In Germany, the civil law system is about to undergo a number of far-reaching changes. The need for reform has been the subject of debate for a number of years, but until now no Federal Government has committed itself to a comprehensive re-enactment of the existing codes of procedure. The SPD-led government is the first to put the issue on the political agenda. Last autumn, more precisely on 6 September 2000, the Cabinet agreed a bill for a law on the reform of civil procedure (Law of Civil Procedure Reform Act - Zivilprozessrechtsreformgesetz - ZPO-RG).

The main purpose of the reforms is to make the law of civil procedure fairer by making the judicial system more transparent, more efficient and more comprehensible to the man in the street. In order to help people assert their rights more quickly, structural reforms are required. I should like to outline and explain these in brief here.

I. Strengthening the courts of first instance

The first pillar of the draft legislation is to strengthen the courts of first instance both in terms of substance and personnel. The legislator will endeavour to strengthen the lower courts so that in future cases can always be settled in this court and second trial courts are generally no longer required.

By way of reminder: "Ordinary" jurisdiction in Germany still has a number of different courts. It has no fewer than four levels: Amtsgerichte (local courts), Landgerichte (regional courts), Oberlandesgerichte (Regional Appeal Courts) and the Bundesgerichtshof (Federal Court of Justice). The composition of the judges varies.

In Germany, the courts of first instance in civil matters are the local and regional courts. Access to the local or regional court of first instance in determined according to the monetary value of the matter. This distinction will remain unchanged after the reform.
The following are the primary measures that are intended to strengthen the substance of the courts of first instance:

1. **Strengthening of the duties of the judges to further the proceedings**

Firstly, the parties should be informed as to the legal view of the court through precise directions from the judges (strengthening of the so-called judges' duties to further the proceedings). This will make the course of the proceedings clearer to the parties and the end result more comprehensible. The parties will be in a better position to see that the court has thoroughly clarified and evaluated the facts of the case which are material to the final decision.

2. **Strengthening of the concept of arbitration - conciliation instead of contentious decision**

In addition, institutionalizing the idea of conciliation in the form of a preliminary arbitration hearing should encourage judges to help bring about a mutually acceptable resolution to the conflict. A settlement proposal should be put to the parties as early in the proceedings as possible, thereby avoiding contentious decisions in the form of judgments and thus recourse to the appeal courts. This principle is by no means alien to German procedural law, as it has long been successfully practiced in other areas such as labour law. The reason for this is that cases which end in settlement generally possess greater authority than those which are decided through contentious judgment. This is primarily explained by the fact that a settlement is always characterized by mutual concessions by the parties; each of the parties managing to assert some of his claims in the result but having to give up others in return. In order to improve communication between the court and the parties, judges will generally order the parties to appear in person in future. This is in striking contrast to current judicial practice, whereby the parties themselves are seldom present at the main hearing but are generally represented by lawyers, even in cases where representation by lawyers is not mandatory. In order to make the procedure more transparent and more comprehensible to the man in the street, it is therefore sensible to involve the parties in the court proceedings at the earliest possible opportunity. This is in keeping with one of the primary aims of the reform, which is to settle the matter definitively at the first instance if at all possible. Of course a full and error-free clarification of the facts of the case which form the basis of the litigation is a vital precondition for achieving this aim. As experience of litigation where representation by lawyers is mandatory has shown, such clarification is virtually impossible without the parties themselves. It is therefore important to involve the parties directly in the process from the very outset because this can narrow down the subject matter of the litigation, clarify the facts of the case and open up possibilities for achieving a constructive solution to the conflict. But for the judges this requires one thing above all else: more time! In order to cope with the increased workload that this approach will generate, it is also vital to strengthen the courts of first instance in terms
of personnel. This can be achieved with the help of reallocation of personnel i.e. through release of personnel resources from the appeal courts.

3. Redress proceeding within the court

In future, the court of first instance will be able to correct its own - uncontested - decisions if it has violated the right to a fair hearing pursuant to Art. 103 (1) Basis Law (Grundgesetz - GG). Under current law the only remedy open to the person affected is to bring a constitutional appeal before the Federal Constitutional Court. According to the proposed bill, the court of first instance will now have the opportunity to correct an alleged infringement of the right to a fair hearing, for example if a set of pleadings has inadvertently not been submitted to the judge. At the same time, this will help to relieve the workload of the Federal Constitutional Court.

II. Development of the sole judge principle

A second central point of the reform is the development of the sole judge principle. The reform intends to extend the use of judges sitting alone and thereby will also serve to increase the number of available personnel in the lower courts. By way of explanation it should be noted that unlike the local courts, when operating as courts of first instance the regional courts are staffed as panels with three professional judges (president and two assessors). The bill provides that in future, matters which present no particular difficulties in terms of facts and points of law should be heard by just one member of the chamber sitting alone. This proposal has met with fierce criticism from some quarters. The main argument of opponents to the increased use of sole judges is that with regard to the subsequent decision, the panel discussion offers a better guarantee of arriving at the correct decision than a judge sitting alone. They are particularly critical of the fact that the sole judge has no opportunity for a thorough and professional discussion with his/her fellow judges. Six eyes are better than two.

However, a look at the current everyday work of the regional courts reveals a different picture. Even where decisions are reached by a panel, preparation of the content of a case is always delegated to one member of the chamber - the reporting judge. For reasons of procedural economy it is not possible for the third judge - in addition to the reporting judge and/or the president - to engage as intensively with the material as his colleague who has taken a leading role. Equally, there is little evidence to suggest that the simultaneous handling of a case by several judges ensures a greater chance of arriving at the right result. On the contrary: it is possible that each would rely on the other and that no one would really get to grips with the details of the case.

The everyday work of the court presents another argument for mandatory use of one judge sitting alone. Although the Code of Civil Procedure currently provides for the assignment of cases to the sole judge in exceptional circumstances, in practice of procedure is the reverse. Accordingly, the panel decision is already the exception rather
than the rule. If this situation is examined more closely, it is clear that the reform is merely adapting the construction of legal procedure to the practice already adopted by the courts.

In my opinion, the widely voiced objections are therefore not justified. Efficient working practice, judges taking responsibility for their own decisions and constant contact between the ruling judge and the parties are all arguments in favor of judges sitting alone. Moreover, studies on the use of the sole judge in first instance courts prove that there are no grounds to fear either that quality will suffer or that there will be problems of acceptance. It has also been demonstrated that the proportion of settlements is higher and the proportion of appeals lower than for panel decisions. The sole judge principle has also proven very successful for many years in labour law.

The legislator envisages an extension to the sole judge principle in the first and second

Instances as follows: In difficult cases - in terms of the law or the facts of the case - the panel and senate will continue to have jurisdiction. General civil cases within the jurisdiction of the regional court shall in future be heard in the trial court by a judge sitting alone, regardless of the value of the matter, but if there are difficult facts or points or law, or if an important principle is at stake, they must be transferred to the panel. Disputes arising from matters specifically listed in the legislation would still be originally dealt with by a panel. If the use of the panel is not justified in an individual case (cases which are straightforward in terms of the facts and the points of law, and where there is no important principle at stake) must be transferred to a judge sitting alone (mandatory sole judge.) probationary judges may only operate as sole judges if they have dealt with civil disputes for at least one year in accordance with the assignment of actions schedule. In the second instance courts, the senate should in future transfer suitable cases to the sole judge. However, cases may only be transferred after the admissibility and merit of the appeal has been examined, thereby guaranteeing that each appeal is firstly assessed by a panel of judges.

III. Reformulation of appeal law

The reform further intends to extensively reform appeal law. According to current law the purpose of the "Berufung" is to examine in full the judgment of the court of first instance in terms of points of law and the facts of the case. The essence of the "Revision", on the other hand, is to evaluate the contested judgment on points of law i.e. it is concerned with examining the application of the law. This principle is to be fundamentally modified.

1. Berufung (general appeal)

Access to the appeal courts
Firstly, access to the appeal court will be extended by reducing the monetary value of the appeal from its current level of DM 1,500 to DM 1,200. Since however the value of the matter is not in principle a reasonable criterion for assessing either the facts or the legal significance of the matter, the reform also provides for the introduction of an admissibility appeal. That means that the judgment of the trial court may allow a general appeal even where the value of the matter is less than DM 1,200, if the dispute concerns an issue of principle i.e. if its significance extends beyond the individual case. Thus the possibilities for judicial relief are extended and made more just.

Reform as an instrument of error control and rectification

Another central element of the reform is the restructuring of the appeal court into an instrument of error control and rectification. In future, an essential function of the general appeal will be to examine the judgment of the lower court to ascertain whether substantive law has been correctly applied and whether the court's findings are full and correct, and to rectify any errors. In contrast to the current system, this means that only if there are specific reasons for doubt as to the correctness or completeness of the court's finding is a new judgment required in the higher court, will the facts of the case be re-examined. The consequence of this is that appeal court is bound by the correct and complete findings of fact of the lower court, unless an admissible new submission from one of the parties to the appeal court justifies different findings. To aid understanding of this point, it should be mentioned that the civil procedure is controlled by the so-called principle of party presentation which states that the parties are solely responsible for determining what facts they wish to put before the court for a decision. This is in contrast to the principle of investigation applicable in criminal and administrative procedures, whereby the court must establish the facts completely ex officio. In the case of the reform, this means that any so-called new "means of attack and defence" of the parties are only admissible if they were not of significance in the first instance or were not able to be submitted. However, any arguments that could easily have been put to the court of first instance may in future no longer be reserved for the appeal court. Under the previous law this was possible "if in the view of the court the admission [of such arguments] would not delay the settlement of the litigation or if the party gives good reason for the delay".

Simplified procedure for dismissal

In cases where a general appeal has no prospect of success, the bill creates a basis upon which it can be dismissed by a unanimous decision of the appeal court without the need for a full hearing. This means that where an appeal is clearly futile, there is no need for another full hearing. However, the appeal court must advise the losing party of the hopelessness of its appeal and give him or her the opportunity to comment. This procedure is not alien to German procedural law, but is already applied e.g. in social courts.
Concentration of jurisdiction within the regional appeal courts

Another essential element of the reform is to merge the route to the higher courts which, in appeal cases, is currently split. To refresh the memory: Decisions of the local courts can be appealed to the regional courts, while first-instance decisions of the regional court are appealed to the appeal court. This split is untransparent and inappropriate. The planned reform - to concentrate jurisdiction for all general appeals on the regional appeal courts - has however met with fierce resistance, especially from the judges and the regional governments. For this reason the Federal Government has decided to shelve plans for a general referral of appeal cases to the regional appeal courts for the time being, and has adopted a so-called "experimental clause" which gives the regional governments an experimental period of five years in which the new arrangement can be "tested" to a certain extent. Then, in the light of the findings of this experiment, a decision can be taken as to the best way of organising access to the accounts in civil matters.

2. Revision (appeal on points of law)

According to current law, Revision (an appeal on points of law only) is not available for all decisions of the local courts. For first-instance judgments with a monetary value of between DM 10,000 and DM 60,000, the regional appeal court may grant leave for Revision in the general appeal judgment, but in practice such restrictive use is made of this power that below a value of DM 60,000 there is currently de facto no possibility of Revision. However, as I have already stressed elsewhere, the monetary value is not a convincing criterion for accessing the legal significance of a matter.

In the area of access to the Revision procedure, the bill therefore replace the previous mixed system of admissibility and value of the case with a pure admissibility appeal, with appeal against denial of leave to appeal to the Federal Court of Justice. This is also taken from the Social Courts act (Sozialgerichtsgesetz) and is found in similar forms in the legal systems of some our European neighbours (e.g. France, Italy, England, Switzerland, Austria). The reform therefore completely abolishes the value criterion and ensures that in principle every case is of fundamental importance (appeal on a point of principle) or that a decision of the Revision court is required in order to further develop the law or to ensure consistency in the law (deviation appeal). This includes not only cases which involve a point of principle in the conventional sense, but also cases which, although not requiring a precedent to be set by the Federal Court of Justice, would appear to require a correction of the ruling because of the blatant incorrectness of the decision of the general appeal court or because a basic procedural right has been violated. The decision as to whether the conditions exist for the Revision court to consider the case is made either by the regional appeal court in its judgment or - in the event that leave to appeal is not granted - by the Federal Court of Justice in response to an appeal against the denial of leave to appeal.
IV. Beschwerde (complaints) procedure

The law governing the complaints procedure will also be simplified in the course of the structural changes to the appeal law in the main cause of action. The newly introduced complaint on a point of law will now also enable fundamental legal issues to be clarified at highest judicial level in the area of secondary decisions (costs, enforceability). This will lead not only to a simplification of case law, but also to a reduction of the workload of the complaint courts. The general time-limit set for complaints will help to simplify and speed up the proceedings because clarify will be achieved more quickly in respect of the final and binding nature of the judges' decision, thereby promoting legal certainty. The newly introduced substantiation requirement will also play a part in this, enabling the complaint court to examine the specific objections of the complainant. Ultimately, the above-mentioned extension of the power of the court whose decision is being challenged to grant relief (see I 3) also serves the goal of shortening the proceedings because it permits rapid self-correction. At the same time it will reduce the workload of the complaint courts.