



COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE  
(CEPEJ)

QUESTIONNAIRE POUR ÉVALUER LES SYSTÈMES JUDICIAIRES 2007

Pays : Allemagne

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## 1. Données démographiques et économiques

### 1. 1. Généralités

#### 1. 1. 1. Habitants et informations économiques

##### 1) Nombre d'habitants

82351000

##### 2) Dépenses publiques totales annuelles de l'Etat/le cas échéant dépenses publiques des collectivités territoriales ou entités fédérales (en €)

	Montant
Niveau national	282788000000
Niveau territorial / entités	414423000000

##### 3) PIB par habitants (en €)

28012

##### 4) Salaire moyen brut annuel (en €)

41952

##### 5) Taux de change de la monnaie nationale (zone non Euro) en € au 1 janvier 2007

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#### Veillez indiquer les sources des questions 1 à 4

Re number of inhabitants (question # 1):

Federal Statistical Office, Statistical Yearbook 2007 for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2007), Table 2.1.1 (as of : 31 December 2006)

Re expenses (question # 2):

Federal Statistical Office, Statistical Yearbook for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2007)

Re GDP (queston # 3):

Federal Statistical Office, Statistical Yearbook 2007 for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2007)

Re average salary (question # 4):

The figure refers to the average gross income of private households per month (€ 3 496) in 2005 (x12), excluding households of the self-employed and farmers and households with a monthly income of € 18 000 and above.

Source: Federal Statistical Office, Statistical Yearbook 2007 for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2007), Table 22.2.1.

### 1. 2. Données budgétaires relatives au système judiciaire

#### 1. 2. 2. Budgets (tribunaux, ministère public, aide judiciaire, frais)

**6) Budget total annuel approuvé et alloué à l'ensemble des tribunaux (en €)**

8731000000

**7) Veuillez préciser**

The amount indicates the expenditure for both the courts and the public prosecution system. This is due to the fact that in some Länder the expenditure for courts is not recorded separately from the expenditure for the public prosecution system and thus question # 6 needs to be seen in combination with question # 17.

**8) Le budget approuvé pour les tribunaux inclut-il les postes suivants? Veuillez préciser pour chaque poste (ou pour certains d'entre eux) les montants concernés:**

Budget public annuel alloué aux salaires (bruts)	<input checked="" type="checkbox"/> Oui	5000000000
Budget public annuel alloué aux nouvelles technologies de l'information (équipements, investissements, maintenance)	<input checked="" type="checkbox"/> Oui	192000000
Budget public annuel alloué aux frais de justice	<input checked="" type="checkbox"/> Oui	1376000000
Budget public annuel alloué aux bâtiments (maintenance, budget de fonctionnement)	<input checked="" type="checkbox"/> Oui	268000000
Budget public annuel alloué à l'investissement en nouveaux bâtiments (tribunaux)	<input type="checkbox"/> Oui	
Budget public annuel alloué à la formation	<input checked="" type="checkbox"/> Oui	
Autres (Veuillez préciser)	<input checked="" type="checkbox"/> Oui	1895000000

**9) Le budget public annuel alloué à l'ensemble des tribunaux a-t-il été modifié (augmentation – diminution) lors des cinq dernières années ?**

- Oui  
 Non

Si oui, veuillez préciser (par exemple en fournissant une indication sur l'augmentation ou la diminution du budget lors des cinq dernières années)

**10) Existe-t-il une règle générale selon laquelle une personne doit payer une taxe ou des frais pour intenter une procédure devant une juridiction de droit commun :**

- en matière pénale ?  
 en matière autre que pénale ?

Si oui, existe-t- il des exceptions ? Veuillez préciser:

In criminal cases it is rare that private persons start proceedings at a court. Usually the public prosecutors are responsible for starting them in court and they are not required to pay any court tax or fee in advance.

For so-called private cases, there is a general standard that foresees advance payment of litigation costs (§ 16 para 1 Gerichtskostengesetz (Court Fees Act), § 379a Strafprozessordnung (code of criminal procedure)). Persons who have been granted legal aid are exempted.

For civil court cases, § 12 Gerichtskostengesetz foresees a general advance payment in case of a civil dispute on the basis of the Code of Civil Procedure (Zivilprozessordnung). The exemptions are outlined in § 14 Court Fees Act. No advance payment is necessary if:

1. the applicant has been granted legal aid,
2. the applicant is entitled to fee exemption
3. the intended litigation appears to be reasonable and not frivolous and when it can be credibly shown that
  - a) immediate payment of costs would be difficult for the applicant for financial or other reasons or that
  - b) a delay would mean damage to the applicant that could not or hardly be replaced.

In cases of jurisdiction over non-contentious matters, any activity that is applied for will only be carried out if sufficient advance payment has been made or secured in order to cover the costs (§ 8 Kostenordnung (Regulation on Costs)). Any exemption from advance payment is regulated in the same way as the cases of the Court Fees Act (Gerichtskostengesetz).

For proceedings in labour courts or courts in administrative, social and financial matters, no advance payment of court fees is required.

**11) Si oui, veuillez préciser le montant annuel des frais (ou taxes) perçus par l'Etat (en €)**

3977000000

**12) Budget total annuel approuvé pour l'ensemble du système de justice (en €)**

12396000000

**13) Budget public annuel approuvé et alloué à l'aide judiciaire (en €)**

557000000

**14) Si possible, veuillez préciser**

	le budget public annuel alloué à l'aide judiciaire dans les affaires pénales	le budget public annuel alloué à l'aide judiciaire dans les affaires autres que pénales
Montant		

**15) Le budget public annuel alloué à l'aide judiciaire est-il compris dans le budget des tribunaux ?**

- Oui  
 Non

**16) Budget public annuel approuvé et alloué au Ministère public (en €)****17) Le budget public annuel alloué au Ministère public est-il compris dans le budget des tribunaux ?**

- Oui  
 Non

**18) Instances formellement responsables des budgets alloués aux tribunaux :**

	Préparation du budget global des tribunaux	Adoption du budget global des tribunaux	Gestion et répartition du budget entre les tribunaux	Evaluation de l'utilisation du budget au niveau national
Ministère de la justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Autre ministère	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parlement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cour Suprême	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Conseil Supérieur de la Magistrature	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tribunaux	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Organisme d'inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Autre	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**19) Si autre ministère et/ou organisme d'inspection et/ou autre, veuillez préciser (suite de la question 18):**

Other Ministry responsible for preparing and evaluating the budget: Federal Ministry of Finance

Other authority responsible for the evaluation: Court of Auditors

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- les caractéristiques de votre système budgétaire et les réformes majeures mises en oeuvre au cours des deux dernières années
- si possible un organigramme avec une description des compétences des différentes instances responsables des procédures budgétaires

Comment on the items included in the budget (question # 8):

The judicial budget comprises expenses for staff, information technology, court costs, management and maintenance of property and buildings as well as training measures. Due to the different budgeting procedures in the Länder, exact amounts cannot be specified in all cases. The figures listed per category therefore need to be understood as minimum amounts. Some of the expenses can also be featured under the last category "Other".

Comment on the changes in the budget (question # 9):

Overall, there have neither been substantial increases or decreases in the budget of the courts.

Comment on the budget of the whole justice system (question # 12):

The indicated amount includes the expenses of the courts and the public prosecution as well as prisons and partly of the Justice Ministries.

Comment on the budget for legal aid (question # 13):

The indicated amount refers to the remuneration of lawyers for advice and representation before the courts. It is not possible to break it down to criminal cases and other cases.

Comment on legal aid as part of the budget of the courts (question # 15):

This question cannot be answered, because the budgeting system differs from Land to Land. Legal aid usually means that a Land abstains from requesting court costs. This exoneration is not entered into the budgets in all Länder.

Comment on the budget of the public prosecution system (question # 16): See replies to question 6 and 12.

Comment on the budget of the public prosecution system as part of the budget of the courts (question # 17): In some Länder, the expenses for the public prosecution system are recorded separately from the expenses for the courts. But this is not the case everywhere and that is why this question cannot be answered. The figures stated in the response to question # 6 cover the expenses for the public prosecution system, too.

Comment on responsibility for the budget (question # 18):

The Ministries and courts are not structured the same way in every Land. The answer therefore reflects the focus of the organisational structure at federal and Länder level. In some Länder, the courts do not belong to the portfolio of the Justice Ministries. In these cases the Ministry that the courts are assigned to, is responsible and not the Justice Ministry.

### **Veillez indiquer les sources pour les questions 6, 7, 13 et 16**

Re budget and items (questions 6, 7, 8 and 12):

Federal Budget 2006 and Länder information

Re budget for legal aid (question # 13):

Information by federal courts and from Länder

## 2. Accès à la justice

### 2. 1. Aide judiciaire

#### 2. 1. 1. Principes

#### 20) L'aide judiciaire concerne-t-elle :

	Affaires pénales	Affaires autres que pénales
Représentation devant les tribunaux	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Conseil juridique	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Autres	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

#### 21) Si autres, veuillez préciser (suite de la question 20) :

For cases other than criminal cases:

The allowance for legal advice (Beratungshilfe) is the instrument used outside the framework of court proceedings.

#### 22) L'aide judiciaire prévoit-elle la couverture ou l'exonération des frais de justice?

Oui

Non

Si oui, veuillez préciser:

a) Criminal cases:

No.

b) Other cases:

Yes.

When legal aid is granted, the Federal or Land Cash Office can only claim from the party unpaid and emerging costs for the court and the bailiff and the fees for the assigned lawyers on the basis of the court's decisions.

Furthermore, any proceedings before social courts (Sozialgerichte) and specific cases before administrative courts (Verwaltungsgerichte) are always free of court costs independent of legal aid.

#### 23) Est-il possible de bénéficier de l'aide judiciaire pour des frais relatifs à l'exécution des décisions de justice ?

Oui

Non

Si oui, veuillez préciser :

In civil court and labour court cases, legal aid can also be granted in the case of enforcement upon application.



**24) Nombre d'affaires ayant bénéficié de l'aide judiciaire publique octroyée au niveau national, régional ou local:**

	Nombre
Total	
En matière pénale	N/A
En matière autre que pénale	592367

**25) En matière pénale, toute personne qui n'en a pas les moyens peut-elle bénéficier de l'assistance gratuite (ou financée par un budget public) d'un avocat ?**

- Oui  
 Non

**26) Votre pays procède-t-il à un examen des revenus et biens du demandeur avant d'octroyer l'aide judiciaire :**

	Non	Oui	Total
en matière pénale ?	no		
en matière autre que pénale ?		income + asset	see below

**27) En matière autre que pénale, est-il possible de refuser l'aide judiciaire pour absence de bien-fondé de l'action (par exemple pour caractère abusif de l'action en justice)?**

- Oui  
 Non

**28) Si oui, la décision pour accorder ou refuser est-elle prise par :**

- le tribunal ?  
 une instance extérieure au tribunal ?  
 une instance mixte tribunal/organe externe ?

**29) Existe-t-il un système privé d'assurance de protection juridique permettant aux justiciables de financer une action en justice?**

- Oui  
 Non

Veillez préciser :

Insurance companies offer contracts. The extent and scope of the insurance are defined by the content of the contract.

**30) La décision judiciaire peut-elle porter sur la manière dont les frais de justice payés par les parties au cours de la procédure seront partagés :**

	oui	non
en matière pénale ?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
en matière autre que pénale ?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- les caractéristiques de votre système d'aide judiciaire et les réformes majeures mises en oeuvre au cours des deux dernières années

Comment on what is covered by legal aid (question # 20):

a) Criminal cases

In criminal cases, legal aid means a lawyer will be assigned to the case unless the defendant has employed a defense counsel himself. A lawyer will only be appointed, if the involvement of a defense lawyer is necessary. Pursuant to § 140 Code of Criminal Procedure (Strafprozessordnung, StPO) this is only the case when the alleged crime, the facts or legal situation or the expected legal impact (sentence) are especially severe. The remuneration for the assigned defense counsel will be paid by the treasury.

b) Other cases

When legal aid has been granted, the party is exempt from paying the court costs and the fees for his own lawyer. The costs for legal representation are only covered when legal representation is obligatory, the opponent has a lawyer or if the argument is about legal matters and a subject matter that is not easily comprehensible.

Legal aid does not cover the costs of the opponent in the proceeding. These need to be borne by the party that has been granted legal aid if he loses the case.

Comment on the number of cases in which legal aid is granted (question # 24):

- For labour court or financial court cases, no figures are available for legal aid that has been applied for or granted.
- Cases at federal courts for which legal aid has been applied for or granted are not included.

Comment on assistance by a lawyer free of charge (question # 25):

Only if it concerns the involvement of a court-appointed lawyer. Pursuant to § 140 Code of Criminal Procedure, a lawyer is appointed by the court only when the alleged crime, the facts or the legal situation or the expected legal impact (sentence) is especially severe.

Comment on an income and asset test and the merit of the case (question # 26):

a) Criminal cases

In criminal proceedings, the income and assets of the accused are only reviewed when the accused is sentenced and thus needs to bear the costs of the proceedings – including the expenses for the court-appointed lawyer.

b) Other cases

Every party is required to use their income and asset for financing the proceeding. If the income is not sufficient, the lack of means needs to be identified. For this check, fixed amounts and expenses as listed in § 115 of the Code of Civil Procedure are deducted from the party's income (e.g. regular deductions from the income such as social security payments, taxes, housing costs and other larger amounts such as electricity fees, heating costs, insurance fees, instalment payments etc.). If the remaining income is too high, legal aid is not granted. If not, legal aid is granted and instalment payments can be asked for depending on the remaining income. If instalment payment is agreed upon, its amount is graded according to the identified income.

The court is entitled to repeat this income check after the conclusion of the case, in order to find out, if the financial situation of the party that was granted legal aid, has changed considerably. If this is the case, the decision on outstanding payments can be changed to the disadvantage of the party, i.e. instalment payment can be required for the advance payment of the litigation costs that the state has provided (if none had been arranged according to the previous decision) or higher instalments than before can be requested. Any change to the disadvantage of the party is only applicable within four years upon closure of the procedure.

Comment on the merit of the case (question # 27):

The planned law suit needs to provide sufficient grounds for success and must not appear to be frivolous (§ 114 Zivilprozessordnung).

Comment on who bears the costs (question # 30):

Civil and labour law courts (Zivilgerichte und Arbeitsgerichte):

Pursuant to § 91 Zivilprozessordnung, the defeated party bears the litigation costs. If the victory or defeat is only partial, the costs are shared according to § 92 Zivilprozessordnung.

Administrative and financial courts (Verwaltungsgerichte und Finanzgerichte):

The defeated party bears the costs for the procedure at administrative and at financial courts.

Social courts (Sozialgerichte):

In social court cases, the decision is upon the discretion of the court. Victory or defeat is only one of many aspects taken into consideration for the decision.

## **Veillez indiquer les sources pour les questions 24 et 26**

Question # 24: Federal Statistical Office, Series 10, Volume 2.1. Civil Courts 2005 (Statistisches Bundesamt, Fachserie 10, Reihe 2.1 Zivilgerichte 2005),  
Series 10, Volume 2.2 Family Courts 2005 (Fachserie 10, Reihe 2.2 Familiengerichte 2005),  
Series 10, Volume 2.4 Administrative Courts 2006 (Fachserie 10, Reihe 2.4 Verwaltungs-gerichte 2006),  
Federal Ministry of Labour and Social Affairs, Results of the statistics of social jurisdiction 2006  
(Bundesministerium für Arbeit und Soziales, Ergebnisse der Statistik der Sozial-gerichtsbarkeit 2006)

Question # 26: Code of Criminal Procedure, Code of Civil Procedure (Strafprozessordnung, Zivilprozessordnung)

## **2. 2. Usagers des tribunaux et victimes**

### **2. 2. 1. Droit des usagers et victimes**

**31) Existe-t-il des sites/portails Internet officiels (ex: Ministère de la Justice, etc.) à partir desquels le public a accès gratuitement (Veillez précisez les adresses Internet) :**

- |   |   |  |
|---|---|--|
| aux textes juridiques (codes, lois, règlements, etc.) ? | <input checked="" type="checkbox"/> oui | <a href="http://www.gesetze-im-internet.de">http://www.gesetze-im-internet.de</a>  |
| à la jurisprudence des hautes juridictions ?            | <input checked="" type="checkbox"/> oui | <a href="http://www.bundesgerichtshof.de">http://www.bundesgerichtshof.de</a> -<br>supreme court for civil and criminal matters<br><a href="http://www.bundesfinanzhof.de">http://www.bundesfinanzhof.de</a> -<br>supreme court for tax matters<br><a href="http://www.bundesverwaltungsgericht.de">http://www.bundesverwaltungsgericht.de</a> -<br>supreme court for administrative matters<br><a href="http://www.bundesarbeitsgericht.de">http://www.bundesarbeitsgericht.de</a> -<br>supreme court for labour matters<br><a href="http://www.bundessozialgericht.de">http://www.bundessozialgericht.de</a> -<br>supreme court for social security matters<br><a href="http://www.bundesverfassungsgericht.de">http://www.bundesverfassungsgericht.de</a> -<br>Federal Constitutional Court |
| à d'autres documents (par exemple formulaires) ?        | <input checked="" type="checkbox"/> oui | <a href="http://www.justiz.de">http://www.justiz.de</a> - comprehensive judicial portal  |

**32) Votre système prévoit-il une obligation d'information des parties concernant les délais prévisibles de la procédure judiciaire ?**

- Oui  
 Non

Si oui, veuillez préciser:

In civil court cases such an obligation does not exist. For default judgements, an instruction on the right of appeal is obligatory (§ 340 para 3 sentence 4 Zivilprozessordnung). An obligation to inform the parties can, however, become necessary for special reasons in a specific case (fair trial). In labour court cases, every decision is followed by an instruction on the right to appeal (§ 9 para 5 Labour Courts Act - Arbeitsgerichtsgesetz).

**33) Existe-t-il un système d'information spécifique, public et gratuit, pour informer et aider les victimes d'infractions?**

- Oui  
 Non

Si oui, veuillez préciser:

The homepage of the Federal Ministry of Justice has links to victim support services of the Länder. Information and links to independent victim assistance organisations such as Weißer Ring e.V. and the working group of victim assistance organisations in Germany (ado) can also be found there. Weißer Ring has a 24 hour-emergency hotline (+49 18 03 34 34 34).

The possibilities of crime victims to receive compensation on the basis of the Victim Compensation Act (Opferentschädigungsgesetz, OEG) are described in the booklet on assistance for crime victims „Hilfe für Opfer von Gewalttaten" published by the Ministry of Labour and Social Affairs. This booklet has been distributed to associations, authorities and interested individuals (100 000 copies per year). In all Länder there are additional information leaflets on victim compensation that are made available to police stations and public prosecutors to be given to victims of crimes. Also, OEG enforcement authorities pass on information to the press in irregular intervals.

In accordance with § 406d Code of Criminal Procedure (Strafprozessordnung, StPO) the injured party of a crime receives information about the closure of the case, the result of the court proceedings or, if appropriate, the imprisonment or release of the accused. The victim needs to be informed about his special powers and rights in the procedure pursuant to § 406h para 1 StPO. Furthermore, according to § 406 para 3 StPO, the victim should be made aware of the possibility to get help and support from victim assistance organisations.

In some Länder, there are systems of varying structures and intensity through which victims receive information. Sometimes victims of a crime receive information leaflets. In many towns and cities there are public and private counselling services which victims of crimes can turn to. Many local and regional courts have set up witness support centres that can serve as contact points. They have been established to help victims overcome their fear to make a statement and if necessary give them additional support too.

The Federal Ministry of Justice has published two booklets concerning victims of crimes. The Victim Reader ("Opferfibel") provides information about legal procedures and the rights of anybody who has become the victim of a crime. It contains information about where to find help for compensation claims, where to find legal advice and who pays for

it and where to turn to for support or tips or about ways to get in touch with other victims.

A second booklet addresses young people and is titled "I Have Rights" ("Ich habe Rechte"). The same topics are covered as in the booklet mentioned above, but this one focuses on young people's needs in language, lay-out and the examples given in the booklet. All the information aims at making young people less afraid to report a crime and this is why not only the course of a criminal proceeding is described, but also its purpose. Authentic cases are reported in which young people talk about their experience as victims of a crime.

**34) Existe-t-il des modalités favorables particulières applicables, au cours des procédures judiciaires, aux catégories de personnes vulnérables suivantes :**

	Dispositif d'information	Modalités d'audition	Droits procéduraux	Autres
Victimes de viol	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victimes du terrorisme	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enfants/Témoins/Victimes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victimes de violence domestique	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minorités ethniques	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Personnes handicapées	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Délinquants mineurs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Autres	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**35) Votre pays dispose-t-il d'une procédure d'indemnisation des victimes d'infractions ?**

- Oui  
 Non

**36) Si oui, cette procédure d'indemnisation consiste-t-elle en**

- un dispositif public ?  
 une décision du tribunal ?  
 un dispositif privé ?

Si oui, quels sont les types d'affaires entrant dans le cadre de cette procédure ?

Any compensation by the state is provided for in the Victim Compensation Act (Opferentschädigungsgesetz, OEG). This Act applies to all cases in which a person has suffered bodily harm due to an unlawful violent assault or lawful defense of such an assault. On the basis of this Act, all medical treatment and rehabilitation measures and programmes for participation in work life are paid for by the state. Children are entitled to additional programmes that are non-medical, but involve social pediatrics or educational therapy. Pensions are paid for those whose earning capacity was reduced or lost totally or to their widows and orphans left behind.

**37) Existe-t-il des études permettant d'évaluer le taux de recouvrement des dommages et intérêts**

**prononcés par les juridictions pour les victimes?**

- Oui  
 Non

si oui, veuillez préciser :

**38) Le procureur a-t-il un rôle spécifique au regard des victimes (protection et assistance)?**

- Oui  
 Non

Si oui, veuillez préciser :

The public prosecutor needs to see to it that the victims of crimes are exposed to as little burden as possible throughout the criminal proceeding and that their interests are taken into consideration. The public prosecutor needs to make sure, in particular, that the victims are informed about their rights (§ 406h StPO). By means of retrieval support, money and valuables the offender disposes of need to be secured so that the victims are able to enforce their claims and have them satisfied.

**39) Les victimes d'infractions peuvent-elles contester une décision du procureur de classer une affaire ?**

- Oui  
 Non

Si oui, veuillez spécifier :

The public prosecutor sends a written note including the justification for closing the proceedings to the person who filed the complaint. If the person who pressed charges is the victim of the crime at the same time, this person can use the procedure available for forcing the prosecutor to file charges (Klageerzwingungsverfahren) on the basis of § 172 StPO, in order to have control over the prosecutor's compliance with the principle of mandatory prosecution (Legalitätsprinzip). This procedure requires two steps. The first step to take is an appeal procedure in which the public prosecutor decides on the appeal filed by the victim not later than two weeks after the initial decision. If a senior officer of the public prosecution office declines further investigations, the victim can apply for a court decision at the higher regional court (Oberlandesgericht) within one month after being notified of the negative decision.

## 2. 2. 2. Confiance des citoyens dans leur justice

### 40) Existe-t-il un système d'indemnisation pour les usagers dans les circonstances suivantes :

- durée excessive de la procédure ?
- non exécution des décisions de justice?
- arrestation injustifiée ?
- condamnation injustifiée ?

Si oui, veuillez préciser (dispositif, tarif journalier) :

\* Wrongful arrest or condemnation:

In Germany, the law on compensation for wrongful prosecution (Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen, StrEG) provides for compensation in these cases.

The law foresees compensation for the impacts of an effective conviction and for imprisonment and other preliminary measures of prosecution (§§ 1–6 and 8-9). The precondition for any compensation is the discontinuation or mitigation of a sentence in an appeal or other procedure or a decision to refrain from a main trial. An equitable compensation is particularly possible in those cases in which the closure of the proceedings depends on the discretionary decision by the court or the public prosecutor. It also applies when the preceding prosecution turns out to be more severe than the actual conviction and its legal effects. Persons, whose prosecution they themselves are responsible for, will not receive any compensation.

Total financial damage caused by the prosecution measure will be compensated for and in case of an imprisonment also immaterial damage. The criminal court decides on the payment of damages by the treasury in basically the same way as on the costs. The amount to be compensated is established by the judicial administrative body. An appeal against its decisions can be made at ordinary courts. Apart from the accused, any person the accused was legally liable to for maintenance is entitled to compensation but limited to the losses in income.

Typical financial damages for which compensation is paid under StEG are damages such as the following:

- jobs lost, when the contract was cancelled because of the prosecution of the employee or the enforcement of a measure against him/her and when the cancellation of the contract is in accordance with labour law,
- earnings lost,
- assets lost for the business associate with unlimited liability.

The StrEG only provides for pecuniary compensation.

Immaterial damage in the case of imprisonment on the basis of a conviction is compensated for by the payment of a day fee (€ 11 for every day started in prison).

\* prolonged processing period:

If the proceedings take an excessive amount of time, compensation can also be applied under certain conditions.

### 41) Votre pays a-t-il mis en place des enquêtes auprès des usagers ou des professions juridiques (juges, avocats, fonctionnaires, etc.) pour mesurer leur confiance dans la justice et leur degré de satisfaction par rapport au service rendu ?

- Enquêtes (de satisfaction) auprès des juges
- Enquêtes (de satisfaction) auprès du personnel des tribunaux
- Enquêtes (de satisfaction) auprès des procureurs
- Enquêtes (de satisfaction) auprès des avocats

Enquêtes (de satisfaction) auprès des citoyens (visiteurs des tribunaux)

Enquêtes (de satisfaction) auprès d'autres usagers des tribunaux

Si possible, veuillez préciser leurs titres, comment se les procurer, etc :

In North Rhine Westfalia, eight surveys have been conducted which included interviews with staff members, citizens, lawyers and notaries.

Six of these studies have already been completed and two of them are still running. The projects focus on individual court branches (administrative courts, social law courts, ordinary courts). Five studies cover the whole region of North Rhine Westfalia and three of the projects cover individual locations (public prosecution in Münster, higher regional court in Cologne, public prosecution in Essen). The survey among the staff of the public prosecution office in Essen has not been completed yet.

A list of the projects is available on the website of the Fachhochschule für Rechtspflege Nordrhein-Westfalen at <http://www.fhr.nrw.de/fachbereiche/Forschung/index.php>.

The survey results are in parts online on

<http://www.fhr.nrw.de/publikationen/Schriftenreihe/index.php>

They can also be received upon request from the Fachhochschule für Rechtspflege Nordrhein-Westfalen and the Justice Ministry of North Rhine Westfalia.

#### 42) Si possible, veuillez préciser :

	Oui (Enquêtes systématiques : par exemple annuelles)	Oui (enquêtes occasionnelles)
Enquêtes au niveau national	<input type="checkbox"/>	<input type="checkbox"/>
Enquêtes au niveau des tribunaux	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### 43) Existe-t-il un dispositif national ou local permettant de déposer une plainte sur la performance (par exemple la durée des procédures) ou sur le fonctionnement du système judiciaire (par exemple le traitement d'une affaire par un juge)?

Oui

Non

#### 44) Si oui, veuillez préciser :

	Délai pour répondre (Oui)	Délai pour traiter la plainte (Oui)
Tribunal concerné	<input type="checkbox"/>	<input type="checkbox"/>
Instance supérieure	<input type="checkbox"/>	<input type="checkbox"/>
Ministère de la Justice	<input type="checkbox"/>	<input type="checkbox"/>
Conseil supérieur de la magistrature	<input type="checkbox"/>	<input type="checkbox"/>
Autres organisations extérieures (ex. médiateur)	<input type="checkbox"/>	<input type="checkbox"/>

#### Pouvez-vous donner quelques éléments d'information sur l'efficacité de cette procédure de plainte ?

Comment on the complaint procedure (question # 43): Administrative courts: Under certain conditions complaints can be made about the way the court works, provided a specific decision is concerned, which may lead to a review of the decision by a superior court. In other cases, a so-called reminder can be sent to the court dealing with the matter. There are no deadlines to be kept.



### 3. Organisation des tribunaux

#### 3. 1. Fonctionnement

##### 3. 1. 1. Tribunaux

#### 45) Nombre de tribunaux considérés comme entités juridiques (structures administratives) et implantations géographiques (compléter le tableau)

	Nombre total
Tribunaux: de droit commun de 1ère instance (entités juridiques)	782
Tribunaux: spécialisés de 1ère instance (entités juridiques)	261
Tous les tribunaux (implantations géographiques)	1136

#### 46) Veuillez préciser les différentes sphères de spécialisation (et, si possible, le nombre de tribunaux concernés)

- Constitutional law jurisdiction:

Constitutional courts at Land level: 15

Federal Constitutional Court: 1

- Ordinary jurisdiction (general civil and criminal law):

Courts at Land level: 806

Federal court: 1

- Administrative law:

Courts at Land level: 67

Federal court: 1

- Financial law:

Courts at Land level: 18

Federal court: 1

- Labour law:

Courts at Land level: 139

Federal court: 1

- Social security law:

Courts at Land level: 84

Federal court: 1

- Patent law:

Federal court: 1

#### 47) Une réforme dans la structure des tribunaux est-elle envisagée (par exemple une diminution du nombre de tribunaux (implantations géographiques) ou une réforme de la compétence des tribunaux).

Oui

Non

Si oui, veuillez spécifier :

The majority of the Länder is not planning any changes of the court structure at the moment. The changes in the few Länder that have planned or already implemented changes, these largely aim at the reduction in the number of local courts

(Amtsgerichte).

**48) Nombre de tribunaux de 1ère instance compétents pour une affaire concernant :**

	Nombre
un recouvrement d'une petite créance	666 local c.
un licenciement	121 labour
un vol avec violence	666 local c.

**Veillez préciser ce qu'est une petite créance dans votre pays (ne répondre que si la définition a changé par rapport à l'exercice d'évaluation précédent):**

No changes since the last survey.

The information given under „robbery“ refers to „common robbery“ (einfacher Raub). Responsibility for „aggravated robbery“ (schwerer Raub) lies with one of the 116 regional courts (Landgerichte).

**Veillez indiquer les sources pour la question 45**

Federal Office of Justice, Federal and Länder Courts, as of 1 January 2007 (Bundesamt für Justiz, Gerichte des Bundes und der Länder, Stand: 1. Januar 2007)

**3. 1. 2. Juges, personnels tribunaux****49) Nombre de juges professionnels siégeant en juridiction (répondre en équivalent temps plein et pour les postes permanents)**

20138.31

**50) Nombre de juges professionnels exerçant à titre occasionnel et rémunérés comme tel:**

	Nombre
donnée brute	
si possible, donnée en équivalent temps plein	

**51) Veillez préciser (ne répondre que si l'information a changé par rapport à l'exercice d'évaluation précédent):**

There are no figures available for this. Figures given in the response to question # 49 include the number of part-time judges.

**52) nombres de juges non professionnels, non rémunérés (y compris "lay judges") percevant, le cas échéant, un simple défraiement. Veillez préciser (ne répondre que si l'information a changé par**

**rapport à l'exercice d'évaluation précédent):**

98002

It is assumed that the question refers to all citizens who work as non-professional judges alongside professional judges and thus can make legally binding decisions. This composition of the bench exists in varying shapes at criminal courts, administrative courts, labour courts, financial courts, constitutional courts and the chambers for commercial cases at the civil cases section of ordinary jurisdiction.

There are 35 995 lay judges as main lay judges (Hauptschöffen) at criminal courts. Additionally there is an equally large number of substitute lay judges (Hilfsschöffen). These will be called when the main lay judge is unavailable, be it for reasons of illness, relocation to another district or bias.

**53) Votre système judiciaire prévoit-il un jury de jugement avec une participation des citoyens ?** Oui Non

Si oui, pour quel(s) type(s) d'affaire(s) ?

In criminal proceedings for moderate and serious offences, the bench consists of professional and non-professional judges (so-called Schöffen). If the expected outcome is a custodial sentence lasting between two and four years, a full bench consisting of one professional and two non-professional judges at the local court is responsible. If a custodial sentence of more than four years is expected or it is a major crime case, the Grand Criminal Divisions of the regional courts or the specialised Division Schwurgerichtskammer is responsible where two lay judges are on the bench together with three professional judges. The juvenile cases are always dealt with at the juvenile full bench of the local courts irrespective of the expected sentence. The Grand Juvenile Division (also including two lay judges) is the court of first instance for especially severe crimes.

The Schöffen as lay judges do not constitute a separate bench of judges, but are equal to other members of the court.

**54) Si possible, veuillez indiquer le nombre de citoyens ayant participé à de tels jurys pour l'année de référence?**

35995

**55) Nombre de personnel non juge travaillant dans les tribunaux (répondre en équivalent temps plein et pour les postes permanents)**

57529.53

**56) Si possible, pouvez-vous distinguer ce personnel selon les 4 catégories suivantes:**

personnels non juge (Rechtspfleger), chargé de tâches juridictionnelles ou para juridictionnelles, ayant des compétences autonomes et dont les décisions peuvent être susceptibles de recours	<input checked="" type="checkbox"/> Oui	11821.49
personnels non juge chargés d'assister les juges (préparation des dossiers, assistance à l'audience, tenue des procès verbaux, aide à la préparation de la décision) à l'instar des greffiers	<input checked="" type="checkbox"/> Oui	37034.86
personnels chargés de tâches relatives à l'administration et la gestion des tribunaux (gestion des personnels, gestion des moyens	<input checked="" type="checkbox"/> Oui	

matériels y compris de l'informatique, gestion financière et budgétaire, gestion de la formation)

11977.09

personnels techniques

Oui

### **Veillez indiquer les sources pour les questions 49, 50, 52, 53 et 55**

Re number of professional judges (question # 49):

Federal Office of Justice, Statistics on judges – as of: 31 December 2006 – Figure in full time equivalents  
Bundesamt für Justiz, Richterstatistik – Stand: 31.12.2006 – Angabe in Arbeitskraftanteilen

Re number of unsalaried lay judges (question # 52):

Federal Office of Justice, Statistics on lay judges 2005 and query among Länder 2005/2006  
Bundesamt für Justiz, Schöffenstatistik 2005 und Länderabfrage 2005/2006

Re number of non-judge staff (question # 55):

Tables of personnel listing persons in post at local, regional and higher regional courts of Länder for 2006, excluding staff of the prosecution service, excluding staff in training - Figure in full time equivalents (Personalübersichten zum Personalbestand der Amts-, Land- und Oberlandesgerichte der Länder für 2006, ohne Personal der Staatsanwaltschaften, ohne Personal in Ausbildung – Angabe in Arbeitskraftanteilen)

Number of staff at constitutional courts and specialised courts (labour courts, administrative courts etc.) are not included.

Number of non-judge staff members (8,517.58) comprises:

- Social services posts in the upper grade of the civil service (2,100.82)
- Posts in the lower grade of civil service (5,830.95)
- Posts for cleaning staff and other workers (585.81)

### 3. 1. 3. Procureurs

#### **57) Nombre de procureurs (répondre en équivalent temps plein et pour les postes permanents)**

5083.64

#### **58) D'autres personnes ont-elles des fonctions comparables à celles des procureurs ?**

Oui

Non

Si oui, veuillez spécifier :

- For the prosecution of tax-related offences, the financial authorities have basically the same rights and obligations as public prosecutors

- In certain cases of petty crime (such as unlawful entry, insult, simple assault, vandalism) the injured party can institute a private suit without calling the public prosecution. This starts the legal proceedings at a court. Practically speaking, however, private law suits are only of little relevance.

#### **59) Nombre de personnels (non procureurs) attachés au Ministère public (répondre en équivalent temps plein et pour les postes permanents)**

11731.09

**Veillez indiquer les sources pour les questions 57 et 59**

Re number of public prosecutors (question # 57):

Federal Office of Justice, Statistics on judges, public prosecutors, public interest representatives 2006  
(Bundesamt für Justiz, Statistik Richter, Staatsanwälte, Vertreter des öffentlichen Interesses 2006)

Tables of personnel of the Länder listing persons in post at the public prosecution sector of the higher regional courts 2006 – Figure in full time equivalents

(Personalübersichten der Länder zum Personalbestand der Staatsanwaltschaften bei den Landgerichten und der Staatsanwaltschaften bei den Oberlandesgerichten 2006 – Angabe in Arbeitskraftanteilen)

Re the number of staff who are not public prosecutors (question # 59):

Federal Office of Justice, Tables of personnel of the Länder listing persons in post at the public prosecution sector of the regional courts and of the higher regional courts 2006 – Figure in full time equivalents  
(Bundesamt für Justiz, Personalübersichten der Länder zum Personalbestand der Staatsanwaltschaften bei den Landgerichten und der Staatsanwaltschaften bei den Oberlandesgerichten 2006 – Angabe in Arbeitskraftanteilen)

There are no figures available for the federal level.

### 3. 1. 4. Budget et Nouvelles technologies

#### 60) Qui est responsable du budget du tribunal ?

	Préparation du budget	Arbitrage et répartition du budget	Gestion quotidienne du budget	Evaluation et contrôle de l'utilisation du budget
Conseil d'administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Président du tribunal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Directeur administratif du tribunal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Greffier en chef	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Autre	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

#### 61) Vous pouvez indiquer ci-dessous :

- tout commentaire utile pour l'interprétation des données ci-dessus
- si possible un organigramme avec une description des compétences des différentes instances responsables des procédures budgétaires au sein des tribunaux

The courts' structure is not the same in all Länder. The response reflects the focus of the existing organisational structures at federal level and Länder level.

#### 62) Pour l'assistance directe au travail du juge/du greffier, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?

	100% des tribunaux	+50% des tribunaux	-50% des tribunaux	- 10 % des tribunaux
Traitement de texte	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Base de données électronique pour la jurisprudence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dossiers électroniques	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E-mail	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Connexion internet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### 63) Pour l'administration et la gestion, quelles sont les possibilités offertes par le système

**informatique existant dans les juridictions ?**

	100% des tribunaux	+50% des tribunaux	-50% des tribunaux	-10% des tribunaux
Enregistrement des affaires	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Système d'information sur la gestion du tribunal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Système d'information financière	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**64) Pour la communication entre le tribunal et les parties, quelles sont les possibilités offertes par le système informatique existant dans les juridictions ?**

	100% des tribunaux	+50% des tribunaux	-50% des tribunaux	-10% des tribunaux
Formulaire électronique	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site internet spécifique	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Autres moyens de communication électronique	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**65) Existe-t-il une institution centralisée responsable de la collecte de données statistiques concernant le fonctionnement des tribunaux et du système judiciaire? (ne répondre que si l'information a changé par rapport à l'exercice d'évaluation précédent)**

- Oui  
 Non

Si oui, veuillez préciser le nom et les coordonnées de cette institution :

Committee on statistics of the judicial system under the chairmanship of the Land Bavaria

Ausschuss für Justizstatistik  
unter Vorsitz des Landes Bayern  
Bayerisches Staatsministerium der Justiz  
80097 München

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- les caractéristiques de votre système judiciaire et les réformes majeures mises en oeuvre au cours des deux dernières années

Comment on the centralised institution for the collection of statistical data (question # 65): The committee on statistics of the judicial system, a subcommittee of the conference of justice ministers of the federation and the Länder, convenes once a year under the chairmanship of Bavaria. The Justice Ministries of the Länder, some statistical offices of the Länder, the Federal Statistical Office in Wiesbaden and the Federal Office of Justice are among the participants. They meet to discuss modifications in statistical coverage of proceedings at the courts. The Länder themselves are responsible for the data collection.

**Veuillez indiquer les sources pour les questions 62, 63 et 64**

### 3. 2. Suivi et évaluation

#### 3. 2. 1. Suivi et évaluation

**66) Les tribunaux doivent-ils établir un rapport annuel d'activités ?**

- Oui  
 Non

**67) Existe-t-il un système régulier de suivi des activités des tribunaux concernant:**

- le nombre de nouvelles affaires ?  
 le nombre de décisions rendues ?  
 le nombre d'affaires faisant l'objet d'un renvoi ?  
 la durée des procédures (délais)?  
 autre?

Veillez préciser:

Every proceeding at a court is registered by using special forms. Certain figures on the work load are compiled in monthly overviews. The forms and the monthly overviews are adapted to the individual needs of the instances and branches of jurisdiction and their use is explained in accompanying instruction leaflets.

**68) Existe-t-il un système régulier d'évaluation de l'activité (en termes de performance, rendement) de chaque tribunal?**

- Oui  
 Non

Veillez préciser

The system described in the response to question # 67 is also used for the evaluation of the courts' activities.

**69) Concernant l'activité des tribunaux, avez-vous défini des indicateurs de performance?**

- Oui  
 Non

**70) Veuillez préciser les 4 principaux indicateurs de performance et de qualité d'une bonne justice.**

- Nouvelles affaires
- Durée des procédures (délais)
- Affaires terminées
- Affaires pendantes et stocks d'affaires
- Productivité des juges et des personnels des tribunaux
- Pourcentage d'affaires traitées par un juge unique
- Exécution des décisions pénales
- Satisfaction du personnel des tribunaux
- Satisfaction des usagers (au regard des services rendus par les tribunaux)
- Qualités judiciaire et organisationnelle des tribunaux
- Coûts des procédures judiciaires
- Autre

Veuillez préciser:

About half of all Länder have established performance indicators. These include the ones indicated above and some of the following ones:

- Productivity of judges and court staff
- Percentage of cases that are treated by a single judge
- Average number of days of main trial sessions per criminal proceeding
- Average age of pending cases
- Quality of work results.

There are no performance indicators in the rest of the Länder or at federal level.

**71) Existe-t-il des objectifs de performance pour chaque juge?**

- Oui
- Non

**72) Existe-t-il des objectifs de performance au niveau des tribunaux ?**

- Oui
- Non

**73) Veuillez préciser qui fixe ces objectifs:**

- pouvoir exécutif (par exemple ministère de la Justice)
- pouvoir législatif
- pouvoir judiciaire (par exemple un Conseil supérieur de la Magistrature)
- autre

Veuillez préciser



**74) Veuillez préciser les principaux objectifs retenus :**

**75) Quelle est l'autorité chargée d'évaluer ces indicateurs de performances des tribunaux :**

- le Conseil supérieur de la Magistrature
- le Ministère de la Justice
- un organe d'inspection
- la Cour Suprême
- un organe d'audit extérieur
- autre?

Autre, veuillez préciser :

The competent Federal or Länder Ministries. At the federal level, this is the Federal Ministry of Justice (for the Federal Court of Justice (ordinary jurisdiction), the Federal Administrative Court, the Federal Finance Court and the Federal Patent Court), the Federal Ministry of Labour and Social Affairs (for the Federal Labour Court and the Federal Social Court) and the Federal Ministry of Defence (for the court martial). In some Länder, the Ministry of Justice of the respective Land is usually responsible for all courts in the Land judicial system (i.e. the local, regional and higher regional courts of ordinary jurisdiction, labour, higher labour, administrative, higher administrative, social, higher social, and finance courts). In some other Länder, it is possible that other Ministries are responsible for some court branches.

**76) Existe-t-il des standards de qualité (politiques de qualité d'organisation et/ou de qualité judiciaire) définis pour les tribunaux (existence d'un système qualité au sein du système judiciaire) ?**

- Oui
- Non

Si oui, veuillez préciser :

Quality assurance is part of quality management and encompasses that quality requirements which are either stipulated in regulations or the quality required by the judiciary itself or by those asking for justice is guaranteed while the resource are used optimally.

There is a whole bundle of strategies that is being tested and used for the quality assurance in the judiciary. Quality assurance is carried out by means of cost-output accounting, controlling, budgeting of personnel costs, the benchmark procedure, balanced scorecards, the EFQM model, the different instruments of human resource development and organisational development, calculation of staff requirements, optimising workflows, surveys among lawyers, citizens, and staff and evaluation instruments. These are all used in the quality assurance system for individual judges or public prosecutors but also for the whole organisation of the courts and the public prosecution offices.

The Ministry of Justice of the state of Baden-Württemberg initiated a survey in the different Länder on citizens' service and customer orientation of the judiciary in 2005. One of the questions asked was about projects for the promotion of a modern judiciary that is citizen-friendly. The survey showed that across the Länder great importance was

attributed to citizens' service and customer orientation in the judicial system. The increased use of modern technology (such as the Internet) offers the judiciary the possibility to reach a large number of citizens and provide those looking for justice the best possible service (register queries, download of information and application forms, information on addresses and how to get there etc).

The continuous development of online-based legal services offers additional improvements in catering for the citizens. In addition to the Internet, the introduction of video conferencing is another tool for customer focus, because it allows the citizens to attend trials without travelling to the court that may be a long distance away.

Another measure taken for quality assurance purposes is the optimisation of need-based training for judges. The training that may be necessary is identified in different ways (e.g. through regularly held personal development meetings). This information is then used for compiling training offers for the respective Land and also, for all Länder, for offers of the German Academy for Judges (Deutsche Richterakademie). Judges are obliged to participate in further training on the basis of general professional law. Adapting the offered trainings to the actual needs is part of the joint efforts of ministries of justice in the Länder and at federal level to guarantee quality in the judiciary.

The development and models mentioned above are, however, not uniform in all Länder. They differ in the methods that are applied, but also in the intensity of the methods under trial or their use.

**77) Existe-t-il des personnels spécialisés dans les tribunaux responsables d'une politique de qualité et/ou de systèmes de qualité de la justice ?**

- Oui  
 Non

**78) Existe-t-il un système permettant de mesurer le stock d'affaires en cours et de repérer les affaires non traitées dans un délai raisonnable :**

- en matière civile ?  
 en matière pénale ?  
 en matière administrative ?

**79) Disposez-vous d'un moyen de mesurer les temps morts durant les procédures judiciaires?**

- Oui  
 Non

Si oui, veuillez préciser :

**80) Existe-t-il un système d'évaluation du fonctionnement des tribunaux basé sur un plan d'évaluation (calendrier de visites) convenu a priori ?**

- Oui  
 Non

Veillez préciser (y compris en indiquant la fréquence de l'évaluation) :

**81) Existe-t-il un dispositif régulier de suivi et d'évaluation de l'activité du Ministère public ?**

- Oui  
 Non

Si oui, veuillez préciser :

The prosecution services are monitored and evaluated at regular intervals for the following purposes:

- To guarantee that the services are given according to the rules and consistently
- To guarantee that the budgetary principles of cost effectiveness and economical use of resources are complied with
- To optimise efficiency and quality of the work and to show where there is general potential for rationalisation
- To show the possibilities for staff motivation and the improvement of their working conditions
- To promote a service that is citizen-friendly and close to the citizen

The organisational structure and the workflows are subject to monitoring and evaluation efforts in addition to the use of human and other resources.

Furthermore, the Federal Government has commissioned several expert reports on the evaluation of various investigation methods such as surveillance of telecommunications and private homes and traffic data queries which in turn are indirect evaluations of the public prosecution.

**Vous pouvez indiquer ci-dessous :**

- **tout commentaire utile pour l'interprétation des données ci-dessus**
- **les caractéristiques du système de suivi et d'évaluation des tribunaux**

Comment on specialised court staff (question # 77):

In some Länder, so-called organisational consultants and organisation commissioners (Organisationsberater, Organisationsreferenten) and sometimes controllers that are specifically trained for the judicial field are responsible for developing quality strategies and for optimising workflows. They usually are based at the higher regional courts.

Comment on the system to measure backlogs (question # 78):

In Germany there are regular evaluations at the courts in the Länder, carried out by the superior authority (e.g. the presidents of the higher regional courts for all the regional courts in the district covered by the higher regional court; the presidents of the regional courts for all the local courts in the district covered by the regional court). The activities of the courts are their subject matter (particularly the number of pending or closed cases and their duration). Additionally, the development of the work in progress (number of unfinished proceedings),

how long they have been pending, the length of the proceedings and unfinished work (number of files that have been presented, but not processed) is continuously monitored. Older proceedings and unfinished work can generally also be the subject of individual evaluations.

**Veillez indiquer les sources pour les questions 70, 71, 72 et 76**

## 4. Procès équitable

### 4. 1. Principes

#### 4. 1. 1. Principes généraux

**82) Quel est le pourcentage de jugements de première instance en matière pénale dans lesquels le suspect n'est pas présent ou représenté par un professionnel (ex. avocat) durant l'audience? (jugements par défaut)**

**83) Existe-t-il une procédure permettant la récusation effective d'un juge si une partie estime qu'il n'est pas impartial ?**

Oui

Non

Si possible, nombre de récusations qui ont abouti (en une année) :

**84) Veuillez préciser les données suivantes concernant le nombre d'affaires relatives à l'Article 6 de la Convention européenne des Droits de l'Homme (durée et non-exécution), pour l'année de référence :**

	Affaires déclarées irrecevables par la Cour	Règlements amiables	Jugements constatant une violation	Jugements constatant une non violation
Procédures civiles - Article 6§1 (durée)	2	2	3	0
Procédures civiles - Article 6§1 (non exécution)	0	0	0	0
Procédures pénales - Article 6§1 (durée)	1	0	0	0

**Veuillez indiquer les sources pour les questions 82 et 84**

Re proceedings in which the suspect is not attending in person or represented by a legal professional (question # 82):

There is no information available on this. The statistics that are published on a yearly basis by the Federal Statistical Office (Statistisches Bundesamt) do not reflect the percentage of judgements in first instance criminal cases in which the suspect was not attending in person or was not represented by a legal professional.

According to German law, a main trial without the presence of the suspect is generally not permitted. Exceptions are possible for petty crimes.

Attention needs to be drawn to the categories of "not attending" or "not represented", which cannot be seen as meaning the same. German criminal law allows for a suspect to appear in court and defend themselves without a legal counsel unless it is a case that requires representation. Not being represented by a legal professional does not necessarily mean that the suspect is in a weaker position.

Re cases on the basis of Article 6 of the ECHR (question # 84): internal statistics

### 4. 2. Durée des procédures

#### 4. 2. 1. Généralités

**85) Existe-t-il des procédures spécifiques pour les affaires urgentes :**

- en matière civile ?
- en matière pénale ?
- en matière administrative ?

Si oui, veuillez préciser :

Civil cases: attachment and arrest, interim injunction

Administrative cases: interim injunction

### 86) Existe-t-il des procédures simplifiées :

- en matière civile (petits litiges) ?
- en matière pénale (petites infractions) ?
- en matière administrative ?

Si oui, veuillez préciser (par exemple si une nouvelle loi sur les procédures simplifiées a été adoptée):

Civil cases: On the basis of § 495a of the Code of Civil Procedure, the court can choose the course of procedure upon its own reasonable discretion provided that the value in dispute does not exceed € 600. An oral trial is only necessary when requested.

Administrative cases: There is the possibility to decide a case with a court order if the case does not show any particular difficulties with respect to the facts or legal aspects. No oral trial is necessary in such cases.

In cases before financial courts, it is possible to deviate from many procedural requirements upon discretion if the value in dispute is small.

### 87) Les tribunaux et les avocats ont-ils la possibilité de conclure des accords sur les modalités de traitement des affaires (présentation des dossiers, fixation des délais pour conclure et des dates d'audience) ?

- Oui
- Non

Si oui, veuillez préciser :

Civil cases: Yes, the court can conclude an agreement on extending a legal or court deadline provided it is not a deadline where the law explicitly precludes modification. The parties can agree on taking evidence on an informal basis (Freibeweis) according to § 284 of the Code of Civil Procedure. If the parties agree, the proceedings can be conducted in writing (§ 128 para 2 of the Code of Civil Procedure).

Criminal cases: as a basic principle: No. However, consensual behaviour is common and advisable due to the principle of fair trial

Administrative cases: as a basic principle: No. Dates and deadlines are determined by the court. However, consensual behaviour is common. The court is also authorised to do without an oral trial if all the parties concerned agree.

#### 4. 2. 2. Affaires pénales, civiles et administratives

### 88) Nombre total d'affaires en 1ère instance (contentieuses et non contentieuses); (veuillez compléter le tableau)

	Affaires pendantes au 1 janvier 2006	Nouvelles d'affaires	Décisions au fond	Affaires pendantes au 31 décembre 2006
Nombre total d'affaires civiles, commerciales et administratives(1-7)	2725286	3617025	22250438	2687295
1 Affaires civiles (et commerciales) contentieuses*	615454	1104828	1588198	544751
2 Affaires civiles (et commerciales) non contentieuses*	1500708	1931275	10614058	1543969
3 Affaires relatives à l'exécution			3601586	
4 Affaires relatives au registre foncier**			5122001	
5 Affaires relatives au registre du commerce**			733127	
6 Affaires administratives*	609124	580922	591468	598575
7 Autres				
Nombre total d'affaires pénales (8+9)	392624	1236815	1254114	375325
8 Affaires pénales (infractions graves)	297355	854099	864231	287223
9 Petites infractions	95269	382716	389883	88102

**89) \* Les affaires mentionnées aux catégories 3 à 5 (exécution, registre foncier, registre du commerce) sont exclues de ce total et doivent être présentées séparément dans le tableau. Les affaires mentionnées à la catégorie 6 (affaires administratives) sont exclues de ce total pour les pays disposant de tribunaux spécialisés ou d'unités spécialisées au sein des juridictions.**

**\*\* s'il y a lieu**

**Remarque : pour les affaires pénales il peut y avoir une difficulté de classification entre affaires pénales graves et petites infractions. Certains pays peuvent connaître d'autres voies de traitement des petites infractions (par exemple par la procédure administrative). Veuillez indiquer, si possible, les catégories d'affaires reportées dans la catégorie affaires pénales (infractions graves) et les affaires à reporter dans la catégorie "petites infractions".**

#### Explication

"Severe criminal offences" (# 8) mean cases on the basis of the Criminal Code and other criminal by-laws.

"Minor offences" (# 9) are understood to be cases prosecuted by the administrative authorities as breaches of administrative rules (misdemeanours) (Ordnungswidrigkeiten)..

### 90) Nombre total d'affaires en 2ème instance (appel) (contentieuses et non contentieuses); (veuillez compléter le tableau)

	Affaires pendantes au 1 janvier 2006	Nouvelles d'affaires	Décisions au fond	Affaires pendantes au 31 décembre 2006
Nombre total d'affaires civiles, commerciales et administratives (1-7)	51391	57270	180113	52011
1 Affaires civiles (et commerciales)	31461	89719	129551	29671

contentieuses*				
2 Affaires civiles (et commerciales) non contentieuses*			85420	
3 Affaires relatives à l'exécution				
4 Affaires relatives au registre foncier**				
5 Affaires relatives au registre du commerce**				
6 Affaires administratives	51391	57270	56651	52011
7 Autres				
Nombre total d'affaires pénales (8+9)	21657	69860	70378	21139
8 Affaires pénales (infractions graves)	20632	61792	62235	20189
9 Petites infractions	1025	8068	8143	950

**91) Nombre total d'affaires au niveau des cours suprêmes (contentieuses et non contentieuses);  
(veuillez compléter le tableau)**

	Affaires pendantes au 1 janvier 2006	Nouvelles d'affaires	Décisions au fond	Affaires pendantes au 31 décembre 2006
Nombre total d'affaires civiles, commerciales et administratives (1-7)	9481	14113	13607	9987
1 Affaires civiles (et commerciales) contentieuses*	4868	5906	2895	5229
2 Affaires civiles (et commerciales) non contentieuses*			2650	
3 Affaires relatives à l'exécution				
4 Affaires relatives au registre foncier**				
5 Affaires relatives au registre du commerce**				
6 Affaires administratives	4613	8207	8062	4758
7 Autres				
Nombre total d'affaires pénales (8+9)	451	3266	3326	391
8 Affaires pénales (infractions graves)	451	3265	3326	390
9 Petites infractions		1		1

**92) Nombre d'affaires de divorces, licenciements, vols avec violence et homicides volontaires reçues et traitées par les tribunaux de 1ère instance (compléter le tableau)**

	Affaires pendantes au 1er janvier 2006	Affaires nouvelles	Décisions	Affaires pendantes au 31 décembre 2006
Divorces			236548	
Licenciements			231588	
Vols avec violence				
Homicides volontaires				

**93) Durée moyenne des procédures (à partir de la date de saisine du tribunal)**

	% des décisions ayant fait l'objet d'un appel	% d'affaires pendantes de plus de 3 ans	1ère instance	2ème instance	Total de la procédure
Divorces					



	1.8 %		10.7 months		
Licenciements					
Vols avec violence					
Homicides volontaires					

**94) Le cas échéant, veuillez préciser les procédures propres au divorce:**

In 6.3 % of all divorce cases, the judgement takes longer than 24 months.

**95) Comment est calculé le délai de procédure pour les quatre catégories d'affaires ? (veuillez décrire la méthode de calcul)**

The average length of proceedings was identified for criminal cases and family law cases, but not for labour law cases within the reporting period. The competent courts collected the data of cases filed and cases concluded for this purpose.

The date of lodging court proceedings means

- For family law cases: the day on which the request was received by the court or was recorded at the court office in charge
- For criminal cases: the day on which the law suit, private law suit or request was received by the court or when the private law suit was recorded at the court office in charge.

If there was a previous arrest proceeding, the date on which the application for an arrest warrant was received by the court is applicable (§ 408 para 3 Code of Criminal Procedure) or in case of an appeal the date on which the appeal was received.

The date that is given for concluding the case in either family law cases or criminal cases is the day on which the case is closed (e.g. by a judgement, decision, withdrawal, acceptance of withdrawal).

**96) Veuillez décrire le rôle et les attributions du procureur dans la procédure pénale (plusieurs choix possibles):**

- diriger ou superviser l'enquête policière
- faire des enquêtes
- quand cela est nécessaire, saisir le juge pour qu'il ordonne des mesures d'enquêtes
- porter une accusation
- soumettre l'affaire au tribunal
- proposer une peine au juge
- faire appel
- superviser la procédure d'exécution
- classer l'affaire sans suite, sans avoir une décision du tribunal
- clore l'affaire par une sanction ou une mesure imposée ou négociée sans décision d'un juge
- autre attribution significative

Veuillez préciser:

Explanation of the options that have not been ticked:

The public prosecution holds their final speech in court after the evidence has been taken and then makes a proposal for a specific sentence or an acquittal. If that is meant in „to propose a sentence“, then the answer to that question would be: Yes.

The public prosecutor can end a proceeding by imposing conditions such as a fine or community service, but this is not a sentence in its actual meaning. If the imposing of

conditions is covered by "sentence", the answer to this question would be: Yes.

**97) Le procureur a-t-il également un rôle dans les affaires civiles et/ou administratives ?**

Oui

Non

Si oui, veuillez préciser :

None in both civil and administrative cases.

**98) Fonctions du procureur concernant les affaires pénales – veuillez compléter ce tableau :**

	Reçues par le Procureur	Classées sans suite par le Procureur parce que l'auteur de l'infraction n'a pas pu être identifié	Classées sans suite par le Procureur en raison d'une impossibilité de fait ou de droit	Classées sans suite par le Procureur pour raison d'opportunité	Terminées par une sanction ou par une mesure imposée ou négociée par le Procureur	Portées par le Procureur devant les tribunaux
Nombre total d'affaires pénales de 1ère instance	4917575	see below	see below	1294747	241102	1187323

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données ci-dessus**

**- les caractéristiques de votre système concernant la durée des procédures et les réformes majeures mises en oeuvre au cours des deux dernières années**

Comment on the column "pending cases on 1 January/31 December 2006" (questions # 88 -91):

There was no data available for the boxes with no entry.

For some of the cases only figures dating back to 2005 were available and thus "total number" is not precise. The figures under 1 to 3 and 7 refer to figures from 2005 and numbers 4,5,6,8 and 9 are figures from 2006.

On # 1:

The number of decisions in first instance courts 2006 (civil and commercial litigious cases) includes 8 567 016 decisions in dunning procedures.

On # 6:

The figures reflect proceedings at administrative courts, social courts and finance courts.

On # 7:

Other cases include proceedings in family courts and labour courts, cases of jurisdiction over non-contentious matters. The specific figures are as follows:

a) first instance courts

pending incoming decisions pending  
1/1/2006 cases 31/12/2006

Family law cases 424,478 521,769 553,183 393,064  
 Labour law courts 190,976 583,059 575,254 151,687  
 Voluntary jurisdiction 1 500,708 1 931,275 2 006,301 1 543, 969

b) Courts of appeal

Family law cases 16,257 57,440 58,670 15,027  
 Labour law courts 15,204 32,279 32,839 14,644  
 Voluntary jurisdiction n/a n/a n/a n/a

c) Supreme Courts

Labour law courts 1,190 2,587 2,154 1,623  
 Voluntary jurisdiction n/a n/a n/a n/a

The decisions of the supreme courts in family cases are included in the figure for decisions in civil cases (number 1 of the table in question # 91).

Comment on the functions of the public prosecutor (question # 98):

1 294,402 cases were discontinued due to a lack of sufficient evidence for a charge. This comprises cases in which the offender could not be identified (2nd column) and also cases that were discontinued due to a lack of a specific legal situation (3rd column). It is not possible to give separate figures for either category.

**Veillez indiquer les sources pour les questions 92 à 94 et question 98**

Federal Statistical Office, Series 10 Volume 2.1 "Civil courts 2005"

(Fachserie 10 Reihe 2.1 "Zivilgerichte 2005" des Statistischen Bundesamtes)

Activity overview of local courts for the years of 2004, 2005 and 2006 (Geschäftsübersichten der Amtsgerichte für die Jahre 2004, 2005 und 2006)

Federal Statistical Office, Series 10 Volume 2.4 "Administrative Courts 2006" (Fachserie 10 Reihe 2.4

"Verwaltungsgerichte 2006" des Statistischen Bundesamtes)

Federal Statistical Office, Series 10 Volume 2.5 "Finance Courts 2006" (Fachserie 10 Reihe 2.5 "Finanzgerichte 2006" des Statistischen Bundesamtes)

Federal Ministry of Labour and Social Affairs, Statistics of social jurisdiction 2006 (Ergebnisse der Statistik der Sozialgerichtsbarkeit 2006, Bundesministerium für Arbeit und Soziales)

Federal Statistical Office, Series 10 Volume 2.2 "Family Courts 2005" (Fachserie 10 Reihe 2.2 „Familiengerichte 2005“ des Statistischen Bundesamtes)

Federal Ministry of Labour and Social Affairs, Overview of the activity of labour jurisdiction 2005 (Übersicht über die Tätigkeit der Arbeitsgerichte 2005, Bundesministerium für Arbeit und Soziales)

Federal Statistical Office, Series 10 Volume 2.3 "Criminal courts 2006" (Fachserie 10 Reihe 2.3 "Strafgerichte 2006" des Statistischen Bundesamtes)

Federal Statistical Office, Series 10 Volume 2.6 "Prosecution services 2006" (Fachserie 10, Reihe 2.6 Staatsanwaltschaften 2006 des Statistischen Bundesamtes)

## 5. Carrière des juges et procureurs

### 5. 1. Désignation et formation

#### 5. 1. 1. Recrutement, nomination et promotion

#### 99) Comment les juges sont-ils recrutés ?

- Par concours (par exemple après un diplôme universitaire en droit)
- Une procédure de recrutement spécifique pour des professionnels du droit ayant une longue expérience juridique (par exemple des avocats)
- Une combinaison des deux
- Autres

Si autres, veuillez préciser :

Judges to be employed at Länder level are recruited on the basis of a selection procedure after graduation from university (second state examination in law, zweite juristische Staatsprüfung), judges to be employed at federal level are recruited on the basis of a selection procedure for legal professionals with long work experience.

At Länder level, interviews are additionally carried out in the form of structured interviews, assessment centres and the like.

#### 100) Les juges sont-ils recrutés et nommés, initialement, en début de carrière, par :

- une instance composée seulement de juges ?
- une instance composée seulement de non juges
- une instance composée de juges et de non juges ?

#### 101) La même instance est-elle compétente pour la promotion des juges ?

- Oui
- Non

Si non, veuillez préciser quelle instance est compétente pour la promotion des juges :

Yes, for judges employed at Länder level

No, for judges employed at federal level

The decision on the promotion of judges employed at federal level is solely in the hands of the competent Minister.

**102) Quels critères et procédures sont utilisés pour promouvoir les juges ? (Veuillez préciser)**

The promotion of judges is based on qualification, performance, and capability and is in the responsibility of the government or the competent Minister.

**103) Comment sont recrutés les procureurs ?**

- Par concours (par exemple après un diplôme universitaire en droit)
- Une procédure de recrutement spécifique pour des professionnels du droit ayant une longue expérience juridique (par exemple des avocats)
- Une combinaison des deux
- Autres

Si autres, veuillez préciser :

In addition to the marks in the examination, interviews are carried out in the form of structured interviews, assessment centres and the like.

**104) Les procureurs sont-ils recrutés et nommés, initialement en début de carrière, par :**

- une instance composée seulement de procureurs ?
- une instance composée de seulement de non procureurs?
- une instance composée de procureurs et de non procureurs?

**105) La même instance est-elle compétente pour la promotion des procureurs ?**

- Oui
- Non

Si non, veuillez préciser quelle instance est compétente pour la promotion des procureurs

**106) Quels critères et procédures sont utilisés pour promouvoir les procureurs? (veuillez préciser)**

The promotion of public prosecutors is based on relevant qualification, performance and capability.

**107) Le mandat est-il à durée indéterminée pour les juges?**

- Oui  
 Non

Existe-t-il des exceptions ? Veuillez préciser :

In Germany, judges are usually appointed for life. There are exceptions for judges at the constitutional courts. Judges are employed for 12 years at the Federal Constitutional Court. Their mandate cannot be renewed at the end of the month following their 68th birthday.

Usually a judge's tenure ends at the end of the month of their 65th birthday.

**108) Le mandat est-il à durée indéterminée pour les procureurs ?**

- Oui  
 Non

Existe-t-il des exceptions ? Veuillez préciser :

A public prosecutor's mandate ends at the end of the month of their 65th birthday.

**109) Si non, qu'elle est la durée du mandat ?**

**Est-il renouvelable ?**

pour les juges

oui, veuillez préciser la durée

pour les procureurs

oui, veuillez préciser la durée

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données ci-dessus**

**- les caractéristiques de votre système de sélection et de nomination des juges et des procureurs et les réformes majeures mises en oeuvre au cours des deux dernières années**

Comment on the authority that is responsible for the recruitment of judges at the beginning of their career (question # 100):

Recruitment regulations for the employment of judges at Länder level are not the same in all Länder.

Judges at federal level are elected by a judge selection committee (Richterwahlausschuss) and appointed by the competent Minister.

Pursuant to Article 98 para 4 Basic Law (Grundgesetz, GG) the Länder can determine if the judge's recruitment is decided by the competent Minister or by the competent Minister in collaboration with a judge selection committee. The following Länder use a judge selection committee for the appointment of judges: Berlin, Brandenburg, Bremen, Hamburg, Hessen, Schleswig-Holstein and Thuringia.

The judge selection committees are composed largely by members of the regional parliament or persons

authorised by them, sometimes there are also representatives of the judiciary and in some Länder one or two lawyers are in these committees.

Re mandate for judges and prosecutors (questions # 107 and 108):

The governmental draft of the law on restructuring public service law (Dienstrechtneuordnungsgesetz, DienstNeuG) stipulates that the judges and the public prosecutors at federal level stay employed until the end of the month of their 67th birthday.

The governmental draft on the law on the status of civil servants (Beamtenstatusgesetz, BeamtStatusG) offers the possibility to determine an age limit for the retirement of judges upon request.

### 5. 1. 2. Formation

#### 110) Nature de la formation des juges.

##### Est-elle obligatoire?

- Formation initiale
- Formation continue générale
- Formation continue pour des fonctions spécialisées (ex. juge pour les affaires économiques ou administratives)
- Formation continue pour des fonctions spécifiques (ex. présidence d'un tribunal)
- Formation continue pour l'utilisation des outils informatiques au sein des tribunaux

#### 111) Fréquence de la formation des juges :

	Annuelle	Régulière	Occasionnelle
Formation initiale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Formation continue générale	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Formation continue pour des fonctions spécialisées	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Formation continue pour des fonctions spécifiques	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### 112) Nature de la formation des procureurs.

##### Est-elle obligatoire?

- Formation initiale
- Formation continue générale
- Formation continue spécialisée (ex. procureur spécialisé)
- Formation continue pour des fonctions spécifiques (ex. procureur général et/ou gestionnaires)
- Formation continue pour l'utilisation des outils informatiques au sein des tribunaux

#### 113) Fréquence de la formation des procureurs :

	Annuelle	Régulière	Occasionnelle

Formation initiale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Formation continue générale	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Formation continue spécialisée	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Formation continue pour des fonctions spécifiques	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Formation continue pour l'utilisation des outils informatiques au sein des tribunaux	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- des commentaires sur l'attention portée dans les curricula à la Convention européenne des Droits de l'Homme et à la jurisprudence de la Cour
- les caractéristiques de votre système de formation des juges et des procureurs et les réformes majeures mises en oeuvre au cours des deux dernières années

All legal professionals have a standard legal education before reaching the qualification entitling them to become judges and then decide on their career as judges, public prosecutors, notaries, administrative officer, lawyer or business lawyer (Einheitsjurist).

## 5. 2. Exercice de la profession

### 5. 2. 1. Salaires

#### 114) Salaires des juges et des procureurs (compléter le tableau)

	Salaire annuel brut (Euro)	Salaire annuel net (Euro)
Juge professionnel de 1ère instance au début de sa carrière	38828,52	
Juge de la Cour suprême ou de la dernière instance de recours	86478,12	
Procureur au début de sa carrière	38828,52	
Procureur auprès de la Cour suprême ou de la dernière instance de recours	86478,12	

#### 115) Les juges et les procureurs bénéficient-ils des avantages suivants :

	Juges	Procureurs
Imposition réduite	<input type="checkbox"/>	<input type="checkbox"/>
Retraite spécifique	<input type="checkbox"/>	<input type="checkbox"/>
Logement de fonction	<input type="checkbox"/>	<input type="checkbox"/>
Autre avantage financier	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

#### 116) Si autre avantage financier, veuillez précisez :

Judges and public prosecutors are exempt from payment into the social security scheme (unemployment and health insurances, pension schemes), but cannot claim any benefits from these systems either.

#### 117) Un juge peut-il cumuler son travail avec les autres professions suivantes :



	Oui rémunéré	Oui non rémunéré	Non
Enseignement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recherche et publication	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Arbitrage	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consultant	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fonction culturelle	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Autre fonction	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**118) Si autre fonction, veuillez préciser**

A judge is not allowed to hold any legislative position (e.g. as a member of a parliament) or enforcing position (e.g. administrative officer). Any second employment of the judges shall not impair their office at court. In principle, the following outside activities are permitted:

1. court administration functions
2. other functions that by law are assigned to a court or judges
3. research and lecturing activities at universities, public institutions of education or administrative training facilities
4. review and examination matters
5. chairmanship at arbitration boards and comparable independent boards as defined in § 104 sentence 2 of the Federal Staff Representation Act (Bundespersonalvertretungsgesetz)

There are additional rules in the pertinent law which give more detailed information, in particular on the obligation to obtain approval and the permitted limits for additional income.

**119) Un procureur peut-il cumuler son travail avec les autres professions suivantes :**

	Oui rémunéré	Oui non rémunéré	Non
Enseignement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recherche et publication	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Arbitrage	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consultant	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fonction culturelle	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Autre fonction	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**120) Si autre fonction, veuillez préciser :**

The information given under # 118 also applies to public prosecutors mutatis mutandis.

**121) Des indemnités sont-elles accordées aux juges en fonction du respect d'objectifs quantitatifs de production de décisions ?**

- Oui  
 Non

Si oui, veuillez préciser :

### **Veillez indiquer la source pour la question 114**

Bundesbesoldungsgesetz (Federal Civil Service Remuneration Act)

There are allowances, special payments, and family allowances that are added to the gross salary. It is not possible to give information on the net salary as it depends on tax category, health insurance and family status.

The gross annual salary of 38,828.52 € means the basic annual remuneration of someone at the beginning of their career and on average 29 years of age on the basis of Salary Group R 1 (Besoldungsgruppe R 1), the gross annual salary of 86,478.12 € is the basic annual remuneration on the basis of Salary Group R 6, in addition there are allowances that are granted in varying amounts across the Länder.

Usually there is an annual special payment of about 60 % of the basic monthly remuneration and, depending on the family status of the judge, an additional family allowance. The gross salary of a judge working in the New Länder is 7.5 % lower.

Judges and public prosecutors are exempt from payment into the legal social security schemes (unemployment and health insurances, pension scheme) just like civil servants.

### **5. 2. 2. Procédures disciplinaires**

#### **122) Quelle autorité peut engager des procédures disciplinaires contre les juges et/ou les procureurs ? Veillez préciser :**

Official disciplinary proceedings against judges at federal courts are initiated by a decision of the Federal Judicial Service Court (Dienstgericht des Bundes). If disciplinary measures are necessary for judges employed at Länder level, the Regional Judicial Service Courts (Landesdienstgericht) are responsible according to the respective legislation concerning judges at Länder courts.

Disciplinary proceedings against public prosecutors are initiated by their supervisors.

#### **123) Quelle autorité détient le pouvoir disciplinaire à l'encontre des juges et des procureurs ? Veillez préciser:**

The Federal Judicial Service Court has disciplinary power on judges at federal courts and the Regional Judicial Service Courts on judges employed at Länder level.

For public prosecutors, the supervisors have the disciplinary power in in-house cases and the disciplinary courts that belong to the administrative jurisdiction have disciplinary power on them in case of court disciplinary proceedings against public prosecutors.

#### **124) Types de procédures disciplinaires et sanctions à l'encontre des juges et des procureurs : nombre de procédures disciplinaires intentées**

	Juges	Procureurs
Nombre total (1+2+3+4)	ca. 55	ca. 26
1. Faute déontologique	ca. 10	ca. 2
2. Délit pénal	ca. 22	ca. 6
3. Insuffisance	ca. 20	ca. 17

professionnelle		
4. Autre	ca. 3	ca. 1

**125) Types de procédures disciplinaires et sanctions à l'encontre des juges et des procureurs : nombre de sanctions prononcées**

	Juges	Procureurs
Nombre total (total 1 à 9)	ca. 25	ca. 4
1. Réprimande	ca. 13	
2. Suspension		ca. 2
3. Révocation		
4. Amende	ca. 3	
5. Diminution de salaire temporaire	ca. 3	ca. 1
6. Rétrogradation de poste		
7. Mutation dans un autre tribunal géographiquement	ca. 1	
8. Démission	ca. 3	ca. 1
9. Autre	ca. 2	

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- les caractéristiques de votre système de procédures disciplinaires pour les juges et les procureurs et les réformes majeures mises en oeuvre au cours des deux dernières années

Comment on disciplinary proceedings (questions # 124 and 125):

There is no uniform statistics at national level. The figures are not identified in all Länder and if they are, the methods differ. It is therefore not possible to give substantial specific information, but only estimates of proceedings and sanctions occurring annually. This estimate refers to all judges and public prosecutors in Germany, both employed at federal and at Länder level.

The provision in § 26 para 1 of the German Judiciary Act (DRiG) states that judges are generally subject to oversight as long as their independence is not affected (article 97 Basic Law). The content of the work of a judge in the jurisdiction process is not subject to supervision. The supervising authority can only have access to the formal aspects of the judge's work and how the work is conducted (convening sessions in meeting rooms, using standard pre-printed forms etc). If a judge commits a disciplinary offence, § 26 para 2 DRiG only allows two measures that the supervising authority could take: On the one hand the judge can be reproached with respect to the irregular nature and implementation of his/her actions and requested to ordinarily and immediately complete the action in question.

If the disciplinary offence requires measures that go beyond reproachment and warning as defined in § 26 para 2 DRiG, these measures can only be taken in the course of disciplinary proceedings. There is no separate disciplinary law for judges, neither in federal legislation nor Länder legislation. The Federal Disciplinary Law (Bundesdisziplinalgesetz, BDG) applies to judges employed at federal level. For judges at Länder level, the respective Länder disciplinary laws of the Länder legislation are applicable. According to the reference in § 46 DRiG, material disciplinary law corresponds to the provisions applicable for civil servants employed at federal level. The same is true for the disciplinary procedure and the disciplinary sanctions (pursuant to § 63 para 1 DRiG) with the exceptions explained in 63 para 2 und para 3 DRiG. Corresponding regulations exist in the Länder laws for judges employed at Länder level. The provisions stipulating the authority of the Federal Judicial Service Court for judges at federal courts can be found in § 62 para 1 number 1 DRiG, the provisions for disciplinary proceeding in § 63 DRiG and disciplinary sanctions in § 64 DRiG. The German Judiciary Law (DRiG) does not have regulations for material disciplinary law (disciplinary offence) nor for the whole disciplinary proceeding and neither for disciplinary sanctions – apart from the special provisions in § 64 DRiG.

If an in-house disciplinary proceeding does not suffice for the punishment of a disciplinary offence, the supreme authority in charge can apply for formal disciplinary charges against the judge which need to be decided by the judicial court (§ 63 para 2 DRiG, so-called judicial disciplinary proceedings, gerichtliches Disziplinarverfahren). The responsibility in cases of formal disciplinary proceedings lies with the Federal Judicial Service Court (§ 62

DRiG) or the respective judicial service courts of the Länder (§ 78 number 1 DRiG). The judicial service courts were particularly established for disputes with respect to the judges' services that are closely linked to the independence of the judiciary.

As public prosecutors are civil servants, they are, unlike judges, dependent on instructions by their supervisors. Their activities can also be controlled in this framework, and proceedings can be initiated against them when they breach their duty. The federal or Länder disciplinary laws apply in those cases without the restrictions of the DRiG outlined above.

## 6. Avocats

### 6. 1. Statut de la profession

#### 6. 1. 1. Profession

#### 126) Nombre d'avocats exerçant dans votre pays

138104

#### 127) Ce chiffre inclut-il la catégorie « conseiller juridique » (« solicitor/in-house counsellor ») qui ne peut pas représenter en justice ?

- Oui  
 Non

#### 128) Nombre de conseillers juridiques

#### 129) Les avocats ont-ils le monopole de la représentation en justice ?

- Affaires civiles\*  
 Affaires pénales - Défendeur\*  
 Affaires pénales - Victime\*  
 Affaires administratives\*

\*Le cas échéant, veuillez préciser si cela concerne tous les niveaux d'instance. En cas de non monopole, veuillez préciser les organismes ou personnes pouvant représenter les clients devant un tribunal (par exemple une ONG, membre de la famille, syndicat, etc....) et pour quelles affaires.

Civil cases: According to § 78 para 1 sentence 1 of the Code of Civil Procedure the parties need to be represented by a lawyer before the regional courts and the higher regional courts. At the Federal Court of Justice, representation by a lawyer qualified for cases at the Federal Court of Justice is mandatory pursuant to § 78 para 1 sentence 3. Compulsory representation by a lawyer can also be required in local courts – family courts.

If representation by a lawyer is not required (usually in general civil cases at local courts), the following persons are entitled to represent the party by proxy: employees of the party or of an associated company, authorities and legal entities under public law including associations formed for the purpose of exercising public functions, family members of age, persons qualified as judges and joined parties provided that the representation is not connected to any remuneration, and consumer organisations and other publicly financed consumer associations in consumer claims within their scope of action, and persons that collect debts in dunning procedures before they are referred to the court where the litigation takes place.

Criminal cases: According to § 138 para 1 of the Code of Criminal Procedure (Strafprozessordnung, StPO), lawyers and university professors qualified as judges can be appointed as legal representation. However, § 138 para 2 StPO allows other persons to be appointed as defence lawyers too – under the restrictions of the Legal Services Act (Rechtsdienstleistungsgesetz). Foreign lawyers, solicitors who are members of the Bar association, assessors, tax consultants in criminal proceedings concerning fiscal offences, family members and friends are among those that could be taken into consideration.

Under certain circumstances listed in § 140 StPO, the representation of the accused by a defence lawyer is obligatory (Pflichtverteidigung).

Under certain circumstances listed in § 397a paras 1 and 2 StPO, the victims are entitled to legal representation. According to the Code of Criminal Procedure no other person than a lawyer can represent the victim in the proceeding.

Administrative cases: As long as legal representation is not mandatory as it is the case for all initial instances of the respective court branch, i.e. the administrative court, the social court or the finance court, any party in the proceeding can choose to be represented by any person capable of presenting the case accurately. This means that family member, non-governmental organisations or trade union members can take over the representation provided that they do not do it on a commercial basis and without proper authorisation.

If the representation is mandatory as it the case in regional courts, only specific groups of persons are entitled to represent the party. These groups comprise lawyers and depending on the legal branch (administrative, social or finance jurisdiction) also other persons such as university professors qualified as judges, tax consultants, auditors, trade union members and members of other associations such as workers' associations. As a basic principle the representation by members of a non-governmental organisation is, however, not permitted in cases for which representation is mandatory.

### 130) La profession d'avocat est-elle organisée à travers :

- un barreau national ?
- un barreau régional ?
- un barreau local ?

Veillez préciser :

There is the Federal Bar Association (Bundesrechtsanwaltskammer) as the national Bar association and 28 regional Bar association which are all members of the Federal Bar Association. Lawyers need to be members of their Bar association. These Bar associations exercise indirect state administration and monitor the compliance with the professional code of practice on the basis of the Federal Lawyers' Act (Bundesrechtsanwaltsordnung).

There is the Deutscher Anwaltverein as a voluntary association in which 50 % of its members are lawyers. This association aims at representing professional and commercial interests of lawyers.

### Veillez indiquer la source pour la question 126

Annual statistics of the Federal Bar Association

About the legal advisors (questions # 127 and 128):

The figure given for the number of lawyers includes the so-called syndic lawyers (Syndikus Anwälte) who are accredited lawyers at the Bar but work as in-house lawyers in companies at the same time. Other legal advisors (legal professionals) who work in companies are not covered.

## 6. 1. 2. Formation

**131) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'avocat ?**

- Oui  
 Non

**132) Existe-t-il un système de formation continue générale obligatoire pour les avocats ?**

- oui  
 Non

**133) La spécialisation dans certains domaines est-elle liée à certaines formations/à un certain niveau de diplôme/à certaines autorisations ?**

- Oui  
 Non

Si oui, veuillez préciser :

Lawyers who have acquired special knowledge or experience in a specific field of law can become authorised to call themselves specialist lawyers (Fachanwalt) by the Bar association they belong to. The training that specialist lawyers need to undergo is regulated by the code for specialised lawyers (Fachanwaltsordnung) as adopted by the Bar associations and ap-proved by the Federal Ministry of Justice.

Comment on the initial training for lawyers (question # 131):

In Germany, there is a standard legal education to become a jurist (Einheitsjurist). Before any person can pursue a career as a lawyer, they have to pass the first and the second state examination in law (Erste und Zweite Staatsprüfung) as for all other classic legal professions. The second state examination bears the qualification to become a judge. This is why there is no separate examination for lawyers especially.

Comment on obligatory continuing professional training (question # 132):

According to the Federal Lawyers' Act (Bundesrechtsanwaltsordnung, BRAO), continuing professional training is required for lawyers, but infringements are practically without any professional punishment. Generally, lawyers do not even need to prove compliance with the requirement for ongoing training to their Bar association.

The provisions for specialist lawyers are, however, different (see above). They need to attend a minimum of 10 hours of continuing professional training per year and provide proof of attendance to the Bar association. If they fail to do so, they can lose their entitlement to be called "specialist lawyers".

### 6. 1. 3. Honoraires

**134) Pour le justiciable, existe-t-il une transparence sur les honoraires prévisibles des avocats ?**

- Oui  
 Non

**135) Les honoraires des avocats sont-ils :**

- réglementés par la loi ?  
 réglementés par le Barreau ?

librement négociés ?

## 6. 2. Evaluation

### 6. 2. 1. Plaintes et sanctions

**136) Des normes de qualité ont-elles été formulées pour les avocats ?**

- Oui  
 Non

**137) Si oui, qui est responsable de la formulation de ces normes de qualité:**

- le Barreau ?  
 le législateur ?  
 autre ?

Veillez préciser (y compris une description des critères de qualité utilisés):

Basic professional standards are outlined in the Federal Lawyers' Act. Additional provisions are given in the code of conduct for lawyers (Berufsordnung für Rechtsanwälte) which has been adopted by the Federal Bar Association as a legally-binding charter on the basis of applicable law (§§ 59b, 191a-e BRAO).

Quality standards can also be derived from the very strict liability laws that are applicable in Germany. For office management there is the possibility to certify the quality management according to ISO 9001. Some law firms have made use of that possibility.

**138) Existe-t-il une possibilité de déposer une plainte concernant :**

- la prestation de l'avocat ?  
 le montant des honoraires ?

Veillez préciser :

**139) Quelle est l'autorité compétente pour traiter des procédures disciplinaires :**



- le juge ?
- le ministère de la Justice ?
- une instance professionnelle ou autre ?

Veillez préciser :

The Bar associations are responsible for reprimanding lawyers (§ 74 of the Federal Lawyers' Act).

The Lawyers' Disciplinary Court (Anwaltsgericht) is responsible for disciplinary proceedings against lawyers when more severe sanctions are necessary in the light of the disciplinary offence (§§ 113 et seqq. Federal Lawyers' Act).

**140) Procédures disciplinaires et sanctions à l'encontre des avocats:  
Procédures disciplinaires initiées**

	Faute déontologique	Insuffisance professionnelle	Délit pénal	Autre
Nombre annuel				

**141) Procédures disciplinaires et sanctions à l'encontre des avocats :  
Types de sanctions prononcées**

	Réprimande	Suspension	Révocation	Amende	Autre
Nombre annuel					

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- les caractéristiques de votre système d'organisation du Barreau et les réformes majeures mises en oeuvre au cours des deux dernières années

On disciplinary proceedings and sanctions against lawyers (questions # 140 and 141):  
There are no statistics about the number of disciplinary proceedings and sanctions available.

## 7. Modes alternatifs de règlement des litiges

### 7. 1. Médiation et autres formes de règlement des litiges

#### 7. 1. 1. Médiation

**142) Le cas échéant, veuillez préciser, par type d'affaires, l'organisation de la médiation judiciaire :**

	Possibilité de médiation privée ou médiation annexée au tribunal	Médiateur privé	Instance publique	Juge	Procureur
Affaires civiles et commerciales	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Affaires familiales (ex: divorces)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Affaires administratives	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Licenciements	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Affaires pénales	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**143) Est-il possible de bénéficier de l'aide judiciaire lors des procédures de médiation ?**

- Oui  
 Non

Si oui, veuillez spécifier :

**144) Pouvez-vous donner des informations sur les médiateurs accrédités ?**

- Oui  
 Non

Si oui, veuillez indiquer le nombre de médiateurs :

**145) Pouvez-vous donner des informations sur le nombre total de procédures de médiation concernant :**

- les affaires civiles ?  oui, nombre :
- les affaires familiales ?  oui, nombre :
- les affaires administratives ?  oui, nombre :

les affaires de licenciements ?  oui,  
nombre :

les affaires pénales ?  oui,  
nombre :

### **Veillez indiquer la source pour la question 145**

Comments on the organisation of court mediation (question # 142):

The Introductory Act to the Code of Civil Procedure (Einführungsgesetz zur Zivilprozessordnung) stipulates in § 15a that disputes can be taken to the local court only after a prior attempt at having the dispute settled amicably by a conciliation office. This provision has been applicable in some cases depending on the subject of the dispute since 1 January 2000. If the law suit is initiated without involving a conciliation office first, the judge can dismiss the case for lack of mediation. This provision is not a national one, but enters into force when adopted by Länder law.

Additionally and in accordance with § 278 ZPO, the court has been obliged since 1 January 2002 to discuss an amicable settlement of a dispute at the beginning of the oral proceeding as part of court mediation unless an out-of-court settlement has already failed.

The court can also appoint another judge to conduct a conciliation meeting and can also suggest an out-of-court dispute settlement to the parties if appropriate (§ 278 para 6 Code of Civil Procedure, ZPO). This proposal is not binding to the parties and can aim at mediation.

Since 2000, several courts have carried out projects for court annexed mediation in which mediation is offered and proposed to the parties when the case has been filed. The mediation is either carried out inside the court by judges of the same court who are not in charge of the dispute or by mediators who are not judges (mostly lawyers). The projects have different outlines in the various court districts of the competent Länder. This relates mostly to civil courts, but there are some administrative and social courts and to a lesser extent labour courts that have introduced these mediation projects. All types of disputes within civil jurisdiction (e.g. contractual disputes, family disputes, disputes between neighbours etc.) are covered. There is no accurate statistical information due to the exemplary nature of this type of court annexed mediation and its ongoing development. In Germany, more than 100 courts in 13 Länder might currently be employing this court annexed mediation.

If "private mediation" means the possibility to choose an independent mediator without a court proceeding, then no detailed information can be made. In Germany, there is a market for such mediation services, in particular for family disputes, succession and inheritance disputes and environmental disputes and also in the field of commercial mediation. However, there are currently no official regulations or monitoring systems with respect to the training to become a mediator or the mediation activities.

Comment on the number of judicial court mediation procedures (question # 145):

No numbers can be provided for court mediation at national level. In Germany, mediation procedures are not regulated by law and therefore there are no reliable bases for surveys. Neither are there any nationwide statistics. At best, there might be some figures from larger associations, organisations or institutions, but their accurateness, completeness or representativeness cannot be gauged. Even if other out-of-court dispute settlement procedures were to be included, it would not be possible to give any figures.

In addition to the offers by freelance mediators, the ongoing projects in some Länder for court annexed mediation are gaining recognition and acceptance among conflicting parties. However, it is not possible to give a representative outline of the situation on the basis of single information reported from individual Länder. For 2004/2005, a total of 422 mediation procedures in constitutional case, 1 896 mediation procedures in civil proceedings and 5 mediation procedures in family cases (in Lower Saxony, the numbers for mediation procedures in family case were integrated into the numbers for mediation procedures in civil cases) and 10 mediation procedures in social law cases were identified. On the whole, the numbers with respect to the projects in court annexed mediation should be considerably higher.

It is important to note, however, that these projects only take place in few towns and cities of some Länder (seven Länder altogether), so that the numbers would not allow any conclusions to be drawn for a nationwide development of mediation procedures in Germany.

Information on mediation in criminal law cases (victim offender mediation) are registered in the so-called victim-offender-mediation statistics (Täter-Opfer-Ausgleichstatistik, TOA-Statistik). This is however incomplete information, because not every institution takes part in the statistics. Within the framework of an impact assessment in retrospect, the number of TOA cases was estimated to amount to about 11,000 in 2000.

## 7. 1. 2. Autres formes de règlement des litiges

### **146) Pouvez-vous donner des informations sur les autres mesures alternatives de règlement des litiges (par ex. arbitrage) ? Veuillez spécifier :**

In civil law cases, arbitration as well as conciliation procedures are common.

Germany has transposed the UNCITRAL model laws for arbitration procedures into the Code of Civil Procedure. Germany hosts important internationally acknowledged arbitration organisations such as the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit).

For conciliation measures, i.e. procedures in which a third party suggests a non-binding solution, there is a large number of institutions located at the Chambers of Industry and Commerce the Chambers for Crafts. Consumers can turn to them in cases of disputes with a company or a craftsman of a specific trade. If other EU Member States are involved, there is the EURO-INFO-Verbraucher e.V. centre in Kehl. This association is the European consumer centre for Germany and France within the EU ECC net project (<http://www.euroinfo-kehl.com>).

Furthermore, in some Länder, there are individuals or communities working as conciliators.

In some cases, some Länder require the party to contact a conciliation office before filing a civil law suit. This applies in particular to claims of small amounts and disputes between neighbours.

The victim offender mediation procedure (TOA = VOM) can be seen as an alternative procedure in criminal law cases. This mediation is carried out outside the actual criminal proceedings. The court may mitigate the sentence on the basis of TOA and in non-serious cases forego a sentence altogether. If the expected sentence is below a certain threshold (minimum custodial sentence of less than one year) the proceedings can be discontinued by the public prosecutor already. The TOA is not obligatory in a criminal proceeding, but at every stage of the proceedings, the public prosecution and the court must examine, if a TOA would be appropriate for the case and if so, work towards it. Both parties must be willing to participate in a TOA. There is no prescribed TOA procedure. The mediators in a TOA can be independent service providers, e.g. specialised TOA centres or victim assistance organisations or court mediation (judiciary social service) or youth assistance/court mediation (at youth welfare offices or private institutions). The mediators should ideally have the relevant qualifications and be specially trained. TOA is possible, however, in other forms as well, e.g. mediation by lawyers or among the parties themselves without an additional mediator. The legal provisions offer a broad scope for autonomous conflict settlement. The supervision of the TOA to make sure it is a genuine one and to find out in what way it can be taken into consideration for the decision, remains within the court and the public prosecution.

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données ci-dessus**

**- les caractéristiques de votre système de modes alternatifs de règlements des litiges et les réformes majeures mises en oeuvre au cours des deux dernières années**

## 8. Exécution des décisions de justice

### 8. 1. Exécution des décisions civiles

#### 8. 1. 1. Fonctionnement

#### 147) Nombre d'agents d'exécution

4920

#### 148) Les agents d'exécution sont-ils :

- des juges ?
- des huissiers de justice exerçant en profession libérale ?
- des huissiers de justice attachés à une institution publique ?
- d'autres agents d'exécutions ?

Veuillez préciser leur statut :

#### 149) Existe-t-il une formation initiale ou un examen spécifique pour accéder à la profession d'agent d'exécution?

- Oui
- Non

#### 150) La profession d'agent d'exécution est-elle organisée par :

- une instance nationale ?
- une instance régionale ?
- une instance locale ?

#### 151) Pour le justiciable, existe-t-il une transparence sur le coût prévisible des frais d'exécution?

- Oui
- Non

**152) Les frais d'exécution sont-ils :**

- réglementés par la loi ?  
 librement négociés ?

**Veillez indiquer la source pour la question 147**

Statistics of the Länder

**8. 1. 2. Supervision****153) Existe-t-il un système de supervision et de contrôle de l'activité des agents d'exécution ?**

- Oui  
 Non

**154) Quelle est l'autorité chargée de superviser et de contrôler les agents d'exécution :**

- une instance professionnelle ?  
 le juge ?  
 le ministère de la Justice ?  
 le procureur ?  
 autre ?

Veillez préciser :

The enforcement agents are subject to supervision by the directors of the local courts. They are controlled with and without prior notice by their superiors or supervisors officially appointed by the Justice Ministries of the Länder.

**155) Des normes de qualité sont-elles formulées pour les agents d'exécution ?**

- Oui  
 Non

Si oui, quelle est l'autorité chargée de formuler ces normes de qualité et quels sont les critères de qualités utilisés?

In order to harmonise enforcement, uniform regulations were established in the Länder for enforcement agents and their activities in the Bailiffs Regulations (GVO) and the instructions for bailiffs (Geschäftsweisung für Gerichtsvollzieher, GVGA), which are supplemented by specific provisions of the Länder. Both comprehensive regulatory provisions contain clear instructions for the enforcement agents with respect to the structure of their employment status, responsibilities, treatment of enforcement orders, operational activities, filing systems, accounting and cash management, statistics to be

kept (GVO) and clear provisions on what individual action their activities involve and what procedures they need to apply (GVGA).

The GVGA in particular contains provisions on the standardisation of the procedures and quality management.

The Federal Ministry of Justice is generally the lead authority and responsible for quality standards – as long as federal provisions are concerned. The Justice Ministries of the Länder are responsible for Länder specific regulations.

**156) Disposez-vous d'un mécanisme spécifique pour l'exécution des décisions de justice rendues contre des autorités publiques, y compris pour assurer le suivi de cette exécution?**

- Oui  
 Non

Si oui, veuillez préciser :

According to § 882a of the Code of Civil Procedure (Zivilprozessordnung, ZPO), enforcement against the federation or the Länder due to financial claims, may only start four weeks after the date on which the creditor made his intention to enact enforcement known to the authority appointed to represent the debtor. This is not the case for rem rights. If the enforcement involves the property of another authority, the claim must also be made known to the Finance Ministry in charge.

The enforcement is not permitted for items that are indispensable for fulfilling public functions of the debtor or items whose sale would be against public interest. If the applicability of such a case is disputed, a court decision becomes necessary.

The enforcement of a court decision does not need to be announced and the mentioned waiting period does not need to be adhered to if the enforcement follows an interim injunction.

It needs to be pointed out, however, that the execution of court decisions against public authorities plays no role in the legal practice in Germany. The public debtor as part of the entity of the state needs to comply with court decisions, just like private debtors. Monetary and non-monetary claims of citizens against the state will be paid and guaranteed if necessary by additions to the budget plan (supplementary budget).

**Veuillez indiquer les sources pour les questions 155 et 156**

The regulations mentioned above.

**8. 1. 3. Plaintes et sanctions**

**157) Quelles sont les principales plaintes des usagers concernant les procédures d'exécution ? (Veuillez n'en indiquer que 3 au maximum)**

- absence de toute exécution ?  
 non exécution des décisions judiciaires rendues contre des autorités publiques?  
 manque d'information ?  
 durée excessive ?  
 pratiques illégales ?  
 supervision insuffisante ?  
 coût excessif ?  
 autre ?

Veillez préciser:

Frequency:

- 1 - unlawful practices
- 2 - excessive length
- 3 - excessive cost

**158) Votre pays a-t-il préparé ou adopté des mesures concrètes pour changer la situation concernant l'exécution des décisions de justice – en particulier les décisions rendues contre les autorités publiques?**

- Oui
- Non

Si oui, veuillez préciser :

With respect to the enforcement of court decisions against public authorities, no need to change the situation has been identified. There are, however, deliberations about a reform of the disclosure of essential facts in the field of forced sales which are planned to be implemented in a legislative procedure in 2008.

**159) Existe-t-il un système mesurant la durée des procédures d'exécution :**

- pour les affaires civiles ?
- pour les affaires administratives ?

**160) Pour un jugement concernant un recouvrement de créances, pouvez-vous estimer le délai de notification aux parties habitant dans la ville du siège de la juridiction :**

- entre 1 et 5 jours ?
- entre 6 et 10 jours ?
- entre 11 et 30 jours ?
- plus ?

Veillez préciser :

**161) Procédures disciplinaires initiées à l'encontre des agents d'exécution:**



Faute déontologique	<input checked="" type="checkbox"/> oui,	5
	nombre :	
Insuffisance professionnelle	<input checked="" type="checkbox"/> oui,	29
	nombre :	
Délit pénal	<input checked="" type="checkbox"/> oui,	14
	nombre :	
Autre	<input checked="" type="checkbox"/> oui,	9
	nombre :	

### 162) Sanctions prononcées à l'encontre des agents d'exécution :

Réprimande	<input checked="" type="checkbox"/> oui,	14
	nombre :	
Suspension	<input checked="" type="checkbox"/> oui,	2
	nombre :	
Révocation	<input checked="" type="checkbox"/> oui,	2
	nombre :	
Amende	<input checked="" type="checkbox"/> oui,	14
	nombre :	
Autre	<input type="checkbox"/> oui,	
	nombre :	

### Vous pouvez indiquer ci-dessous :

- tout commentaire utile pour l'interprétation des données ci-dessus

- les caractéristiques de votre système d'exécution des décisions civiles et les réformes majeures mises en oeuvre au cours des deux dernières années

### Veillez indiquer les sources pour les questions 157 et 160

On complaints (question 157):

All other listed events occur too, but do not constitute the majority of the complaints. The indicated cases are based on experience and do by no means make any statements on whether the individual complaints were justified or not.

On sanctions against enforcement agents (question 162):

In addition, five proceedings were discontinued.

In four cases, the salaries were lowered.

In two cases, the agents were reprimanded.

Source: Statistics of the Länder

## 8. 2. Exécution des décisions pénales

### 8. 2. 1. Fonctionnement

### 163) Existe-t-il un juge chargé spécifiquement de l'exécution ?

Oui

Non

Si oui, veuillez préciser ses fonctions et compétences (ex. fonctions d'initiative ou de contrôle).

Si non, veuillez préciser quelle autorité est compétente pour l'exécution des jugements (par ex: procureur).

Generally speaking, the first instance court takes the subsequent decisions that refer to the suspension of the sentence on probation. These are decisions, e.g. on the probation

period, conditions, instructions or the repeal of the suspension of the sentence on probation.

If a custodial sentence is enforced, the enforcement chamber of the district in which the detention centre is located is responsible for the execution of the decision. The same chamber remains responsible for the enforcement of decisions that need to be taken once the custodial sentence has been interrupted or the remaining enforcement period of the custodial sentence has been suspended on probation.

Besides, the public prosecution is the authority entrusted with enforcement.

**164) En matière d'amendes prononcées par une juridiction pénale, existe-t-il des études permettant d'évaluer le taux de recouvrement effectif ?**

Oui

Non

Si oui, veuillez préciser :

**Vous pouvez indiquer ci-dessous :**

**- tout commentaire utile pour l'interprétation des données ci-dessus**

**- les caractéristiques de votre système d'exécution des décisions pénales et les réformes majeures mises en oeuvre au cours des deux dernières années**

## 9. Notaires

### 9. 1. Statut

#### 9. 1. 1. Fonctionnement

**165) Existe-t-il des notaires dans votre pays ? Si non, allez à la question 170.**

- Oui  
 Non

**166) Les notaires ont-ils un statut :**

privé (sans contrôle par une autorité publique)?

oui,  
nombre :

de profession libérale réglementée par les pouvoirs publics?

oui,  
nombre :

public ?

oui,                   8513  
nombre :

autre ?

oui,  
nombre et  
précisez :

**167) Le notaire exerce-t-il une fonction :**

- dans le cadre de la procédure civile ?  
 dans le domaine du conseil juridique ?  
 pour authentifier les actes/certificats ?  
 autre ?

Veillez préciser :

According to § 20 of the Federal Notary Code (BNotO), the duty of a notary is to authenticate deeds of all kinds and to authenticate signatures, initials and copies. Any authentications that are necessary for property deals or specific legal transactions under company law are inseparably linked to unbiased legal advice given to the parties by the notary.

Notaries also fulfill additional tasks in the administration of justice, e.g. they issue documents for the representation entitlements on the basis of a public register in accordance with § 21 Abs. 1 BNotO and mediate in certain legal matters.

**Veillez indiquer la source pour la question 166**

Statistics of the Federal Association of Notaries (Bundesnotarkammer) as of 1 January 2008

#### 9. 1. 2. Supervision

**168) Existe-t-il un système de supervision et de contrôle de l'activité des notaires ?**

- Oui  
 Non

**169) Quelle est l'autorité chargée de superviser et de contrôler notaires :**

- une instance professionnelle ?  
 le juge ?  
 le ministère de la Justice ?  
 le procureur ?  
 autre ?

Veillez préciser :

Pursuant to § 92 BNotO, the Justice Ministries of the Länder and their subordinate court presidents of the higher regional courts and the regional courts of the districts in which the notaries' office is located are responsible for the supervision of the notaries. In addition to this and in accordance with § 67 BNotO, the notary associations issue directives which give more detailed descriptions of the official and other duties of their members in the framework of the regulations.

**Vous pouvez indiquer ci-dessous :**

- tout commentaire utile pour l'interprétation des données ci-dessus
- les caractéristiques de votre système notarial et les réformes majeures mises en oeuvre au cours des deux dernières années

## 10. Fonctionnement de la justice

### 10. 1. Réformes envisagées

#### 10. 1. 1. Réformes

**170) Pouvez-vous fournir des informations relatives au débat actuel dans votre pays en ce qui concerne le fonctionnement de la justice ? Des réformes sont-elles envisagées ? (par exemple modification de la législation, modification dans la structure judiciaire, programme d'innovation, etc. ...) Si oui, veuillez préciser.**

I. Reforms are basically conceivable at three levels for sustainably increasing the quality and the efficiency of the judiciary:

1. at the level of the incoming cases (input),
2. at the level of the court organisation and the procedures (conversion)
3. at the level of the results (output).

In Germany, reforms at all three levels are being discussed and in parts have already been implemented.

II. In more detail:

#### 1. Incoming cases

Reform efforts at the level of the incoming cases (input level) deal with the question of how the workload of the courts can be reduced at the preliminary stage already.

As a case in point, § 15a of the Introductory Act to the Code for Civil Procedure (EGZPO) can be mentioned. By means of this provision, the Länder have been given the possibility to subject the admissibility of certain civil cases to out-of-court dispute conciliation procedures since 2000. Special conciliation units are responsible for the mediation procedures and have either been established or certified for this purpose by the Justice Ministries of the Länder. This provision reduces the workload of the civil jurisdiction system, establishes durable legal peace through consensual solutions and develops new forms of dispute culture. According to 15 a EGZPO the following cases require obligatory mediation:

- disputes under property right in local courts for financial claims below 750 Euros
- disputes between neighbours
- disputes in claims on the basis of hurt personal pride unless committed publicly in the press or broadcasting services
- disputes in claims on the basis of discrimination for reasons of race, ethnic origin, sex, religion, disability, age or sexual orientation

#### 2. Court organisation and procedures

Reform schemes at the level of court organisation and the procedures (conversion level) deal with the simplification of the court's organisation, and aim at increasing the pace and efficiency of the procedures.

a) As far as the employees of the judiciary are concerned, motivation and performance potential have been improved by rational organisation of the workflows. At the beginning of the 90s several external consulting agencies identified many problem areas in the framework of studies on organisation and efficiency of the work at the courts. The area of the organisation of the division of labour in the support functions was one of the problem areas.

The members of the staff were assigned very narrowly defined tasks and this led to a lack of willingness to provide the necessary services in peak times or during sick leaves. Frequent file transports were subject to time lags and prolonged waiting periods were unavoidable. This situation also led to unfavourable psychological side-effects among the employees. This is why the requirement for a holistic approach to these services and their bundling in service units was essential. The secretariat and the registry were joined and formed a conglomerate of functions where the employees would do all the office work in addition to the work of the registry. The staff members were allocated to individual judges and public prosecutors and judicial officers in their function and office accommodation. To date, service units have been established all over the country.

More recent reform ideas also aim at establishing a system of functional cooperation and purposeful allocation and limitation of responsibilities to avoid duplication of work by more than one judicial body (judge, judicial

officer) within one proceeding (at least for long stretches throughout the proceeding). The reform models foresee further shifts of functions of judges or the judicial officers to members of the service units or functions of the judicial officers to the deeds officials in the registries of members of the service units.

b) In the area of procedures, numerous reform laws of the past on the simplification and acceleration of court procedures can be mentioned. One of the more recent ones is the reform of the Code of Civil Procedure of 2002 that brought about modifications in the first instance procedures, but also in appeal, revisions and complaint procedures. One of the objectives of the reform was to strengthen the first instance. By extending the judicial obligation to provide information, the procedures were made more transparent.

The appeal procedure was restructured. Its prime objective now is to correct errors of the first instance that were committed because facts were not acknowledged accurately or legal provisions were applied insufficiently. The court of appeal was also given the right to dismiss an appeal by decree if the court does not think the appeal could be successful and if the dispute has no fundamental significance. The first act on the modernisation of the judiciary (1. Justizmodernisierungsgesetz) of 24 August 2004 established a similar possibility for the instance of appeals in law only.

The second act on the modernisation of the judiciary (2. Justizmodernisierungsgesetz) just recently took another step towards modernising the judiciary. This act contains a comprehensive package of measures which affects almost every area of the judiciary. In the future, a deadline shall for example be set for civil law proceedings when experts are commissioned to prepare reports. In civil law disputes it will be allowed to make use of expert reports that were developed for other cases. In dunning procedures, lawyer will be allowed to issue machine-readable dunning notes – except for dunning procedures in labour law cases.

### 3. Results

Reforms at the output level deal with ensuring the quality of results of judicial work which has become a core challenge for the future of the judiciary in times of decreasing funds. The operation and blanket use of a benchmarking system that is tailored to the needs of the judiciary plays a significant role. As the classical commercial tool of management by objectives cannot be applied to courts and public prosecution services for constitutional reasons, a control system is needed that takes the special aspects of this field into consideration and in this respect particularly the autonomy of judicial decisions that is protected by the Constitution.

The judiciary opted for a decentral model of self-control through institutionalised benchmarking in performance comparison groups (Vergleichsringe). The decision was based on successful examples that were taken from benchmarking processes carried out in the municipalities.

Courts and public prosecution offices that can reasonably be compared with one another are grouped together and in performance comparison groups across Germany, the heads of the respective units at those courts and public prosecution services meet, in order to discuss cost and performance indicators and organisational options for their offices. They are supported in these groups by specially trained controllers and organisational consultants. This joint analysis of the shared data creates the preconditions to identify untapped potential for optimisation and achieve increases in quality and performance and improvements of the organisational structure at the respective courts and offices.

Additionally, the comparison group provides transparency which is a vital precondition for the new controlling system and quality management to be successful.

All this, however, can only be implemented if the data base used in the benchmarking is valid, and this is why the comparison group must make sure that the data is of the necessary quality. The experience to date has shown that this instrument lives up to the expectations and is widely accepted. In the coming budgeting periods, the controlling efforts must further extend the use of this instrument and make it a permanent exercise.

In addition to the comparison groups that exist internally within the Länder, comparison groups have started to be established for a structured transregional data exchange of the most important judicial performance indicators. The starting point for this transregional approach was a decision by the Conference of the Justice Ministers. A transregional benchmarking system is meant to broaden the horizons of the individual offices and to enable them to learn from each other and thus leads to improvement in efficiency and quality. These transregional benchmarking project will be continued in the coming budget period.