

Fighting the Good Fight: Schoenherr's Dispute Resolution Team Considers ADR in CEE



“Clients are increasingly looking for diversity in terms of dispute resolution methods,” according to Anne-Karin Grill, Partner at Schoenherr in Vienna. Keen to learn more about this development, CEE Legal Matters spoke with Grill, Schoenherr’s Bucharest-based Partner Silvia Opris, and Natasa Lalatovic Djordjevic, Attorney at Law at Moravcevic Vojnovic i Partneri in cooperation with Schoenherr in Serbia.

A Strong and Growing Practice

Business is good for Schoenherr's dispute resolution specialists across the region. Lalatovic Djordjevic reports that her nine-member team in Belgrade, which covers Serbia, Bosnia and Herzegovina, and Montenegro, has registered "constant growth" in recent years. Grill, in Vienna, reports similar growth in her Austrian practice, marked by an increasing number of commercial and investor-state arbitrations. Opris reports that her dis-

and gas industries – that "has been flourishing."

Schoenherr's Romanian dispute resolution practice is also diverse, according to Opris, who points particularly to tax and employment litigation complemented by a number of white collar crime proceedings, which are fairly new to the Romanian market. In addition, Opris says, the Competition Council in Romania is active, and a number of challenges to its decisions have sprung up in recent years. Finally,



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– Anne-Karin Grill, Partner at Schoenherr in Vienna

pute resolution team "has been developing for close to ten years and has increased to become a core part of the Bucharest office."

Unsurprisingly, however, while the growth of the firm's teams is similar, the sources of work are not. In Vienna, Grill reports, complex cross-border commercial arbitration work has been a key focus over recent months, while Lalatovic Djordjevic reports that her team acts "in all investor-state cases against Montenegro and Serbia," complemented by a commercial litigation practice – involving various types of corporate and commercial disputes, particularly involving the construction (FIDIC), banking, automotive, and oil

Opris refers to an arbitration practice primarily focusing on the construction sector in Romania.

Building on an Already-Strong Reputation

Schoenherr's well-established reputation for offering strong commercial and transactional advice across CEE has been key to the development of an equally strong dispute resolution practice. "We've been in Romania for 20 years now," Opris says, "with the firm originally bringing in the knowledge of an international firm from abroad, and not really being directed at local litigation." As a result, "it is only natural that, as someone coming



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in with international clients, it would be commercial work that would be the point of entry.” And as the number of both clients and local lawyers has increased over time, the number of disputes her team has been asked to handle has naturally increased as well.

Lalatovic Djordjevic agrees. In Belgrade, she explains, “at one point it became clear that international corporations present in the market need dispute resolution support.” As a result, “it was a must for us to take steps to be able to offer such support – and particularly important because the clients have become used to and appreciate the high quality of legal services provided by our transaction, competition, and real estate teams. We are keen to ensure that clients continue to receive that level of quality.”

Grill agrees, noting that Schoenherr’s two key assets – its reputation for highly skilled lawyering and its full regional coverage – both work to the dispute team’s advantage. “On the one hand,” she says, “our clients know that if they come to us for transactional work they are also in good hands if dispute resolution advice might be required at a later stage. We’ve had a number of successes in the past and I think that resonates in the market. On the other hand, at Schoenherr we are used to working in fully integrated trans-national teams. Many of our successes are truly joint successes of Schoenherr’s dispute resolution teams across the firm’s jurisdictions.”

Indeed, Grill insists, it is Schoen-

herr’s commitment to an integrated offering that sets it apart from most of its peers: “We see to it that people know each other, train together, and work on cases together. I think clients also appreciate this. They get the best expertise paired with local market knowledge and native language capabilities.”

The Ongoing Growth of Alternative Dispute Resolution Methods

While alternative dispute resolution tools are at different stages of development across CEE, the three Schoenherr lawyers are uniformly enthusiastic about its growth in their markets.

Lalatovic Djordjevic points to several significant changes in commercial arbitration in Serbia. “At the moment, everyone has high expectations. In 2016, we saw the merger of two arbitral institutions at the Serbian Chamber of Commerce and Industry: The Foreign Trade Court of Arbitration (administering foreign disputes) and the Permanent Court of Arbitration (administering local disputes).” The resulting institution, she says, referring to the Permanent Arbitration at the Serbian Chamber of Commerce and Industry, handles disputes arising out of both international and domestic business relations, and operates under modern rules.

Opris expects to see an increase in the use of arbitration in Romania as

well, although she reports that, at the moment, a considerable percentage of commercial disputes remain in state courts. She is especially encouraged by a recent development within the international arbitration court attached to the Romanian Chamber of Commerce. According to Opris, the court, which has been around for roughly 15 years, lost credibility in 2012 when it eliminated a fundamental aspect of party autonomy by having the appointing authority select the arbitrators, instead of the parties themselves. The previous system was restored in 2014, and Opris hopes that this return to sense will allow the institution to re-establish itself in the market. Furthermore, she’s optimistic about the recent launch of the Bucharest International Arbitration Court, which was set up with the help of the American Chamber of Commerce (and with the involvement of her own team), explaining that “I believe this will have positive effects on the arbitration market, if only for the simple benefit of having another institution to compete with the old one.”

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The already-advanced ADR market in Vienna continues to develop as well, says Grill. “ADR is growing, in the



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sense that it is no longer automatically linked to arbitration, with clients now looking at the full spectrum of available dispute resolution methods.” The strong advocacy work of the International Chamber of Commerce in Paris is a factor in this maturation process, as are the efforts of local lawyers to promote alternative methods of dispute resolution now that “some clients have grown wary of arbitration as they failed to see the immediate benefits they were promised — procedural flexibility, short duration, affordability, and confidentiality.” The perception is that arbitration has grown into “an industry,” that is no longer as flexible and cost-efficient as it used to be. And now that this has become an increasingly common and polished field of law, costs have also increased — “significantly, in some cases.” As a result, Grill reports, “mediation is becoming a real alternative,” promoted by lawyers as a dispute resolution method “in an institutionalized context — not just on an ad-hoc basis.”

Educating the Market

“Arbitration in Romania is definitely what we should be looking out for in the next couple of years,” Opris says, as “companies become aware of the benefits that it can bring as a viable

“At one point it became clear that international corporations present in the market need dispute resolution support. [As a result] it was a must for us to take steps to be able to offer such support — and particularly important because the clients have become used to and appreciate the high quality

alternative to litigation.” Increasing this awareness, however, is an ongoing challenge. Lalatovic Djordjevic, for example, explains that the merger of the two institutions in Belgrade was driven in part by the fact that the Permanent Court of Arbitration, which was tasked with purely local disputes, “was almost never used by local companies, despite constant criticism of the court system.” In addition, she reports, there is a general lack of awareness among the smaller and mid-size companies involved in the great majority of local disputes, although multi-nationals are already aware of the benefits of arbitration and frequently instruct their lawyers to explore such options. “Even though the practice of arbitration has a long-standing tradition in Serbia, small and mid-sized companies are unfortunately still very much unaware. We are looking forward to seeing the change in that respect.”

Grill claims that lawyers need to “become more proactive and courageous in promoting alternative options.” She believes many of her peers hesitate to suggest ADR for fear that an increase in the popularity of those methods may negatively impact their litigation practices — a fear that she concedes may not be completely unjustified, but

she insists that, at the end of the day, “if you assist clients in finding sustainable and economically sound solutions, they will return satisfied.” And the optimum time to suggest ADR, Opris notes, is well before any dispute arises: “Without advance awareness, it might be difficult to convince a client to turn to a third party to find a solution, irrespective of how good their reputation might be. By the time they get to our doorstep, it is often the case that at least one of the parties involved will lack confidence and is then far likelier to reject the idea of arbitration.”

Despite positive developments in recent years, both Lalatovic Djordjevic and Opris hope to see arbitration pick up speed even more in their jurisdictions and look towards an increased use of mediation as well, in light of its benefits. Indeed, Opris says her team’s connection to its colleagues in the market known as the center of ADR for CEE constitutes a real advantage: “It is exciting to see what our colleagues in Vienna are doing. We see positive examples in Austria and, when the time comes, we can import the know-how and bring in experienced mediators, a result of which can be the expansion of mediation in Romania as well.”

Ultimately, regardless what kind of work is involved, Grill believes that Schoenherr’s commitment to dispute resolution is a key component of the firm’s strategy: “We want to offer legal advice across the spectrum to our clients, and top quality dispute resolution is a critical pillar in that. It is one thing to advise on a contract and another to assist clients in protecting their legal rights. Not focusing on dispute resolution, both regionally and in our local jurisdictions, would be an oversight. I am passionate about what I do and strongly believe that dispute resolution will remain a field of law that will keep growing.”

Radu Cotarcea