

Digitisation and civil procedure in Germany

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Thank you for providing an excellent overview of the situation in Germany regarding digitisation. It was informative to get a glimpse of how the German civil procedure system is changing during and after the pandemic. Below, I have one or two ideas about issues related to virtual court proceedings on which I would like to ask Prof. Stadler's assessment or opinion.

South Korea has provisions for virtual court hearings. The Korean Civil Procedure Act was amended on August 8, 2021 to provide for the holding of pre-trial, interrogation, and hearing sessions through relay facilities such as video or by using Internet video facilities (Article 287-2 of the Civil Procedure Act). However, in order to conduct virtual court hearings for witnesses and experts located outside Korea (hereinafter referred to as "international virtual court hearings"), an international legal basis is required, and Korea has also adopted the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (hereinafter referred to as the "Hague Evidence Convention").

Since direct examination of witnesses is the most desirable and reliable method of evidence, it might be expected that judges and parties would prefer to examine witnesses in person, even in international virtual court hearings. However, there is currently a split in national practice as to whether this should be permitted and, if so, on what grounds. In Germany, it is understood that the judiciary refrains from refusing requests for international virtual court proceedings from other EU countries on the basis of the Hague Evidence Convention and the European Regulation on Evidence Taking.

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I wonder if there is a way to interpret the fact that parties or witnesses located abroad participate in hearings or witness depositions by virtual methods from embassies, diplomatic missions and/or consulates near their location, etc., not as an exercise of the court's jurisdiction abroad, but as an act that taking place within the extended territory of the country holding the trial, by applying concepts such as territorial limits of jurisdiction (although there would be limitations by the Hague Evidence Convention, etc., if the courts or offices of other countries were used instead of the embassy of the host country). Wouldn't it be fair to say that a trial held in the country where the court is located should still be considered a trial in the host country, even if the parties or witnesses are participating by virtual methods from another country? I think this interpretation would not only make it free to the restrictions such as the Hague Evidence Convention or the European Regulation on Evidence Taking, but would also be a way to jump-start international virtual court hearings by more actively applying the national laws of the host country.

On the other hand, even now that the pandemic situation is over, the need for (international) virtual hearings seems to remain, as it will avoid unnecessary travel costs for parties and witnesses, and it will contribute to the speed and efficiency of proceedings by providing an easy and inexpensive way for courts to communicate directly with parties/witnesses abroad or at a distance. Such arrangements will also allow for a high degree of responsiveness to unexpected situations that may arise in the future (such as a second pandemic). While much work remains to be done on the technical side, we believe that efforts to perfect (international) virtual court hearings will continue to be necessary. I wonder whether legislation requiring courts and key government agencies, and where possible embassies, missions and/or consulates, to have dedicated courtrooms for (international) virtual court hearings would be a good idea in the long run.