

Introduction

The Committee on West European Law of the Section of International Law, which the writer chairs, believes strongly that it will be rendering substantial help to the members of the Section if it can make available to them information on some of the processes which lawyers in several of the West European countries face, in connection with litigation. Accordingly, those familiar with litigation in Austria, England, Italy and West Germany wrote articles covering this aspect of practice in those countries. The highlights of their papers are noted in the succeeding paragraphs.

The salient difference between the common law conception and Austrian law relative to service of process is absence of the requirement of personal service in order to achieve due process. Austria relies mainly on service by mail with certain exceptions not relevant to international exchanges. Another distinguishing point is that Austrian service is performed by the courts and not by the parties. The author warns of the consequences of taking lightly non-participation in relation to Austrian procedure. Recent legislation on the enforcement of foreign money judgments may not only harbor disappointments for an American judgment debtor of an Austrian decision, but international treaties between that country and many foreign countries must be considered which make Austrian judgments enforceable in all the treaty countries, without supplementary procedure. This may be especially important for multinational corporations.

The scope of the article on English law covers the whole process of litigation in that country from the issue of proceedings to trial and subsequent appeal. The writer attempted to lead his readers through the main stages of a typical action to explain what steps are required, what courses are open to the parties and what documents are required, with the intention of providing a brief and reasonably simple account of how English proceedings are conducted, and of

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shedding some light upon the underlying attitudes which English law adopts in that field.

Italy provides both active and passive assistance to courts in foreign countries. Active assistance is given by Italian courts, which will execute letters rogatory and permit court officers to serve process. Passively, Italy permits foreign officials or individuals to perform legal acts such as the taking of depositions on Italian territory without objection. While the assistance granted by Italy is not complete, and complicated procedures must sometimes be followed, all necessary testimony can be obtained and legal documents served in connection with foreign proceedings.

The article on West Germany deals with the principles underlying Service of Process under West German law. It explains the duty of the judge under the German Rules of Civil Procedure and what a non-resident American plaintiff should keep in mind as far as service of process is concerned in that country. That article also touches on the legal assistance exchanged between Germany and the United States as well as on service of documents in connection with appellate proceedings.

It is the hope of this Chairman that members of the Bar will join him in believing that knowledge of the different processes alerts them to the problems which must be considered, when enforcing the rights of their clients through litigation in those countries.