Second Study Commission

Civil Law and Procedure

2018 Questionnaire

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STRATEGIES IN EFFECTIVE CASE MANAGEMENT

Answers of the German Association of Judges (Deutscher Richterbund, DRB)

submitted by

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1. Can case management be used effectively in civil litigation matters in your jurisdiction?

   Yes, albeit there is room for improvement (see question 5). The German Code of Civil Procedure (ZPO), a federal code, provides the rules which are binding for all court proceedings in civil law (special procedures apply for family law and related fields of law). The ZPO does not foresee “case management” as a system. Yet it contains provisions prescribing a certain order of procedural steps courts are required to follow in any civil proceeding. While the ZPO was enacted in 1879, it has been modified frequently until today in order to incorporate modern requirements to civil lawsuits while maintaining its basic outline. The ZPO contains several tools that enable – as well as require – courts to conduct proceedings in a timely manner. These include, but are not limited to:

   - the possibility to decide cases of low amounts in dispute (max. 600 €) without an oral hearing unless requested by the defendant; such cases may be decided by an abbreviated written judgement which contain the main legal reasons for the decision, but no additional presentation of the facts of the case,
- the obligation of all courts to work towards an amicable settlement of a case at any stage of civil proceedings,
- the possibility to refer the case to specialized mediation judges (condition: if all parties to the lawsuit agree),
- the possibility to conduct written pre-trial proceedings which may result in an abbreviated judgement by default (condition: if defendant does not react to formal submission within a certain timeframe),
- the possibility to decide by abbreviated judgement by default (condition: if one party does not appear at an appropriately scheduled oral hearing),
- the possibility to reject certain statements of facts as delayed (condition: if the statement is made after a certain deadline issued by court, unless the delay is sufficiently excused),
- the possibility for appellate courts to dismiss an appeal by written order without an oral hearing (condition: if all members of the court are unanimously convinced that the appeal does not have any chances of being successful, that the legal questions of the case do not have any fundamental significance, that no appeal judgement is needed in light of the development of the law or in order to ensure consistent adjudication, and that no oral hearing is needed); the parties must be heard before issuing such an order, appeal to the State or Federal Supreme Court against such an order ("Revision") may be applicable.

Besides this legal framework provided by the ZPO, courts are neither bound nor supported by specific case management tools. Specific pre-trial conferences, for example, are not foreseen by the ZPO. Judges are free to develop their own strategies in order to handle a specific case efficiently in accordance with the provisions set out by the ZPO.

Electronic case management systems replacing paper forms exist to a certain extent, but electronic files are not yet commonly introduced in German civil courts. Pilot projects are being conducted, but are encountering numerous practical difficulties (e.g. in terms of data protection, interoperability of different IT systems all over Germany, insufficient IT user support etc.).

2. Are there rules or guidelines for the use of case management in civil litigation in your jurisdiction?

The only rules which are actually binding for courts are set out in the ZPO (see above question 1). In a practical manner, informal recommendations and trainings on how to handle cases as efficiently as possible are provided in most German states.
3. What are the advantages or disadvantages of the use of case management in your jurisdiction?

*The ZPO contains several tools which are helpful and valuable in structuring civil proceedings in a timely manner in order to deliver justice in due time. Due to the instruments mentioned above (question 1), the average duration of a civil proceeding is relatively short in Germany. The advantage of not having too many fixed rules for case management is that the legal provisions leave a lot of flexibility to judges in terms of how they handle an individual case. Another advantage is that the ZPO clearly encourages parties to settle disputes amicably. Since judges are even required to enhance amicable settlements at any stage of civil proceedings, settlement rates are quite high in Germany. Disadvantages of the German system might be that there is much room for lawyers and parties to delay the proceedings by applying for extensions, postponements of hearings, and by challenging a judge on the grounds of bias. The latter requires the judge in question to halt the proceedings until another judge has decided upon the challenging application, and if this decision is appealed against, until the appellate court has decided. This tool is widely used especially in clear cases by defendants not willing to pay their debts in order to considerably delay the judgement. A discussion of possible changes to the ZPO in order to ensure more efficient civil proceedings has been taking place for some years already, but has not yet resulted in significant changes ultimately.*

4. Who incurs the costs of the use of case management in your jurisdiction?

*Aside from filing fees which must be paid when initiating any civil court proceedings in Germany, there are no specific costs of case management.*

5. Can the use of case management in your jurisdiction be improved?

*Yes. Some changes to the ZPO could result in more efficient case management. It would be desirable to restrict the possibility to apply for deadline extensions. Furthermore, the current system allows parties to reply to any new fact introduced by the other party unless the latter was delayed, which may result in a “ping pong game” if every party is keen on having “the last word”. It could be considered to restrict these possibilities. Furthermore it is widely regarded necessary to create a more efficient procedure when challenging a judge on the grounds of bias. Current legislative discussions include the proposal to make this a question of appeal, instead of forcing a judge to halt the entire proceedings up to several months. Eventually, the introduction of electronic filing makes efficient and intuitive electronic case management systems utterly desirable.*