



Strasbourg, 16 December 2011

CCJE(2011)7

**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

**Questionnaire with a view of the preparation of Opinion No. 15 on
specialisation of judges and courts**

Replies from Germany

1. Specialisation of courts

TYPES OF COURTS/JUDGES	(A) TICK THE BOX IF YOUR COUNTRY HAVE SPECIALISED COURTS/JUDGES IN:	(B) IF YES TO (A), TICK THE BOX IF THEY ARE SPECIALISED JUDGES/CHAMBERS WITHIN A GENERALIST COURT	(C) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE INSTITUTION WITHIN THE GENERAL ORGANISATION OF THE JUDICIARY	(D) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE JUDICIARY FORMING A SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(F) IF YES TO (A), TICK THE BOX IF THEY HAVE A TERRITORIAL COMPETENCE DIFFERENT FROM GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)	(G) IF YES TO (A), TICK THE BOX IF THEY APPLY RULES (PROCEDURE, EVIDENCE, ETC.) THAT ARE DIFFERENT FROM THOSE APPLICABLE IN GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)
Family courts	X	X					X
Juvenile courts	X	X					X
Administrative courts/council of state	X			X	X	X	X
Immigration/Asylum	X	X (in administrative courts)					
Courts of Account							
Military Courts							
Tax Courts	X			X	X	X	X
Labour/social courts	X			X	X	X	X
Courts for agricultural contracts	X	X			X	X	
Consumers' claims courts							
Small claims courts							
Courts for wills and inheritances	X	X					X
Patent/copyrights/trademark courts	X	X				X	
Commercial courts	X	X			X		
Bankruptcy courts	X	X				X	X
Courts for land disputes							
"Cours d'arbitrage"							
Serious crimes courts/courts of assize	X	X					
Courts for the supervision of criminal investigations (e.g. authorising arrest,	X	X					

¹ For example, appeals on decisions of the specialised court of first instance is filed with a specialised court of appeals, council of state, etc.

² For example, composition including lay members: jurors, psychologists, engineers; please specify qualifications and system of recruitment. For example composition of only lay members: representatives of labour organisations, aldermen-échevins, justices of the peace, magistrates etc.

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wire-tappings, etc.)							

Courts for the supervision of criminal enforcement and custody in penitentiaries	X	X					
Other, please specify:							

To what extent specialisation of courts is relevant in your system?

Explanations: Germany has 5 separate jurisdictions (ordinary courts for civil, family and criminal cases; administrative courts; labour courts; social security courts; tax courts) with their own codes of procedure and appeals system, cf. [the attached table](#). The districts of these specialised courts do not generally coincide with districts of ordinary courts (local and regional courts). Specialised judges or panels within the ordinary courts (e.g. patent courts, bankruptcy courts, agricultural courts) can have a territorial competence different from the local or regional courts of which they are part, if by law their jurisdiction is extended to more than one district (concentration). Within the three great branches of ordinary courts (i.e. civil, family and criminal cases), different codes of procedure apply. Within each court, the work load is for every single year assigned to the judicial staff by a special self-governing body, the presiding committee (Präsidium) which is composed by judges elected by their peers. This committee has the task to assign judges to each adjudicating body or panel and therefore, within the courts of ordinary jurisdiction, also has to decide on whether a judge will do civil, family or criminal cases. In addition, in many courts special panels have been set up for certain fields, e.g. medical malpractice, construction cases, lease, unfair competition etcetera. The idea behind this is to concentrate knowledge and experience so that courts, especially appeal courts, can work at the same level (Augenhöhe, eye-level) as specialised lawyers. On the other hand, it is regarded as essential that flexibility of staff-assignment does not get lost so that fluctuation in incoming caseload can be answered by moving judicial staff at least within a court. Therefore, emphasis is put on keeping a sufficient number of generalist judges and/or on expecting judges to accept being transferred to another field of specialisation and to acquaint themselves with new fields.

2. Specialisation of judges

a) Does the recruitment procedure take into account the specialised studies accomplished after the university diploma in law? Does it take into account the specialised professional experience? Please specify.

Generally not. Appointment of young career judges to the judiciary is done either by the ministry of justice or by the relevant court of appeal. In this process, certain preferences or experience may be relevant on a case by case basis, e.g. if an applicant has put emphasis in his studies on administrative law, he may have better chances to be appointed to the administrative court.

b) Are judges promoted to a higher court, or assigned to a post of chief judge, on the basis of a procedure giving relevance to specialisation? Please specify.

Again, specialisation or particular experience may be relevant, as the case may be (e.g. if a position in the panel for law of unfair competition has to be filled at a court of appeal). There is, however, no strict procedure weighing specialisation as against generalists' experience.

c) May a judge from a generalist court move to a specialised court, or from one specialisation to another:

<i>As to separate court systems:</i>	<i>Within the same court system:</i>
<input checked="" type="checkbox"/> by just filing an application examined on the basis of seniority and other criteria not including previous specialisation?	<input checked="" type="checkbox"/> by showing professional experience?
<input type="checkbox"/> by resigning from original post and participate to a new recruitment?	<input checked="" type="checkbox"/> by attending specialisation/reconversion courses?
<input type="checkbox"/> other?	<input type="checkbox"/> by passing a specialisation exam?

Within the same court system, assignment lies with the presiding committee (cf. 1, above). Showing interest, professional experience and having attended additional courses may be a decisive factor for the independent and responsible decisions of these committees.

d) Does the system ensure that all judges may access specialisation (e.g. by giving them the appropriate information)?

Yes, they can show their interest to the presiding committee.

e) What are for judges the criteria for access to specialisation?

Cf. c), above: Knowledge, experience, interest, sometimes seniority.

f) Do financial provisions exist helping judges to transfer to other towns where specialisation may be acquired?

No

g) Are there access/reconversion courses to specialised functions:

- Yes, within the judicial training institute ?

- Yes, organised by an institution different from the judicial training institute?

- No?

h) Are there training courses reserved only to specialised judges?

Yes

i) Are exchanges of judicial experiences between different specialisations and/or generalist groups of judges organised?

Yes

j) Do specialised positions exist in court for organisational purposes only (e.g., judge serving as spokesperson for the court; judge for the development of IT in court; judge co-operating with ADR services, etc.)?

Yes

k) If yes, is there a specific training for this type of posts? Please specify.

There are, as a rule, no structured career plans with structured elements of training and education. Generally, highly qualified younger judges are asked to work in the courts' self-administration as assistants of court presidents. They receive additional training in these functions and gain experience over the years, if they work first in courts of first instance and later in courts of appeal or even for a period of time in the ministry of justice.

l) Do specialised judges have a higher compensation than generalist judges? Please distinguish, if relevant, according to whether the specialist judges belong to the same court system or a separate court system (e.g., in some countries, depending on the distinction between ordinary judges and administrative judges).

No

m) Are there special allowances, or benefits in kind, for specialised judges?

No

n) Are specialised judges entitled to a preferential access to higher courts? If yes, is such access limited to the specialisation field of the judge concerned?

There are no rules of law entitling for preferential access. Specialisation may be relevant, if positions in a special field have to be filled. It may be an obstacle, if the specialist is not prepared to change the field or to work as a generalist if such a position has to be filled.

3. Specialisation of courts vis-à-vis specialisation of other actors of justice

a) Is the bar and/or professional associations of lawyers organised on a specialised basis in your country? Please specify.

Not as of law, because the bar is organised as one entity. Within the bar, however, groups or associations of specialised lawyers have been formed. In addition, lawyers can ask for certification in certain special fields (Fachanwalt), e.g. in labour law, social security law, administrative law, criminal law, family law etcetera. This requires additional training and exams.

b) In order to practice before specialised courts, have lawyers to be specialised (e.g. registered in special bar listings)?

No

c) Is public prosecution organised on a specialised basis in your country? Please specify.

Generally not. Within the prosecution, specialised departments (homicide, juvenile crimes etcetera) are quite common. In some Länder, special central offices or departments have been formed for certain fields (e.g. economic crimes).

d) In order to practice before specialised courts, have prosecutors to be specialised (e.g. belong to specialised department of the prosecution service)?

No

e) Are specialised judges assisted by specialised staff (clerks, technical staff, etc.) ? If yes, is this staff recruited on an *ad hoc* basis?

No. Experience and additional training lead to a certain level of specialisation with this staff.

4. Specialisation and governance

Is your Council for the judiciary or other another equivalent independent body entrusted with the protection of the independence of judges competent for all specialised judges, as for all generalist judges? If not, please specify the specialised judges that are not under the governance of the Council.

In Germany, there is no specific council for the judiciary. However, in addition to staff councils existing for the five different jurisdictions the legal safeguard for independence of the judiciary is the judicial service court (Dienstgericht). The scope of jurisdiction of these courts includes questions of dismissal, disciplinary matters and also disputes with respect to an alleged violation of judicial independence. Composition of this court takes into account from which of the five jurisdictions the dispute in question arises.

5. Specialisation, professional associations of judges, judicial ethics

a) Are there in your country professional associations of specialised judges?

Yes, following the five different jurisdictions. There is also a widespread practice of professional contacts and interchange of opinions between judges of specialised fields and lawyers (e.g. in family law, criminal law, lease etcetera).

b) Do specialised judges have separate or common “principles of judicial ethics”³ with respect to generalist judges? If separate principles apply, please specify (i.e. separate principles needed by exposure of specialised judges to problems affecting juveniles, family problems, labour disputes, etc.).

No

6. Conclusion

a) Please give your opinion on the advantages and disadvantages of special courts

³ See principles of judicial ethics as defined in CCJE’s Opinion No. 3 (i.e. rules having no disciplinary impact).

The advantages of special courts, i.e. special jurisdictions like the five branches of jurisdiction in Germany, are generally seen in the fact that it is easier to organise court business. All the panels and judges apply similar procedural rules, the composition of the panels is similar, mutual understanding and respect are considered to be granted and to be a solid basis for effective court work.

The disadvantage of special courts is evident where the caseload coming to these courts is relatively small and where the courts themselves are small. Flexible assignment of judicial and support staff is increasingly difficult, e.g. in case of illness of a relevant percentage of a small number of judges. In addition, administering small units is less effective.

The German example shows quite well that both systems can exist rather well if the number of staff assigned to a specific jurisdiction is sufficient. Ordinary courts with differently composed panels (e.g. for criminal cases, agricultural cases, commercial cases) and further specialisation show that administering a great amount of diverse specialisations is possible and that mutual understanding and respect can also be present in large courts with many judges and many different specialisations. From this point of view, special jurisdictions do not seem to be necessary. They may, however, be useful if the number of judges and courts would seem sufficient for effective administration of justice; this is no longer the case in all the German Länder.

b) Please give your opinion on the advantages and disadvantages of specialisation of judges

A certain level of specialisation appears inevitable, in order to have courts acting on the same level of quality as specialised lawyers. The higher up in the court system (appeal courts, courts of cassation) you look, the more does specialisation seem necessary. On the other hand, it is essential to have judicial staff with generalist knowledge and experience to enable courts to meet the demands of the public and to maintain necessary flexibility in assigning incoming cases to competent judges. From this point, it would be preferable to have a sufficient number of generalists especially in first instance courts. Judges should be expected to be prepared to change their field of work and, if necessary, of specialisation, if needed.