

Freiburg, 20 April 2012

CEPEJ-SATURN(2012)

**COMMISSION EUROPÉENNE POUR L'EFFICACITÉ DE LA JUSTICE
(CEPEJ)
EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE**

**Report on a meeting
held on 20 April 2012
at Freiburg (Breisgau) Landgericht¹
Germany**

Report of
Jacques Bühler (Switzerland)
Chair of the steering group of SATURN² Centre of CEPEJ

¹ Approximate equivalent : regional court

² SATURN = Study and Analysis of judicial Time Use Research Network

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at Freiburg im Breisgau Landgericht (Germany)**

I. Participants

A. Representing Freiburg Landgericht

A. Neff, Landgericht President; A. Kratschmer, Landgericht Vice-President; J. Adam, Landgericht Judge; F. Büchler, Chair of a Division of the Landgericht; M. Schneider, Chair of a Division of the Landgericht; A. Huber, Controller.

B. Representing the Ministry of Justice of Baden – Württemberg
Frau C. May.

C. Representing the CEPEJ

M. Oreshkina, Assistant to the Secretariat of the CEPEJ; J. Bühler, Chair of the steering group of SATURN Centre of CEPEJ.

II. Report description

A. *Name:* Freiburg Landgericht.

B. *Location:* Freiburg im Breisgau, Germany.

C. *Scope :* Civil and criminal proceedings.

D. *Judges*

1. Professional judges (number of FTE according to allocation of business in 2012):
 - Civil courts of first instance: 17.95 FTE
 - Commercial courts: 1.1 FTE
 - Criminal courts: 9.15 FTE.

Annual fluctuations in staff among the judiciary is estimated to be approximately 10% to 15%. One explanation for this is that younger judges complete a probationary period limited to two years at the Landgericht. They are deployed in all division of the court (with the exception of commercial divisions and criminal appeal divisions).

2. Other judges:
 - Commercial judges: 26
 - Expert examiners: 8
 - Lay judges

E. *Court employees*

1. Legally qualified staff ("Rechtspfleger": 2,00 FTE)
2. Other staff (FTE):
 - Court administration (finance, human resources, monitoring, communications): 11,15
 - Court registry, clerk's office: 22,40
 - Information, library, documentation: 1,60
 - Logistics (post, cleaning, security, etc.): 6,90

- IT: 0,25
- other staff: 2,02

F. Use of IT

1. Business management software: SAP
2. Word processing and Internet access: available for all judges and court employees.
3. IT service providers: Ministry of Justice using outsourcers

G. Caseload

Statistics for 2007 - 2011 for civil proceedings at first instance (excluding commercial divisions) - Freiburg Landgericht

Year	1	2	3	4	CR (%)	DT (in months)	Total duration of proceedings (in months)	Staff deployed Average	Cases dealt with per 1 FTE
2007	1'903	2'729	2'829	1'801	104	7.64	7.8	16.77	169
2008	1'801	2783	2'630	1'991	95	9.08	7.5	14.99	175
2009	1991	2'805	2'807	1'989	100	8.50	7.2	15.66	179
2010	1'989	2'721	2'731	1'982	100	8.71	7.3	16.19	169
2011	1'982	2'598	2'703	1'878	104	8.34	7.9	16.20	167

1 = Cases pending on 01.01

2 = Incoming cases

3 = Resolved cases

4 = Cases pending on 31.12

CR = (Resolved cases * 100) / Incoming cases

DT = 12/ (Cases dealt with / Pending cases as at 31.12)

Statistics for 2007 - 2011 for civil proceedings at first instance (litigious or contentious cases resolved by court judgment) - Freiburg Landgericht

Year	Resolved cases	Duration of litigious or contentious proceedings (months)	Staff deployed average	Cases dealt with per 1 FTE
2007	657	11.9	16.77	39
2008	470	12.7	14.99	31
2009	523	11.1	15.66	33
2010	561	11.7	16.19	35
2011	590	12.7	16.20	36

Note: This only includes proceedings dealt with by means of what is known as a litigious or contentious judgment in the form relevant to the particular case. It does not include proceedings concluded through settlement, withdrawal etc or through decisions such as judgment on admissions or judgment in default. Whether proceedings are "contentious" or dealt with is only apparent when the case comes to an end.

H. Workload per judge

A judge sitting at first instance in a civil court who does not exercise a presidential function has on average the following number of cases in progress:

- overall: 130 to 135 cases
- these typically include about 20 to 50 substantial and complex matters.

Those matters which are substantial and complex notably include disputes in the area of medical negligence, solicitors' and tax advisers' negligence and

construction cases (ie cases concerning the remuneration of developers or architects, as well as building or planning defects).

III. Background to actions

A. *Choice of court*

Freiburg Landgericht is member of the CEPEJ pilot court network. Following the annual meeting of pilot courts in September 2011, President Neff issued an expression of interest on behalf of his court in the Coaching Programme of the SATURN steering group. It was then agreed that a meeting at Freiburg Landgericht would be set for 20 April 2012.

B. *Preparatory tasks*

Prior to the meeting, the following preparatory tasks were undertaken:

1. Freiburg Landgericht studied the documents available on the CEPEJ homepage.
2. It also analysed its needs and expressed the wish that the CEPEJ Coaching Project, at least in a first phase, should be confined to the civil courts of first instance.
3. Before the meeting, all of the statistics relating to the civil courts were provided to CEPEJ representatives, who were able to undertake a broad analysis (calculation of Clearance Rate and Disposition Time indicators).
4. The CEPEJ representatives in turn sent the main documents relevant to implementation of CEPEJ Directives to the court in German, including:
 - the 15 CEPEJ SATURN Directives
 - a brief summary of the methodology
 - the Coaching report of Dornach-Thierstein Amtsgericht³ in Dornach (Switzerland) as an example of a similar exercise.
5. The Landgericht has studied the 15 CEPEJ guidelines in advance and evaluated their stage of implementation. It has concluded that these 15 guidelines have in the main been adequately implemented.
6. However, the Landgericht would like to improve the position relating to the duration of certain substantial and complex cases. In particular, it has established that, when there is a change of judge, knowledge transfer between the departing judge and the new judge does not as a rule take place. The new judge must therefore start from the beginning in familiarising himself or herself with substantial and complex cases. Most of the deliberations which have taken place in the case up to that point are thus lost.

C. *The meeting*

1. At the meeting on 20 April 2012 at Freiburg Landgericht, J. Bühler gave a presentation about the CEPEJ and its areas of activity. At the request of the court, he placed emphasis on overcoming the problem of the duration of proceedings.
(Powerpoint Presentation: see enclosure 1)

³ Approximate equivalent : country court

2. The discussion about next steps focussed on the interest on the part of the Landgericht in the development by the CEPEJ of a standard and/or production of “Best Practice” in relation to knowledge transfer on a change of judge. This is because the relatively frequent change of judges in complex and substantial cases, caused by the way the court system operates, lengthens the duration of proceedings.
3. Long proceedings also occur as a result of the difficulty of reaching agreement as to an expert who will be recognised by all parties in costly construction or negligence cases. However, this point should not form part of a project developed in cooperation with the CEPEJ.
4. As the question of knowledge transfer is of general interest, the CEPEJ representatives present were keen to take it up. Proposals as to next steps are set out in the numbered paragraphs below.

IV. Change of judge and case-related knowledge transfer

A. Starting point

1. Current practice on case transfer: In complex construction or liability disputes, which usually last considerably more than a year, there is frequently a change of judge. The departing judge leaves the court before the new judge starts. Consequently no knowledge transfer takes place between the two judges with consecutive responsibility for the case. The absence of knowledge transfer compels the new judge to familiarise himself or herself with the proceedings from the beginning, and he or she is unable to take forward the deliberations of his or her predecessor. Information that is available consists largely of notes written by hand in the court file which can give rise to an incomplete picture of previous deliberations.
2. Case allocation and court organisation: There are three civil divisions within the Landgericht which specialise in medical negligence cases and one specialising in lawyers’ and tax advisors’ negligence. No courts specialise in construction cases; construction cases, like all other proceedings, are referred in accordance with the annual allocation of business to all of the civil divisions on the basis of a pre-determined rotation. Nor are there any plans to create specialist courts for construction cases.
3. Allocation of judges: Judges in their probationary period, who as a rule work in the Landgericht for two years, are similarly spread across all of the civil divisions. The problem of familiarisation with complex proceedings arises among these judges on a regular basis. Of course, the problem of knowledge transfer can also arise on the departure of other judges, for example when they are promoted or when they take a career break to care for children.
4. Consequences: Case allocation (in part allocation of complex cases to all divisions), court organisation (lack of specialisation of divisions across the board) and allocation of judges (judges in their probationary period allocated across all divisions) mean that there is no reduction in the frequency with which knowledge transfer is needed in complex cases. There are no plans for changes to this way of organising the court – in the general sense – and change would appear to be unlikely to be achievable in the Freiburg Landgericht. For this reason, the analysis by CEPEJ should concentrate exclusively on the specific area of knowledge transfer.

B. Potential ways forward

1. The Landgericht has of course already given consideration to possible solutions. At the forefront are ideas such as the establishment of a protocol for recording procedural steps and early recording of the facts.
2. The representatives of the CEPEJ should consider the following initial ideas with a view to putting forward solutions to Freiburg Landgericht to address knowledge transfer in complex cases:
 - ✦ Commissioning an expert to clarify whether and, if appropriate, what case management provisions already exist in the civil procedure rules of member states of the Council of Europe.
 - ✦ Conducting a discussion in the form of an exchange of information relating to knowledge transfer in complex and substantial cases in the context of the meeting of CEPEJ pilot courts on 27 September 2012, which is expected to take place in Malta.
 - ✦ Request for information from CEPEJ representatives through the CEPEJ Forum or by means of a general email survey.

C. Further actions

Practical suggestions with regard to knowledge transfer in complex and substantial cases should be provided by the end of 2012

Enclosure:

1. Presentation on addressing the length of proceedings dated 20.4.2012
2. Suggestion for conducting a discussion relating to knowledge transfer in complex and substantial cases in the context of the meeting of CEPEJ pilot courts on 27th September 2012.
3. Draft for commissioning an expert