

Comments and Questions on Prof. Dr. Astrid Stadler's Lecture
on Digitisation and Civil Procedure in Germany

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In both Germany and Japan, the digitisation of civil litigation is currently underway. In Japan, a significant progress was made with the amendment of the Code of Civil Procedure last year, and from 2026 at the latest, when the amended law comes entirely into force, the full digitisation of court records will be achieved and online filing will be mandatory for professional legal representatives. Professor Stadler's lecture was very interesting in that it provided a detailed overview of the latest developments in Germany and showed that they are basically going in the same direction as in Japan. At the same time, however, her lecture showed that in Germany, several issues which have not yet been fully examined in Japan are already being discussed. In particular, the Bavarian pilot project on joint documents, the proposal for fully virtual hearings and the related debate on how to guarantee the publicity, as well as the discussion regarding virtual court hearing in a cross-border setting are of great interest. The following questions concern mainly these aspects.

1. Pilot project on so-called "basic document"

I understood that the main function of the so-called basic document was to reduce the burden of judges through providing basis for the fact part of judgments as well as to discourage parties from submitting overly lengthy documents. Similar concerns regarding overly lengthy pleadings have been expressed also in Japan and the project's objectives are understandable. However, it is not clear whether the form of jointly prepared documents is the best way to achieve these objectives. For example, the judge could encourage parties to submit, separately and not jointly, a very concise summary of their arguments, which could form the factual allegation part of the judgment. Thus, I wonder if there is any discussion in Germany about such alternatives.

2. Publicity and orality of the proceedings

In Japan, even after the latest amendments of the Code of Civil Procedure, the premise that judges must be present in the courtroom even in case of online hearing and there are so far no concrete plans for a reform to introduce fully virtual hearings, in which the court is no longer present in the courtroom. Like in Germany, the major challenge would be how to satisfy the constitutional principle of publicity. However, there are some differences between Germany and Japan with regard to the underlying procedural rules. For example, in Germany, sec 128 para 2 CPC provides that as far as the parties give their consents thereto every three months, the court may give a judgment without hearing oral argument at all, a rule that Japanese law doesn't know.

Based on this rule, then, the following question may arise: If parties may agree to avoid oral hearings, thus eliminating the publicity in favour of a fully written procedure (and given that the provision does not violate the requirement of European Convention on Human Rights), why can't they have a fully virtual hearing without public access, as long as they so agree?

3. Online communication in cross-border setting

If, as suggested in the lecture, a strict position with regard to the attendance in virtual hearings from outside the country should be supported, I wonder if we should also consider that online applications from abroad or online service of documents on parties located abroad as problematic, entailing an infringement of foreign sovereignty. I would appreciate very much to know if there are any discussion on these points in Germany.