
Summary of the main findings of

**"Exploring the causes of the decline in the
number of first-instance proceedings before
the civil courts"**

Berlin, April 2023

Contracting Authority
Federal Republic of Germany,
represented by the Federal Minister of Justice
Mohrenstraße 37
10117 Berlin

Authors
Dr. Stefan Ekert
Prof. Dr. Caroline Meller-Hannich
Monika Nöhre Präsidentin des Kammergerichts a.D.
Prof. Dr. Armin Höland
Dr. Katharina Gelbrich
Lisa Poel
Lukas Hundertmark
Adrian Moser

Contractor
INTERVAL GmbH
Brunnenstraße 181
10119 Berlin
www.interval-berlin.de

13 Summary of main findings

Type of proceedings (not) brought before the courts

1. During the 2005-2019 review period, the number of first-instance proceedings before the civil courts fell by more than 600,000, which corresponds to a decline of 32.5 %. Local courts accounted for a greater part of this decline than regional courts, both in absolute terms (-522,746 cases versus -88,755 cases) and as a percentage (-36.1 % versus -20.6 %). This downward trend has continued in the years 2020-2022, following the review period.
2. The number of lawsuits filed is decreasing in all *Länder*. A statistical analysis has not shown economic factors such as GDP to have any significant impact on this trend. Differences between individual fields can be explained by factual events, such as the “diesel scandal” and periods of particular difficulty for the aviation industry rather than by the nature of the fields concerned. The decline is affecting disputes from the minor to the major.
3. When evaluating our file samples, we found that in both years under review (2015 and 2019), the vast majority of civil lawsuits before the local courts and the civil divisions at the regional courts were brought by companies (B2B and B2C) and not by private individuals. The figures are around 57 % (2015) or 68 % (2019) for local courts and 61 % (2015) or 57 % (2019) for civil divisions.
4. Our results from the statistical analysis of regional court cases indicate that, over time, the average proceedings dealt with by the regional courts have become more complex, more challenging and also less predictable in terms of outcome. This can be inferred from an increase in the length of proceedings along with a simultaneous decrease in the proportion of those proceedings involving an evidentiary hearing, fewer proceedings per judge and a lower rate of plaintiffs prevailing in their litigation.

5. Between 2005 and 2019, the number of proceedings brought before the divisions for commercial matters dropped by 50 %. The evaluation of our file samples has shown that around 90 % of all cases before the divisions for commercial matters were resolved by the presiding judge alone, without the participation of any (honorary) commercial judges. While in the *Land* of Berlin 90 % of decisions are taken by the division sitting in full bench, this rate was not found to apply throughout Germany. Considering that the number of cases brought before the divisions for commercial matters is also decreasing in Berlin, as is the case nationwide, honorary judges are obviously not the deciding factor in litigants' choosing the state justice system.

6. The English-speaking divisions for international commercial matters that have been set up at some regional courts in major cities are used very rarely according to the information provided by the judges surveyed on this issue. Over a period of almost four years up until the end of the research period, the number of incoming cases per court was in the low single digits.

Preferred method of dealing with conflicts

7. In a survey of 7,500 private individuals, around 43 % of respondents stated that they had not been faced with any civil law issues in the past 10 years. The remaining 57 % resolved their conflicts mainly on the basis of the opposing party offering concessions or gestures of goodwill, followed by buyer protection – i. e. generally on amicable terms. Only 17.7 % of this group took at least one of their conflicts to court.

8. Since the year 2000, the contract portfolios of providers of legal expenses insurance have increased by around 20 %. In 2020, around 56 % of all private households had such insurance coverage. Similarly, half of the private individuals surveyed by us had legal expenses insurance coverage. Individuals with such cover are 50 % more likely to pursue any claims they may have in court (see also no. 20 below).

9. The analysis of our population survey shows that legal advice has a major influence on the choice of approach to conflict resolution. If the legal advice provided (mostly by an attorney-at-law) is to take legal action, the likelihood of a court dispute increases sixfold (see also no. 18 below).

10. According to our population survey, as far as private individuals are concerned, cases with higher amounts in dispute are resolved more frequently by the courts than cases with lower amounts in dispute.

11. Cases – in some instances mass claims – are taken to the civil courts if a convenient private legal tech service is available for the (joint) judicial enforcement of rights. In such cases, the parties concerned are prepared to forego part of their claim. This results in heavy case loads for individual courts or panels and places a huge burden on judges.

12. When it comes to private individuals deciding in favour of or against taking legal action, the question of whether their opponent is a private individual or a company has no significant bearing on their choice. Similarly, the socio-demographic characteristics recorded (gender, age, school-leaving qualifications, income and migrant background) have no influence on whether individuals decide to take legal action or choose a different route to resolve a conflict. The study did not identify any specific obstacles for vulnerable groups to taking legal action either.

13. A survey of 300 companies revealed that companies are currently using methods for avoiding and resolving disputes out-of-court more frequently than in previous years. 41.3 % of respondents stated that they had not been involved in a single legal dispute in the civil courts in the past 10 years. The following measures in particular have be-

come increasingly important in preventing disputes in recent years: foresight in drawing up contracts; regularly updating general terms and conditions; agreeing advance payment; and prior credit checks.

14. In the event of a civil dispute, companies generally focus on working out a solution in direct communication with the customer, often with the help of an established procedure. Around 85 % of the companies surveyed use a systematic and partly automated procedure to handle customer complaints to resolve or avoid conflicts, while 78.3 % make goodwill offers to customers. Arbitration proceedings, mediation and conciliation were only very rarely mentioned as conflict resolution methods. Pursuing civil proceedings was mentioned as a last resort, to be used after all attempts at an amicable settlement have failed.

Importance of alternative dispute resolution mechanisms

15. The number of incoming cases received by the conciliation bodies has risen by around 50,000 to 60,000 since 2005, while the number of cases received by the local and regional courts has fallen by around 500,000 in the same period. The increase in the number of conciliation proceedings can therefore only be responsible to a small extent – if at all – for the drop in cases in the civil courts. Naturally, this development primarily concerns claims of private individuals, meaning that the impact here is greater than for corporate claims.

As for arbitration, the quantitative impact here is even less than that of conciliation. However, high-value and complex commercial disputes in particular naturally divert to arbitration to a greater extent.

Nevertheless, it should be noted that, despite fluctuations and a partially unclear data basis, alternative dispute resolution has shown growth. This would point to its increasing attractiveness, while indicating no reduction in the number of causes of disputes. This is a remarkable finding in comparison with the state justice system: we can note

an overall increase in alternative dispute resolution cases; (only) in civil proceedings before state courts are the number of incoming cases falling continuously.

Importance of judicial decisions and legislation

16. New legislation in the field of substantive civil law tends to have the effect of increasing the number of cases filed because any ambiguities in the law first need to be clarified. In contrast, in the field of civil procedural law, it was not possible to prove that legislative changes have either the effect of increasing or of decreasing the number of lawsuits.

17. Court judgements, on the other hand, rarely have the effect of increasing the number of lawsuits. Wherever they do lead to an increase in the number of lawsuits filed, for example where they modify previous judicial decisions, this effect usually subsides once again after a short transitional period. Clarifying judgements handed down by the highest courts generally even have the effect of reducing the number of proceedings. Factual events such as the “diesel scandal” and large-scale cancellations/delays of flights are presumed to have a greater impact on the increase in the number of cases filed than changes in legislation or modifications of judicial decisions.

Reasons for the decline in the number of lawsuits filed

18. The survey of 7,500 private individuals showed that the considerable effort involved, the costs of legal action, the length of the proceedings and the difficulties in assessing the prospects of success are the main reasons for not taking legal action.

19. It was seen that the most important agents on the path from civil conflict to court proceedings are attorneys-at-law, as almost 90 % of all local-court actions, and necessarily all actions before the regional courts, are initiated by them. As already mentioned, our population survey also confirms this filtering effect. A survey of 2,269 attorneys-at-law revealed that around 38 % had noticed a decline in their court work over the last 10 years. Furthermore, 30.7 % stated that they currently advised clients to take legal action less frequently than 10 years ago. The main reasons stated for not advising clients to pursue court proceedings were the costs (52.0%) and length of proceedings (59.9%) as well as the unpredictable prospects of success (66.3%). In particular, the length of proceedings was cited as a financial obstacle. This was seen to have a particularly serious impact on disputes in the area of building law.

In the free text responses, members of the legal profession complained of an increasing discrepancy in the level of professional specialisation between judges and attorneys-at-law, an unreasonable insistence on reaching a settlement (despite the fact that the rate of settlements has not actually increased significantly), a lack of appropriate digital skills in the courts, and inadequate IT equipment in the courts.

20. A perceived distancing and scepticism (e.g. mutual accusations of a lack of appropriate preparation of proceedings) between legal practitioners and judges was evident in individual interviews conducted with representatives from both professional groups. According to the responses by the interviewees, this development began with the abolition of the geographically limited admission to practise as a lawyer; it then intensified over time, and has since reached a temporary peak with the mass claims events such as the “diesel scandal”.

21. In recent years, providers of legal expenses insurance have significantly expanded their practice of pre-processing reported claims by telephone and referring them to cooperating attorneys-at-law and legal service providers. A large number of cases are settled in an accessible approach at an early stage through active claims management and no longer end up in court. According to an estimate by providers of legal expenses insurance, around 90 % of all potential conflicts are settled after an initial

telephone consultation. As a result, legal expenses insurance has not only an increasing but also a decreasing effect on the number of lawsuits.

An exception to this are claims resulting from a large number of similar individual incidents, such as the claims in connection with the “diesel scandal”. In these cases, resolution at an early stage is not usually possible.

22. Both in our interviews and in the online survey, legal practitioners frequently criticized what they saw as the courts’ lack of understanding of more complex economic contexts and failure to attract international disputes. Our interviews found that these two factors are seen as significant, particularly in disputes in the B2B area involving relatively high-value claims (from 10,000 euros upwards).

Conflicts with an international dimension played only a minor role for the companies surveyed. Court action is occasionally pursued in other jurisdictions, but to a lesser extent than 10 years previously, according to respondents in 2022. None of our surveys has found any evidence of a trend towards parties litigating abroad instead of in the domestic courts. Nonetheless, in this area too, the lack of attractiveness of German law and the German judicial system is naturally a particular issue when it comes to higher-value claims on the part of international companies.

23. There is no single reason that would explain all aspects of the fall in the number of proceedings. Rather, this phenomenon needs to be broken down and considered on the basis of the type and holder of a claim. Nevertheless, it can be noted that the changing business world and economic reality, characterized above all by the ever faster pace at which things happen and by distinctive strategies for avoiding and resolving conflicts, are the main factors in the decline in the number of lawsuits filed. These are followed by the increasing perception that court proceedings are uneconomical, with parties weighing up their prospects of success against the time, costs and stress that court action would entail. Another key factor overall is the filtering effect that results from legal advisers increasingly discouraging clients from taking legal action. The final factors to mention are connected with the organisation of the courts.

They relate primarily to a lack of structures that would allow specialization; a lack of equipment, particularly in terms of digitalisation; limited options for spreading the case load caused by waves of lawsuits; and frequent changes of judges.