

Digitisation and civil procedure in Germany

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I learned about the recent developments in electronic litigation and video-conference trials in Germany from the speaker. The digitization of litigation and the increased use of video-conference trials due to the COVID-19 pandemic have been quite impressive. I believe that most countries are facing similar situations. I intend to provide a brief overview of the status of electronic litigation and video-conference trials in Korea and offer some comments on the issues raised by the speaker to facilitate our discussion.

1. Electronic Litigation in Korea

In Korea, efforts to promote electronic litigation, which aims for a paperless court system, began in March 2010. As a result, electronic filing became possible for all cases except criminal ones starting in March 2015. As of 2022, approximately 97% of all civil cases are filed electronically, and this number is rapidly increasing as most lawyers prefer electronic litigation. However, in Korea, electronic litigation cannot be imposed on the opposing party unless they agree, with the exception of government agencies and local authorities, who are mandatory users. As of 2022, only 20.7% of electronic litigation cases proceed entirely electronically, while the rest involve paper document service to the opposing party (see Table 1). This inconvenience is considered transitional, and currently, all litigation records are electronically stored.

2. Video-conference trials in Korea

Initially, video-conference trials were conducted by establishing remote facilities for court proceedings. However, due to the COVID-19 pandemic, participants such as parties and witnesses can now join trials via internet connections from their respective locations. Thanks to the infrastructure of electronic litigation, the courts established video conference rooms (virtual courtrooms) in all trial divisions (2,946) across the country using the "VidyoConnect Program" on April 4, 2021. Subsequently, with the amendment of the KCCP on August 17, 2021 (effective from November 18, 2021), not only preparatory hearings but also trial hearings can be conducted by video-conference trial upon the request or consent of the parties (witness examination can also be done at the court's discretion).

3. Hybrid Video-conference trials and Methods of Publicizing

(1) Implementing the principle of open trials in video-conference trials may pose challenges. Fortunately, during the pandemic in Korea, there was no lockdown, and judges conducted trials in the courtroom while some or all parties or witnesses attended remotely via video. Therefore, there were no concerns about violating the principle of open trials. Interestingly, even after the social anxiety caused by COVID-19 largely subsided as of August 2023, the number of video-conference trial requests continues to increase (see Tables 2 and 3). Lawyers are increasingly requesting video-conference trials, especially in cases where they believe there is no need to physically attend trials in distant locations. Moreover, a recent decision by the appellate court (Gwangju Appellate Court, Decision 2022RA1116 on October 20, 2022) acknowledged that video-conference trials are also a means of realizing the constitutional right to access a trial, and it deemed it possible to appeal the decision to dismiss the application for video-conference trials.

(2) There may be some controversy over whether a hybrid video trial, in which one party appears in person and the other party appears via video, is permissible in video-conference trials. Currently, hybrid video trials are being conducted in Korea at a significant rate (see Table 3). The presenter expresses critical opinions on this type of trial, and I largely concur with her views. However, it is essential to carefully consider whether to allow this type of trial.

(3) The primary challenge arises when it is not possible to hold a video hearing at the courthouse. According to Art. 73-4(2) of the KCCP, it is stipulated that the hearing shall be broadcast in a public place in the courthouse or on the internet in a manner determined by the Director of Supreme Court Administration. The presenter points out issues with both of these methods, and I generally agree with her assessments. However, some people may insist that in the case of the former, attending a civil trial in an open courtroom or observing the trial proceedings through video in that courtroom is essentially the same. Nonetheless, there are significant concerns in Korea regarding the latter method—internet broadcasting that can be accessed by anyone and potentially identifies the trial participants. I believe that we should strive to find technical solutions to minimize human rights violations of trial stakeholders without compromising the principle of open trials. I anticipate that the presenter's identification of these problems will be greatly beneficial.

Table 1]¹

Year \ cases	Total Cases	E-filing case	Mutual agreement case	Mutual agreement rates
2012	1,044,928	389,823	13,821	3.5%
2013	1,095,915	476,718	27,185	5.7%
2014	1,136,935	610,620	46,438	7.6%
2015	1,006,592	611,550	69,902	11.4%
2016	973,310	641,436	81,062	12.6%
2017	1,017,707	731,737	86,798	11.9%
2018	959,270	740,931	111,536	15.1%
2019	949,603	779,009	122,676	15.7%
2020	926,408	844,849	135,726	16.1%
2021	892,607	852,067(95%)	168,980	19.8%
2022	829,897	805,064(97%)	167,178	20.7%

¹ This data is based on data extracted from the Judicial Yearbook published by the Supreme Court of the Republic of Korea.

Table 2] Video-conference monthly accumulated cases(Video-conference date and interrogation date)²

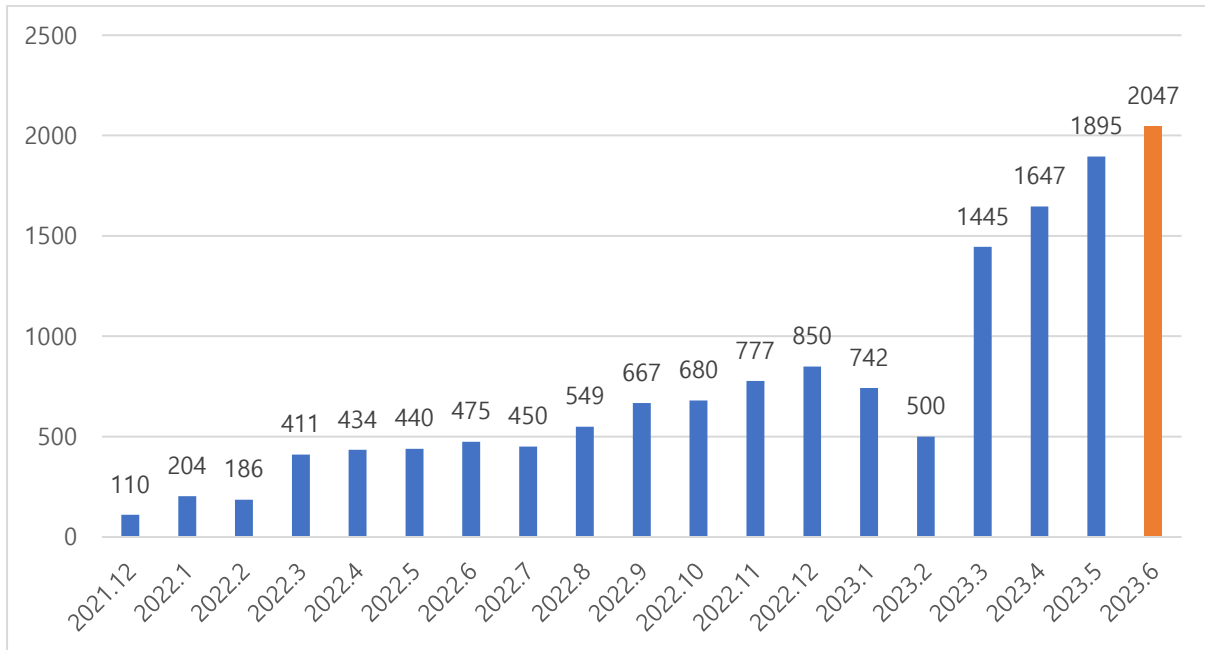


Table 3] Accumulated Video-conference cases(Dec. 2021-June 2023) (14,527)

	Video-conference pre-trial & trial date				Interrogation date		
	one-sided internet connections	mutual internet connections	remote facilities by court	total	internet connections	remote facilities by court	total
cases	4,004	8,276	1,343	13,623	108	796	904

² Korean Supreme Court Release (Aug. 21. 2023).