

Claim, Judicial Case Management and Cooperation

24. Legal Requirements for the claim (1)

■ Types of claims

Action for Performance



Aimed at:

- Payment of a sum of money
- Submission of possession
- Submission of a declaration
- Omission of specific behaviour

Action for Declaration



Aimed at:

- Clarification of a legal relationship:
 - Existence
 - Non-Existence

Action for Modification



Aimed at:

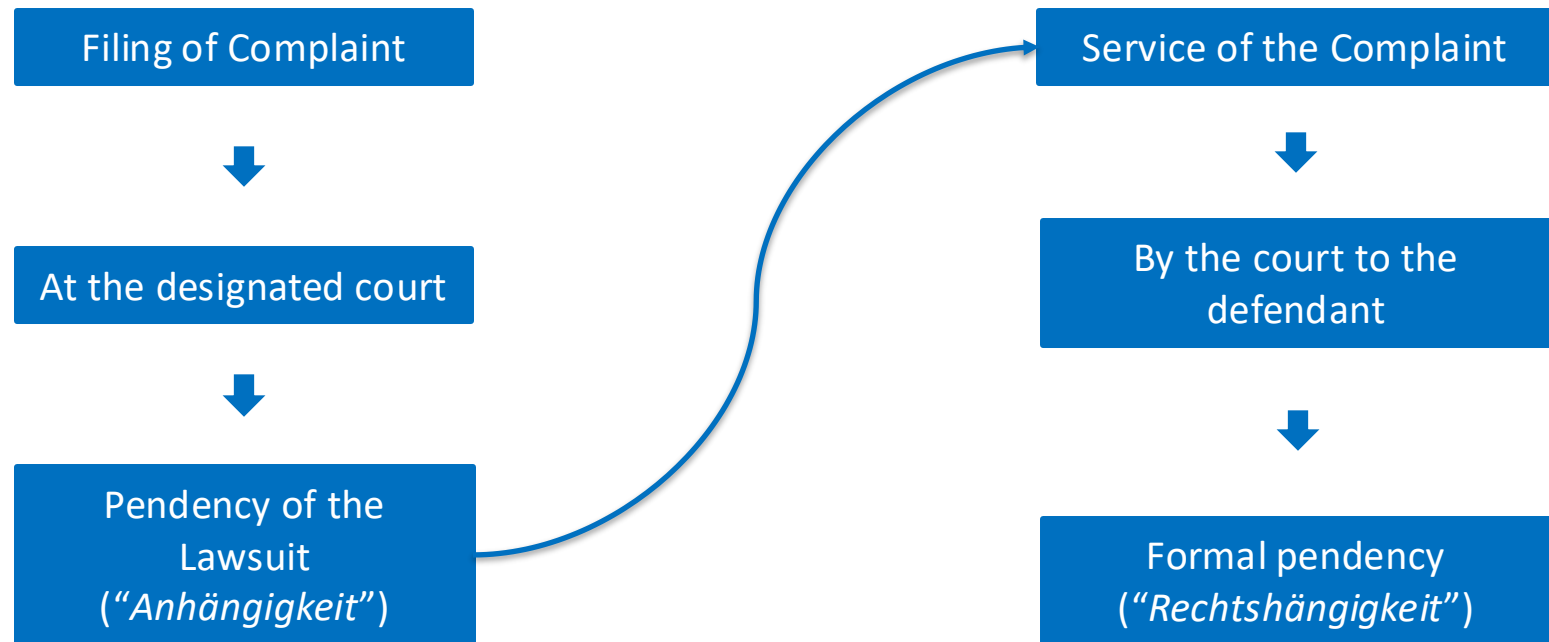
- Modification of a legal right or status by judicial decision
- For example:
 - Divorce
 - Exclusion of a Partner in a company

24. Legal Requirements for the claim (2)

- Filing of an Action, Sec. 253 Para 1 CPC:
 - Complaint must include:
 - Designation of the Parties, Sec. 253 Para 2 Nr. 1 CPC
 - Exact information on the subject matter, Sec. 253 Para 2 Nr. 2 CPC
 - Exact information on the grounds for the claim, Sec. 253 Para 2 Nr. 2 CPC
 - Precisely specified petition, Sec. 253 Para 2 Nr. 2 CPC
 - Signature
 - Complaint shall include:
 - Statement regarding the unsuccessful attempt at mediation
 - Indication as to the value of the subject matter
 - Statement on the possible objection to video hearings pursuant to Sec. 128a CPC

24. Legal Requirements for the claim (3)

- Procedural steps



24. Legal Requirements for the claim (4)

- Sec. 130 CPC: (Required) content of the written pleadings
 - 1. The designation of the parties and their legal representatives by name, status or business, place of residence and position as a party; the designation of the court and of the subject matter of the litigation; the number of annexes;
 - 2. The petitions that the party intends to file with the court at the session;
 - 3. Information on the factual circumstances serving as grounds for the petitions;
 - 4. The declarations regarding the facts alleged by the opponent;
 - 5. The designation of the evidence that the party intends to submit as proof of any facts alleged, or by way of rebutting allegations, as well as a declaration regarding the evidence designated by the opponent;
 - 6. The signature of the person responsible for the written pleading;
- Electronic communication is now standard → **mandatory for lawyers and public entities to submit electronically Sec. 130d CPC**

Section 130a CPC (Electronic document)

(1) Where the written form is required for preparatory written pleadings and their annexes, for petitions of and declarations by the parties as well as for information, testimonies, reports, and declarations by third parties, **recording them as electronic documents shall comply with this requirement provided that this is suited for processing by the court.** The person responsible for the written pleading is to furnish the document with a **qualified electronic signature pursuant to the Electronic Signature Act (Signaturgesetz).** If an electronic document transmitted is not suited for processing by the court, this shall be communicated to its sender without undue delay, specifying the applicable technical framework conditions. [...]

25. Judicial Case Management (1)

- It is the duty of the court to conduct the proceedings and bring the dispute to a speedy conclusion
 - ex officio
 - Instruments: order, informal ruling or by trial judgment

Formal Management



Material Case Management

- The court must ensure the formal process
 - ✓ Schedule hearings, Sec. 216 Para 1 CPC
 - ✓ Determine, extend and shorten deadlines, Sec. 70, 71 CPC
 - ✓ Summon the parties, Sec. 214, 274 I CPC
 - ✓ Open, conduct and close hearing
- Statutory procedure:
 - ✓ Referral to competent court
 - ✓ Order of the hearing

- The court must point out defects and work towards improvement of:
 - ✓ Incorrect disposition
 - ✓ Incomplete submission
 - ✓ Erroneous assumptions of certain procedural circumstances
- The court **must not** point out:
 - ✗ New defenses and objections if they are not indicated in the party's submission
 - ✗ Advice on changing the material legal situation

25. Judicial Case Management (2)

Section 139 CPC (Direction in substance of the course of proceedings)

- (1) To the extent required, the court is to discuss with the parties the circumstances and facts as well as the relationship of the parties to the dispute, both in terms of the factual aspects of the matter and of its legal ramifications, and it is to ask questions. The court is to work towards ensuring that the parties to the dispute make declarations in due time and completely, regarding all significant facts, and in particular is to ensure that the parties amend by further information those facts that they have asserted only incompletely, that they designate the evidence, and that they file the relevant petitions. The court may structure the proceedings and compartmentalise the matter in dispute by taking measures to conduct the proceedings.
- (2) The court may base its decision on an aspect that a party has recognisably overlooked or has deemed to be insignificant, provided that this does not merely concern an ancillary claim, only if it has given corresponding notice of this fact and has allowed the opportunity to address the matter. The same shall apply for any aspect that the court assesses differently than both parties do.
- (3) The court is to draw the parties' attention to its concerns regarding any items it is to take into account **ex officio**.
- (4) Notice by the court as provided for by this rule is to be given at the earliest possible time, and a written record is to be prepared. [...]

Summary

- Legal Requirements for the claim
- Judicial Case Management