How to bring a case to court

Saksamaa

1 Do I have to go to court or is there another alternative?

It may well make sense to use alternative dispute resolution. Please refer to the factsheet on 'Mediation'.

2 Is there any time limit to bring a court action?

There is no procedural time limit to bring a court action, although there are time limits on when claims can be brought. If a claim has become time-barred and the opposing party invokes this, the claim will be dismissed. The time limits depend on the substantive law of the case rather than on procedural law. They vary from case to case. This question can be clarified by taking legal advice.

3 Should I go to a court in this Member State?

See 'Jurisdiction'.

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

See 'Jurisdiction – Germany'.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

See 'Jurisdiction – Germany'.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

The question of whether you must be represented by a lawyer in order to bring a court action depends on which court has jurisdiction for the claim.

At the regional courts (*Landgerichten*) and higher regional courts '*Oberlandesgerichten*', the parties must be represented by a lawyer. Use of a lawyer is also obligatory in most family matters (e.g. divorce, maintenance disputes, property disputes) that come before the local court (*Amtsgericht*).

In all other cases before the local court, you may bring an action and conduct the proceedings yourself.

In the simplified procedure for obtaining an enforceable payment order for a money claim (*Mahnverfahren*), the court with jurisdiction is the local court. So you may file an application for an order for payment at the court yourself, without a lawyer.

You may also lodge a claim without a lawyer in the labour court (*Arbeitsgericht*).

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

Generally a claim must be filed in writing at the court that has jurisdiction.

However, if the local court has jurisdiction for the proceedings, a claim can be registered orally at the court office (*Geschäftsstelle des Amtsgerichts*). The claim can be registered at the office of any local court. The office will send the record of the claim to the relevant court without delay.

The same applies to an action before the labour court. A claim before the Labour Court may also be registered at the office of the labour court.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

The language of the courts is German. So the claim must be filed in German.

Generally, a claim must be filed in writing. In an action before the local court or the labour court, claims may also be registered orally at the office of the court (see question 7).

A claim can also be filed by fax. The fax must show the signature of the party or of the lawyer, if a lawyer is acting. It must be clear who has signed the original to show that they are responsible for the claim.

Finally, a claim may be sent as an electronic document by a secure means of transmission (De-Mail [German e-Government communications service], special electronic mailboxes) or, provided that it has a qualified electronic signature, by means of the electronic court and administration mailbox (EGVP).

The transmission of electronic documents by e-mail is not possible.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

There are standardised forms for use in simplified proceedings – i.e. applications for an order for payment (*Mahnbescheid*) or order for enforcement (*Vollstreckungsbescheid*) in money claims. These forms must be used. If an application is not filed on the appropriate form within the deadline, it will be rejected as inadmissible.

There are no standardised forms for a claim. The statement of claim must have a particular form and content:

It must give the correct names and addresses of the parties and their legal representatives. The court which has jurisdiction for the claim must also be indicated.

The claim must state clearly what is being complained of and what the court is being asked to award the claimant (the order sought).

The subjectmatter of the claim and the facts on which the party taking action bases its claim must also be comprehensively and clearly described.

The statement of claim must be signed personally. If the party bringing the action is represented by a lawyer, the signature of an authorised lawyer or their representative is required.

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

Court costs are charged for proceedings before the courts that deal with civil and commercial matters. These charges are the fees and expenses of the court.

After the statement of claim has been filed, the court charges an advance payment of court costs on account (*Gerichtskostenvorschuss*) corresponding to the amount of the statutory court fees. Generally, the claim will not be served on the opposing party until the party bringing the action has paid the advance payment of court costs on account.

The same applies to the payment order procedure.

There is no requirement to pay in advance in proceedings before the labour court.

If a lawyer is acting, lawyer's fees will also have to be paid. The principle is that lawyer's fees are not due until the end of the proceedings or after a court judgment on costs, but a lawyer may require a down payment for his work corresponding to the amount of his subsequent fees even before the claim is filed.

The costs of the proceedings, the court costs and the lawyer's fees, including costs already paid, must ultimately be borne by the party that loses the action.

11 Can I claim legal aid?

Anyone not able to finance their own court action may apply for legal aid. The court checks whether the action has any prospect of success, that it is not malicious, and whether financial need exists. If the court awards legal aid, then the party bringing the action does not have to advance any costs for the service of the claim.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

Provided that the claim is free of errors and an advance payment of court costs on account has been made to the court cashier, it will be served on the opposing party immediately. The action is deemed to have commenced when it is served on the opposing party.

If there is an error in the claim, the court will give the party bringing the action an opportunity to put this right. If the error is not removed, the court will dismiss the claim as inadmissible.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

On service of the claim, the presiding judge will either set an early date for a first hearing or order written preliminary proceedings. Both parties will be notified of the hearing date or the fact that written preliminary proceedings have been ordered. The court may order the parties to appear in person at any hearing.

In preparation for any hearing, the court may require the parties to supplement or clarify their submissions and may set time limits for providing statements about specific issues that need to be clarified. The court may order the parties to the action or third parties to provide documents and items for inspection and may seek information from official sources.

The parties must be informed of all these orders.

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