Small claims

Duitsland

1 Existence of a specific small claims procedure

1.1 Scope of procedure, threshold

There is no special procedure for small claims in the Code of Civil Procedure (Zivilprozessordnung, ZPO). However, Section 495a of the Code does make provision for a simplified procedure. It allows the court to decide how to proceed, at its reasonable discretion, in cases where the value in dispute is €600 or less. The Code does not restrict this possibility in any other way: for example, it does not confine it to any particular type of dispute.

1.2 Application of procedure

In such cases, therefore, the court may decide how to proceed at its reasonable discretion and may, in particular, make use of certain specific ways of simplifying the procedure. The court is not obliged to do this. Even where the value in dispute is less than €600 the court may also proceed under the usual rules.

If the court determines its procedure at its own discretion, the parties cannot object. They may only request an oral hearing.

1.3 Forms

There are no standardised forms that need to be used.

1.4 Assistance

The usual rules apply. This is because the proceedings are simplified only in terms of the procedure to be followed. Parties that are not legally represented are facilitated in the same way as those that are legally represented. For example, in actions before the local courts (Amtsgerichte) the claim may be registered orally at the court office. Even a person who is legally represented is free to register a statement orally rather than filing it through their lawyer. Similarly, the question whether a party is legally represented or not does not affect the nature and scope of the court's duty to inform and advise (Aufklärungs- und Hinweispflichten). The court is legally obliged to explain the proceedings from a legal and factual point of view and to clarify the issues.

1.5 Rules concerning the taking of evidence

The court is not restricted to taking evidence in the usual ways. Contrary to the principle of direct evidence (Unmittelbarkeit) which applies otherwise and which means that witnesses, experts or the parties themselves must be heard before the trial court in the presence of the parties, in simplified proceedings the Court may for example order witnesses, experts or parties to be questioned over the telephone or in writing.

1.6 Written procedure

An exclusively written procedure may be used. However, there must be oral proceedings if one of the parties so requests.

1.7 Content of judgment

The structure of the judgment is simpler than for ordinary proceedings. This because judgments where the value in dispute is less than €600 generally cannot be appealed.

For example, the description of the facts may be omitted. It is also possible to leave out the grounds of the decision if the parties are willing to accept this, or if the essential content of the grounds is already set out in the court record. Because of the requirements of international legal relations, however, the grounds of the judgment must be stated if the judgment is expected to be enforced abroad (Section 313a(4) of the Code of Civil Procedure).

If, exceptionally, the court were to give leave to appeal, the structure of the judgment would be governed by the usual rules.

1.8 Reimbursement of costs

There are no restrictions on the reimbursement of costs; the usual rules apply.

1.9 Possibility to appeal

As a general rule judgments where the value in dispute is less than €600 cannot be appealed. By way of exception, however, an appeal may be permitted if in its judgment the first court gives leave to appeal. This may be because the case is of fundamental importance, or because a decision by the appeal court is required in order to develop the law or to ensure consistent case law.

If no appeal is permitted, the first court must reopen the case if a party aggrieved by the judgment objects that the court has failed to give it a proper hearing in a way that is material to the decision. If the objection is not remedied by the trial court, the only recourse for the party is to lodge a constitutional complaint with the Federal Constitutional Court.

Last update: 02/05/2023

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