conciliation judge in most cases, which increases the risk of failure and thus of double referrals.

The German regulation clarifies that despite the idea of peace under the law through mediation, the structural integration of a conciliation judge into judicial procedural law must fulfil its primary purpose. This means that the foremost goal of the court proceedings remains the determination and enforcement of subjective rights (Prütting, 2020).

Finally, by deliberately leaving the definition of conciliation hearings open, the use of a range of conflict management procedures is permissible. Consequently, moderation, evaluation, conciliation and final offer procedures would be conceivable. The only question is whether and to what extent methodological clarity must be established for the parties (Greger, 2016).

Such detailed legal regulation is lacking in Austria, but some commentators, especially Austrian lawyers, see juridification as the necessary next step in helping the existing project of conciliation proceedings achieve a breakthrough (Eisenreich-Graf & Rill, 2019). However, the preceding statements on the German situation do not support this demand.

## Conclusions

The conciliation hearing conveys the idea that, in addition to their in-court settlement work in standard proceedings, mediately trained judges can also take on the role of a conciliation judge. Such dispute resolution proceedings only come about after the pendency of a dispute has arisen, by means of a referral by the judge of the proceedings and based on the voluntariness of the parties. Conciliation judges have no decision-making authority; this remains solely with the trial judge.

The above allows for the conclusion that, ultimately, for the successful implementation of this concept a high level of acceptance of the procedure is required. This can be achieved by creating an adequate legal basis which provides suitable organisational framework conditions.

Therefore, a cautious minimum regulation that safeguards legal activity (judicial action, business allocation) and protects the parties (confidentiality, clarity of costs) is recommended. This seems to be a practical approach for all those seeking to expand the judicial function in the sense of an additional facet with conciliation judges. However, the parties and their lawyers need clarity: they need to know whether their case will still be heard in court or whether it will be negotiated out of court. This applies to the conciliation procedure as a whole. The parties must be clear about the possibilities and benefits of the conciliation hearing so they do not have exaggerated expectations. Thus, in order for the conciliation procedure to unfold to its full effect, the professional groups concerned must be informed more intensively. Above all, this primarily affects the legal profession; if they are not more involved in further elaborating the concept of the conciliation hearing, resistance will continue. Finally, together with those involved, the question will also have to be answered as to what this all means for court-annexed mediation. At first glance, conciliation in the judicial environment gives the impression that out-of-court initiatives would be pushed out of the court and the mediator displaced. However, after a closer look, it becomes clear that mediation-trained conciliation judges carry the idea of consensus into the judiciary and pass it on to the parties and the legal profession. The concept of mediation will become suitable for everyday use.

## References

Arbeitsgerichtsgesetz [Labour Courts Act]. *Bundesgesetzblatt* [Federal Gazette] I 853, 1036 (1979). Retrieved from: https://www.gesetze-im-internet.de/arbgg/ArbGG.pdf.

Bundesgesetz über das gerichtliche Verfahren in Rechtsangelegenheiten außer Streitsachen [Non-Contentious Proceedings Act]. *Bundesgesetzblatt* [Federal Gazette] I 111 (2003). Retrieved from: https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20003047/Au%c3%9fStrG%2c%20Fassung%20vom%2007.04.2022.pdf.

Bushart, C. (2021). Multi-door courthouse? Die Praxis gerichtlicher Verweisungsvorschläge. *Zeitschrift für Konfliktmanagement*, *24*, 180–184.

Deutsches Richtergesetz [German Judiciary Act]. *Bundesgesetzblatt* [Federal Gazette] I 713 (1972). Retrieved from: https://www.gesetze-im-internet.de/drig/DRiG.pdf.

Directive 2008/52 of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters. OJ L 136 (2008), pp. 3–8. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=en.

Dürschke, J. (2013). Güterichter statt Mediator – Güteverhandlung und Mediation im sozialgerichtlichen Verfahren. *Neue Zeitschrift für Sozialrecht*, *2*, 41–80.

Eberhard, C. (2012). Vom richterlichen Mediator zum Güterichter. *Zeitschrift für Konflikt-Management*, *15*, 16–20.

Eisenreich-Graf, A., & Rill, U. (2019). Das Einigungsverfahren – die gerichtliche Streitbeilegung als Chance für die Zukunft. *Österreichische Richterzeitung*, *4*, 55–57.

Gerichtsverfassungsgesetz [Courts Constitution Act]. *Bundesgesetzblatt* [Federal Gazette] I 1077 (1975). Retrieved from: https://www.gesetze-im-internet.de/gvg/GVG.pdf.

Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit [Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction]. *Bundesgesetzblatt* [Federal Gazette] I 2586 (2008). Retrieved from: https://www.gesetze-im-internet.de/famfg/FamFG.pdf.

Gesetz vom 1. August 1895, über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten [Austrian Code of Civil Procedure]. *Reichsgesetzblatt* [National Gazette] 113 (1895). Retrieved from: https://ris.bka.gv.at/GeltendeFassung/Bundesnormen/10001699/ZPO%2c%20Fassung%20vom%2007.04.2022.pdf.

Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung [German Mediation Promotion Act]. *Bundesgesetzblatt* [Federal Gazette] I 1577 (2012). Retrieved from: https://www.gesetze-im-internet.de/mediationsg/MediationsG.pdf.

Greger, R. (2007). Abschlussbericht zum Modellversuch Güterichter. *Zeitschrift für Konfliktmanagement*, *10*, 180–183.

Greger, R. (2012). Alternative Konfliktlösung und Gerichtsverfahren. In R. Greger & H. Unberath (Eds.), *Kommentar zum MediationsG, Recht der alternativen Konfliktlösung* (pp. 255–299). München: C.H. Beck.

Greger, R. (2016). Alternative Konfliktlösung und Gerichtsverfahren, Güterichterverfahren. In R. Greger, H. Unberath & F. Steffek (Eds.), *Recht der alternativen Konfliktlösung, Kommentar zum Mediationsgesetz und Verbraucherstreitbeilegungsgesetz* (pp. 379–442). München: C.H. Beck.
Greger, R. (2017). Mediation und gerichtliches Verfahren. In T. Trenczek, D. Berning, C. Lenz, & H.-D. Will (Eds.), *Mediation und Konfliktmanagement* (pp. 474–483). Baden-Baden: Nomos Verlagsgesellschaft.
Hammerl, J. (2017). Das Einigungsverfahren. *Österreichische Juristen-Zeitung*, *17*, 760–767.
Janitsch, J. (2014a). Abschlussvereinbarung. *Einigungsverfahren*. Retrieved from: http://einigungsverfahren.at/index.php/abschlussvereinbarung.
Janitsch, J. (2014b). Entstehung des Projekts – Eine Verhandlungssituation, wie sie jeder Richter kennt. *Einigungsverfahren*. Retrieved from: http://einigungsverfahren.at/index.php/entstehung-des-projekts.
Janitsch, J. (2014c). Konzeptpapier "Gerichtsinternes Einigungsverfahren". *Einigungsverfahren*. Retrieved from: http://einigungsverfahren.at/index.php/konzeptpapier.
Masser, K. et al. (2018). *Die Entwicklung der Mediation in Deutschland – Bestandsaufnahme nach fünf Jahren Mediationsgesetz* (Vol. 8). Baden-Baden: Nomos Verlagsgesellschaft.
Mayr, P. (2012). Aktuelle Entwicklungen und Probleme bei den Rechtsschutzalternativen. In R. Gmeiner, R. A. Schütze & T. Garber (Eds.), *Europäische und internationale Dimension des Rechts – Festschrift für Daphne-Ariane Simotta* (pp. 375–400). Wien: LexisNexis Verlag.
Meisinger, A. (2021). *System der Konfliktbereinigung – Alternative, komplementäre und angemessene Streitbeilegung*. Wien: MANZ Verlag.
Moritz, M. (2021). Mediation und Vergleich im verwaltungsgerichtlichen Verfahren: Widerspruch oder Chance?. *Österreichische Richterzeitung*, *11*, 245–256.
Prütting, H. (2020). § 278. In W. Krüger & T. Rauscher (Eds.), *Münchener Kommentar zur ZPO* (Vol. I). München: C.H. Beck.
RIV Fachgruppe Einigung – Alternative Streitbeilegung bei Gericht. (unpublished). Einigungsverfahren bei Gericht, Vorlage eines Konzepts an das Bundesministerium für Justiz als Grundlage für ein bundesweites Modellprojekt. Wien.
Saenger, I. (2021). § 278 Gütliche Streitbeilegung, Güteverhandlung, Vergleich. In I. Saenger (Eds.), *Zivilprozessordnung – Familienverfahren, Gerichtsverfassung, Europäisches Verfahrensrecht* (9th ed.). Baden-Baden: Nomos Verlagsgesellschaft.
Schmidt, J. (2016). Bestehende und neue Formen der Konfliktlösung: Österreich am Weg zum Einigungsrichter?. In A. Deixler-Hübner & M. Schauer (Eds.), *Alternative Formen der Konfliktbereinigung* (pp. 171–212). Wien: MANZ Verlag.
Schneider, N. (2020). Was darf ein Güterichter?. *Neue Zeitschrift für Familienrecht*, *11*, 475–477.
Steinbeiß-Winkelmann, C. (2021). § 173 VwGO. In F. Schoch & J.-P. Schneider (Eds.), *Verwaltungsrecht – Verwaltungsgerichtsordnung: VwGH* (pp. 205–2010). München: C.H. Beck.
Steiner, T. (2015). Das Güterichterverfahren. In G. Wagner & H. Eidmüller (Eds.), *Mediationsrecht* (pp. 280–322). Köln: Otto Schmidt.
Thau, K. (2016). Gerichtsinternes Einigungsverfahren – ein Jahresrückblick Pilotprojekt zu einer alternativen Streitbeilegung. *Interdisziplinäre Zeitschrift für Familienrecht*, *3*, 140–143.
Zivilprozessordnung [German Code of Civil Procedure]. *Bundesgesetzblatt* [Federal Gazette] I 3202 (2005), I 431 (2006), I 1781 (2007). Retrieved from: https://www.gesetze-im-internet.de/zpo/ZPO.pdf.