

Vindobona Legal

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News from the Bar

Danubia The annual congress of the Danubian Bar Association ended yesterday with a clear request to the Danubian legislator for legislative action concerning both issues which had been on this year's agenda, i.e., the protection of confidentiality agreements in negotiations and ADR proceedings as well as a clear regulation of the treatment of privileged communications between the legal profession and its clients. There is a widely held belief in the legal community that one of the major obstacles to greater use of all modes of alternative dispute resolution methods in Danubia is the insufficient protection of the confidentiality of negotiations either outside or within a mediation. Offers made in such negotiation are regularly used and admitted as evidence in subsequent court or arbitration proceedings by the other party to prove that the offeror was accepting part of the liability. As it is very difficult to quantify the damages resulting from such behavior, there have been requests for legislative actions to efficiently protect the confidentiality of the negotiations. The proposals made range from statutory penalties to rules excluding such documents as suitable evidence in any form of binding legal proceedings.

The second topic of legal privileges was addressed prominently by Santtu Osiris, the chief litigation counsel at Annubis, Danubia's largest company. In his keynote on "Privileged information about privileges"

reporting about the work of the IBA Task Force on this topic, he gave a recent example of what he called a "serious disadvantage of the Danubian entities in international disputes".

So far, Danubia has no rules on legal privileges protecting such documents from disclosure. The mere provision that communication between counsel and clients is to be kept confidential contained in the ethical rules for lawyers cannot be compared with the detailed rules on privilege existing in other jurisdictions, such as the US or those jurisdictions which have followed the American approach such as Equatoria. From the reports of speakers from other jurisdictions, it seems that only in Mediterraneo the situation is comparable to that in Danubia. In her first reaction to the requests, the minister of justice announced the formation of a working group to address both issues, which also in her view required a regulation to remedy the disadvantages of the legal profession in Danubia and Danubian parties in disputes abroad.