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‘Open Court Day’

A tool to connect judges with the public or
an impediment to professional conduct?

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1. Introducing ‘Open Court Day’

A. *The Austrian Amtstag*

Any Tuesday morning in Austria, members of the public may appear in district and regional courts in front of a judge to verbally file lawsuits or legal motions. This legal institution is what is referred to in the Austrian judicial system as *Amtstag* (hereinafter translated and referred to as ‘Open Court Day’).

There are few judicial tools as polarizing as Open Court Day. While some refer to it as a ‘valuable bridge between the court and the general population seeking legal protection’¹ or as a ‘useful institution serving work efficiency’², others see it as ‘a danger for objectivity’³ and a ‘disrespect of the separation of powers’⁴ that ‘conveys a false image of the judiciary to the public’⁵. Dr. Irmgard Griss, former president of the Supreme Court in Austria, once said in an interview with the Austrian daily newspaper *Die Presse*: ‘When you experience Open Court Day at a Viennese district court, you feel like you are not in a court, but in a therapy ward.’⁶

In principle, Open Court Day allows litigants with no representation (or people who are not yet party to a court proceeding) to appear in court and file a lawsuit or an application verbally in front of a judge without the opposing party being present. One of the underlying principles governing Open Court Days in Austria is the idea that the court shall be *open* for the requests of the people, which is why we have chosen to translate *Amtstag* as Open Court Day.

B. *Investigating Open Court Day*

Due to a range of legal provisions presented in part 3 of this paper, the role of the judge at Open Court Day often goes beyond merely recording verbal applications, motions and lawsuits or providing general procedural information. In reality, judges often end up giving legal advice to unrepresented litigants at Open Court Day.⁷ It will come as no surprise that, as a result, tensions may arise between the demands of guaranteeing a low-threshold access to justice on the one hand and those of upholding the principles of impartiality, objectivity and professional conduct of judges on the other.

Our research has shown that Open Court Day is a purely Austrian phenomenon. As will be shown below (see part 4. C.), other European countries have opted for different ways to ensure that

¹ Lackner, ‘Ein Plädoyer für den Amtstag’, 11 *Richterzeitung (RZ)* (2010) 257.

² Mayr, ‘Amtstag - die Rechtsgrundlagen einer österreichischen Institution’, 9 *Richterzeitung (RZ)* (2010) 197, at 198.

³ Ertl, ‘Amtstag 2010 - Eine kritische Betrachtung’, 9 *Richterzeitung (RZ)* (2010) 201, at 203.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Die Presse, *OGH-Präsidentin: "Aufgaben der Justiz überdenken"*, 21.02.2010, available at <https://www.diepresse.com/541359/ogh-praesidentin-aufgaben-der-justiz-ueberdenken>.

⁷ Mayr, *supra* note 2, at 198.

unrepresented parties receive the required assistance when going through the judicial system. It may therefore seem counter-intuitive to choose a topic that, at least at first glance, appears purely Austria-centric. However, we believe that a thorough analysis of the issues surrounding professional judicial conduct in the context of Open Court Day will make apparent that it goes to the heart of judicial ethics in general, raising questions related to impartiality, objectivity, clarity of roles and professional conduct of judges like hardly any other. There is, therefore, a strong link to Article 6 ECHR, to the Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes⁸ and to the Regulation establishing a European Small Claims Procedure⁹ (see part 4 below). Accessibility of justice for citizens is also a topic that remains relevant in all Member States, as it is one of the factors examined in the yearly EU Justice Scoreboard.¹⁰

This topic is also timely given the rate of technological progress, especially in the field of artificial intelligence and its application in the legal sector.¹¹ As a result, it becomes increasingly important to ensure that the ‘human factor’¹² does not get lost and the judiciary is not perceived as sitting in an ivory tower, far removed from the public. Therefore, direct contact with parties is of great importance to Austria’s jurisprudence and politics. In fact, just two years ago, the newly established Austrian government explicitly included a ‘commitment to and preservation of the Open Court Day’ in its government program for the years 2020-2024.¹³

C. Open Court Day - A Survey

In an attempt to go beyond a mere literature review and in an effort to shine a light on the specific ethical challenges judges face when conducting Open Court Day, we designed a brief survey on Open Court Day, paying special attention to judicial ethics and professional conduct. We believe that by closely examining the way Austria seeks to uphold Article 6 ECHR through Open Court Day, we can draw important conclusions that are relevant to other European countries. As questions regarding the scope of judges’ general duty to provide guidance, (appearance of) bias and liability are challenges that judges face everywhere, ways to reform and improve Open Court Day can also serve as useful pointers for professional judicial conduct in general (see part 6 below).

⁸ Council Directive 2003/8/EC, OJ 2003 L26/41.

⁹ Council Regulation 861/2007, OJ 2007 L 199/1; amended by Council Regulation 2015/2421, OJ 2015 L 341/1.

¹⁰ European Commission, *The 2022 EU Justice Scoreboard*, available at https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf, at 20-39.

¹¹ Kunesch, ‘GPT-3 als Richter? Künstliche Intelligenz und Art 6 EMRK’, *Jahrbuch Öffentliches Recht 2021* (2021), 305.

¹² Summer, ‘Zusammenfassung der 2. Podiumsdiskussion’, 1-2 *Richterzeitung (RZ)* (2022) 23, at 24.

¹³ Federal Chancellery of Austria, *Aus Verantwortung für Österreich. Regierungsprogramm 2020-2024*, available at <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/die-bundesregierung/regierungsdokumente.html>, at 22.

For our survey, we used official allocations of duties to ensure that our sample would be evenly distributed across Austria. In order to arrive at a representative cross-section of all Austrian courts conducting Open Court Days, we chose three district courts with varying sizes per regional court division as well as those regional courts acting as labour and social courts. We used Google Forms to design a survey with multiple choice questions and sent out the link to the 489 judges we had selected according to the aforementioned criteria. For ease of use, our survey was conducted in German. The participants were guaranteed that their replies would remain anonymous and that they would only be analysed for the purposes of this paper and the subsequent presentation.

Out of 489 judges the survey was emailed to, a total of 209 (42.7%) had submitted responses by the date of submission. This high response rate reflects the strong interest in this particular way of providing guidance to and interacting with parties, as well as the salience of the ethical questions that arise in the course of Open Court Day. Fundamentally, the high response rate underlines how crucial it is that we as (aspiring) judges remain aware of the variety of ethical questions that arise when interacting with unrepresented parties, especially as we reflect on how to best fulfil our obligations as representatives of the judicial power, while ensuring that the guarantees under Article 6 ECHR apply to unrepresented parties as well.

2. Understanding Open Court Day

A. (Un-) Represented in Court

To understand the legal background and purpose of Open Court Days in Austria, a brief look at the Austrian system of obligatory representation of parties by lawyers in court is inevitable. In district courts, parties in a civil proceeding have the obligation to be represented by a lawyer when the amount in dispute exceeds € 5000.¹⁴ In regional courts or any other higher courts, there is a general obligation to be represented by a lawyer. In family law proceedings as well as in proceedings concerning rental and lease agreements – which are held in district courts regardless of the amount in dispute¹⁵ – a general obligation to be represented by a lawyer does not exist.¹⁶ This also applies to labour and social law proceedings, which are held in regional courts regardless of the amount in dispute.¹⁷ As a result, unrepresented parties are not an anomaly but quite a regular occurrence in Austrian courts.

¹⁴ § 27(1) of the Austrian Code of Civil Procedure (*Zivilprozessordnung*).

¹⁵ § 49(2) of the Act on the Exercise of Jurisdiction and the Jurisdiction of the Ordinary Courts in Civil Cases (*Jurisdiktionsnorm*).

¹⁶ § 27(2) of the Austrian Code of Civil Procedure (*Zivilprozessordnung*).

¹⁷ § 3 and § 39(3) of the Austrian Labor and Social Court Act (*Arbeits- und Sozialgerichtsgesetz*).

B. Open Court Day in Practice

As the possibility for parties to appear in court and file a suit or an application verbally during Open Court Day is only open for unrepresented parties, Open Court Days are predominantly held regarding small claims, family law proceedings, proceedings concerning rental and lease agreements and labour and social law proceedings. Other legal matters (e.g. insolvency law and law of execution) can also be covered, however, Open Court Days regarding these issues are commonly not held by judges but by judicial officers. In practice, the way Open Court Day is conducted varies from court to court. In general, Tuesday mornings from 8:00 to 12:00 a.m. are uniformly designated for conducting Open Court Days.¹⁸ In order to reduce the spread of SARS-CoV-2, a new legal provision was introduced in 2020 which allows for the use of pre-registration systems. This includes the rejection of non-urgent applications and motions if the party fails to pre-register in a timely manner.¹⁹ Currently, parties usually make an appointment with an office worker via phone for the next Tuesday morning and briefly state why they want to appear in court. At the scheduled appointment, the party may then file a suit or application or raise an objection before a judge, judicial clerk or candidate judge, the latter two being supervised by a judge.

In practice, the conduct of Open Court Days is often stressful both for the party and the judge. On the one hand, court appointments concerning issues such as parental custody, divorce, disputes with the landlord, imminent eviction or disputes with the employer/employee might place the party in an emotionally exhausting situation. On the other hand, the judge normally does not have sufficient information on the content of the motions of the party before the appointment, and therefore needs to react spontaneously while remaining professional at all times. Procedurally, after the complaint, motion or other procedural act has been verbally declared on the court record, it is served to the opposing party, who may then raise a written objection, file a written statement or appear in court at an Open Court Day themselves. Of course, when all the necessary procedural acts are in place, a date for a court hearing will be set and the claim will be negotiated in a trial with both parties.

¹⁸ On the 9th March of 1982 the Austrian council of ministers decided that in all federal offices with official opening hours for the public, employees will be uniformly available on Tuesday mornings from 8.00 to 12.00 a.m. This was done in an attempt to bridge the gap between the public sector and the general public. The Federal Ministry of Justice implemented this decree dated May 10th 1982, ordering that Tuesday mornings from 8:00 a.m. to 12:00 a.m. are to be uniformly designated as Open Court Days within the scope of § 54 Geo (Danzl, 'Geo' in K.-H. Danzl [ed], § 54 *Geo. Mündliches Parteienbringen bei Gericht* [2021], at para 7).

¹⁹ § 54(3a) of the Austrian Rules of Procedure for the Courts of First and Second Instance (*Geschäftsordnung für die Gerichte I. und II. Instanz*, BGBl II 2020/90 [Federal Law Gazette]).

3. The Legal Provisions behind Open Court Day

A. National Legal Sources

In Austria, the holding of Open Court Days has a long tradition. Back in 1873, § 15 of the Small Claims Procedure Act (*Bagatellverfahrensgesetz*) already stipulated that on certain ‘court days’, which are to be determined in advance and announced by ‘a posting at the courthouse’, the plaintiff and the opposing party may appear before the court even without a summons in order to file and hear a lawsuit, which shall be recorded in the minutes of the hearing.²⁰ In 1895, the provision was transferred to § 439(1) of the Austrian Code of Civil Procedure (*Zivilprozessordnung*, hereinafter ‘ZPO’) which is still in force today.²¹ In connection with § 439 ZPO, other legal sources exist that have implications for Open Court Day in general as well as for the ways in which unrepresented parties may verbally put motions and applications on court record:

While § 433 ZPO allows for pre-trial in-court settlements, § 434 ZPO provides that parties, if they are not represented by lawyers, may verbally file all motions at the court. According to § 54(1) of the Austrian Rules of Procedure for the Courts of First and Second Instance (*Geschäftsordnung für die Gerichte I. und II. Instanz*, hereinafter ‘Geo’) in district courts certain days and hours, namely at least one day a week, may be set aside for the receipt of such verbal complaints, applications and declarations in contentious and non-contentious matters as well as in matters of private prosecution, with the effect that at other times all non-urgent submissions of this kind may be referred to that particular day (Open Court Day). As § 54(1) Geo is the only provision in Austrian law that explicitly refers to Open Court Day, it constitutes the key provision regarding Open Court Days in Austria. Considering the exact wording, § 54(1) Geo does not regulate that Open Court Days must be established in district courts. Rather, the provision provides the opportunity to restrict multiple court appearances to one day, thereby channelling and concentrating appointments with the public. This suggests that it used to be possible to appear in court any day to verbally file a suit or an application.

B. *Manus + Ducere*

These legal provisions all show that Open Court Day is, in principle, restricted to the holding of pre-trial in-court settlements, hearings without summons or the verbal filing of actions, appeals, remedies and declarations on court record.²² Nonetheless, parties often expect to receive legal

²⁰ Mayr, *supra* note 2, at 197.

²¹ *Ibid.*

²² *Ibid.*

information, guidance and advice when they appear at Open Court Day.²³ As will be highlighted below (see part 5.C.1.), in practice, their expectations are often met. This is due to several legal provisions in connection with the possibility of procedural actions by unrepresented parties: § 432 ZPO contains a general obligation to give instructions on procedural acts by unrepresented parties. It stipulates that the judge shall, if necessary, give parties unacquainted with the law and not represented by lawyers the necessary instructions for the performance of their procedural acts and inform them of the legal consequences associated with their acts or omissions. In Austria, this obligation is called *Manuduktionspflicht* (originating from the Latin words *manus* for hand and *ducere* which means to guide someone). In addition, § 435 ZPO mandates that, if in the judge's opinion, the complaint submitted in writing requires supplementation or clarification in any respect, or if there are doubts about the initiation of the proceedings, the judge shall, if the plaintiff is not represented by a lawyer, give the plaintiff the necessary instructions for the corresponding completions or corrections before the motion is filed. If the action is put on court record verbally, the plaintiff has to be informed about its potential inadmissibility. § 435 ZPO not only requires judges to inform parties about issues of inadmissibility, but also if the action appears to be obviously unfounded. The admission of futile lawsuits without appropriate instruction may even give rise to claims for official liability (see part 5. C. 5.). However, the recording of the action may not be refused if the plaintiff insists on the recording despite the instruction.

Another legal provision linked to the expectation of litigants to receive general advice and information is § 54(4) Geo, according to which the judge or other court officials entrusted with receiving and certifying verbal submissions shall instruct the parties on the legal provisions in question and shall ask them to include all information required for their particular case.

The judge's general duty to instruct unrepresented parties is even more wide-ranging in non-contentious proceedings and in labour and social court proceedings.²⁴

All in all, what the aforementioned legal provisions regarding the Austrian Open Court Day have in common is their alignment with the conception of a *social* civil procedure that has fundamentally shaped the Austrian Code of Civil Procedure of Franz Klein.²⁵ As the architect of the Austrian Code of Civil Procedure, Klein regarded legal conflicts as a '*social evil*' (*soziales Übel*) with high stakes and costs not only for the parties involved but for society as a whole.²⁶ Therefore, he wanted civil procedure to enable conflict resolution and, by doing so, serve the

²³ *Ibid.*

²⁴ *Ibid.*, at 198. § 39 of the Austrian Labor and Social Court Act (*Arbeits- und Sozialgerichtsgesetz*) as well as § 14 of the Non-Contentious Jurisdiction Act (*Außerstreitgesetz*) contain such provisions.

²⁵ Mayr, *supra* note 2, at 200.

²⁶ G. E. Kodek and P. G. Mayr, *Zivilprozessrecht* (2nd ed., 2013), at 32.

interests of the parties as well as the general public.²⁷ Given this holistic view of court proceedings, it appears consistent that Austria remains committed to its Open Court Day as a way to solve conflicts pragmatically and in an unbureaucratic setting.

4. European Legal Sources

A. *Right to a Fair Trial*

As stated above, the majority of parties that appear before a judge on Open Court Day are people who are legally unacquainted and not represented by lawyers. The opportunity to bring a case before a judge or file a suit or an application is therefore closely connected to the right to a fair trial.

Article 6 ECHR states that in determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. An inherent feature of a fair trial, which applies to both criminal and civil cases,²⁸ is the equality of arms, in the sense of a fair balance between the parties, which requires that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis the other party.²⁹

Similarly, Article 47 of the Charter of Fundamental Rights of the European Union (EUCFR) stipulates the right to an effective remedy and to a fair trial. In addition, it codifies in its third paragraph that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. This provision primarily affirms the relevant case law of the European Court of Human Rights (ECtHR), while also taking into consideration the system of legal assistance for cases before the Court of Justice of the European Union (ECJ).³⁰

However, whilst an effective right of access to the courts is therefore guaranteed, Article 6 ECHR leaves to the State a free choice of the means to be used towards this end. As the ECtHR has stated in *Airey v. Ireland*: ‘it is not the Courts function to indicate, let alone dictate, which measures should be taken; all that the Convention requires is that an individual should enjoy his effective right of access to the courts in conditions not at variance with Article 6

²⁷ *Ibid.*

²⁸ ECtHR, Guide on Article 6 of the ECHR (civil limb), 85, available at https://www.echr.coe.int/documents/guide_art_6_eng.pdf.

²⁹ ECtHR, *Kress v. France*, Appl. no. 39594/98, Judgment of 7 June 2001, at para 72; *Regner v. The Czech Republic*, Appl. no. 35289/11, Judgment of 19 September 2017, at para 146; *Dombo Beheer B.V. v. The Netherlands*, Appl. No. 14448/88, Judgment of 27 October 1993, at para 33; All ECtHR decisions are available at <http://hudoc.echr.coe.int/>.

³⁰ C. Drexel, *Der Zugang zum Recht* (2016), at 98; Explanations Relating to the Charter of Fundamental Rights, OJ 2007/C 303/30.

para 1'.³¹ In any case, this provision 'may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory ... or by reason of the complexity of the procedure or of the case.'³² The ECJ also references the case law of the ECtHR in his judgments³³ and states that when making the assessment whether the conditions for granting legal aid constitute a limitation on the right of access to the courts, the national courts must consider the subject-matter of the litigation, the applicant's prospect of success, the importance of what is at stake for the applicant, the complexity of the case and the applicant's capacity to represent himself effectively.³⁴

It is therefore clear that the right to legal aid is not absolute and may be subject to restrictions, provided that they pursue a legitimate aim and are proportionate. Conditions on the granting of legal aid may be based on the financial situation of the litigants or their prospects of success in the proceedings.³⁵

These conditions are also established in the Austrian legal system, where legal aid not only entails the waiver of court fees but also the appointment of a lawyer if necessary. Legal aid shall be granted to parties to the extent that they are unable to meet the costs of proceedings without endangering their livelihood and the intended prosecution or defence does not appear malicious or futile.³⁶ As long as a party's livelihood is not endangered, which in principle means that they exceed a minimum level of income, legal aid is denied. This sometimes leads to a gap in the protection of the right of access to the courts where parties that are 'too rich' for legal aid might still not be able to afford legal representation on their own.³⁷

Since the states have a free choice of the means to guarantee the right to a fair trial and equality of arms, legal aid is only one of the measures that can be taken. Simplifying the applicable procedure can also ensure that legally unacquainted parties who are not represented by lawyers are able to have effective access to court.³⁸

This is why Austrian law stipulates the aforementioned *Manuduktionspflicht* (see part 3. B. above). By means of judicial assistance and instruction, the parties are informed of the legal consequences associated with their procedural acts, which they would otherwise not be able to

³¹ ECtHR, *Airey v. Ireland*, Appl. no. 6289/73, Judgment of 9 October 1979, at para 26.

³² *Ibid.*

³³ C-279/09, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Germany* (ECLI:EU:C:2010:811); C-156/12, *GREP GmbH v Bavaria* (ECLI:EU:C:2012:342) at para 38-42; Drexel, *supra* note 30, at 103.

³⁴ C-279/09, *supra* note 33, at para 60-61.

³⁵ ECtHR, *Steel and Morris v. The United Kingdom*, Appl. no. 68416/01, Judgment of 15 February 2005, at para 62.

³⁶ §§ 63, 64 of the Austrian Code of Civil Procedure (*Zivilprozessordnung*).

³⁷ Drexel, *supra* note 30, at 228-232.

³⁸ ECtHR, *Airey*, *supra* note 31, at para 26; ECtHR, *Steel and Morris*, *supra* note 35, at para 60.

comprehend in terms of their significance and scope. Therefore, the parties are enabled to perform the necessary acts themselves, thus simplifying the applicable procedure.³⁹

This obligation of judicial assistance and instruction corresponds to the Council of Europe's Recommendation on the independence, efficiency and responsibilities of judges, which stipulates that they 'should act independently and impartially in all cases, ensuring that a fair hearing is given to all parties and, where necessary, explaining procedural matters'.⁴⁰ However, the Austrian *Manuduktionspflicht* goes further than that and includes not only procedural but also substantive matters.⁴¹

The same goes for Open Court Day, where judges not only address how a specific procedural act is to be set, but also discuss the legal and factual issues of a case, which includes procedural and substantive law. In international comparison, this is rather unusual, since most states only provide guidance by state organs on questions of procedural law as recommended by the Council of Europe.⁴² Nonetheless, Open Court Day has significance going beyond Article 6 ECHR and Article 47 EUCFR, as it has previously been used for the implementation of other legislative acts of the EU as well, namely the Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes⁴³ (hereinafter the 'Legal Aid Directive') and the Regulation establishing a European Small Claims Procedure⁴⁴ (hereinafter the 'Small Claims Regulation').

B. Additional EU Legislation

The Legal Aid Directive set out to provide legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice by laying down certain minimum common standards.⁴⁵ Article 3(2)(a) of this Directive stipulates that legal aid is considered to be appropriate when it guarantees – among others – pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings. The provided legal aid should cover the costs relating to the assistance of a local lawyer or any other person entitled by the law to give legal advice.⁴⁶

³⁹ § 432 of the Austrian Code of Civil Procedure (*Zivilprozessordnung*); Drexel, *supra* note 30, at para 245.

⁴⁰ Council Recommendation of 17 November 2010, No. (2010) 12, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805afb78, at Chapter VII/60.

⁴¹ Kodek, '§ 432 ZPO', in H.W. Fasching and A. Konecny (eds), *Zivilprozessgesetze* (2017), at para 1/1.

⁴² Kodek, '§ 439 ZPO', in H.W. Fasching and A. Konecny (eds), *Zivilprozessgesetze* (2017), at para 2.

⁴³ Council Directive 2003/8/EC, *supra* note 8.

⁴⁴ Council Regulation 861/2007, *supra* note 9.

⁴⁵ Council Directive 2003/8/EC, *supra* note 8, Explanatory Notes No. 5, 8.

⁴⁶ Council Directive 2003/8/EC, *supra* note 8, Article 8.

To a large extent the Austrian procedural provisions already complied with the provisions of the Legal Aid Directive.⁴⁷ Regarding Article 3(2)(a) it was clarified through an amendment of the Austrian Code of Civil Procedure that the assistance of a lawyer by means of legal aid also extends to pre-litigation advice with regards to an out-of-court settlement of the dispute.⁴⁸ Furthermore, it was stated in the Explanatory Notes to this amendment that the criteria of the Legal Aid Directive are otherwise met by the existing legal services provided through Open Court Day as well as other free legal information provided by the bar associations and interest groups such as the Chamber of Labour or Commerce.⁴⁹

Similarly to the Legal Aid Directive, the free legal advice provided on Open Court Day was also referred to regarding the application of the Small Claims Regulation. This legal framework established ‘a European procedure for small claims, intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs’.⁵⁰ The European Small Claims Procedure provides an alternative to the procedures existing under the laws of the Member States, where all parties use the according standard forms provided in Annex I to IV. Representation by a lawyer or another legal professional is not mandatory.⁵¹

Therefore, the Member States have to ensure that the relevant forms are available at all courts and tribunals where such a procedure can be commenced and that the parties can receive practical assistance in filling in these forms. Additionally, the court or tribunal shall inform the parties about procedural questions if necessary.⁵² In Austria, these objectives are again met through Open Court Day and the so-called *Manuduktionspflicht*.⁵³

C. Assisting Unrepresented Parties – Other Solutions

While other Member States are also obligated to protect the fundamental rights of Article 6 ECHR and Article 47 EUCFR, implement the Legal Aid Directive and apply the Small Claims Regulation, none of them have opted to do so by establishing a similar institution where judges themselves provide legal advice directly to parties without the opposing party present.⁵⁴

⁴⁷ Obenaus and Kührtreiber, ‘Gemeinschaftsrechtliche Aspekte der Verfahrenshilfe’, 17 *Zivilrecht aktuell (Zak)* (2007) 323, at 325.

⁴⁸ BGBl. I Nr. 128/2004 (Federal Law Gazette); § 64(1)(3) of the Austrian Code of Civil Procedure (*Zivilprozessordnung*).

⁴⁹ ErlRV 613 BlgNr. XXII. GP, 4, 12 (Explanatory Notes to Government Bill).

⁵⁰ Council Regulation 861/2007, *supra* note 9, Article 1.

⁵¹ *Ibid.*, Article 1, 5, 10.

⁵² *Ibid.*, Article 4(5), 11, 12.

⁵³ Mayr, ‘Das Europäische Bagatellverfahren in Österreich’, 2 *Fachzeitschrift für Verkehrsrecht (ZVR)* (2009) 40, at 41; Mayr, *supra* note 2, at 198.

⁵⁴ O. Scheiber, *Mut zum Recht* (2020) at 162; Ertl, *supra* note 3, at 203; European Commission, Directorate-General for Health and Consumers, *Guide to legal aid and advice in the European Economic Area* (1997), available at <https://op.europa.eu/en/publication-detail/-/publication/d4c6255e-b1bb-4801-bb3a-2fe5c6613562/language-de>, at 54-163.

In Germany, for example, simple motions and declarations can be filed with a judicial clerk at the court office.⁵⁵ In cases where a lawyer is mandatory or otherwise necessary, the parties can apply for legal aid. In further contrast, in the Netherlands no legal information is given by members of the court, neither judges nor judicial clerks, since assistance offered by the court would contravene the principle of impartiality and the passive role of the judge.⁵⁶

However, not only other EU Member States have chosen not to provide legal advice by judges. An institution like Open Court Day is also unheard of in states like New Zealand, Australia, Armenia and the United States of America.⁵⁷

Given Austria's unique way of granting assistance to unrepresented parties, the following section will analyse Open Court Day and ethical issues beyond it.

5. Judging Open Court Day: The Good and The Challenging

A. Questions Asked

After conducting a thorough literature review, we identified four central advantages (low-threshold access to justice, direct contact with the parties, the possibility to ‘intercept’ futile lawsuits, and the possibility to find pragmatic solutions) as well as four central challenges (time spent at Open Court Day, conflict of roles, appearance of bias, and risking a liability case) in the context of Open Court Day that were then included as possible answers in the survey, along with one box that allowed respondents to include answers that did not correspond with the provided answer options. Choosing this particular survey design, we made sure that responses could be analysed in a meaningful way. In order to ensure a high response rate, the survey was designed to take no more than five minutes. To this end, we included only one open question (‘My ideas for improving Open Court Day’), while the other eight were multiple-choice questions that included one open-answer field for each (‘Other’).

B. The Good

1. Low-Threshold Access to Justice

As shown above, the law stipulates that the overarching purpose of Open Court Day is to collect verbal application by parties on one particular day. As such, Open Court Day offers a low-threshold way of gaining access to the justice system.⁵⁸ In this respect, it is important to note that Open Court Day is free of charge and without major bureaucratic hurdles. This is particularly

⁵⁵ § 129a of the German Code of Civil Procedure (*Zivilprozessordnung*).

⁵⁶ Ertl, *supra* note 3, at 202; Kramer and Ontanu, ‘The functioning of the European Small Claims Procedure in the Netherlands: normative and empirical reflections’, *Nederlands Internationaal Privaatrecht* (2013) 319, at 322.

⁵⁷ Ertl, *supra* note 3, at 203.

⁵⁸ O. Scheiber, *supra* note 54, at 161.

relevant for and helpful to parties whose language skills prevent them from putting in a request in writing.⁵⁹ As such, Open Court Day often serves as the first point of contact with the judicial system. The low-threshold access to justice made possible by Open Court Day is considered an important advantage by the majority of our survey's respondents (61.2%).

2. *Breaking Barriers*

Besides facilitating access to justice, Open Court Day can also serve as a tool to connect judges with the public, thereby reducing the barriers between the population and the court system.⁶⁰ By doing so, general acceptance of the justice system and trust in the proceedings can be enhanced.⁶¹ In times of ever increasing digitalization, Open Court Day can act as a bridge between the court and the parties,⁶² which is something that 30.1% of all respondents considered advantageous about Open Court Day.

3. *Pragmatism Rules*

Open Court Day also offers judges and parties a way to find pragmatic solutions to legal issues in a less formal setting. Rather than having to start formal proceedings, questions can be answered directly and settlements can be sought outside the realm of official court proceedings, thus enabling parties to swiftly reach an agreement.⁶³ Furthermore, parties can be pointed to other institutions that are more apt at dealing with their particular request.⁶⁴ 43.1% of the survey's respondents see the possibility to find pragmatic solutions as a positive effect of Open Court Day.

4. *Channelling & Intercepting*

Moreover, Open Court Day enables judges to channel requests by parties and to 'intercept' legal disputes that have no chance of success. By listening to the party's concerns and offering them general legal information, parties can be dissuaded from futile lawsuits⁶⁵ that would otherwise burden the justice system, as starting official proceedings in the case would lead to an increased workload. This aspect of Open Court Day is endorsed by 35.9% of all respondents.

⁵⁹ Beran, 'Familienrechtlicher Amtstag - was sonst?', 3 *Richterzeitung (RZ)* (2018) 44, at 45.

⁶⁰ Kodek, *supra* note 42, at para 59.

⁶¹ Täubel-Weinreich, 'Über die unvereinbare Liebe zum Amtstag', 4 *Richterzeitung (RZ)* (2011) 89.

⁶² Summer, *supra* note 12, at 24; Lackner, *supra* note 1, at 257.

⁶³ Rassi, 'Three steps to justice?', 9 *Richterzeitung (RZ)* (2005), 182, at Fn 11.

⁶⁴ Täubel-Weinreich, *supra* note 61.

⁶⁵ Kodek, *supra* note 42, at footnote 60; Fucik, '§ 439 ZPO', in WH. Rechberger and T. Klicka (eds), *Kommentar zur ZPO* (2019) at para 2.

C. The Challenging

1. Expectation vs Reality

Overall, the findings of our survey in regard to the positive aspects of Open Court Day show that it can be a tool to connect the public to the justice system. However, while those supporting Open Court Day hail its achievements particularly in the context of access to justice, Open Court Day has also drawn widespread criticism, in particular given the ethical challenges it gives rise to:

As argued above, giving guidance to parties constitutes an important hallmark of Open Court Day. At the Austrian Open Court Day, however, it is not only procedural questions that the court informs parties about. As outlined above (see part 3. B.), according to Austrian civil procedure law, the judge is obliged to provide guidance and instruction to unrepresented parties for concretely planned legal actions.⁶⁶ In principle, a general need for information on the side of the party does not suffice.⁶⁷ To a certain extent, even an assessment of the chances for success offered by the judge to the party present at Open Court Day is assumed to be permissible, but only within the boundaries established by § 435(2) of the Austrian Code of Civil Procedure.⁶⁸ Such ‘acts of compensatory legal protection’⁶⁹ are intended to make up for the lack of legal knowledge and routine of unrepresented parties and therefore constitutes a crucial element towards ensuring the upholding of Article 6 ECHR.

As a result of these legal provisions, however, judges at Open Court Day may be faced with the daunting task of having to decide where their general duty to provide legal guidance ends and where the provision of legal advice begins. For parties who have a particular (legal) problem and therefore decide to seek advice (free of charge) from the court, it can be difficult to understand that there are limits to what the judge can give instructions on. In this context, there is a discrepancy between expectation and reality.⁷⁰

2. Blurred Lines

As a result, there is an area of tension between the self-image of the judge as a representative of the judicial power and the expectations of parties who often seek not only legal guidance but also concrete legal advice from the court.⁷¹ In practice, a lot of judges may end up providing such advice in the course of consultations at Open Court Day.⁷² In part, this is done because the careful gathering of information for the purpose of properly providing legal guidance as stipulated by law may require providing legal information on the distribution of the burden of

⁶⁶ Mayr, *supra* note 2, at 198.

⁶⁷ *Ibid.*, at 198.

⁶⁸ Kodek, *supra* note 42, at para 13.

⁶⁹ Mayr, *supra* note 2, at 198.

⁷⁰ Ertl, *supra* note 3, at 201.

⁷¹ *Ibid.*

⁷² *Ibid.*

proof and consideration of the (presumed) probative value of evidence.⁷³ In practice, this means that it can be very difficult to draw the line between providing general legal guidance to unrepresented parties and offering concrete legal advice.⁷⁴

As a result, there is concern that by providing legal guidance in the widest sense, judges may encroach on the sphere of activity of legal advisory professionals. From the perspective of the separation of powers, this leads to the fundamental question whether and to what extent the judiciary should really be tasked with giving legal instructions in general.⁷⁵ When it comes to interacting with unrepresented parties on the occasion of Open Court Day, further concern exists that a judge conducting Open Court Day may be faced with having to act as a therapist, a mediator, a life coach and a social worker, while still upholding their judicial role.⁷⁶ It goes without saying that this particular constellation comes with a wide range of (ethical) challenges.

3. A Conflict of Roles

In addition to the several non-legal roles a judge at Open Court Day may take over because of the specific circumstances of the parties involved, there is a particular internal conflict of roles that Open Court Day-judges may be confronted with. Given that Open Court Day takes place in all kinds of courts – including very small courts with only one or two judges – the following situation may arise: the judge conducting Open Court Day may be the one who ends up being the judge who decides the case and then perhaps also records the appeal (at Open Court Day) against their own decision.⁷⁷ This potential conflict of roles has been widely criticized.⁷⁸ Simply appearing before the decision-making body gives many parties the impression that the judge was on their side anyway because they were friendly.⁷⁹ Even with careful clarification, it comes as no surprise that many parties will not be able to understand why they end up losing the case after the judge has taken up their request after all.⁸⁰

It goes without saying that this particular setup does not lead to an increased trust in the judicial system. It may instead serve to undermine public trust in the way justice is administered. Unsurprisingly, the majority of judges who took part in our survey considered this conflict of roles a major problem in the context of Open Court Day (67.5%). More than a decade ago, this sentiment was already echoed in the resolution passed by the Conference of English-German language Judges in the area of family law, ‘supporting efforts ... to substantially reform Open

⁷³ *Ibid.*

⁷⁴ Toifl, ‘18. Familienrichtertag - Neues Gesetz - neuer Richter, AußStrG 2005 - eine Standortbestimmung’, 3 *Richterzeitung (RZ)* (2006) 58.

⁷⁵ Kodek, *supra* note 42, at para 21.

⁷⁶ Täubel-Weinreich, *supra* note 61.

⁷⁷ Ertl, *supra* note 3, at 201.

⁷⁸ *Inter alia: ibid.*, at 203; Täubel-Weinreich, *supra* note 61, at 89; Mayr, *supra* note 2, at 200.

⁷⁹ Täubel-Weinreich, *supra* note 61.

⁸⁰ Ertl, *supra* note 3, at 201.

Court Day so that the judge who provides assistance to a party at Open Court Day is not the same as the one who decides the case.’ Furthermore, the resolution demanded ‘that litigants [shall] not be given the opportunity to discuss their case with the adjudicating judge without being asked to do so’.⁸¹ So far, however, the system has not been changed. On the contrary, as mentioned above, the current government programme even features a renewed commitment to Open Court Day and includes no reference whatsoever to its potential reform.⁸²

4. *The Appearance of Bias*

According to 60.8% of our respondents, another major ethical challenge inherent in Open Court Day that may have a negative impact on public trust in the judiciary concerns the appearance of bias. As judges, we are supposed to always keep an equidistance to all parties involved. At Open Court Day, however, the judge is faced with a situation that may call into question this equidistance, since formal proceedings may commence as the result of one party having verbally filed a motion with the judge at Open Court Day. Legally, a party is allowed to verbally put a motion on the court record during Open Court Day, which is then sent to the opposing party.⁸³ As a result, a party that is not well-versed in legal handlings of the court, upon receiving such a document might arrive at the conclusion that the other side already had a chance to talk to the judge and by doing so convince them of their arguments.

Generally speaking, if a party – expecting from the court an unbiased, objective hearing and examination of their case – learns of contact between the opposing party and the judge outside of the official hearing dates, it is likely that the party will suspect that the opposing party will have improperly attempted to influence the judge by a one-sided presentation of the facts on their side.⁸⁴ Therefore, there is an imminent danger that the process will be perceived as one-sided from the get-go by one of the parties, which might then have a negative impact on the forthcoming proceedings. On a greater scale, this can be harmful for the overall acceptance of the justice system as a whole.

This balancing act between ensuring impartiality and objectivity while properly providing legal services as part of Open Court Day can be daunting and, procedurally, has led to the concern that having offered legal guidance on the occasion of Open Court Day can lead to judges being reported for being biased. So far, however, Austrian courts have ruled that it is not a ground for rejection if the judge has expressed a certain legal opinion on the occasion of Open Court Day.⁸⁵

⁸¹ Fucik, ‘8. Englischsprachig-deutschsprachige Richterkonferenz 2010 in Berlin-Bericht samt Schlussfolgerungen und Entschließungen’, 4 *Interdisziplinäre Zeitschrift für Familienrecht (iFamZ)* (2011), 226, at 227.

⁸² Federal Chancellery of Austria, *supra* note 13, at 22.

⁸³ Aistleitner and Zinkl, ‘Die Ethik der Unabhängigkeit’, 2 *Richterzeitung (RZ)* (2004) 40.

⁸⁴ Ciresa and Hofmeister and Widerin, ‘Amtstag real’, *Anwaltsblatt (AnwBl)* (1994) 415.

⁸⁵ Regional Civil Court Vienna EFSIlg 57.661 (Collection of Marriage and Family Law Decisions); Higher Regional Court Innsbruck 2 R 262/89; Regional Civil Court Vienna 43 R 734/88; Regional Civil Court Vienna 43 R 181/01p.

Even repeated consultations of a certain party as part of Open Court Day do not allow for the assumption that the judge will not be guided exclusively by objective points of view in a legal dispute.⁸⁶ As a result of these rulings, it is generally accepted that consultations that take place as part of Open Court Day do not constitute judicial bias.⁸⁷ The ECtHR has stated in a similar context regarding pre-trial decisions by judges that ‘the fact that the judge has detailed knowledge of the case file does not entail any prejudice on his part that would prevent his being regarded as impartial when the decision on the merits is taken. Nor does a preliminary analysis of the available information mean that the final analysis has been prejudged.’⁸⁸

5. *Liability Risks*

Beyond questions of bias, there is concern that a judge offering legal guidance and/or assistance during Open Court Day may lead to a higher risk of liability. In our survey, 27.3% of all respondents considered this a challenge. If legal information (on the occasion of Open Court Day) is given incorrectly or inadequately, or if the person seeking legal assistance is given incorrect or incomplete advice or instruction, but also if the assistance is not given or is delayed, official liability applies if the other prerequisites (in particular damage and causality) are met.⁸⁹ However, as long as the legal instruction in question was based on an interpretation or application of the law that is justifiable on the basis of due consideration, official liability may not apply.⁹⁰

6. Conclusion

A. *Reforming Open Court Day*

Overall, of the judges that responded to our survey, roughly a third were in favour of keeping the status quo, while a third voted for reforming Open Court Day, and a third to abolish it completely. With only a third satisfied with the Open Court Day in Austria as it is now, it is worthwhile to examine the ways in which it may be improved in an attempt to better serve unrepresented parties and judges alike. The fact that 128 respondents (61.2%) chose to reply to the open answer question by offering reform proposals further serves to underline the need to closely examine ways to ensure a better implementation of Open Court Days in Austria. Building on a thorough analysis of these responses, in combination with our own findings, in the following section we will put forward a proposal of how Open Court Day can be improved. Going beyond

⁸⁶ Regional Civil Court Vienna 43 R 2107/92; Higher Regional Court Vienna 13 R 23/99v.

⁸⁷ Regional Civil Court Vienna EFSlg 69.688 (1992) (Collection of Marriage and Family Law Decisions); Higher Regional Court Innsbruck 2 R 262/89; Supreme Court (Austria) 1 Ob 2/88; Regional Civil Court Vienna EFSlg 57.661 (1988) (Collection of Marriage and Family Law Decisions); Kodek, ‘§ 435 ZPO’, in H.W. Fasching and A. Konecny (eds), *Zivilprozessgesetze* (2017), at para 4.

⁸⁸ ECtHR, *Morel v. France*, Appl. no. 34130/96, Judgment of 6 June 2000, at para 45.

⁸⁹ Supreme Court (Austria) 1 Ob 9/03k RZ 2003/23.

⁹⁰ Supreme Court (Austria) 1 Ob 12/80 SZ 53/83; RS0049955, T8.

the specifics of a reform of Open Court Day, we then draw larger conclusions by discussing ways to uphold professional conduct in the context of the interaction with unrepresented parties as a whole.

B. How the Judges Responded

The reform proposals put forth by the respondents of our survey can be grouped into four broad categories: organizational, clarity of roles, outsourcing and expectation management.

1. Organizational Matters

The fact that the majority of suggestions of the respondents can be categorized as organizational shows that ensuring ways of handling Open Court Days efficiently is a crucial aspect for Austrian judges. 37.8% of all respondents were concerned with the time-consuming aspect of Open Court Days and many therefore want to be compensated accordingly. Many of the suggestions made include the request that appearing in court on Open Court Days should only be possible by appointment (if it is not yet) or that Open Court Days should be conducted by telephone for brief questions. It was even proposed that Open Court Day should be conducted online if the party agrees. Many proposals included moving away from a fixed morning to a more flexible setting. Moreover, it was suggested that time limits for each party should be introduced. It was further proposed that consideration be given to the competence of the judges in conducting Open Court Days, e.g. that a judge in criminal law should not have to provide guidance in civil law proceedings, or that one fixed judge per division should conduct Open Court Days with corresponding compensation for the workload. Moreover, it was suggested that there should be clear guidelines for appointments in order to avoid futile appearances in court or that Open Court Days should in fact only be open for applications.

2. Fixing Conflict of Roles

Due to impartiality being the core aspect of the judicial power, it is not surprising that many suggestions put forth by respondents of our survey concern the need for a clarity of roles. A great number of judges put forward the proposal that the judge conducting Open Court Day should not be the judge deciding the case. To facilitate the implementation of such a rule, the judge who records the suit or application during an Open Court Day should be subsequently excluded from the case. Moreover, it was suggested that there should not be any Open Court Day appointments during ongoing proceedings (especially in family law matters) and that there should be very limited consultation or filing of motions by the judge deciding the case.

3. Outsourcing

The proposals mentioned above have a strong link to the suggestions that Open Court Days

should be ‘outsourced’, either to a separate office at the court under judicial guidelines, to an independent institution with equally easily accessible legal advice or to the office of lawyers within the scope of initial consultations. For example, it was proposed that Open Court Day should be replaced by an initial consultation with a lawyer free of charge for the party but remunerated to the lawyer. Some suggestions refer to the advisory services of the Austrian Chamber of Labour (*Arbeiterkammer*) and would like to see them expanded. It was also suggested that ‘simple’ motions should be filed at service centres already established at some courts or that separate offices should receive such applications.

4. Expectation Management

Although many suggestions concern outsourcing Open Court Days, numerous proposals were also made to improve them for the parties as well as for the judge through clear guidelines as to what Open Court Days offer. It was suggested that legal advice should only be given in connection with a specific application, submission of claim or statement on a subject of a proceeding. The respondents propose that it should be clarified that the judge conducting Open Court Day does not serve the purpose of providing general legal information without reference to a specific legal matter. It was further suggested that this clarification could be made by handing out standardized information sheets to the parties at Open Court Day.

C. Ways Forward

All in all, we believe that Open Court Day continues to play an important role in narrowing the gap between citizens and their judicial system. Accordingly, it seems counter-intuitive to abolish this institution completely as it serves the purpose of enabling citizens to make use of their rights under Article 6 ECHR and Article 47 EUCFR. Nonetheless, the disadvantages, especially the conflict of roles, must not be underestimated.⁹¹

As some of the survey participants have suggested, at first glance it seems like a feasible solution to automatically exclude the judge that advised a certain party during Open Court Day from conducting any further proceedings in this matter. However, this would only be possible for larger courts where several judges are assigned to cover the respective legal field. In addition, parties would need to be prevented from being able to exclude a judge from conducting their trial by selecting them as their judge on Open Court Day, therefore indirectly picking their judge for the trial.

When considering outsourcing Open Court day, the costs of a non-court organization providing legal guidance for parties unacquainted with the law obviously have to be taken into

⁹¹ Drexel, *supra* note 30, at 259; Täubel-Weinreich, *supra* note 61.

consideration.⁹² Additionally, parties should still be able to file actions verbally and directly at court, since it would otherwise not be possible for people not represented by lawyers to file a claim without familiarizing themselves with the formal requirements of such legal documents.⁹³ Using existing internal resources therefore seems preferable to establishing a separate organizational unit.

In order to prevent a conflict of roles, positions for judges who would be primarily responsible for Open Court Day could be established.⁹⁴ These judges could then conduct Open Court Days at their regional court and the district courts in their area. In order to make these positions desirable, the duration for such positions could be limited to a certain time period⁹⁵ or a higher compensation could be considered.⁹⁶ Alternatively, the time judges spend conducting Open Court Days could be reflected in their overall workload, so that they are assigned fewer ‘non-Open Court Day’ cases.⁹⁷ Smaller organizational changes, especially making appointments mandatory, seem to have had a positive impact for judges conducting Open Court Day during the pandemic and should therefore be maintained.

As suggested by the respondents to our survey, to better manage expectations of parties, informational pamphlets could be provided to parties before entering the judge’s office in order to communicate directly what the purpose of their meeting is or should be and what the role of the judge is during Open Court Day. To further establish that judges are not obligated to provide general legal advice during these meetings, a clarification regarding the relevant legal provisions could also be helpful in order to prevent miscommunication regarding the purposes of Open Court Day.

D. Beyond Open Court Day

The results of our survey as well as our findings in the literature have shown that communication is key: as trivial as it may sound, the way judges interact and communicate with parties, especially those not well acquainted with the law and not represented by an attorney, have profound implications. As judges, we have to be well-versed in the legal language while at the same time being able to transport the contents thereof to the general public. This places high

⁹² Drexel, *supra* note 30, at 261.

⁹³ *Ibid.*, at 260.

⁹⁴ Täubel-Weinreich, *supra* note 61.

⁹⁵ Drexel, *supra* note 30, at 261.

⁹⁶ Similar to the way prosecutors of the Economic and Corruption Prosecutor’s Office are automatically classified as senior prosecutors, see § 175(1)(6) of the Austrian Judicial and Prosecutorial Service Act (*Richter- und Staatsanwaltschaftsdienstgesetz*), such ‘Open Court Day judges’ could also be classified higher. Alternatively, they could profit from additional compensation similar to judges on call according to § 66 Abs 3 of the Austrian Judicial and Prosecutorial Service Act (*Richter- und Staatsanwaltschaftsdienstgesetz*).

⁹⁷ Ciresa and Hofmeister and Widerin, *supra* note 84.

demands on judges – be it in trials, hearings or Open Court Days. When interacting with unrepresented parties in particular, judges need to be continuously aware of their role and the responsibility that comes with it. In this respect, it is crucial to pay special attention to balancing the need of unrepresented parties for information and guidance in the context of Article 6 ECHR, which enables them to make themselves heard in the judicial system, with the need to uphold the central judicial principles of impartiality, objectivity and professional conduct. Furthermore, in an effort to ensure the continued trust in the integrity of judicial decision-making, special care needs to be taken to avoid any actual as well as apparent bias. As Lord Hewart C.J. put it, ‘not only must Justice be done; it must also be seen to be done’.⁹⁸

Even though Open Court Day may seem to some – coming from different legal traditions – as an anachronistic legal institution that may even disrespect the separation of powers, we hope that, by analysing the ways in which Open Court Day is conducted in Austria and what this means for judges in their quest to act ethically and professionally, we have provided a new avenue into thinking about unrepresented parties and their need for (legal) information. We strongly believe that a court should not be a fortress built with legal texts that laymen can hardly understand but a forum for settling disputes and for finding solutions to problems. In this context, Open Court Days – as flawed as they may be – are an important way of connecting the judicial system to the public. There is inherent value in being able to sit before a judge and to be heard, without any bureaucratic or financial obstacles. This direct contact can also help to establish trust of citizens in their national legal systems, a goal that should be held high in all Member States.⁹⁹ Therefore, even though there are challenging and even problematic aspects that come with Open Court Days and the Austrian legal provisions surrounding the judge’s general duty to provide guidance to unrepresented parties, we hope that this paper will open up space for further discussion and exchange about how we can best fulfil our roles as judges in the context of impartiality and objectivity while ensuring that the guarantees of Article 6 ECHR apply to everyone.

⁹⁸ R v Sussex Justices, ex parte McCarthy ([1924] 1 KB 256, [1923] All ER Rep 233.

⁹⁹ European Commission, The 2022 EU Justice Scoreboard, available at https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf, at 52.