



Digitisation and Civil Procedure in Germany

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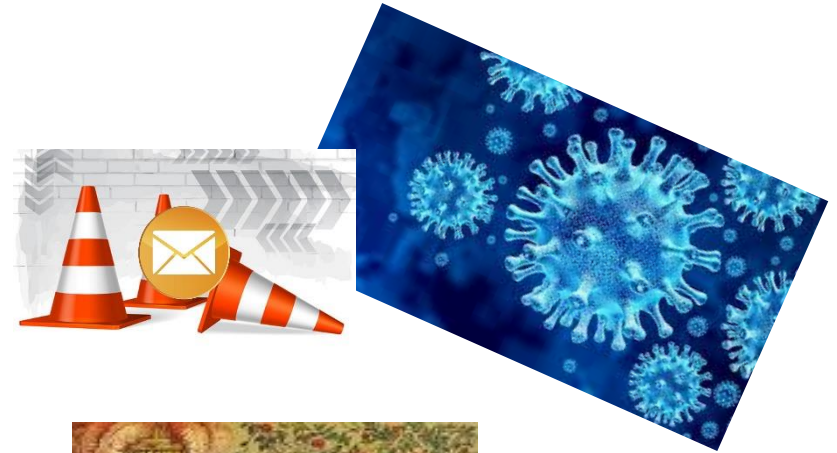
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I. Introduction

- Standard of digitisation in Germany quite low compared to international standards
- COVID19 pandemic showed that schools, universities etc. had difficulties to switch to efficient online tools
- Digitisation / Civil Procedure
 - gap between legal provisions and situation in courts
 - Lack of electronic equipments (hardware & software)
 - Virtual court hearings enshrined in CPC since 2002, but not used in practice until COVID19 pandemic
 - Electronic communication not fully implemented



„Sleeping Beauty“
awakens

II. Electronic communication between courts & lawyers

- provisions enacted in 2013, came into force step-by-step 2014-2022
- since 2018: lawyers, notaries, etc. must be accessible for electronic service
- since January 2022: electronic submission of pleadings etc. mandatory for lawyers
- establishment of electronic platform for lawyers turned out to be difficult
- mandatory use by lawyers was challenged before the Federal Constitutional Court
- resistance among lawyers and in courts
- electronic filing of pleadings etc. basis for complete electronic file management



Electronic file management

- Since 2022: approx. 90% of civil proceedings based on electronic file management (regional differences across Germany)
- Completely electronic processing of court files mandatory as of Januar 2026
- Slowly growing acceptance among judges
- One step further ?
 - => electronic „basic document“
 - => shared document for submission of facts and arguments instead of individual pleadings by lawyers
 - => pilot project in Bavaria
 - => party submissions to be limited and structured
 - => great resistance from Bar Associations

III. Virtual court hearings

1. Situation during the COVID19 pandemic

- until 2020 no priority for videoconferencing techniques
- legal basis has been provided since 2001
- increased used during the pandemic
- judicial administration ensured better equipment in courts step-by-step
- particularly used if no evidence taking was necessary



§ 128a ZPO

Court Hearing by way of video and audio transmission.

(1) ¹The court may, on application or ex officio, allow the parties, their agents and assistants to be present at another place during a hearing and to perform procedural acts there. ²The hearing shall be transmitted simultaneously in sound and vision to that place and to the courtroom.

(2) ¹The court may, on application, allow a witness, an expert or a party to be present at another place during a hearing. ²The hearing shall be transmitted simultaneously in sound and vision to that place and to the courtroom. ³If parties, authorised representatives and assistants have been permitted to be at another location in accordance with subsection 1 sentence 1, the hearing shall also be transmitted to that location.

III. Virtual court hearings

Scope of application

- § 128a (1): parties and lawyers connected via videoconference for court hearing
- § 128a (2): witnesses, experts, parties connected via videoconference or taking of evidence
- no recording allowed!
- Courts reluctant to use videoconference technique for the hearing of witnesses, preferred for general discussion of case & exchange of legal arguments

Restrictions

- judges must be present in court room
- no fully virtual hearings
- no telephone conferences
- background: constitutional guarantee of public access to court hearings
(art. 6 ECHR, art. 47 European Charter of Fundamental Rights)
- connection from everywhere?



The future of virtual court hearings

Post-pandemic use and consolidation of videoconferences

- Draft bills from 2022 & 2023
- not yet enacted
- Why?
 - ✓ Most participants appreciate advantages
 - ✓ Saves time and travel for lawyers
 - ✓ High flexibility in scheduling hearings



Proposal November 2022

- courts can order mandatory participation in videoconferences
- mandatory in case of joint application of parties
- completely virtual hearings (judges also remote, not in the court room)



- evidence taking via videoconferences: witness hearing, experts, inspection of evidence objects (such as electronic documents)
- preliminary recording of videoconferences as a basis for court minutes

The future of virtual court hearings

Revised Proposal May 2023

- virtual hearings to be refused only in exceptional cases (e.g. lack of technical equipment)
 - complete virtual hearings only in selected pilot projects:
 - „Panel of judges should act as a unit in the courtroom“
- How to guarantee access of public?
- no publicity at all? (e.g. Swiss COVID-Act April 2020 (20.4.20-1.1.2022))
 - Live broadcasting of videoconferences on the internet?
(protection of personal rights/
unauthorized screen recordings/behaviour of participants)
 - broadcasting videoconference to a special room in the court house with public access

Article 6 § 1 of the European Convention on Human Rights – Right to a fair trial

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and **public hearing** within a reasonable time by an independent and impartial tribunal established by law.

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ...

The future of virtual court hearings

Videoconferences in a cross-border setting?

- limited/prohibited by public international law?
- violation of foreign state's sovereignty by courts exercising sovereign authority abroad?
- highly controversial issue in Germany
- European Evidence Regulation Art. 12: permission by foreign Member State required for videoconference
- proposed EU legislation: videoconference without permission exclusively for hearing of parties



IV. Conclusions

- German courts are still struggling with the digital world
- Electronic communication: a chance for new ways of structuring and standardizing party submissions?
- Use of videoconferencing technology must be well considered – not suitable for all situations
- Currently: no completely digital court proceedings

