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Sigmund A. Cohn

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# A Streamlined Debt Collection Procedure in the Federal Republic of Germany

by *Sigmund A. Cohn*\*

## I. INTRODUCTION

In September 1977, Congress amended the Consumer Credit Protection Act<sup>1</sup> by adding at its end a new Title VIII, called "Fair Debt Collection Practices Act."<sup>2</sup> The Act states that "[t]here is abundant evidence of the use of abusive, deceptive and unfair debt collection practices . . ." that "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs and to invasion of individual privacy."<sup>3</sup> It declares as its purpose "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged and to promote consistent State action to protect consumers against debt collection abuses."<sup>4</sup> The Act then sets elaborate rules as to what a debt collector must, may and may not do in the process of his activities.<sup>5</sup> It also establishes civil liability for transgressing debt collectors.<sup>6</sup>

It is of special interest that according to the official purposes of the Act as defined above,<sup>7</sup> the existence and activities of debt collecting agencies are considered a fact of American life and that they are to be protected as long as no

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\* Professor Emeritus of Law, University of Georgia, School of Law; J.U.D. University of Breslau, 1921; J.D., University of Genoa, 1934.

1. 15 U.S.C. § 1601 (Supp. 1978).

2. Pub. L. No. 95-109, §§ 801-818, 91 Stat. 874. The Act was approved on September 20, 1977.

3. *Id.* § 802(a).

4. *Id.* § 802(e).

5. *Id.* §§ 804-812.

6. *Id.* § 813.

7. See note 4 *supra* and accompanying text.

abuses occur. The Report of the Banking, Housing and Urban Affairs Committee of the Senate<sup>8</sup> gives these details about the debt collection business in the United States:

Debt collection by third parties is a substantial business which touches the lives of many Americans. There are more than 5,000 collection agencies across the country, each averaging 8 employees. Last year, more than \$5 billion in debts were turned over to collection agencies. One trade association which represents approximately half of the Nation's independent collectors states that in 1976 its members contacted 8 million consumers.

Hearings before the Consumer Affairs Subcommittee revealed that independent debt collectors are the prime source of egregious collection practices. While unscrupulous debt collectors comprise only a small segment of the industry, the suffering and anguish which they regularly inflict is substantial. Unlike creditors, who are generally restrained by the desire to protect their good will when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them. Collection Agencies generally operate on a 50-percent commission, and this has too often created the incentive to collect by any means. . . .

The Committee has found that collection abuse has grown from a State problem to a National problem. The use of WATS lines by debt collectors has led to a dramatic increase of interstate collections.<sup>9</sup>

The Report also states that only a "miniscule" number of persons, according to one source only 4% of all defaulting debtors, willfully refuse to pay their debts.<sup>10</sup>

Thus, in the United States the engagement of collection agencies appears to be an extra-legal step, most commonly used, though fraught with abuse, which is taken before or substituted for, the legal means of a law suit to enforce a duty to pay. The discipline of comparative law often reveals that most diverse methods can be applied for achieving the same goal. In West Germany, for example, the institution of a debt collector is virtually unknown. The following pages shall describe and evaluate a very simplified procedure, used there, to obtain an enforceable title, the so-called "Reminder Procedure" (Mahnverfahren), which may well be the reason why they have no debt collectors.

8. S. REP. NO. 95-382, 95th Cong., 1st Sess., reprinted in [1977] U.S. CODE CONG. & AD. NEWS 1695.

9. *Id.* at 2.

10. *Id.* at 3.

## II. THE WEST-GERMAN MAHNVERFAHREN

Ever since the creation of the German Empire in 1871 the German central government has had jurisdiction to legislate in the field of civil procedure.<sup>11</sup> The Federal Republic of Germany (West Germany) has maintained this principle.<sup>12</sup> On the basis of this jurisdiction the law of civil procedure was first unified in the Code of Civil Procedure for the German Empire in 1877.<sup>13</sup> Under the pressure of ever growing industrialization and the need for speeding up judicial proceedings, the Code has undergone countless changes. Many of these were directed toward simplification and adaptation of the proceedings to modern business methods.<sup>14</sup> The latest major change, directed toward these aims, has been an Act for the Simplification and Speeding up of Judicial Proceedings of December 3, 1976.<sup>15</sup>

Among the more comprehensive innovations of this Act is the complete overhaul of a Book of the Code called Mahnverfahren (Reminder Procedure).<sup>16</sup> The purpose of this Book had always been to obtain, as to probably non-contentious claims, an enforceable judicial title as fast as possible and without any trial. It is not the main purpose here to compare in detail the rules of the new Book with those of the old one, but rather to describe succinctly the present status of this West-German procedure which, as will be seen, appears as an effective means of debt collection also for claimants outside West Germany.

Although the heading Mahnverfahren has not changed it has only now taken on the meaning of "Reminder Procedure" used above. Before, the meaning of the same word was stronger in the sense of "Exhortation Procedure." The new meaning becomes clear from the provision<sup>17</sup> that the reminder notice of the court (formerly called payment order) must contain a statement that the court has not examined whether the petitioner (the law no longer calls him creditor) has the claim which he pursues. As will be seen, the provisions concerning the admissibility of and the form of initiating the Mahnverfahren reflect this restricted role of the court.

A reminder notice is to be issued upon a petition concerning a claim for the payment of a fixed sum of money in national currency.<sup>18</sup> The Mahnverfahren

11. Law of April 16, 1871, [1871] Reichsverfassung [RGB1] 63; Law of August 11, 1919, [1919] RGB1. 1383.

12. GRUNDGESETZ arts. 74(1), 72(1) (W. Ger.).

13. [1877] RGB1.83 (Ger.).

14. See survey of amendments to the ZIVILPROZESSORDNUNG (Code of Civil Procedure) [ZPO] in H. SCHONFELDER, DEUTSCHE GESETZE 1-5 (14th - 53rd ed. 1977). All citations of the ZPO and of other West German laws now in force are hereinafter made (if not indicated otherwise) on the basis of their text in Schonfelder's collection.

15. [1976] BGB1.I 3281 (W. Ger.). This Act went into force on July 1, 1977. *Id.* art. 12.

16. ZPO bk. 7, now codified at ZPO §§ 688-703d (W. Ger.).

17. ZPO § 692, para. 1, No. 2 (W. Ger.).

18. ZPO § 688, para. 1 (W. Ger.).

is not admissible if the claim depends on a counter-performance which has not yet been carried out or if service of the reminder notice would have to be made by publication or with certain exceptions to be listed later abroad.<sup>19</sup>

The petition in which the issue of a reminder notice is requested must be signed in handwriting and indicate (1) the parties, (2) the court to be petitioned, (3) the claim with precise statement of the requested performance, (4) the declaration that the claim does not depend upon a counter-performance or that the counter-performance has been fulfilled, (5) the court which has jurisdiction in case the proceeding becomes contentious and in which lies the general venue against the adversary.<sup>20</sup> It is significant that in No. 3 only an "indication" of the claim (like "purchase according to statement of . . .") is required and not, as was the case before the Act of December 3, 1976,<sup>21</sup> a description of the basis of the claim. Technically, it is important that the Federal Minister of Justice can, with the consent of the Bundesrat (upper chamber of the Federal Government) establish forms for the simplification of the Mahnverfahren,<sup>22</sup> which was done (to a certain extent) by a Decree of May 6, 1977.<sup>23</sup> Once such forms have been introduced, the parties must use them for their petitions or other declarations in the proceedings.<sup>24</sup>

The Mahnverfahren is to be carried out exclusively by the Amtsgericht (local court) in which lies the general venue of the petitioner, not that of the adversary.<sup>25</sup> For a petitioner residing outside West Germany who has no general venue within that country, the Amtsgericht Schöneberg in Berlin has exclusive jurisdiction.<sup>26</sup> The shift toward the petitioner's general venue, which was made in the Act of December 3, 1976, may appear strange but the anomaly is cured by the rule that the reminder notice must be served upon the adversary<sup>27</sup> and that the special jurisdiction and venue for the Mahnverfahren cease as soon as the proceedings become contentious.<sup>28</sup> The reason for the innovation was to make it easier for large firms (for example of the mail order house type or for issuers of credit cards) to bring large numbers of petitions at one place. As will be seen later, computerized proceedings are envisaged in this regard.<sup>29</sup> Business of this type had, before the change in the Act of

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19. ZPO § 688, paras. 2, 3 (W. Ger.).

20. ZPO § 690, paras. 1, 2 (W. Ger.). General venue is, on principle, based upon residence, ZPO §§ 12, 13 (W. Ger.), or a place of domicile of prolonged duration. ZPO § 20 (W. Ger.).

21. See note 15 *supra*.

22. ZPO § 703(c), para. 1 (W. Ger.).

23. [1977] BGBI. I 693 (W. Ger.). This decree went into force on July 1, 1977, *id.* § 3, together with the Act of December 3, 1976. See note 15 *supra*.

24. ZPO § 703(c), para. 2 (W. Ger.).

25. ZPO § 689, para. 2, cl. 1 (W. Ger.).

26. ZPO § 689, para. 2, cl. 2 (W. Ger.).

27. ZPO § 693, para. 1 (W. Ger.).

28. ZPO § 696, para. 1 (W. Ger.).

29. ZPO § 689, para. 1, cls. 2, 3 (W. Ger.).

December 3, 1976, often accomplished the same result through contractual provisions establishing jurisdiction and venue at their place of business for a later arising *Mahnverfahren*.<sup>30</sup>

The petition to issue a reminder notice is to be rejected if it refers wholly or in part to a claim other than the type described above<sup>31</sup> or if it lacks any of the prerequisites of its contents,<sup>32</sup> if it is directed to the wrong court or if the prescribed form is not used.<sup>33</sup> The petitioner must be heard before the rejection but — with one exception presently of no importance — has no remedy against the rejection.<sup>34</sup> This lack of a remedy should not be weighed too heavily as the petitioner will always have the alternative of pursuing his claim in an ordinary law suit.

The reminder notice must contain (1) the five indications required for the petition as enumerated above,<sup>35</sup> (2) the statement that the court has not examined the justification of petitioner's claim,<sup>36</sup> (3) the request to pay within two weeks after service of the reminder notice the claimed sum — with interest and the cost shown in exact figures — to the extent that the claim is considered justified or to notify the court whether and to which extent the claim is contested, (4) the announcement that an order of execution, corresponding to the reminder notice, may be issued on the basis of which the petitioner may enforce his claim if the adversary has not contested it within the set time limit, (5) in case that forms are prescribed, a statement that the contestation should be made on a form similar to one enclosed in the reminder notice and that such forms are available and can be filled out at any local court, (6) the indication to which court the case will be forwarded in the case of contestation and that the latter court will have the right to examine the question of its own jurisdiction or venue.<sup>37</sup>

The court takes care of the service of the reminder notice upon the adversary.<sup>38</sup> As far as any time limit which has to be complied with or a statute of limitations which shall be tolled is concerned, the effect of such service is retroactive to the day on which the petition to issue the reminder notice was presented to the court.<sup>39</sup> The clerk of the court notifies the petitioner of the date of the service of the reminder notice.<sup>40</sup>

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30. ZPO § 38, para. 3, No. 2(b) (W. Ger.), in the old text of Act of March 21, 1974, [1974] BGB1.I 753 (W. Ger.).

31. See notes 18, 19 *supra* and accompanying text.

32. See note 20 *supra* and accompanying text.

33. ZPO § 691, paras. 1, 2 (W. Ger.).

34. ZPO § 691, paras. 2, 3 (W. Ger.).

35. See note 20 *supra* and accompanying text.

36. This corresponds to what was emphasized above in the text accompanying note 21.

37. ZPO § 692, para. 1, Nos. 1-6 (W. Ger.).

38. ZPO § 693, para. 1 (W. Ger.).

39. ZPO § 693, para. 2 (W. Ger.).

40. ZPO § 693, para. 3 (W. Ger.).

If the adversary has not contested the reminder notice in time the petitioner may apply — after the expiration of the time for contestation and within six months from the service of the reminder notice — to the court to issue an execution order (Vollstreckungsbefehl) on the basis of the reminder notice. In this application the petitioner has to declare whether and to what amount payments have been made upon the reminder notice.<sup>41</sup> The execution order shall embrace the cost of the proceedings<sup>42</sup> and is to be served upon the adversary by the court, except if the petitioner asks to provide for the service himself.<sup>43</sup> The court may allow service by publication. In this case the execution order is to be affixed to the bulletin board of the court before which the proceedings are carried on when they become contentious.<sup>44</sup>

If the petitioner does not apply for an execution order within the time limit of six months from service of the reminder notice, all effects of the reminder notice are nullified.<sup>45</sup> This includes the right to have an execution order issued as well as the retroactive effects of a reminder notice on preserving other time limits or on the tolling of a statute of limitations.<sup>46</sup> The reminder notice also loses its effect if an execution order is applied for in time but is rejected for other reasons.<sup>47</sup> This shows that the application for an execution order is subject to an examination of the general prerequisites of a civil proceeding such as the impediment of the pending of another proceeding concerning the same claim or the existence of a final judgment as to it, and especially of all prerequisites of the Mahnverfahren itself. It would be illogical to allow an execution order if the issue of the reminder notice was defective.<sup>48</sup>

All phases of the Mahnverfahren are to be handled not by a judge, but by a para-legal clerk (Rechtspfleger).<sup>49</sup> The Rechtspfleger's refusal to issue the execution order is subject to a recourse to a judge.<sup>50</sup> The execution order has the

41. ZPO §§ 699, para. 1, 701 (W. Ger.).

42. ZPO § 699, para. 3, cl. 1 (W. Ger.).

43. ZPO § 699, para. 4, cls. 1-3 (W. Ger.).

44. ZPO §§ 699, para. 4, cl. 4, 690, para. 1, No. 5 (W. Ger.); see text accompanying note 20 *supra*. It is to be observed that service by publication can be considered only if its prerequisites have arisen after the issue of the reminder notice; for the issue of the reminder notice is not allowed if its service would have to be made by publication. See text accompanying note 19 *supra*.

45. ZPO § 701, cl. 1 (W. Ger.).

46. See text accompanying note 39 *supra*.

47. ZPO § 701, cl. 2 (W. Ger.).

48. Accord, Crevenoeur, *Das Mahnverfahren nach der Vereinfachungsnovelle*, 30 Neue Jur. Wochenschrift 1320, 1323 (1977).

49. Law of November 5, 1969, [1969] BGBI.I 2063 (W. Ger.), as amended by § 3, No. 3(a), § 20, No. 1 [hereinafter cited as Rechtspflegergesetz]. The prerequisites for becoming a Rechtspfleger are far more stringent than those for becoming a clerk of the court. *Id.* § 2.

50. *Id.* § 11, para. 1, cls. 1, 2. In general, no time limit is set for presenting the recourse; yet in the special situation of the Mahnverfahren it could be argued that in case of rejection of an execution order the recourse should be allowed — like the application for the issue of the execution order — only within six months from the service of the reminder notice upon the adversary. See text accompanying notes 45 & 46 *supra*. If the judge refuses to change the decision of the

effect of a default judgment which can be enforced even if it has not yet become final.<sup>51</sup> The remedies against it will be discussed later. The Mahnverfahren as such ends with the issue of the execution order.

Another way of ending it is for the adversary to contest the reminder notice. The adversary may present his contestation (*Widerspruch*) of the whole claim or of a part of it in writing to the court that issued the reminder notice as long as the execution order has not been issued.<sup>52</sup> The court notifies the petitioner of the contestation and of the time when it was received.<sup>53</sup> In case of a timely contestation and upon request by the petitioner — which can already be made in his petition to issue a reminder notice — the court transfers the proceeding *ex officio* to the court which was indicated in the reminder notice in the event that the matter should become contentious.<sup>54</sup> The court notifies both parties of the transfer which is not subject to any remedy.<sup>55</sup> The court to which the proceeding was transferred is not bound by the transfer with regard to its jurisdiction and venue and may transfer the proceeding to the proper court.<sup>56</sup> All the rules about the transfer are *mutatis mutandis* applicable if the Mahnverfahren and the contentious proceeding happen to take place in the same court.<sup>57</sup>

With the arrival of the file at the transferee-court the proceedings are considered as pending before it.<sup>58</sup> If the transfer takes place soon after the contestation the proceeding is dealt with as *lis pendens* from the service of the reminder notice upon the adversary.<sup>59</sup> The clerk of the transferee-court has to request the petitioner immediately to explain the basis of his claim within two weeks in form of a brief commencing a law suit.<sup>60</sup> From then on the proceeding takes on essentially the form of a contentious law suit.

In case the adversary has presented his contestation too late (*i. e.* only after issue of the execution order)<sup>61</sup> it is considered as a special appeal (*Einspruch*) from a default judgment. Upon any such special appeal the court carries out

Rechtspfleger the recourse is treated as an appeal to be handled by the next higher court. Rechtspflegergesetz, *supra* note 49, § 11, para. 2.

51. ZPO § 700, para. 1 (W. Ger.).

52. ZPO § 694, para. 1 (W. Ger.).

53. ZPO § 695 (W. Ger.).

54. ZPO § 696, para. 1, cls. 1, 2 (W. Ger.). See text accompanying notes 20 & 25 *supra*.

55. ZPO § 696, para. 1, cl. 3 (W. Ger.).

56. ZPO § 696, para. 5, cl. 1 (W. Ger.).

57. ZPO § 698 (W. Ger.). This will be the case when the local court which has issued the reminder notice also has jurisdiction as to the amount of the claim and is the court of general venue of the adversary.

58. ZPO § 696, para. 1, cl. 4 (W. Ger.).

59. ZPO § 696, para. 3 (W. Ger.). This will depend on whether the petitioner has applied for transfer already in his original petition or at least soon after he was notified of the contestation.

60. ZPO § 697, para. 1 (W. Ger.). It should be remembered that in the petition for the issue of the reminder notice the petitioner had only to "indicate" his claim but not to justify it. See text accompanying notes 20 & 21 *supra*.

61. See text accompanying note 52 *supra*.



the same transfer as in the case of a timely contestation of the reminder notice.<sup>62</sup>

Special provision had to be made for the case that there is no court of general venue for the adversary within the Federal Republic of Germany to which the Mahnverfahren court could transfer the proceeding when it becomes contentious. In this situation the Mahnverfahren is to be brought before the local court that would have another type of jurisdiction in the contentious proceeding if the jurisdiction of local courts were unlimited (*i.e.* unlimited with regard to the amount of money in litigation).<sup>63</sup> Then, if the Mahnverfahren becomes contentious the court transfers the proceeding either to itself<sup>64</sup> or, if the amount involved surpasses its own jurisdiction, to the higher court which has jurisdiction and within whose venue the Mahnverfahren court is situated.<sup>65</sup> The court for the contentious proceeding would then not be one of general venue over the adversary in the meaning of ZPO § 690, para. 1, No. 6,<sup>66</sup> but one of so-called "special jurisdiction." For example, in the case of a claim based upon a tort it would be the court within whose venue the tort was committed.<sup>67</sup>

Of course, if general jurisdiction over the adversary within the Federal Republic of Germany is lacking, it will have to be examined whether the reminder notice can be served upon him within that territory as otherwise the Mahnverfahren is — on principle — not allowed.<sup>68</sup> Within the territory of Federal Republic of Germany service can be made wherever the person to be served is found, or, for example, to an adult who shares his dwelling as a member of his family or as a servant even if this place does not amount to a residence suitable for creating a general venue.<sup>69</sup>

As was mentioned before<sup>70</sup> the re-codification of the Mahnverfahren was directed toward making it suitable for mass collection of debts. Two innovations of a general type are to serve this aim. One is the provision which allows

62. ZPO §§ 694, para. 2, 700, para. 3 (W. Ger.).

63. ZPO § 703(d) paras. 1, 2 (W. Ger.). The jurisdiction of the local courts is with regard to the amount in litigation on principle limited to DM 3,000. Gerichtsverfassungsgesetz in its version of May 9, 1975, [1975] BGBI.I 1077, § 23, No. 1 (W. Ger.).

64. See text accompanying note 57 *supra*.

65. ZPO § 703(d), para. 3 (W. Ger.).

66. See text accompanying note 20 *supra*.

67. ZPO § 32 (W. Ger.).

68. See text accompanying note 19 *supra*. There is one exception to this rule: ZPO § 688, para. 3 (W. Ger.) allows a Mahnverfahren if service is to be made in one of the countries parties to the Treaty of September 27, 1968, [1972] BGBI.II 773 (W. Ger.), regarding the Enforcement of Judicial Decisions in Civil and Commercial Matters. The countries involved are Belgium, France, Italy, Luxembourg and the Netherlands. In these cases, the petition may also request payment of a fixed sum of money in foreign currency.

69. ZPO §§ 180, 181 (W. Ger.).

70. See text accompanying note 29 *supra*.

a computerized handling of these proceedings.<sup>71</sup> It is left to the States of the Federal Republic (Länder) to determine when, at an individual court, computerization shall be introduced.<sup>72</sup> The Federal Minister of Justice has not yet issued forms to be used in courts that may handle Mahnverfahren by computerization. From this it should result that none of the Länder has as yet made use of the authority to introduce this method. The other provision authorizes the Länder to determine that venue shall lie in one local court to handle all Mahnverfahren for the whole territory of one or even of several courts of appeal and that even several Länder may through agreement extend the venue for Mahnverfahren of one local court beyond the borders of the Land in which it is situated.<sup>73</sup>

To evaluate the practical effect of the now even more simplified Mahnverfahren one should keep in mind that from its very origin in 1877<sup>74</sup> its aim was to handle simple uncontested situations in an easy way (as it was expressed in the preparatory work of the codifications of 1877), procuring an enforceable title without a trial. In other words it was to become an effective means of collecting debts where no contestation was expected but the debtor, rather by oversight or financial difficulties or unwillingness, neglected to pay debts when they became due.

Besides the detailed rules discussed before, some general features as they have developed over the period of a century should be considered for this evaluation. To initiate the Mahnverfahren, no lawyer is required by law as the proceeding starts before the Rechtspfleger of the local court where no representation through a lawyer is prescribed.<sup>75</sup> The layman (who could, for example, be a clerk of a large firm who specializes in this kind of work) is greatly helped by the forms issued by the Federal Minister of Justice and which have now to be applied by legal dictate.<sup>76</sup> No written power of attorney is requested for a person who signs the petition for another person or for a firm; he only needs to assure that he is authorized.<sup>77</sup> Not only do the forms give detailed instructions as to the items which have to be inserted in the original petition and in the other declarations of the parties in the course of the proceeding;<sup>78</sup> they also are arranged in such a way that the petition (through appropriate blacking of spaces on its reverse side and of the reverse sides of

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71. ZPO § 689, para. 1, cl. 2, § 690, para. 3, § 696, para. 2, § 699, para. 2 (W. Ger.). The German expressions for computerization are 'handling by machine' or 'inscription readable only by machine.'

72. ZPO § 703(c) para. 3 (W. Ger.).

73. ZPO § 689, para. 3 (W. Ger.).

74. See text accompanying note 13 *supra*.

75. Rechtspflegergesetz, *supra* note 49, § 13; see note 49 *supra* and accompanying text; ZPO § 78 (W. Ger.).

76. See text accompanying notes 22-24 *supra*.

77. ZPO § 703 (W. Ger.).

78. See text accompanying note 20 *supra*.

added sheets) serves for instant preparation of the following papers: the reminder notice; the notification of the petitioner of the service of the reminder notice upon the adversary; the request by the petitioner to issue an execution order; the execution order itself and the notice to the petitioner about the service of the execution order upon the adversary; the contestation of the reminder notice and the notification of the petitioner of the contestation.

The form for the reminder notice instructs the adversary that payments cannot be accepted by the court but are to be made to the petitioner; that lack of means does not cancel the duty to pay the debt and that an extension of time or payment in installments can be allowed only by the petitioner, not by the court. It explains that against the reminder notice contestation may be made and how and where this can be done; but it also warns the adversary that if there is no valid defense against the claim the contestation would be pointless and only would burden the adversary with additional cost.

As to the cost, the principle, applied almost worldwide, prevails that the losing party has to pay all costs and also any lawyer's fees of his lawyer and of that of the winning party if services of a lawyer are involved.<sup>79</sup> The form for the petition contains a list of court costs which are staggered according to the amount claimed in the petition. The petitioner has to prepay the cost to the court. But the reminder notice also embraces, besides the main claim and interest on it, the court cost as part of what the adversary has to pay if he does not contest the claim. Some examples will show that the cost is quite modest: if no lawyer is involved and the main claim amounts to DM500 (about \$220) the court cost is DM11.50 (about \$5.00); for a claim of DM1,000 (about \$440) the court cost is DM19.50 (about \$8.60); for DM10,000 (about \$4,400) it is DM91 (about \$40). Small amounts for the cost of the forms and for serving the reminder notice are to be added.

### III. CONCLUSION

Thus, the *Mahnverfahren* in its new form does appear to be a quick, simple and inexpensive way to obtain an enforceable title. Although venue for it may now lie in a court far away from the adversary's residence, he is still protected

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79. ZPO § 91 (W. Ger.). The United States is almost alone among developed nations with her system that — with certain statutory exceptions — each party pays its own cost and attorney's fees to the effect that a prevailing plaintiff does not recover all that is owed him while a prevailing defendant is forced to spend considerable sums out of his own pocket. The American Bar Association is considering a change of this system. At the meeting of its House of Delegates in August 1977, the House by a vote of 170 to 96 referred back to the Consortium dealing with the matter a recommendation "for the support of the principle that courts and administrative agencies should require that reasonable attorney's fees be paid as an item of costs to prevailing parties by losing parties in civil litigation except under certain specified conditions." Summary of Actions Taken by the House of Delegates of the American Bar Association, August 8-10, 1977, at 17.

by the necessity of being served<sup>80</sup> and by the easy way in which he may force, through contestation, the proceeding to become a full-fledged normal law suit to be dealt with by the court which would have both, jurisdiction and venue if the claim had been pursued, from the start, outside the Mahnverfahren. An American petitioner should keep in mind that though he may have no general venue within the Federal Republic of Germany, he still can avail himself of the Mahnverfahren by petitioning the local court (Amtsgericht) Schöneberg in Berlin.<sup>81</sup> The result seems to confirm the assumption made at the end of the Introduction that the Mahnverfahren has eliminated the need for debt collectors in West Germany.

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80. See text accompanying note 69 *supra*. Special rules about service upon members of the NATO Armed Forces have been established in Art. 32 of the Agreement of August 3, 1959, [1961] BGBI.II 1183, 1218, 1244 to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany.

81. ZPO § 689, para. 2, cl. 2 (W. Ger.); see text accompanying note 26 *supra*.