

## German courts - proceedings

Everyone litigating in Germany can rely on the independence of German courts. Corruption within the judicial authorities is not an issue in Germany.

As is the case with substantive law, German procedural law is also systematically and clearly structured in the form of codes. The Code of Civil Procedure (Zivilprozessordnung, abbreviated as ZPO) governs civil proceedings and therefore provides the foundation for the work of both judges and lawyers.

A further factor contributing to the predictability of German civil suits is German liability law. As opposed to US courts, German courts do not award extremely high damages. Similarly, the concept of punitive damages is alien to German law, which instead strives to compensate for any actual damage incurred.

In the German civil trial system the judge actively steers the proceedings. This facilitates the efficient conduct of the proceedings, while maintaining a focus on decisive issues.

The court is responsible for the structure and organisation of the proceedings, including the service of the statement of claim, written pleadings and court decisions. The court also summons ordinary witnesses as well as expert witnesses. If and when required, the court can enforce the attendance of witnesses by subpoena. Compared to other jurisdictions where counsels of the parties are required to perform all of these costly and timeconsuming organisational tasks, the German approach significantly accelerates court proceedings.

Moreover, the courts also actively manage and structure the proceedings during the actual hearings. As early as at the first hearing, the matter at hand is discussed with the parties and their lawyers, with the judge providing guidance as to the issues that he or she considers relevant.

The Code of Civil Procedure requires German judges to always aim for an amicable resolution of a dispute at any stage of the proceedings. Therefore, elements of mediation and conciliation form an integral part of German civil proceedings. In suitable cases, the court will propose that the parties enter into out-of-court mediation. Moreover, many judges and lawyers have undergone additional training to become qualified mediators.

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In these cases, injunctive relief provides focused and effective help. In the majority of cases, the court will decide whether the requested relief is granted the same day that the application for injunctive relief is received, or, at the latest, a few days thereafter. The decision is then served and enforced without delay. Particularly where breaches of competition law or patent infringements are concerned, the courts respond very quickly – a decisive advantage that other jurisdictions only offer to a very limited extent, if at all.

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Final judgments that can no longer be appealed are enforceable. However, the courts usually declare judgments to be provisionally enforceable, even when they have not yet become non-appealable. The prerequisite for this provisional enforceability is that the prevailing party furnishes a bank guarantee in order to safeguard the losing party's position. Such a bank guarantee is not required in proceedings for injunctive relief and summary proceedings.