



Commercial Court
Stuttgart | Mannheim

Dr Patrick Melin, LL.M., Presiding Judge, Regional Court of Stuttgart

***The new Stuttgart Commercial Court -
A solution to the challenge of bringing international commercial disputes before
state courts.***

The Stuttgart Commercial Court and Mannheim Commercial Court started work in Baden-Wuerttemberg in November 2020 in the face of great hope and expectations on the part of the state government, especially the Ministry of Justice of Baden-Wuerttemberg, but also a certain degree of scepticism from their potential “clientèle”, namely lawyers working in the field of commercial law. The following sections introduce and explain the Stuttgart Commercial Court and how it came to be in more detail.

I. Introduction

Commercial courts – courts which are supposed to have jurisdiction to hear major commercial disputes, especially international ones – are the talk of the town. In Germany¹ and indeed worldwide, there is an observable trend whereby large-scale international commercial disputes are heard by courts of arbitration instead of state courts.² In order to reverse this trend and strengthen the role of state courts in commercial disputes,³ various states have taken the initiative recently and established specialised commercial courts which all have one key thing in common: proceedings can be conducted in English.⁴ In Germany, the legal and political debate concerning strengthening the state’s jurisdiction for large-scale commercial disputes, especially international ones, has been under way for a number of years now. This discussion has gained significant momentum in light of Brexit which is generally expected to result in the highly traditional English commercial judiciary and London as a legal venue potentially losing their international primacy.⁵ In this context, numerous legislative initiatives from the Bundesrat have been brought before the Bundestag proposing the creation of court divisions for international matters of trade – and therefore the addition of a special court division for matters of international trade in the sense of Section 95 of the German Courts Constitution Act (GVG), where all parties want the proceedings to be conducted in English, to the current system of divisions for commercial matters.⁶ These legislative initiatives have not yet been addressed by the Bundestag, however. Regardless, several regional courts have already established special divisions for matters of international trade where proceedings can be conducted in English,⁷ although these divisions have yet to gain any significant response.⁸ Additionally, the Justice Ministers’ Conference proposed further reforms to the German Code of Civil Procedure (ZPO) and Courts Constitution Act (GVG) at its meeting in the spring of 2019 in line with the findings of a state working group focusing on Germany’s judiciary and strengthening its courts with regard to commercial disputes. Besides the aforementioned possibility of creating court divisions for matters of international trade, a state liberalisation clause is proposed which is intended to facilitate “streamlined stages of appeal...beginning at a higher regional court” with a specialised international panel for matters of trade, subject to an agreement between the parties and for disputes “in the field of commercial law



Commercial Court Stuttgart | Mannheim

with a very high value in dispute". The creation of "special procedural rules for complex legal disputes" "which are consistent with the special requirements of the parties and serve the purpose of efficient proceedings" is also recommended.⁹ The state of Baden-Wuerttemberg decided not to wait for these political proposals to be implemented – something that is not expected to happen in this legislative period – and established two Commercial Courts in Stuttgart and Mannheim in November 2020, each one affiliated with the Regional Court there. By establishing the Commercial Courts independently of any potential reform of the German Courts Constitution Act (GVG) and Code of Civil Procedure (ZPO), the stated goal is to strengthen the state judiciary within the pre-existing structures and establish an attractive alternative to courts of arbitration for companies and lawyers.

II. The concept of the Stuttgart Commercial Court

What are the key concepts of the Stuttgart Commercial Court?¹⁰

1. Organisation

At first instance, the Stuttgart Commercial Court consists of a commercial civil division, the 49th Civil Division of the Regional Court of Stuttgart, and a division for commercial matters, the 31st Division for Commercial Matters of the Regional Court of Stuttgart. Proceedings in both divisions can be conducted in English. With regard to competence, the 49th Civil Division has special jurisdiction for all corporate disputes regardless of the value in dispute. Additionally, the 49th Civil Division at the Regional Court of Stuttgart will be the only civil division with jurisdiction over corporate acquisitions in which – where apparent – courts of arbitration are currently dominant¹¹, as well as over disputes in connection with commercial transactions with a value in dispute of over € 2 million. For one, these rules on competence are the product of a desire to focus on the substance of corporate law, a field in which the Regional Court of Stuttgart did not previously specialise and which is now concentrated in the 49th Civil Division. Given the allocation of major commercial disputes on the basis of the value in dispute and the inclusion of corporate acquisitions, they also stem from the allocation of major commercial disputes where no other division of the Regional Court of Stuttgart has special jurisdiction – such as a construction or antitrust division – to the Commercial Court and which are normally the subject of arbitration agreements. The jurisdiction of the 31st Division for Commercial Matters corresponds to that of the commercial civil division, encompassing both corporate acquisitions and commercial transactions with a value in dispute of over € 2 million, and as such the parties can choose either the commercial civil division with three regular judges or the division for commercial matters with one regular judge and two commercial judges within the Commercial Court; under corporate law, the jurisdiction of the 31st Division for Commercial Matters of the Stuttgart Commercial Court is limited to matters relating to company law.¹² Additionally, a special panel has been created at the Higher Regional Court of Stuttgart. This panel is also part of the Stuttgart Commercial Court and deals with appeals in connection with large-scale commercial disputes, corporate acquisitions and proceedings conducted in English.



Commercial Court Stuttgart | Mannheim

2. Proceedings in English

As indicated above, legal disputes can be conducted in English at the Stuttgart Commercial Court. The judges chosen for the Stuttgart Commercial Court can all speak English fluently and have extensive experience abroad.¹³ Proceedings can therefore be conducted in English and documents in English do not need to be translated. However – and this is essential – this is but one aspect of the Stuttgart Commercial Court.

3. Exceptional staff and equipment

Its staff and equipment greatly distinguish the Commercial Court from a “normal” civil division, as does its judges’ readiness to adapt the way in which proceedings are held to the requirements of major commercial proceedings, where possible in accordance with procedural law. The Stuttgart Commercial Court houses impressive new rooms which make it easier to conduct even complex commercial disputes both reasonably and efficiently. The spacious courtrooms are fitted with the latest conference equipment so trials can be held by videoconference, trials can be recorded on audio tape and electronic documents can be displayed on large wall-mounted monitors. Lawyers and parties have access to modern conference rooms to which they can retire to consult during breaks. With two large courtrooms and potentially a third smaller one, schedules can be far more flexible than other divisions at the regional court. For instance, major proceedings can easily be conducted over multiple days in a row where necessary and if the parties desire it. The people who work in the court are no less extraordinary: the judges who were specially selected for the Stuttgart Commercial Court all possess a profound knowledge of commercial law and experience with commercial cases, often gained in major legal firms. Additionally, the personnel structure has been designed so that cases falling under the special jurisdiction of the commercial civil division can and are heard by three judges on a regular basis. This makes it possible to press on with large-scale proceedings efficiently and expediently. Furthermore, it is the stated goal of the judges at the Commercial Court to select a procedural structure that, in accordance with procedural law, is tailored to the requirements of the parties and lawyers in major commercial disputes. Video conferences are an available option for steering and planning proceedings in major cases, based on the case management conferences that are a familiar process in courts of arbitration. Although the German Code of Civil Procedure (ZPO) does not expressly provide for something like this, it does not forbid it either. The purpose is to make consistent use of leeway in terms of structuring proceedings in order to handle major cases efficiently.

III. Practitioner requirements

So as to be able to examine whether the concept of the Stuttgart Commercial Court as described above will be suitable for it to achieve its objectives – to substantially strengthen and increase the attractiveness of the state judiciary compared to courts of arbitration – this section addresses the question of what specifically the “clientèle”, i.e.



Commercial Court Stuttgart | Mannheim

businesses and commercial lawyers, expect from a dispute resolution forum and why, in this regard, private courts of arbitration are often the preferred choice over state courts.

The litigation practitioner Professor Markus Köhler in Stuttgart and Stephan Hudetz recently identified three core requirements which play a decisive role in the bilateral selection of a dispute resolution forum:¹⁴ firstly, the parties are interested in a high-quality, compelling decision that can stand up to potential appeals and as part of the declaration of enforceability. Secondly, the costs are a factor in the selection of a dispute resolution forum. And thirdly, the parties are interested in efficient proceedings and a rapid decision.¹⁵ Based on these core requirements, Köhler and Hudetz examined what specifically would have to be done for businesses to bring disputes before state commercial courts and decide in favour of the state judiciary in their commercial contracts. The option of conducting proceedings in English is to be welcomed, but it alone is not enough to substantially increase the attractiveness of the state judiciary.¹⁶ First and foremost, courts having suitable, sufficiently experienced judges is a critical factor in the success of state commercial courts. Besides language qualifications, professional expertise in commerce and the law is required.¹⁷ It is also necessary to adjust the workloads of the judges. A judge who hears 150 cases per year is not able to dedicate the necessary attention or time to complex, large-scale proceedings.¹⁸ The equipment of the judiciary also has to be improved so it can stand up to being compared against the equipment and technical means of private courts of arbitration. It is important to install modern information technology and courtrooms in each Commercial Court so cases involving large teams of lawyers, representatives and experts can be heard.¹⁹ These rooms would also have to be available for one set of proceedings exclusively for several days in a row or longer than a week, if the need arose.²⁰ With regard to conducting proceedings, they have to be conducted efficiently and transparently in the same style as the courts of arbitration. It is prudent to hold proceedings as conferences which establish a framework in terms of deadlines and procedures in order to make it easier to schedule the proceedings.²¹

IV. The Commercial Court concept as a tailored solution

If we examine the structure of the Stuttgart Commercial Court as described above in the context of these requirements, we can conclude that the concept thoroughly addresses and implements the requirements of legal practitioners. This applies to the desire for specifically selected judges with language skills in addition to extensive experience with commercial law, to the need for sufficient personnel that individual major proceedings can be dealt with appropriately, to the need for adequate, modern room equipment so even major proceedings can be conducted efficiently, to the requirement that rooms be available for multiple days in a row if necessary and, finally, to the expectation that effective, stringent proceedings that match the standards of courts of arbitration will be chosen. It can therefore be said that the tailored concept is, point by point, suitable for meeting the practical expectations placed on a state commercial court. Of course, there are other unalterable factors which play a role in the choice between a court of arbitration and a state court, unless the general legal framework should change. Some of these aspects favour courts of arbitration and some favour the state judiciary. The former include confidentiality²² which state courts, unlike courts of arbitration, cannot



Commercial Court Stuttgart | Mannheim

guarantee absolutely due to the public nature of state judicial proceedings, and – to a certain extent – the enforceability of decisions, where courts of arbitration are at an advantage by virtue of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (also known as the New York Convention) which enjoys virtually global applicability, although the abolition of the enforcement of foreign judgements through the Brussels I Regulation could establish a parallel within the European Union.²³ The latter include the relatively moderate costs of state courts which, as court fees are capped when the value in dispute reaches € 30 million, is of particular significance when the scale of a dispute is large. Other aspects include the guaranteed impartiality of the judges, the better chances of temporary legal protection from state courts²⁴ and the advantages when evidence is gathered, where a state court has significantly more extensive means of enforcing the taking of evidence than a private court.²⁵

V. Summary

It remains to be seen whether what the Stuttgart Commercial Court has to offer companies, their legal departments and their lawyers will pay off. In any case, as we have seen, the concept fundamentally lends itself to meeting the key expectations of practitioners from an appropriate dispute resolution forum in major commercial disputes within the existing legal framework. It is now up to the lawyers to put the Commercial Court to the test through jurisdiction clauses and examine whether it can indeed offer high judicial quality at moderate prices²⁶

Under the current German Code of Civil Procedure (ZPO), no special jurisdiction agreement can be made in favour of the Stuttgart (or Mannheim) Commercial Court. However, under the criteria of Section 38 ZPO, it is possible to agree a jurisdiction clause in favour of the Regional Court of Stuttgart – even for looming disputes that are not yet pending – which would then establish its competence if the matter falls under the business allocated to the Commercial Court by the roster allocating court business. In the interest of strengthening the state judiciary in the field of commercial law, frequent use will hopefully be made of this option.



Commercial Court
Stuttgart | Mannheim

Dr Patrick Melin, LL.M.

(Dickinson School of Law of the Pennsylvania State University), presiding judge at the Regional Court of Stuttgart, is the presiding judge in the new commercial civil division of the Stuttgart Commercial Court. He has years of experience as a judge, including in the 14th Civil Division of the Higher Regional Court of Stuttgart which specialises in corporate law, speaks fluent English after having spent many years in the USA and is the author of a comparative dissertation on American methods of legal interpretation.

-
1. E.g. see also Stürner, JZ 2019, 1122 f.
 2. E.g. regarding the Netherlands, see Lobach, IWRZ 2017, 256.
 3. More details about why such strengthening is prudent not only for fiscal reasons, Stürner, JZ 2019, 1119, 1123.
 4. For example, France established an international commercial chamber at the commercial court (“tribunal de commerce”) in Paris on 1 March 2018. Parties can submit documents in English and conduct proceedings in English there. However, the website is currently only available in French, with the exception of the headers. In the Netherlands, the Netherlands Commercial Court was opened in Amsterdam on 1 January 2019 and also offers proceedings in English (for more details see Lobach, IWRZ 2017, 256ff.). Even before this, the English-speaking Singapore International Commercial Court was opened in Singapore in 2015 for international commercial disputes; see also Köhler/Hudetz, BB 2020, 2179.
 5. For example, see the dissertation by Podszun/Rohner, available at https://www.jura.hhu.de/fileadmin/redaktion/Fakultaeten/Juristische_Fakultaet/Podszun/Podszun_Rohner_Paper_Staatliche_Gerichte_staerken.pdf (accessed: 12 November 2020); although restrictive, Stürner, JZ 2019, 1122, 1124.
 6. BR-Drs. 42/10, BR-Drs. 93/14 and finally BT-Drs. 19/1717.
 7. An English-speaking division for commercial matters at the Regional Court of Frankfurt am Main, see <https://ordentliche-gerichtsbarkeit.hessen.de/ordentliche-gerichte/lgb-frankfurt-m/lg-frankfurt-m/kammer-für-internationale-handelssachen> (accessed: 12 November 2020) and an English-speaking civil division and a division for commercial matters at the Regional Court of Hamburg.
 8. See Köhler/Hudetz, BB 2020, 2179, 2181f. with additional supporting references
 9. For more details about these proposals, see also Podszun/Rohner, ZRP 2019, 190 ff.
 10. The homepage created specially for the new Commercial Courts in Stuttgart and Mannheim, available at www.commercial-court.de or www.commercialcourt.de, provides an impression of the new Stuttgart Commercial Court.
 11. See Stürner, JZ 2019, 1122, 1123 with additional supporting references
 12. The rosters allocating court business with the exact rules on competence are available on the Commercial Court website at <https://www.commercial-court.de/standorte> (accessed: 16/11/2020).
 13. For the profiles of the judges at the Stuttgart Commercial Court and Mannheim Commercial Court, visit www.commercial-court.de/richter (accessed: 16/11/2020).
 14. Köhler/Hudetz, BB 2020, 2179, 2181.
 15. This aspect is also pointed out by Stürner, JZ 2019, 1122, 1126.
 16. Köhler/Hudetz, BB 2020, 2179, 2181f.
 17. Köhler/Hudetz, BB 2020, 2179, 2182.
 18. Köhler/Hudetz, BB 2020, 2179, 2182.
 19. Köhler/Hudetz, BB 2020, 2179, 2182.
 20. Köhler/Hudetz, BB 2020, 2179, 2182.
 21. Köhler/Hudetz, BB 2020, 2179, 2182.
 22. Stürner, JZ 2019, 1122, 1127; Köhler/Hudetz, BB 2020, 2179, 2183.
 23. Köhler/Hudetz, BB 2020, 2179, 2183.
 24. Köhler/Hudetz, BB 2020, 2179, 2184.
 25. Köhler/Hudetz, BB 2020, 2179, 2184.
 26. As expressed in an interview with the magazine JUVE, available at <https://www.juve.de/nachrichten/namenundnachrichten/nachrichtrecht/2020/11/neuer-commercial-court-wir-bieten-sehr-hohe-qualitaet-zu-einem-vergleichsweise-moderaten-preis> (accessed: 12/11/2020).