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Small claims

 Germany

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European Judicial Network
(in civil and commercial
matters)

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*). However, in proceedings before the local courts (*Amtsgerichte*), 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. The simplified procedure changes only the way in which the proceedings are conducted. Parties without a legal representative receive the same procedural assistance from the court as those with a legal representative. For example, in actions before the local courts 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. 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 principles that evidence should be taken directly (*Unmittelbarkeit*) and that parties may attend (*Parteiöffentlichkeit*), which otherwise apply and which require that witnesses, experts or one of the parties must be heard before the court hearing the case 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 is 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. Due to the requirements of cross-border legal cooperation, however, the grounds of the judgment must be stated if the judgment is expected to be enforced abroad.

Where leave to appeal is granted by way of exception, the structure of the judgment is governed by the usual rules.

1.8 Reimbursement of costs

There are no restrictions on the reimbursement of costs; the usual rules apply. Under those rules, legal costs are in principle to be borne by the unsuccessful party.

1.9 Possibility to appeal

Judgments where the value in dispute is less than € 600 generally 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 this objection is not remedied by the court hearing the case, the only recourse for the party is to lodge a constitutional complaint with the Federal Constitutional Court, but the decision will be reviewed only for violations of constitutional law and not for violations of ordinary statutory provisions.

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