# Focusing a dispute on the dispositive legal and factual issues, or how German arbitrators think

## – An introduction to a traditional German method

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**Summary**

The article explains a century old method of reviewing factual and legal submissions of the parties in order to distill the legally relevant and material issues for the decision-making. The method is applied by the German courts and in domestic German arbitration proceedings. It is an approach that German-trained lawyers apply intuitively, as it has been part of their practical legal training. Understanding the method as a non-German lawyer helps to better appreciate how German arbitrators think. The method has the potential to stimulate discussion on a methodological underpinning for time- and cost-efficient decision-making in international arbitration.

**Relationstechnik – Dispositive factual and legal issues – Case analysis – Time and cost efficiency –Domestic arbitration – German court proceedings – International arbitration**

[1] The views expressed in this article are personal.

# 1. Introduction

In the debate about time- and cost-efficient arbitration proceedings, a number of German commentators refer to a method used in the German courts to focus a dispute on the dispositive legal and factual issues, the so-called *Relationstechnik*[2]. The method goes back some five hundred years in Germany and still today all German lawyers are trained to apply it during their practical legal training[3]. Hence, the method is part of the German litigation DNA and also widely applied by German arbitrators in domestic cases.

It is, however, largely unknown outside of Germany[4] and the German Civil Procedural Code contains no provisions on the method which makes access to it difficult for those who were not trained in Germany.

This article highlights German legal education which is focused on teaching decision-making (under 2.) as a backdrop for explaining the method (under 3.). Given their legal training, many German arbitrators intuitively apply the method when faced with the task of deciding a dispute. Knowing about the method will help foreign lawyers better appreciate the thinking of German arbitrators with their often somewhat rigid focus on the dispositive legal and factual issues. The article finally raises the question whether the method could be used in international arbitration proceedings (under 4.).

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2 *Cf.* e.g. J. Risse, "Ten Drastic Proposals for Saving Time and Costs in Arbitral Proceedings", *Arbitration International*, Vol. 29, No. 3, 2013, p. 453-466 at p. 460 advocating the use of the *Relationstechnik*; S. Elsing, "Procedural Efficiency in International Arbitration: Choosing the Best of Both Legal Worlds", *SchiedsVZ* 2011, p. 114-123 also advocating the *Relationstechnik* at p. 117: "*One measure that seems fit to help counter the negative development is a three-step technique known as the 'Relationstechnik' ('Relevance Method'), which is widely used in Germany, particularly by judges, to identify those disputed facts of a case that are critical to its outcome ('relevant' in the strictest sense; 'facts in issue' or 'ultimate facts'). [...] the Relevance Method would prove useful as well in assisting arbitral tribunals to direct parties early on in the proceedings to focus submissions – for example, on evidence going to the truly critical facts – and, in turn, to expedite the proceedings. It serves to discipline arbitrators and parties alike. Experience indicates that a proper implementation of the Relevance Method will in many cases result in a one-day hearing (and sometimes even less)*;" and F. Semler, "Schnelligkeit und Wirtschaftlichkeit in Schiedsverfahren", *SchiedsVZ* 2009, p. 149-152 setting forth in detail the *Relationstechnik*.

3 *Cf.* F. Ranieri, "Das Reichskammergericht und der gemeinrechtliche Ursprung der deutschen zivilrechtlichen Argumentationstechnik", *ZEuP* 1997, p. 718-734.

4 *Id.*, at p. 732: "*Die pädagogische Tradition, die einer solchen Denk- und Argumentationsweise zugrunde liegt und welche übrigens in anderen kontinentaleuropäischen Ländern weitgehend unbekannt ist, offenbar die überraschende Fortwirkung in Deutschland der gemeinrechtlichen Wissenschaft bis heute.*"

## 2. The German legal training teaches decision-making

Different from many other jurisdictions, German lawyers are trained in practical decision-making from a judge's perspective at both stages of their legal education, studying law at a university (under 2.1.) and taking part in a practical legal training course (under 2.2.). Both stages are concluded by state examinations in the law. Once both examinations are passed, the young lawyer has attained the ability to sit as a judge (*Befähigung zum Richteramt*) and can be admitted to the bar. This focus on decision-making is somewhat unique.

### 2.1. The German law school's traditional focus on remedies

At a German law school, the legal training in the civil law is traditionally focused on remedies (*Anspruchsgrundlagen*)[5]. Solving a hypothetical case is a typical task in a student examination, in other words, rather than answering discrete legal questions, the student's task is to decide whether a party is entitled to a requested relief. In their examination case scenarios, law professors usually include a number of legal problems which the students need to spot and discuss. The students therefore learn to focus on dispositive legal issues, namely those relevant for deciding the matter: granting or denying the claim.

The facts provided to the student are framed to allow for legal argument. The student has to determine from a decision-maker's perspective which is the proper legal test – by discussing and weighing competing legal views – and then apply it to the given facts. The various legal problems included in the case scenario need to be elaborated while the non-dispositive issues must be cut short. By way of example, if a contractual claim for non-performance is at stake and no legal issues arise with respect to contract formation, a student would not be expected to elaborate that a contract conclusion requires offer and acceptance, but merely to acknowledge that a contract was concluded (being a precondition for the requested contractual remedy).

In solving a case, a student has to (i) adhere to technical rules – e.g. contract claims are reviewed first, then tort claims; (ii) identify legal remedies – what stat-

[5] Not all statutory provisions spell out a remedy. Only those provisions which set forth a legal consequence, such as an entitlement to damages or restitution, qualify as *Anspruchsgrundlagen*. *Cf.* D. Medicus/J. Petersen, *Bürgerliches Recht, Eine nach Anspruchsgrundlagen geordnete Darstellung zur Examensvorbereitung*, Munich, Vahlen, 24th ed., 2013.

utory provisions or legal rules spell out the consequence which the requesting party seeks? ; and (iii) then review the legal test for the application of the pertinent legal remedies. By way of example, if a claim for damages is at stake and the case scenario includes problems with causation as well as contract formation, a student is supposed to start with examining the contractual claims. If he finds that a contract was not validly concluded, he then turns to tort claims and discusses in this context the causation issues.

The thinking trained at a German law school therefore focuses on understanding the dogmatic underpinnings of the German legal system as developed by law professors and the courts to allow for predictable decision-making.

### 2.2. The Practical Legal Training

After university, all German law graduates pursue a practical legal training organised by the state, the *Referendariat*. Within two years, they spent time with the courts, the state prosecutor's office, the administration and private practitioners. In parallel, they follow courses organised by the courts, the administration and the state prosecutor's office in which they learn the drafting skills to be applied during the practical training.

At the introductory course and during the training at a civil court, a trainee is initiated to the decision-making method applied by German judges for centuries, the *Relationstechnik*. The decision-making method is not spelled out in the law but is handed down from generation to generation. It is part of the German litigation DNA. The judges apply the method and the counsel know it from their own training.

The training books written for law graduates in their practical legal training typically set forth the *Relationstechnik*[6]. The basics of the methods have already been applied by the *Reichskammergericht*, the court of the Holy Roman Empire[7]. The

[6] See M. Anders/B. Gehle, *Das Assessorexamen im Zivilrecht*, Munich, Vahlen, 11th ed., 2013; R. Oberrhein, *Zivilprozessrecht für Referendare*, Munich, Vahlen, 9th ed., 2012, p. 190 with reference to K. Schellhammer, "Die Relationstechnik oder: Wie findet und formuliert man das Urteil im Zivilprozess", *Jura* 1987, p. 169; and F. Ranieri, "Relationstechnik" in F. Ranieri, *Das Europäische Privatrecht des 19. und 20. Jahrhunderts*, Berlin, Duncker & Humblot, 2007, p. 321-327 from a historical perspective.

[7] See H. Berger, *Die Entwicklung der zivilrechtlichen Relation und ihrer denktechnisch-methodischen Argumentationsformen*, Frankfurt, Diss. 1975; F. Ranieri, "Entscheidungsfindung and Begründungstechnik im Kameralverfahren" in P. Oestermann (ed.), *Zwischen Formstrenge und Billigkeit – Forschung zum vormodernen Zivilprozeß*, Cologne, Weimar, Vienna, Böhlau, 2009, p. 165-190 about the structure of an *Aktenrelation* at the *Reichskammergericht* at p. 171 *et seqq*.

method has not changed much, even though German civil procedure and civil law underwent many changes, including its codification in the year 1900 – the German Civil Code.

## 3. The *Relationstechnik* in overview

The method is applied in three steps (under 3.1.), the legal tests are key in the application of the method (under 3.2.) and the method shapes the proceedings (under 3.3.).

### 3.1. Three step approach

The method is applied in three steps[8], which are repeated as necessary during the evolution of the case: first, the decision-maker reviews the claimant's submissions with a view to whether the claimant has fully substantiated its claims while assuming that all facts alleged by the claimant are true (*Klägerstation*)[9]; second, the decision-maker reviews the respondent's submissions with a view to whether the respondent has fully substantiated its defences which would bring down the claim, again assuming that all facts alleged by the respondent are true (*Beklagtenstation*)[10]; and, third, an identification of the disputed factual allegations necessary for establishing and/or defending against the claim and subject to the taking of evidence (*Beweisstation*)[11]. The judge reviews whether the claimant and/or respondent have offered sufficient and relevant evidence to support their disputed dispositive narratives. The scope of the taking of evidence by hearing witnesses or experts is then limited to the dispositive disputed facts.

8 *Cf.* R. Oberrhein, *Zivilprozessrecht für Referendare*, Munich, Vahlen, 9th ed., 2012 at p. 190 *et seq.*

9 *Id.*, at p. 190: "*Gegenstand der Prüfung in der Klägerstation ist das Vorbringen des Klägers […]. Dieser wird ohne weitere Prüfung als wahr unterstellt und geprüft, ob ausgehend davon das erstrebte Prozessziel (Klagestattgabe) erreicht werden kann. Ist dies der Fall, ist die Klage* schlüssig."

10 *Id.*, at p. 192: "*Gegenstand der Prüfung in der Beklagtenstation ist die Frage, inwieweit das Vorbringen des Beklagten (ebenfalls unter Einschluss des unstreitigen Parteivortrags) geeignet ist, die Ansprüche des Klägers zu Fall zu bringen, die Klage abzuweisen. Ist dies der Fall, ist das Vorbringen* erheblich."

11 *Id.*, at p. 194: "*In der Beweisstation wird untersucht, welcher der bisher für die Prüfung der rechtlichen Relevanz als wahr unterstellten Parteivorträge tatsächlich zutrifft, da die Entscheidung nicht mehr alternative ergeben kann, sondern von einer feststehenden tatsächlichen Grundlage ausgehen muss. Gegenstand der Prüfung ist hier daher die Frage, welche Tatsachen der Entscheidung zugrunde gelegt werden können.*"

**3.1.1.** *The first step: the review of the Claimant's case*

Once a claimant has comprehensively developed its case, typically in its full statement of claim, the judge reviews the claimant's submissions with a view to understand what relief the claimant seeks to obtain. The judge then turns to the legal basis for requesting such relief. It is well possible that the claimant's claim is based on concurring or alternative legal theories. The legal basis informs the applicable legal test. The applicable legal test in turn informs the judge what factual assertions the claimant must make in order to satisfy the test.

By way of example, if the claimant requests a payment for an alleged contractual violation, a judge would review whether the claimant asserted (i) the existence of a contract; (ii) the violation of a contractual duty; and (iii) resulting damage. If the claimant alleged all these preconditions for a contractual damages claim, the judge is satisfied that the claimant has fully substantiated its case for a contractual damages claim. If the claimant also asserts a tort claim, the claimant would also need to substantiate the preconditions for such claim.

If the claimant has failed and continues to fail with the necessary factual substantiation of its claims, this will result in the judge dismissing the claim or parts of the claim for lack of factual substantiation. However, in practice a full dismissal of a case for lack of factual substantiation rarely occurs. Nevertheless, in some case, it is already possible for a judge at the first step of his analysis to limit the scope of the proceedings as the claimant is unable to factually substantiate the preconditions of a claim or there is no legal basis for the requested remedy. As such, the first step can be an efficient filter to reduce the complexity of matter.

At this stage, there is no need for a claimant to explain how the contract was concluded but it is sufficient to state that a contract exists and to exhibit the contract. If the claimant would provide lengthy details about the parties' pre-contractual dealings or about how the parties' relationship deteriorated over time, these would be information not considered relevant for the judge's review at this stage. As such, initial German-style submissions typically refrain from telling a comprehensive story and therefore often seem to foreign readers dry and technical.

**3.1.2.** *The second step: the review of the respondent's defences*

If the decision-maker is satisfied that the claimant has submitted comprehensive allegations necessary to satisfy the legal test for granting the requested relief, the judge would then turn to the respondent's submissions with a view to whether the respondent has fully pleaded relevant defences which could bring down the claims.

In the above example, relevant defences could be, among other things: (i) the contract was not concluded with the respondent; (ii) the contract does not provide for the obligations which the claimant asserted (e.g. certain performance parameters); or (ii) the alleged damages do not result from the alleged violation.

Some of the respondent's defences will rest on denying the claimant's factual allegations (e.g. there is no contract between the parties), establishing an own factual or legal defence (e.g. time-bar) or submitting legal arguments on the applicable legal test relevant for the claimant's case (e.g. discussing the preconditions for statutory or contractual claims). For the judge's review at this stage, it is only relevant to analyse whether the responses to the claim are legally relevant. For this purpose, the facts asserted by the respondent are treated as true.

If a judge finds that some narrative is legally irrelevant for deciding the matter, no further effort will be made in the proceedings to clarify or proof the narrative. By way of example, the claimant states that the motor of the red car which he bought from the respondent was already broken when the risk passed. If the respondent now alleges that the car was not red but blue, the judge would not consider this denial of the claimant's narrative relating to the car's colour as a legally relevant defence[12]. If a broken motor is at stake, the colour of the car does not matter for the decision-making.

#### 3.1.3. *The third step: checking the disputed factual allegations for their relevance*

If any of the defences are legally relevant, the judge would then review which of the critical allegations are disputed. The judge will assume the undisputed allegations as being true and use them for his decision-making without any further need to hear witnesses or experts on these facts.

If legally relevant facts are disputed, the judge would then check what offers of evidence have been submitted by the parties: documents, testimony of witnesses or experts. The judge would first review whether the party which bears the burden of proof for the relevant allegation has offered any evidence.

For instance, if the respondent denies that a contract was concluded between the parties, the claimant would need to submit a written contract setting forth the names of the parties or offer witness testimony that a contract had been orally concluded between the parties. If the claimant fails to do so, the judge can dismiss the case. There is no need to hear any witnesses offered by the respondent saying that the parties only discussed a contract.

[12] Example adopted from F. Semler, "Schnelligkeit und Wirtschaftlichkeit in Schiedsverfahren", *SchiedsVZ* 2009, p. 149-152 at p. 150.

If evidence has been offered by the party bearing the burden of proof for a disputed allegation, the judge would then review whether any counter-evidence has also been offered. If the pertinent offers are on point, the judge would review the evidence, hear the witnesses or appoint an expert (in German court proceedings it is common to request the court to appoint an expert if a technical allegation is disputed).

On the basis of the evidence taken, the judge would then decide on which of the competing narratives to base his decision. The judge will ask the question: Has the party who bears the burden of proof for a specific factual allegation discharged that burden? If so the claim or defence will succeed. If not, the claim or defence will fail. If the judge cannot decide (*non liquet*), the party bearing the burden of proof will lose.

### 3.2. The applicable legal tests are key

This approach forces the decision-maker to undertake a preliminary legal analysis at the beginning of the matter and to revisit the legal analysis as the case evolves in order to determine the pertinent legal tests. Once the judge has identified the relevant legal tests, he can assess whether the claimant has fully factually substantiated its claims or the respondent its defences.

As the application of the relevant legal tests will eventually determine the final decision-making, the entire court proceedings are geared towards this end – what is needed in terms of factual allegations and legal arguments to decide the case? In light of the pertinent legal tests, the judge needs to identify the relevant undisputed facts and to assess by hearing witnesses and experts which party has presented the more convincing narrative of the disputed facts (relevant to the legal test).

Framing the relevant legal tests is often a difficult task. Contractual provisions and codified legal rules are the starting point but the contractual provisions typically need interpretation and the statutory provisions have been refined by the jurisprudence of the courts. In German court proceedings, the parties submit their legal arguments to the judge and the judge engages with the parties in a dialogue about the construction of the legal tests. This approach provides the parties with an opportunity to understand the judge's thinking and enables a focused response.

### 3.3. A method shapes the proceedings

The above described three step analysis allows for filtering the parties' submissions and for excluding non-relevant factual and legal submissions. As such, the proceedings are focused on the dispositive issues through the prism of the appli-

cable legal test. This translates into distinct stages of the proceedings – first, comprehensive submissions by the parties on the factual and legal basis of a claim and/or response; second, the determination and sharing of the relevant legal tests between judge and parties (*Rechtsgespräch*); third, the review of the factual allegations for their legal relevance by the judge; fourth, the judge's identification of the disputed factual allegations in need of proof by the party bearing the burden of proof (*Beweisbeschlus/Beweisanordnung*); and, fifth, the judge's pro-active taking of evidence at the hearing.

#### 3.3.1. *A full written elaboration of the facts and legal theories are necessary*

A party, whether claimant or respondent, needs to fully plead its case in its written submissions. It cannot wait to do so until the hearing day. Accordingly, a claimant basically needs to have done the home work of identifying the legal theories for its claims when it files a claim – the claimant's legal theories are therefore not a moving target throughout the proceedings. Once, a claimant has determined the legal theories on which it bases its requested relief, the corresponding factual expositions are put forward. In a *artis* submission, every factual allegation has a legal relevance. There are no loose ends, all factual allegations are tied to a legal test.

In German-style submissions, a party differs between factual allegations and legal arguments. These are traditionally strictly separated. The (chronological) factual exposition is limited to the facts needed for the later legal arguments. While the principle of "*da mihi facta, dabo tibi ius*" applies – in other words, a party would not necessarily need to plead the law as the judge is assumed to know the law –, hardly any counsel would refrain from clearly identifying the legal basis of the asserted claims or defences.

#### 3.3.2. *The Rechtsgespräch*

By applying the method, the judge or tribunal of judges form on the basis of the parties' written submissions a view on the applicable legal tests. This typically requires a thorough legal analysis right at the outset of a matter and in case of a tribunal early deliberations.

Facts which are not relevant to the application of the pertinent tests, can be ignored; and only legally relevant facts which are disputed need to be proven by hearing witnesses or experts. After having reviewed the parties' full submissions, a German judge typically holds a short first hearing to discuss legal issues with the parties. At such a hearing, usually no evidence is taken but the judge summarizes his initial

understanding of the dispute and shares his preliminary legal views – what are the relevant legal tests and what substantiations are needed to meet these tests?

The judge therefore provides the parties at an early stage of the proceedings with an opportunity to understand and challenge the judge's thinking process. As a consequence, the parties can adopt their pleadings, focus and elaborate their factual and legal submissions. There is no need to plead various alternatives for lack of a clear understanding what the decision-maker considers relevant. Counsel do not need to second guess whether their legal arguments resonate with the decision-maker. They will know early on. If a judge wants to depart from a preliminary view, he will need to share any new (legal) thoughts with the parties in order to prevent surprises.

#### 3.3.3. *Review of factual allegations for their legal relevance*

Once, the legal test is settled (at least for the current court instance), the focus shifts to the facts presented by the parties and whether they need to be proven. Facts which are undisputed need no proof. At this stage, a judge typically uses DIN A-4 sheets of paper once folded vertically. In the left column of the paper, the judge sets forth the claimant's narrative, as far as it is considered legally relevant. In the right column of the paper, the judge then states whether a claimant's legally relevant allegation is disputed by the respondent and, if so, what the respondent's counter-narrative is. The judge also notes the offers of evidence submitted by both parties, such as exhibited documents, witness or expert testimony. By juxtaposing the narratives, the judge has a quick overview of the key disputed facts and how the parties seek to proof their respective narrative.

#### 3.3.4. *The Beweisbeschluss/Beweisanordnung relating to disputed allegations*

With respect to the disputed facts and with a view to the parties' offers of evidence for these facts, the judge then formulates an order for the taking of evidence which sets out the disputed issues (*Beweisthemen*) and which witnesses or experts are called to testify on them. The judge is the gate-keeper of the taking of evidence. Only evidence for disputed factual allegations which are considered dispositive for the judge's decision will be examined at the hearing.

#### 3.3.5. *The judge's control of the taking of evidence*

As the taking of evidence is supposed to help the judge determine which story to follow, the judge also actively takes charge of the process. The judge questions the witnesses and experts to find out what narrative to follow: the claimant's or the respondent's allegations. Judges do not subject a witness to a cross-examination

but typically ask open questions. Counsel are allowed to ask follow-up questions. If a judge considers such questions to relate to legally irrelevant issues, a judge cuts a counsel short. In short, the judge is the master of the proceedings. The entire proceedings are geared towards enabling the judge to discharge his task of decision-making. The underlying assumption is that the judge best knows what he needs for his decision.

## 4. What is the relevance of the method for (international) arbitration ?

The above-described method is applied in court. However, it equally finds application in domestic arbitration proceedings. Domestic German arbitration proceedings often mirror court proceedings – an arbitrator who shares a preliminary case assessment with the parties, limits and runs the taking of evidence[13]. Given that all German lawyers who typically sit as arbitrators in domestic cases – judges, law professors or attorneys – were once trained to apply the *Relationstechnik*, they are familiar with it and often apply it intuitively. Similarly, German counsel representing parties assume that the arbitrators will apply the method and therefore adopt their pleading style. There is then a level playing field. However, if foreign counsel participate in domestic proceedings, they are often puzzled by the way a German-style domestic arbitration is run[14], for lack of an understanding of the *Relationstechnik* and how its application shapes the proceedings.

[13] *Cf.* K.P. Berger, "The International Arbitrator's Dilemma: Transnational Procedure versus Home Jurisdiction", *Arbitration International*, Vol. 25, No. 2, 2009, p. 217-238 at p. 219 for a critique of mirroring court proceedings, albeit with reference to technical provisions related to procedures before German courts: "*Sometimes, however, German counsel who are not familiar with the arbitration process tend to carry this general principle too far. They assume that arbitration is merely a mirror image of German court procedure, i.e. a substitute for instead of an alternative to litigation in Germany courts.*"

[14] *Cf.* K.H. Böckstiegel, "Assumptions regarding Common Law versus Civil Law in the Practice of International Commercial Arbitration", *SchiedsVZ* 2011, p. 113-114 who refers to difficulties with the German approach in an international context at p. 114: "*A particular feature of the German tradition should be mentioned in this context, namely what we have all learned as Relationstechnik. This can indeed be a method avoiding unnecessary work and unnecessary examination of evidence and thus limiting and speeding up the procedure. It seems still to be very helpful and applied in domestic German arbitrations. However, as soon as non-German parties, counsel or arbitrators are involved, it seems more difficult to maintain. These often feel that this method puts them at a disadvantage and provides for a pre-judgment of the issues at too early a stage when not all aspects of the case are clear.*"

The method is certainly a German peculiarity. Is there any room for it in international arbitration proceedings? Surely, an arbitrator with a German legal training can and will likely use the method to get a grip on a matter, in particular by focusing on the legal tests and filtering the legally relevant facts from the non-relevant ones. While the application of the method then remains invisible to the parties, it nevertheless informs the thinking of the German-trained arbitrator. He might share his findings in deliberations and thereby the method could well have an impact on the collective decision-making process.

However, the parties will typically not be privy to this thinking process as international arbitrators, including German ones, are traditionally hesitant to share preliminary views and to overtly interfere with the parties' reign of the taking of evidence. The current practice of international arbitration is therefore not really compatible with the procedural stages shaped by the *Relationstechnik*, namely the *Rechtsgespräch*, the *Beweisbeschluss/Beweisanordnung* and the control of the taking of evidence by an arbitral tribunal. But does this imply that there is no room at all for the *Relationstechnik* in international arbitration?

What could be of particular interest as a new (and optional) feature of international arbitration is the *Rechtsgespräch* on the basis of an early case assessment by the arbitral tribunal informed by an analysis pursuant to the *Relationstechnik*. The beauty of the method is that it reviews the parties' submissions assuming that the claimant's or respondent's factual narrative is correct. As such, there is no pre-judging of the evidence. However, a transparent focusing on the dispositive legal issues is possible, provided both parties have comprehensively set out their respective cases. As such, written advocacy gains critical importance. In a *Rechtsgespräch* an arbitral tribunal can help counsel to focus on the dispositive legal, factual and evidentiary issues (and re-assess the chances of success).

Adopting such an approach would not mean doing without document production or cross-examination altogether, it would just focus these (time-consuming and expensive) tools to the legally dispositive issues of a case. If they help to win the case, they should be used by counsel to test and challenge the opposing party's narrative. However, a case is not won by fighting legal or factual issues which the decision-makers (eventually) do not consider relevant. Providing the parties with the option of an early case assessment on the basis of the *Relationstechnik* might save time, costs and frustration – and increase the attractiveness of international arbitration, notably in the many cases in which time and costs matter.