



GSLA
German-Singaporean
Lawyers' Association



Claus H. Lenz

LST Lenz Schuhmacher Tap
Rechtsanwaelte (Attorneys-at-Law)

Tel: +49 (0)221 13 08 16 0

Email: lenz@lst.law

Civil Justice Reforms - The German Experience

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Singapore is currently undergoing civil justice reforms to ensure that the Courts, as a forum for dispute resolution, remain relevant, effective and efficient for litigants.

The German Courts are renowned for their cost and time efficiencies.

Although the German legal system is a civil law system and it is an adversarial system, there is a balance between party autonomy and the active management and supervisory role played by the German Courts.

- How do the German Courts manage, supervise and in some instances, expedite civil Court proceedings?
- What is the role of the parties in presenting facts and evidence for their respective cases?
- How do the German Courts give their preliminary advisory opinions on the case before receiving the evidence and full submissions at trial?
- How do the German Courts receive documentary evidence, and ensure that all relevant documents are before the Court, without the discovery process?
- How are lawyers' fees and court fees made transparent and predictable to the litigants?

German Civil Procedural Law

- **Court System - Gerichtsverfassungsgesetz (GVG)**
- **Procedures - Civil Procedure Code (ZPO)/Principles**
- **Costs**
 - **Gerichtskostengesetz (GKG) – Court Fees**
 - **Rechtsanwaltsvergütungsgesetz (RVG) – Attorney's Fees**

German Civil Procedural Law

- **Gerichtsverfassungsgesetz (GVG)**
 - **Structure of the Court System**
 - **Lower District Court (Amtsgericht)**
 - **District Court (Landgericht)**
 - **Higher/Regional Court**
 - **Federal Court of Justice**

The German Civil Law Court System

- **Statistics (numbers from the state of NorthRhine Westfalia)**
 - **Number of closed cases in 2017**
 - First instance: 72,608**
 - Second instance: 11,055**
 - **Average length of proceedings**
 - First instance: 9.8 months**
 - Second instance: 6.5 months**

German Civil Procedural Law

- **Civil Procedure Code (ZPO)**
 - **Procedural Principles in German Law**
 - Principle of free Disposition of the Parties
 - Principle of attempting amicable solutions
 - Adversarial Principle
 - Hearing of Both Parties Principle (*audiatur et altera pars*)
 - Principle of Orality
 - Principle of Directness
 - Principle of Public Hearing
 - Principle of Pre-Trial Discovery ?!

German Civil Procedural Law

Procedural Principles in German Law

Principle of free Disposition of the Parties or
Principle of Party presentation

Parties have to present the facts,
Judges have to know the law (*Iura novit curia*)

German Civil Procedural Law

Parties have to present the facts,
Judges have to know the law (*Iudex novit curia*)

Section 138 ZPO - Obligation to make declarations as to facts; obligation to tell the truth:

- (1) The parties are to make their declarations as to the facts and circumstances fully and completely and are obliged to tell the truth.
- (2) Each party has to react in substance to the facts alleged by the opponent.
- (3) Facts that are not expressly disputed are to be deemed as having been acknowledged unless the intention to dispute them is evident from the other declarations made by the party.

German Civil Procedural Law

Parties have to present the facts,
Judges have to know the law (*Iura novit curia*)

Section 139 ZPO - Directions in substance of the course of proceedings

(1) To the extent required, the court is to discuss with the parties the circumstances and facts as well as the relationship of the parties to the dispute, both in terms of the factual aspects of the matter and of its legal ramifications, and it is to ask questions. The court is to work towards ensuring that the parties to the dispute make declarations in due time and completely, regarding all significant facts, and in particular is to ensure that the parties amend by further information those facts that they have asserted only incompletely, that they designate the evidence, and that they file the relevant petitions.

German Civil Procedural Law

Parties have to present the facts,
Judges have to know the law (*Iura novit curia*)

Section 139 ZPO - Directions in substance of the course of proceedings

(2) The court may base its decision on an aspect that a party has recognisably overlooked or has deemed to be insignificant, provided that this does not merely concern an ancillary claim, only if it has given corresponding notice of this fact and has allowed the opportunity to address the matter. The same shall apply for any aspect that the court assesses differently than both parties do.

(3) The court is to draw the parties' attention to its concerns regarding any items it is to take into account *ex officio*.

German Civil Procedural Law

Procedural Principles in German Law

- Principle of attempting amicable solutions

Section 278 ZPO

Amicable resolution of the dispute; conciliation hearing; settlement

- (1) In all circumstances of the proceedings, the court is to act in the interests of arriving at an amicable resolution of the legal dispute or of the individual points at issue.
- (2) For the purposes of arriving at an amicable resolution of the legal dispute, the hearing shall be preceded by a conciliation hearing unless efforts to come to an agreement have already been made before an alternative dispute-resolution entity, or unless the conciliation hearing obviously does not hold out any prospects of success. In the conciliation hearing, the court is to discuss with the parties the circumstances and facts as well as the status of the dispute thus far, assessing all circumstances without any restrictions and asking questions wherever required. The parties appearing are to be heard in person on these aspects.
- (3) The parties shall be ordered to appear in person at the conciliation hearing as well as at any other conciliation efforts.

German Civil Procedural Law

- **Civil Procedure Code (ZPO)**
 - **Procedural Principles in German Law (remaining)**
 - Adversarial Principle
 - Hearing of Both Parties Principle (*audiatur et altera pars*)
 - Principle of Orality
 - Principle of Directness
 - Principle of Public Hearing
 - Principle of Pre-Trial Discovery ?!

German Civil Procedural Law

- **Civil Procedure Code (ZPO)**
 - **General Principles of Evidence Taking**
 - Principle of free assessment of evidence
 - Principle of Directness
 - Principle of Concentration
 - Principle of Pre-Trial Discovery

German Civil Procedural Law

- Evidence
 - Minimum Standard of Proof: “feasible degree of certainty”
 - Means of taking evidence:
 - Expert testimony
 - Visual inspection
 - Examination of opponent
 - Documents
 - Witness testimony
 - Burden of Proof

German Civil Procedural Law

- **Court Order for the Taking of Evidence**
 - Finding out what is in dispute and what is relevant (the famous German “Relationstechnik”)
 - Issuing a court order for taking of evidence with clear determination of the topic to be addressed by an expert appointed by the court or witnesses

German Civil Procedural Law

Cost of civil Proceedings

- Court Fees acc. to Gerichtskostengesetz (GKG)
- Lawyers' Fees acc. to Rechtsanwaltsvergütungsgesetz (RVG)

Principles:

- Fixed scale fees according to the amount in dispute
- Full cost compensation (of scale fees) of the winning party

Exceptions:

- Fee arrangements

German Civil Procedural Law

Cost of civil Proceedings

- Contingency (success) fees
- Litigation Funding
- Legal Aid

How do the German Courts manage, supervise and in some instances, expedite civil Court proceedings?

- According to their wide discretion
- By ordering the Parties (the legal representatives) to appear in person
- By discussing potential settlements with the Parties early in the proceedings
- By expressing preliminary opinions
- By limiting the taking of evidence
- By appointing experts of their own

What is the role of the parties in presenting facts and evidence for their respective cases?

- **Full responsibility to present facts and evidence from own sources**
- **Very limited requests for document production: Section 142**

ZPO:

(1) The court may direct one of the parties or a third party to produce records or documents, as well as any other material, that are in its possession and to which one of the parties has made reference. The court may set a deadline in this regard and may direct that the material so produced remain with the court registry for a period to be determined by the court.

(2) Third parties shall not be under obligation to produce such material unless this can be reasonably expected of them, or to the extent they are entitled to refuse to testify pursuant to sections 383 to 385. Sections 386 to 390 shall apply mutatis mutandis.

How do the German Courts give their preliminary advisory opinions on the case before receiving the evidence and full submissions at trial?

May be a wrong question?

- **Partial (documentary) evidence available with first submissions**
- **Preliminary view on the basis of Statement of Claim and Reply by application of the German “Relationstechnik”**
- **Conciliation Hearing (Güteverhandlung)**

How do the German Courts receive documentary evidence, and ensure that all relevant documents are before the Court, without the discovery process?

- **From submissions of the Parties**
- **Pre-Trial Discovery (“Selbständiges Beweisverfahren”)**
- **By order for document production (Sect. 142 ZPO)**

Lastly, how are lawyers' fees and court fees made transparent and predictable to the litigants?

- Court Fees: GKG
- Lawyers' Fees: RVG or Fee arrangement (P&P costs only to RVG)
- Scale fees, structured subject to procedural steps such as:
Basic fees, Hearing, Taking of Evidence, Settlement

Example: 1,000,000 EUR Amount in Dispute

Court Fees: 3 x EUR 5,336 = EUR 16,008

Lawyers' Fees: 2,3 x EUR 4,713 = EUR 10,839.90 + expenses + VAT

Thank you!

**LST Lenz Schuhmacher Tap
Rechtsanwaelte (Attorneys-at-Law)
Claus H. Lenz
lenz@lst.law**

**Cologne/ Köln
Agrippinawerft 22
Rheinauhafen
50678 Köln
Germany
Tel +49-221-13 08 16 0
Fax +49-221-13 08 16 20**