

Second Study Commission

Civil Law and Procedure

62nd Annual Meeting of IAJ – Astana (Kazakhstan)

PROBLEMS, LARGE AND SMALL,

IN THE FINANCING OF LITIGATION

Report for Germany

1. Who incurs the costs of civil litigation in your jurisdiction?

At the end of a civil procedure, its costs (court fees, expert and witness costs as well as attorney fees) have generally to be paid by the unsuccessful party. In case of partial prevailing and unprevailing, the costs will generally be divided in the ratio of the prevailance. The court determines the amount of costs to be paid from the unsuccessful (or less successful) party to the other by a separate order (Kostenfestsetzungsbeschluss). However, in certain kinds of procedures as in labour law and in homeowners disputes the costs will be borne by both parties regardless of any prevailance.

The amount of the court and lawyer fees depends on the value of the claim at stake. These fees are determined in the Statute on Court Costs (Gerichtskostengesetz) and the Statute on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz). For social reasons, the fees are limited in certain cases as in family and in rental law procedures.

However, the claimant generally has to advance the court fees before the beginning of the procedure at his risk to obtain a reimbursement in case of his prevailance. Usually, his lawyer will ask for such an advance as well.

2. Are there problems pertaining to civil litigation funding in your jurisdiction?
3. What resources, if any, are available to litigants in order to address financing litigation issues in your jurisdiction?
4. Are litigation funding agreements permitted in your jurisdiction? and
5. If so, how are such agreements regulated or otherwise controlled?

Civil litigation funding is not legally restricted or controlled in Germany. Introduced in 1998, it is nowadays a well-established business offered by quite a number of companies. However, these companies usually require a minimum litigation value of about 50.000 € and reasonably good success chances. In case of prevailance, the funding company will obtain a part of the amount awarded, usually at least 10 %, depending on the funding agreement.

Further ways to finance a civil litigation are

- legal aid, which is granted by the court in case of lack of sufficient ressources and sufficient prospects of prevailance (comp. Art. 47 (3) of the Charter of Fundamental Rights of the European Union: *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*; comp. Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes); legal aid covers only the court fees and the legal fees of the attendant's lawyer;
- legal protection insurances, if contracted before the emergence of the conflict;
- since 2008 the arrangement of success fees ("no foal, no fee") with the lawyer. Such an arrangement is restricted to very limited circumstances, i.e. if the lawyer's client would otherwise be prevented from pursuing his claim for economic reasons. The compliance with these conditions is supposed to be controlled by the bar association.

Presiding Judge at the Court of Appeal of Karlsruhe