

The Justice System of the Federal Republic of Germany:

Lessons for Developing and Transition Countries

The World Bank and German Foundation for International Legal Cooperation

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***Christian Hueck*, German Foundation for International Legal Cooperation**

German Foundation for International Legal Cooperation (IRZ Foundation)

- ⇒ legislative consultation
- ⇒ basic and further training for judges, public prosecutors, attorneys, notaries, academics and young lawyers

The mandate of the IRZ Foundation

On behalf of the Federal Government, the German Foundation for International Legal Cooperation supports partner states in reforming their legal systems and their judiciary. The IRZ Foundation was established in 1992 as a non-profit-making association at the initiative of the then Federal Minister of Justice Dr. Klaus Kinkel.

Main focus of the Foundation's work

In providing legislative consultation, we undertake discussions with experts, draft expert reports and assist in drawing up draft Bills. We promote the implementation of reform statutes, in particular through basic and further training of judges, public prosecutors, attorneys, notaries, academics and young lawyers, including within the framework of programmes from International Finance Institutions. In the seminars and symposia, as well as in training periods and guest visits to Germany, the main focus is on German and European law, supplemented by a cross-border exchange of experience.

In addition, the IRZ Foundation supports the partner states in approximating their national law to that of the European Union. This long-term process is continually

supported by suitable specialists, a process which has proven successful: Today, many of our partner states are continuing to develop their legal systems independently, and some are accession candidates to the EU.

Our partner states

Our work so far has mainly focused

- ⇒ the states of Central and Eastern Europe: *Bulgaria, Poland, the Slovak Republic, Slovenia, the Czech Republic and Hungary,*
- ⇒ the Newly Independent States of the former Soviet Union (NIS): *Belarus, Estonia, Georgia, Latvia, Lithuania, the Russian Federation, Ukraine,* and
- ⇒ the partner states of the Stability Pact for South Eastern Europe: *Albania, Bosnia-Herzegovina, Yugoslavia, Croatia, Macedonia and Romania.*

We are open to cooperation with other states.

Fields of law

As well as basic and further training, we support and advise in particular the development and establishment of the following fields:

- ⇒ democratic constitutional structures in line with the rule of law in the context of the European understanding of human rights,
- ⇒ providing a private and economic law foundation for private law activities and the economic exchange of goods and services,
- ⇒ public law context of entrepreneurial activities against the background of the lawfulness of the administration and the guarantee of the freedom of trade,
- ⇒ an independent, well-functioning judiciary, including all procedural law foundations, and
- ⇒ harmonisation of the national legal orders with European law.

The extensive competence

The comprehensive specialist basis, as well as the long-term commitment of our members and specialists, have proven their worth as crucial strengths of the IRZ Foundation. This enables us to assure rapid, flexible, coordinated support with no laborious bureaucracy and to maintain this support for an extended period.

The IRZ team consists of the executive officer, seven project leaders and 25 other highly-committed employees. In total, roughly 900 experts work on our projects, covering almost all fields of law. They come from Germany and other EU States, from the European Commission and from institutions with which we cooperate actively:

- ⇒ the legal and academic associations and chambers,
- ⇒ the judiciary and administration at Federal and Land level, and
- ⇒ academia.

The IRZ Foundation is supported by its membership and by a Board of Trustees, composed of personalities from the political, economic, administrative, scientific and legal professional associations in Germany. Many contribute their specialist knowledge to the project work of the IRZ Foundation.

Funding

To perform its tasks, the IRZ Foundation receives funding from several sources:

- ⇒ from the budget of the Federal Ministry of Justice,
- ⇒ from the Stability Pact for South Eastern Europe,
- ⇒ from European Union and World Bank project funds, and
- ⇒ from individual donations, membership subscriptions and money from the support association.

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**Moving Cases through the Courts Expeditiously and at Reasonable Cost,
Judge Ruediger Dietrich Tönnies, President of the Bremen District Court**

Procedural acceleration in German civil procedure

1. Preliminary statistical remarks

- A total of roughly 1.9 million sets of civil proceedings were pending at first instance in Germany in 2000, of which 1.5 million were before Local (District) Courts and 420,000 were before Regional Courts. Additionally, roughly 8 million sets of reminder proceedings were initiated.
- Roughly 4,500 judges were employed for this activity at first instance.
- No backlog of cases has occurred; equal numbers of cases have been received as have been dealt with.
- The average duration of proceedings before the Local Courts is 4.3 months, proceedings with a final judgment taking 6.5 months, while before the Regional Courts the average is 6.9 months, and with a final judgment 10.8 months.
- 30 % of proceedings are concluded by a judgment based on the defendant's acknowledgement, by a default judgment or by a waiver judgment, 10 % by settlement, 15 % by withdrawal of the action, 30 % by means of a judgment, and the rest by other means.
- The annual average workload for a civil judge in a Local Court is about 670 cases, and in a Regional Court roughly 180 cases.

2. Procedural provisions in accordance with the Civil Procedure Code (ZPO) aimed at expedition

The high number of cases concluded in an international comparison and the rapid conclusion of those cases is endangered by increasing workloads on the courts and by greater enforced savings in the public budgets, which is why fundamental amendments have been made to the civil procedure regulations. Basically, these are: The 1976 Simplification Reform (Vereinfachungs novelle) and the 2001 Civil Procedure Reform Act (Zivilprozessreformgesetz).

- Principle of expedited proceedings

The principle of expedited proceedings is one of the most important procedural principles in German civil procedure, in particular since the 1976 reform of civil procedure law. In combination with the principle of concentration which was expressed in many parts of the Civil Procedure Code, the legal dispute is to be concluded as rapidly as possible. Adjournments of the oral hearing are to be avoided as far as possible. The fastest possible completion of court proceedings may not however take place at the expense of any major reduction in the correctness of the ruling. It therefore becomes necessary to strike a suitable balance between the need for legal certainty and substantive justice (constitutional basis: Art. 2 para 1 of the Constitutional Code [GG] in conjunction with Art. 20 para 3 of the Basic Law; Art. 6 para 1 of the ECHR).

- Once the action has reached the court, it is submitted to the judge. He/she orders the ex officio service of the action without delay, section 271 of the Civil Procedure Code. He/she decides at this point whether an early first hearing is to be scheduled, section 275 of the Civil Procedure Code, or a written preliminary procedure ordered, section 276 of the Civil Procedure Code. The submission period is at least two weeks, section 274 of the Civil Procedure Code. An early first hearing is especially suitable in summary documentary evidence proceedings, after being preceded by legal aid proceedings if only legal issues are to be clarified or if an agreement in the form of a settlement appears possible. On the other hand, the early first hearing may also serve to clarify particularly difficult cases in advance.

If the judge does not set an early first date for an oral hearing, he/she orders written preliminary proceedings. He/she calls on the defendant to state within a two-week statutory period whether a defence is intended against the action or the cause of action is to be recognised, section 276 of the Civil Procedure Code. If the indication that defence is intended is not provided in good time, on request by the plaintiff a default judgment or a judgment based on the defendant's acknowledgement may be issued in written proceedings. Where appropriate, the defendant is to submit a defence within a further period of at least two weeks.

- Principle of concentration

As a rule, the legal dispute is to be dealt with in a single, comprehensively-prepared oral hearing (main hearing), section 272 of the Civil Procedure Code. For this the court must have the necessary preparatory measures taken ex officio; section 273 of the Civil Procedure Code. In particular, the judge may

- instruct the parties to add to their prepared written statements, and in particular may also set deadlines,
- obtain information,
- order the parties to appear in person,
- summon (expert) witnesses, and
- order the submission of documents.

If the parties do not comply with the conditions for preparation, they risk having their statements rejected as being late.

In the main hearing, the court introduces the state of the facts and of the dispute; the parties who appear as a rule are heard in person, immediately followed by the taking of evidence with renewed subsequent discussion of the state of the facts and of the dispute. The ruling should then be handed down in most cases.

- Judge's duty to investigate

In accordance with section 139 of the Civil Procedure Code, the judge must discuss the state of the facts and of the dispute with the parties in accordance with the factual and legal aspects and ask questions. He/she encourages the parties to submit statements in time and in full on all relevant facts and to submit relevant requests. The court does not have to investigate the facts ex officio, but is obliged to encourage the parties to make statements in full.

- Conciliation hearing, settlement

10 % of all sets of civil proceedings are concluded by means of a court settlement. This is an executory title in accordance with section 794 section 1 No. 1 of the Civil Procedure Code. Settling a legal dispute in an agreement between the parties is the declared goal of German civil procedure. It serves the cause of legal peace and the expedition of the case, since another instance is avoided. The court is hence to strive to achieve conciliatory

settlement of the legal dispute at every stage of the procedure, including regarding individual points of the dispute. After the 2001 civil procedure reform, the oral hearing must always be preceded by a conciliation hearing (exception: evident lack of prospects). The court may submit a proposed settlement prior to the oral hearing which the parties may accept by submitting a written statement to the court.

- Rejection of late submissions

In accordance with section 282 of the Civil Procedure Code, each party is to submit its means of attack and defence in such good time that it complies with careful procedural conduct in line with promoting the proceedings in accordance with the state of the procedure. Furthermore, the judge has the right to set the parties deadlines in the provision of documents in the context of their duty to cooperate. Means of attack and defence that are not submitted in good time may at the discretion of the court be rejected as late because of delay, with the consequence that they are not considered. In practice this is a very difficult provision, very frequently involving a collision with the legal duty to investigate; extensive case law examples.

- Default procedure

If a party that has been properly summoned does not appear at the oral hearing, at the request of the opponent, a default judgment may be handed down, sections 330 and 331 of the Civil Procedure Code. If the plaintiff defaults, the action is rejected, whilst if the defendant defaults, the court examines whether in accordance with the statement of the plaintiff, which is regarded as admitted, the cause of action is partly or wholly justified (convincing). To the extent of the conclusiveness, a – provisionally executable - default judgment is handed down, which may be challenged by means of an objection within two weeks of being served.

- Conclusion

Cooperation between the handling of the abovementioned procedures leads to effective running of the proceedings. It is a matter for the judge to define the precise structure running of the proceedings, but there is no official investigation! The material on which the proceedings are based remains the statements submitted by the parties.

3. Special types of proceeding

Reminder proceedings

The reminder proceedings (sections 688 to 703 d of the Civil Procedure Code) are to lead in the case of claims unlikely to be disputed to a rapid executory title with no oral hearing. This procedure is extremely effective. It was used roughly 8 million times in 2000. Irrespective of the amount of the claim, only the Local Court where the applicant has his/her place of residence is competent. The application to issue a payment order is to be addressed to the competent Local Court using a form which is the same across the country. The request must designate the parties, the court and the claim, and must contain a declaration that the latter does not depend on a counter service. If the preconditions are met, a payment order is issued calling on the opponent to meet the claim within two weeks of it being served, or to submit an objection within the same period. This takes place without an examination as to whether the claim in fact exists. If an objection is filed, for which there is no prescribed form, the court of reminder passes the legal dispute to the trial court if so requested. Regular civil proceedings follow. If no objection is submitted, a writ of execution is handed down on request which is also served on the opponent. The writ of execution is already provisionally executable since it is considered identical to a default judgment. It may be challenged by means of an objection within two weeks. This is also then passed to the competent trial court.

Judicial administration officers are competent to issue payment orders and writs of execution and to make sure that the formal preconditions are adhered to. The procedure is fully automated in many parts of Germany and is only actually processed by a judicial administration officer in exceptional cases. Plausibility checks are built into the system.

- Summary documentary evidence proceedings

In particular in the case of actions for payment, it is possible in accordance with sections 552 et seqq. of the Civil Procedure Code to file an action in summary documentary evidence proceedings if all the facts needed to back up the claim can be proved by documents. In this case, the taking of evidence is restricted to submitting documents and hearing the parties. The procedure is very fast and extremely effective. It makes sense if objections are anticipated from the defendant, but the appearance of the documents suggest that the claim is justified.

- Procedure at the reasonable discretion of the court

With values at dispute of up to €600.00, the Local Court may determine proceedings at the reasonable discretion of the court. Written witness statements, telephone questioning, etc., are possible. The main principles of these proceedings, which conform to the rule of law, are naturally to be adhered to. It becomes much easier to hand down judgments.

4. Digression: criminal procedure

- Order imposing punishment procedure

In criminal proceedings before a Local Court, the legal consequences of the offence may be established in the case of minor crimes by means of a written order imposing punishment with no main trial, should the public prosecution office so request in writing (sections 407 et seqq. of the Code of Criminal Procedure [StPO]). The public prosecution office files such a request if no main trial is considered necessary in accordance with the outcome of the investigations, for instance in case of a confession or where the evidence is clear. An order imposing punishment may set an administrative fine, a prohibition to drive, deprivation of the right to drive and prison sentences of up to one year if its execution is suspended on probation. The accused may submit an objection to the order imposing punishment within two weeks of it being served.

A total of almost 600,000 orders imposing punishment were requested in Germany in 2000, compared with roughly 850,000 charge proceedings with a main trial.

- Administrative offence procedure

Breaches of the law which are not criminal and hence where no punishment may be imposed are sanctioned as administrative offences, carrying an administrative fine in accordance with German law. These include virtually all traffic offences, as well as breaches of the administrative regulations. The principle of discretionary prosecution applies to the procedure. In small-scale cases, a cautionary fine may be imposed. Competence lies with the administrative authorities, which may carry out their own investigations and issue an order imposing an administrative fine. An objection to the Local Court is available as an appeal, while an appeal on a point of law may be made to a Higher Regional Court where appropriate against a judgment of the Local Court.

- Expedited proceedings

In suitable cases, the public prosecution office may file a request for a ruling to be handed down in expedited proceedings in criminal cases before a Local Court because the facts of the case are simple or the evidence is clear, so that a hearing may be carried out immediately. The summons period is 24 hours. The expedited procedure is safeguarded by the possibility of so-called main trial detention, section 127 b of the Code of Criminal Procedure, if it is to be expected that the main trial will take place within one week of apprehension.

Court staff

Courts are only able to deal properly with the tasks assigned to them if they have adequate structures and sufficiently well-trained staff. Here, for one thing a distinction must be observed between the tasks reserved to judges, and those which are to be undertaken by non-judicial staff. Irrespective of the functional division of tasks, however, one must endeavour to ensure that tasks are carried out in a manner that is as homogeneous as possible. The good cooperation between the various levels is a precondition for effective, rapid performance of tasks. Investigations have revealed that a major share of time delays, be it with judicial orders or rulings, are the result of irrational processing by what may be termed the downstream staff. In particular, a too high degree of diversification in the downstream work (guards, typists, registry, cost calculation and services which establish costs) is a disadvantage for rapid case processing. Particular significance attaches to the use of modern office technology, in addition to specialist training.

1. Judicial administration officers

For many years the courts of ordinary jurisdiction in Germany have been responsible for a large number of procedures which in other states are dealt with by administrative authorities. In the main these are guardianship, custody of persons of full age and committal cases, inheritance cases, matters of registration and those related to land registries (non-contentious jurisdiction). These matters, as well as a major portion of execution cases, including insolvency cases, are generally assigned to judicial administration officers.

- Judicial administration officers are civil servants of the higher intermediate service with life tenure, who carry out judicial administration tasks assigned to them by the Act on Judicial Administration Officers (Rechtspflegergesetz), in doing so make their own decisions and are subject only to the law.
- The work of a judicial administration officer is dependent on a preparatory service of at least three years as a candidate for the office of judicial administration officer, of which at least 18 months is spent taking a specialist academic course at a Technical College. The study periods specific to the

occupation are served in the focal areas of the tasks to be carried out by judicial administration officers in courts.

- Judicial administration officers decide on principle independently of instructions, but must submit business to the judge if they wish to derogate from a statement made by the judge or if there is a material connection to a case to be dealt with by a judge. He/she may submit the case to the judge if foreign law is to be applied.
- With the exception of execution, judicial administration officers are not competent on principle for matters of contentious jurisdiction. They may also not order measures entailing deprivation of liberty or other measures of encroachment which are subject to judicial reserve.

The use of judicial administration officers is very much adapted to the particularities of the German system. The use of specialist lawyers with training at a Technical College certainly seems to make sense where judicial capacity is scarce and typical tasks of non-contentious jurisdiction are undertaken by the courts, such as keeping registers. For the states in transformation, it does not appear to be so easy to train judicial administration officers because there is one thing that they are not, and that is judges' assistants.

2. Activity of the registry ("service units")

The court system in Germany has been tested at all levels in the past 15 years. Comprehensive investigations and comparisons with foreign models have led to extensive structural reforms, which have improved the effectiveness of the non-judicial areas (such as a Kienbaum investigation on Local Court Organisation).

- The courts are headed by Presidents, who are entrusted with service supervision of judges, judicial administration officers and the other staff, or Directors, who as a rule only undertake the service supervision of judicial administration officers and of the other staff. In addition to their administrative function, they must always also exercise judicial functions to a degree that is determined by the business schedule. As heads of the courts, the Presidents

or Directors are responsible for running them in a manner that is trouble-free, effective and responsive to citizens' needs.

- Presidents and Directors are assisted by a manager who heads the court registry in accordance with section 153 of the Courts Constitution Act (GVG). At the same time, he/she runs the court's administrative transactions on behalf of the President or Director.
- The core non-judicial activities are carried out in the registry, or more accurately, in the individual (sub-)registries. In the course of a comprehensive restructuring process, service staff are allocated to the judicial departments to guarantee that tasks are completed in full. These include:
 - collating and registering actions received
 - submissions to judges
 - implementing judicial orders
 - keeping records in sessions or after dictation
 - typing
 - creating official copies of rulings
 - costs
 - calculation
 - keeping statistics
 - contact with the public outside the oral hearing.

The implementation of tasks in one hand guarantees that the registry staff continually administrate and quickly process "their files".

- The new job description requires a high level of qualification. As a rule, a preparatory service of two years is required, ending with the examination for the intermediate judicial service. Specialist court employees and other employees from similar occupations with the same level of knowledge may also be deployed.
- The use of modern technology is a matter of course; special computer programmes exist for the respective areas. Some of the registers work fully automatically, as do reminder proceedings. Civil, family and criminal proceedings are dealt with using modern applications and databases. Voice recognition and online connections are increasing. Electronic files are being kept at model courts on a trial basis.

3. Execution

Fast justice is good justice, but only if the state's ruling is indeed followed by the possibility to execute that ruling without delay. In this sense, it is rather advantageous that the entire execution system is functionally allocated to the (Local) Courts. There are no separate execution authorities in ordinary jurisdiction.

- Execution related to tangibles, coercive execution in respect of surrender of moveables and immoveables, coercive execution by means of arrest

These tasks are assigned to bailiffs in Germany. The latter are subject to the service supervision of the head of the competent Local Court. As a rule, bailiffs maintain their own offices in the districts assigned to them and hold fixed consultations. Execution orders are given to them by the creditor or by the court office responsible for assigning work to bailiffs.

Bailiffs are civil servants of the intermediate judicial service who have undergone additional training after a long period working in the courts. In addition to their salaries they receive incentives and compensation for office expenses. This makes the work of a bailiff somewhat lucrative, thus guaranteeing rapid conclusion of the large numbers of cases received.

- Attachment of a debt/execution levied on moveables

The ruling on the pledging of receivables and the forced sale and receivership of property is a matter for the execution court (in functional terms the Local Court). The tasks are transferred to judicial administration officers. This guarantees a high level of specialist competence for the proper execution of judicial titles.

- Procedure to submit an affirmation in lieu of oath

If pledging is fruitless, the debtor must on request by the creditor submit a complete list of his/her property and must affirm the correctness of this information to the bailiff in lieu of oath. If the information is refused, the debtor may be arrested on request by the creditor. The execution court of the Local Court keeps a list of individuals who have submitted affirmations in lieu of oath or in respect of whom detention has been ordered. The list serves to inform creditors entitled to execute. The entry has vital effects on the debtor's credit

worthiness, so as a rule the debtor uses all means available in his/her attempt to prevent the entry being made.

4. Court business schedule

In accordance with Art. 101 para 1 second sentence of the Constitutional Code (GG), no one may be removed from the jurisdiction of his lawful judge, meaning that in general it must be established from the outset which judge is competent to deal with specific types of circumstances. In giving shape to this constitutional principle, the judges themselves distribute the business they are to deal with via a Board elected by them in the framework of judicial self-administration. Personal composition and responsibilities must be regulated in view of the basic right to one's lawful judge to ensure that no one may be removed from the judge appointed to their case by virtue of administrative measures.

In the business schedule, the Board distributes the judicial business among the individual panels, chambers or departments of the court prior to commencement of the business year for its duration, and determines the members of the individual panels of deciding judges. In the event that a judge is prevented from attending, deputies are also appointed. A change is only permissible during the business year because of overburdening, a transfer or permanent hindrance of a judge.

5. Judicial statistics

Differentiated judicial statistics are kept for all judicial work in Germany. These permit the quantity of the cases received, time taken by the proceedings, the course of the proceedings, the outcome of the proceedings, and the duration of the proceedings at Federal, Regional and Higher Regional Court district and court level to be recorded. These statistics are a valuable tool assisting us in the evaluation and comparison of the performance of the courts. For roughly two years, for instance, in Bremen comparisons have been carried out between the courts of individual Federal Länder, and between individual courts. Best practice comparisons lead to an incentive for courts with poorer performance. The statistics make it possible to develop general performance standards and structures.

Judicial statistics are also of inestimable value in the service supervision of judges/judicial administration officers and registries. It has become customary at many courts for the monthly reports of the respective department to be given to the judges to take note so that they can assess their performance themselves. Attention to conduct in concluding cases and the duration of the proceedings also makes it possible to counter poor trends in good time. Furthermore, the statistics form an excellent basis for the annual business distribution.

By using consultancy firms, an attempt is being made at present to ascertain by means of analytical methods the average processing times for all business occurring in the courts. Parallel with this, consultancy firms have been commissioned to develop guideline times for the service area.

BREMEN DISTRICT COURTRef. No: C /200 Orderin the case of
against_____
represented by:_____
represented by:

1. Serve statement of claim with following authenticated letter and duplicate of No. 3 to defendant (counsel) (form 252a):

Service of the action

(caption)

Dear ...,

Please find enclosed a duplicate of the action received by the Local Court on .

If you do not consider the claim asserted in the action to be justified and intend to contest the action, you are herewith requested to indicate this within the statutory period of **two weeks** from service of the action. Arrival at court is relevant for meeting the deadline. **If you do not make a statement within two weeks of this service, the court may hand down a default judgment against you with no oral hearing if the party bringing the action so requests.**

If you have notified in good time that you do not consider the claim to be justified, within a further period of weeks a written defence to the action (in triplicate where possible) must be received by the court. It must contain **everything** you can submit in your defence; in particular you must assert objections against the admissibility of the action within this period. You must provide a **detailed** statement on **all** claims contained in the action. You may have a record taken of this statement regarding the action at the registry of any Local Court. Please submit any documents, pieces of writing, receipts, slips, etc., which serve your defence when defending against the action, where appropriate as photocopies.

If you miss the deadline to respond to the action, as a rule you will have foregone the opportunity to defend yourself against the action at all. You hence run the risk of losing the case simply as a result of missing this deadline.

If you state within two weeks of service of the action that you consider the claim asserted to be justified in full or in part (main claim, interest, costs, etc.), a corresponding **judgment based on the defendant's acknowledgement** may be handed down against you with no oral hearing. **If the entire proceedings are concluded by means of a judgment based on the defendant's acknowledgement, the court costs are reduced to one-third.**

Yours sincerely,

2. Letter to plaintiff (counsel) with duplicate of No. 3.: (form 252b_276)

In legal dispute

the court has ordered written preliminary proceedings (section 276 of the Civil Procedure Code). The court has set in addition to the statutory period in accordance with section 276 subsection 1 of the Civil Procedure Code a further period of.....weeks to make a statement.

Do you request that a judgment based on the defendant's acknowledgement should be handed down if the defendant does not indicate an intention to defend?

3. Information from the court to the parties (counsel):

4. Resubmission two weeks after service

Bremen,

Local Court Judge

Paying for Justice, *Judge Ruediger Dietrich Tönnies*, President of the Bremen District Court

Costs and expenses of court proceedings - Funding of the court system

Access to the courts, and hence the administration of justice, depends to a not inconsiderable degree on the fees and expenses it entails for those concerned. On principle, in civil proceedings, the losing party must pay the costs of the legal dispute, in particular the cost incurred by the opponent (section 91 of the Civil Procedure Code [ZPO]). This always and at all instances includes the statutory fees and the expenses of the lawyer of the winning party. If a party partly wins and partly loses, as a rule the costs are spread proportionately (section 92 of the Civil Procedure Code). These cost-related consequences of civil proceedings which are ruled on in the judgment or ruling naturally exercise considerable pressure on the parties to think twice about initiating or opposing an action.

In criminal cases, the costs of the proceedings are to be borne by the accused to the extent that they are incurred by the proceedings in respect of an offence in respect of which they are convicted. Partial acquittal leads to the costs incurred in this context being imposed on the state coffers. (section 465 of the Criminal Procedure Code).

In matters of non-contentious jurisdiction, in general the party bears the cost of the proceedings which initiated the court's activity (section 2 of the Costs Ordinance [KostO]).

Court costs

- Court costs are levied in accordance with the Court Costs Act (Gerichtskostengesetz). These costs are payable to the state, in contrast to out-of-court costs, in particular the fees of the lawyers. The amount as a rule depends on the value of the item under dispute, which is set by the court. This is not difficult in the case of actions for payment, but with other actions and with non-property disputes, the circumstances of the individual case create the determining factor. The court has a broad margin of appreciation in such cases. In some cases, the Act presumes standard values at dispute, such as with divorces (last

three months' income). The establishment of the value is determined by means of a ruling that may be challenged by an objection.

- In essence, individual fees emerging from a costs list are payable for the individual procedural steps in civil proceedings. These provisions incorporate monitoring elements, providing an incentive for the parties to conclude proceedings quickly. Whilst fully-implemented civil proceedings as a rule cost three times the cost rate, the fee is lowered to the single rate if the action is withdrawn, if a judgment is handed down based on the defendant's acknowledgement, if grounds for the judgment are waived and a settlement is concluded. The Act provides for similar reductions for appeals on points of fact and law.
- Only a half fee is payable for the reminder procedure, including writs of execution.

The amount of the court fees emerges from a digressive table. The loss of an action with a value at dispute of € 10,000 burdens the plaintiff with two-times-three fees at € 196 each, in other words a total of roughly € 1,200, while an action with a value at dispute of € 100,000 incurs a maximum of € 4,800. Fees in the lower area do not cover costs for social reasons, but have been considerably increased in recent years.

As a rule, the courts do not act until the fee payable for the proceedings has been paid. (Expert) witnesses are not summoned as a rule until fee advances have been paid.

- In criminal proceedings, the extent of the punishment handed down in the sentence determines the amount of the court costs.

Lawyers' fees

The lawyer's fee is payment for the lawyer's work. The fees are regulated in a Fees Code for Lawyers (Gebührenordnung für Rechtsanwälte). The amount in civil proceedings is also in line with the value at dispute set by the court.

For a lawyer's work in civil courts separate fees are incurred for the general running of the proceedings, for taking evidence and hearing the case before the court. The structure of the lawyers' fees has been used several times in the past in order to expedite proceedings. If a matter is settled out of court, there is for instance a one-and-a-half settlement fee. Lawyers' fees are much higher than court costs. With a value at dispute of €10,000 as a rule €1,500 and with a value at dispute of €100,000 roughly €4,000 are incurred in lawyers' fees per party represented by a lawyer, an amount which has to be paid twice if costs are to be refunded. The lawyer may agree a higher fee with the client in writing. In such a case, however, if they should win, the client can only demand that the opponent should pay the part covered by the Fees Code.

- In criminal cases, framework fees apply depending on the competence of the court, the significance, extent and difficulty of the case, taking account of the client's income and assets. Here too the consideration of the Fees Code may have an expediting effect.

Legal aid/court appointment of counsel

- Legal aid
is full or partial exemption from legal costs (court fees and expenses) for parties who are on a low income. It may be granted in civil proceedings, matters of non-contentious jurisdiction and in execution proceedings. It is granted if the party is unable or only partly able to meet the costs from their income or assets, possibly only in monthly instalments. Ability to pay is initially to be determined by the judge, following a relatively complicated procedure. Where appropriate, up to 48 monthly instalments are to be determined in order to meet the court costs. Then, the court
 - examines after hearing the opponent whether the intended pursuance or defence of rights has sufficient prospects of success (section 114 of the Civil Procedure Code). The court may indeed summon the parties prior to the oral hearing if lodging appears possible. This preliminary procedure already ascertains the prospects of proceedings in a summary fashion;

- proceedings which have no prospects of success from the outset cannot be carried out at the expense of the state. In family cases, certain stages of the proceedings are as a rule already moved into the legal aid examination procedure (for instance in matters of maintenance).

If legal aid has been partly or totally granted, the party is exempted from court costs; if representation by counsel is compulsory, a lawyer is appointed. This lawyer has a right to payment from state coffers, but at special, lower rates.

- Obligatory counsel

In criminal proceedings, the court appoints defence counsel if such appointment is prescribed for the main trial once the bill of indictment has been served (section 140 of the Criminal Procedure Code) and if the accused does not yet have counsel. This is frequently the case if the accused is assetless. Defence counsel is obliged to accept the case. Again, the fees of obligatory counsel are lower than those of optional counsel. They are payable from state coffers.

Budgetary independence of the courts

The expenses of the state coffers in legal matters (fees for obligatory counsel, fees for appointed lawyers in civil matters, fees to maintain guardianships, etc.) have risen over the past years in an unjustifiable manner. At the same time, public funds for judicial budgets have been considerably reduced. This has led almost all Land administrations of justice in Germany to undertake additional efforts to achieve savings in the courts. As a result, the courts have been given their own budgets in most Länder, and they have to be more flexible and to make do with the estimates contained in these budgets. Since the accrual accounting system in the judicial system is based on uniform benchmarks in all Federal Länder, this permits a comparison of the court cost structures in the individual Federal Länder. Considerable reservations have been expressed about this system in the past from a judiciary concerned that it may affect their independence. Ultimately, however, it is unobjectionable as long as the judge in question has sole responsibility in the

framework of their powers to head the proceedings and set the procedural costs themselves to the necessary degree.

Ascertaining the costs has already led to notable results which in turn have led to legislative cost-reduction measures - in cooperation with the Land Courts of Audit (e.g.: proceedings for custody of persons of full age).

Proper cost calculation is supplemented by the district revisers located in the Regional Courts, who have a separate right to investigate matters concerned with cost.

BREMEN DISTRICT COURT

Ref. No.: C /200

O r d e r

**1. Ruling in the case of
(small caption)**

_____ against _____
represented by: represented by:

Legal aid is granted to

- and lawyer who is willing to defend

in Bremen / is appointed with prior consent under the conditions applying to lawyers admitted to the trial court (section 121 subsection 3 of the Civil Procedure Code).

The court may rescind the grant of legal aid if

1. the party has deceived the court in respect of preconditions relevant to the grant of legal aid by incorrectly describing the circumstances of the dispute;
2. the party has provided incorrect information intentionally or with gross negligence regarding their personal or economic circumstances;
3. the personal or economic preconditions for legal aid did not pertain; in this case, rescission is ruled out if four years have passed since the ruling with force of law or conclusion of the proceedings by other means;

The court may amend the ruling on the payments to be made if major changes have occurred in the personal or economic circumstances relevant to legal aid. On request by the court, the party is to declare whether a change in circumstances has occurred. A change detrimental to the party is ruled out if four years have passed since the ruling with force of law or conclusion of the proceedings by other means.

2. Official copy of 1.) to parties (counsel) without official form (form 11a)

3. Please note further instruction on p.

4. Official copy of the order filed in legal aid record book

Bremen,

Local Court Judge

**Performance Standards, Legal Education and Working Conditions for Judges,
Judge Rainer Voss, Presiding Judge at the Duesseldorf Regional Court and
Honorary President, German Judges Association**

The courts in Germany work well in most cases. The average duration of proceedings in civil matters at first instance from receipt of the action until the final ruling in a Local Court is 4.3 months and in a Regional Court 6.9 months, in criminal matters at first instance the time from receipt of the charge until the final ruling in a Local Court is 3.9 months and in a Regional Court 6.2 months.

The confidence of the population in the administration of justice is satisfactory. Judges have a good reputation.

The reasons for this are:

I. Good, thorough legal training and further training. This happens in four stages:

- 1) University studies (average five years)
- 2) preparation period (two years)
- 3) period as probationary judge of at least three, maximum four years
- 4) ongoing professional development

II. Selection of judges

The manner of appointment to the office of judge is regulated differently in the Länder and at Federal level.

A common feature of all selection procedures in the Länder is that only the best have a chance of being appointed as a judge on probation.

The same principles largely apply to promotion to a higher judicial office.

III. Regular evaluation of performance

Judges on probation are evaluated by the President of the court a total of three times within the first three years. If they prove to be unsuited for judicial office, they are dismissed. Both dismissals and evaluations may be examined by a court at the request of the person dismissed.

Judges with life tenure are evaluated every four years until reaching the age of 49. This evaluation, inter alia, determines whether they are able to successfully apply for a higher judicial office.

The evaluation is to include at least the following characteristics:

- a) general abilities, in particular
 - general knowledge
 - ability to assimilate information and mental agility
 - ability to conceptualise and reach a judgment
 - ability to express themselves
 - social understanding
 - particular interests and experience
- b) specialist skills, in particular
 - general and specialist legal knowledge, as well as the ability to apply it
 - feeling for which legal solution is correct
 - ordering the facts of the case
 - willingness to take decisions
 - ability in running the hearing
 - statements in collegiate court
 - conduct towards those concerned by the proceedings
- c) personal characteristics, in particular
 - awareness of duty
 - willingness to work
 - thoroughness
- d) physical strength, in particular
 - general state of health
 - resistance to stress
- e) social conduct, in particular towards colleagues and subordinates.

The evaluation is to be concluded with a summarised appraisal of skills and performance.

IV. Working conditions

In general, the working conditions are good. Material equipment and staffing depends on the budget, which in turn is approved by the responsible Parliament. Computer equipment is available in all courts. The court buildings are mostly in good condition. Non-judicial staff are well trained, in particular judicial administration officers (civil servants with life tenure and legal training) are a

major element of the administration of justice.

Working hours for all staff - with the exception of judges - is 37 1/2 hours in Western Germany and 40 hours in Eastern Germany.

Judges have no fixed working hours. They themselves determine when and where they work.

Remuneration of judges and judicial administration officers is satisfactory. All have 30 working days' holiday.