



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2011

Country: Germany

National correspondent

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Phone Number :

1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants (if possible on 1 January 2011)

81 751 602

2) Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €) - (If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP)

	Amount
State level	353 299 000 000
Regional / federal entity level (total for all regions / federal entities)	485 706 000 000

3) Per capita GDP (in €)

30 566

4) Average gross annual salary (in €)

44 532

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2011

A.1

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

1. Statistisches Bundesamt, Wiesbaden. Online database.(31.12.2010)
2. Federal Statistical Office, Statistical Yearbook for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2011), Table 23.
3. Calculated on the Basis of Federal Statistical Office, Statistical Yearbook 2011 for the Federal Republic of Germany (Statistisches Jahrbuch für die Bundesrepublik Deutschland 2011), Table 24 and the answer to question no. 1.
4. The figure refers to the average gross income of private households per month (€ 3.711) in 2009 (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 2011 for the Federal Republic of Germany (Statistisches Bundesamt, Statistisches Jahrbuch für die Bundesrepublik Deutschland 2011), Table 22.2.1.

1. 2. Budgetary data concerning judicial system

1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

6) Annual approved public budget allocated to the functioning of all courts, in €(if possible without the budget of the public prosecution services and without the budget of legal aid):

TOTAL annual approved budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input checked="" type="checkbox"/> Yes	7 789 169 914
1. Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	4 758 375 002
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	161 650 654
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	<input checked="" type="checkbox"/> Yes	1 712 187 748
4. Annual public budget allocated to court buildings (maintenance, operating costs)	<input checked="" type="checkbox"/> Yes	315 904 319
5. Annual public budget allocated to	<input checked="" type="checkbox"/> Yes	65 625 004

investments in new (court) buildings

6. Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	56 770 990
7. Other (please specify):	<input checked="" type="checkbox"/> Yes	718 656 197

7) If you cannot separate the budget of the public prosecution services and the budget of legal aid from the budget allocated to all courts, please indicate it clearly. If "other", please specify:

Baden-Württemberg:

The figures above also include the expenditure of the public prosecution offices, which is not separately recorded. Expenditure on legal aid has been removed from the calculation.

Bavaria:

Ordinary courts:

The budget of the public prosecution offices cannot be presented separately.

Social and labour courts:

The figures on the public annual budget for basic and further training consist exclusively of further training costs. The training costs cannot be shown separately.

Finance courts:

Legal aid cannot be shown separately, and is included in the court costs (estimation: roughly € 4,000 per year).

Administrative courts:

The expenditure for legal aid cannot be separated from the budget approved for the Bavarian administrative courts.

Brandenburg:

For information on the approved annual budget for all courts (not including the budget for the public prosecution office and legal aid), the data have been estimated unless shown separately in the budget plan. Item 6 No. 3 shows amongst other things all expenditure for experts, interpreters, witnesses, legal advice, disbursements in insolvency proceedings and legal matters, accommodation of juveniles in homes in order to avoid remand detention, compensation and damages paid to third parties, as well as remuneration for guardians and custodians. Item 6 No. 7 covers all other budget items, such as costs for official trips, expendables, appliances and facilities, vehicles, benefits in accordance with the Rehabilitation Act (RehaG), etc.

Bremen:

Other personnel expenditure (honorary, as well as in an auxiliary profession, aid benefits, etc.), material administrative expenditure (supplies, postal services, working clothes, equipment, etc.).

Hamburg:

The amount at "Other" includes expenditure for central directorship; central further training and training, as well as expenditure for the office and business equipment, including the libraries. The staff costs for trainee jurists, as well as for the examination offices, are included in item 1.

Hesse:

The information above does not include the budget for the public prosecution office and legal aid. "Other" includes the non-monetary resources and investments not stated at Nos. 2 to 6.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

No information.

North Rhine-Westphalia:

The expenditure for the public prosecution offices is estimated together with the expenditure of the courts. It is not possible to show it separately.

Regarding "Other":

Rent and lease of official buildings 134,716,300 €

Refund of expenses, remuneration

for guardians, curators and custodians 188,300,000 €

Communication (largely service/postal costs 46,956,800 €

expenditure for temporary accommodation 10,290,000 €

Other personnel expenditure (e.g. honorary judges, compensation of the bailiffs, etc.) 59,072,000 €

Other administrative expenditure (supplies, books pp) 40,980,600 €

Rhineland-Palatinate:

Cannot be separated.

Saarland:

Only estimates for the staffing and materials expenditure budget can be shown separately for the chief public prosecution office and the public prosecution office (i.e. not including statutory expenditure), cf. enclosure

The assessment of legal aid takes place in "Expenditure on legal matters" for the courts and public prosecution offices in Chapter 02 60 item 532 01. The total estimate for 2010 was € 16.6 million; total "as is" expenditure was 17,575,341.60 €.

The estimate for sub-item 532 01 A "Legal aid" was € 9 million, whereas "as is" expenditure in 2010 was € 8,965,691.72.

Saxony-Anhalt:

It is not possible to separate for 2010 the budget estimates assessed for the courts and public prosecution offices. It will however be possible to show and make available corresponding data in future with the introduction of output-orientated budgeting in all ordinary courts and public prosecution offices from the budget year 2012.

It is not possible to show the expenditure for legal aid estimated in the budget plan separately because of the budget system (item structure).

Re No. 7. Other

This contains all expenditure the of main group 4 (personnel expenditure, including pension expenditure), 5 (material administrative expenditure), 6 (allocations and subsidies), 8 (investments) and 9 (special expenditure on financing – pension fund), which are estimated in the court chapters in individual plan 11 unless they are already separately shown at Nos. 1 to 6.

Saxony:

Items where "NA" is stated in Question 6 cannot be shown separately by the public prosecution offices.

Re "Other": Compensation to honorary judges and lay judges; compensation to honorary staff in the social service of the judiciary; remuneration for overtime and additional work by staff; separation allowance and remuneration of moving costs; compensation to enforcement agents; supplies, items of equipment (not including computer equipment); letter and parcel fees, other telecommunication fees; supplies and post fees; running of official vehicles; personal items of equipment and expendables; running of official vehicles and expendables; management of the plots of land, buildings, rooms; rents and leases; maintenance of the plots of land and buildings; refunding of travel expenses; travel costs; moving and transfer costs of offices; third-party services; mixed administrative expenditure; expenditure on items deposited; refund of administrative expenditure to Länder; allocation to the generation fund; compensation (also ex bono) to accused persons in criminal matters; acquisition of official vehicles; Acquisition of appliances, items of equipment.

Schleswig-Holstein:

The information refers to the ordinary courts, administrative, social, financial and labour jurisdiction, incl. legal aid and not including management costs of buildings, construction and IT expenditure.

Other: in particular materials costs budgets, remuneration of civil servants in the enforcement service.

Thuringia:

No information.

Re Other Federation:

Payments prescribed by law are to be made to a fund to form reserves for the pensions of civil servants and judges.

8) Are litigants in general required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

for criminal cases?

for other than criminal cases?

If yes, are there exceptions to the rule to pay court a tax or fee? Please provide comments on those exceptions:

9) Annual income of court taxes or fees received by the State (in €)

3 515 706 357

10) Annual approved public budget allocated to the whole justice system, in €(this global budget does not include only the court system as defined under question 6, but also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.)

NA

13 320 680 442

11) Please indicate the budgetary elements that are included in the whole justice system. If "other", please specify in the "comment" box below.

Court system	Yes
Legal aid	Yes
Public prosecution services	Yes
Prison system	Yes
Probation services	Yes
Council of the judiciary	Yes
Judicial protection of juveniles	Yes
Functioning of the Ministry of Justice	Yes
Refugees and asylum seekers services	Yes
Other	Yes

Comment :

Court system 1 Yes 0 No 1NA 0NAP

Legal aid 1 Yes 0 No 0NA 0NAP

Public prosecution services 1 Yes 1 No 1NA 0NAP

Prison system 1 Yes 1 No 1NA 0NAP

Probation services 1 Yes 1 No 1NA 0NAP

Council of the judiciary 1 Yes 1 No 1NA 0NAP

Judicial protection of juveniles 1 Yes 1 No 1NA 0NAP

Functioning of the Ministry of Justice 1 Yes 1 No 1NA 0NAP

Refugees and asylum seekers services 1 Yes 1 No 1NA 0NAP

Other 1 Yes 1 No 1NA 0NAP

*) not including information from Mecklenburg-Western Pomerania and Thuringia. Information for Bavaria is available on the individual jurisdictions, which diverges with regard to various items. The respective responses from the Federal Länder on the individual budget items emerge from the Table enclosed re Question 11. The Yes and No answers are combined in the overview below.

Yes No

Court system BY (social courts/labour courts/administrative courts)*, BB, HH, HB, HE, NI, NW, RP, SL, ST, BE, SH, Federation

Legal aid BW, BY (ordinary courts/finance courts/social courts/labour courts/administrative courts)*, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH, Federation

Public prosecution services BW, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH BY (ordinary courts/finance courts/administrative courts)*

Prison system BW, BY (ordinary courts/finance courts)*, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH, Federation BY (administrative courts)*

Probation services BW, BY (ordinary courts/finance courts)*, BB, HB, HE, NI, NW, RP, SL, ST, BE, SH, BY (administrative courts)*, HH, Federation

Council of the judiciary BY (ordinary courts/finance courts)*, BE BW, BY (administrative courts)*, HB, NI, SL, SH, Federation

Judicial protection of juveniles BW, NI, BE, SH BY (administrative courts)*, HH, HB, RP, SL, ST, Federation

Functioning of the Ministry of Justice BW, BY (ordinary courts/finance courts)*, BB, HH, HB, HE, NI, NW, RP, SL, ST, SN, BE, SH, Federation BY (administrative courts)

Refugees and asylum seekers services BW BY (ordinary courts/finance courts/administrative courts)*, BB, HH, HB, NI, NW, RP, SL, ST, BE, SH, Federation

Other HH, HB, NI, NW, SL, ST, SN BY (administrative courts)*, BB, HE, RP, Federation

If "other", please specify:

Bavaria:

With regard to legal aid in the finance courts cf. information at Question 7.

Bremen:

Judicial examination office.

Hamburg:

The costs for the Hamburg Data Protection Commissioner and the Equality Office are also estimated in the overall judicial budget in Hamburg.

Lower Saxony:

Northern German College for the Administration of Justice.

North Rhine-Westphalia:

Basic and further training facilities for the judiciary, expenditure on pensions for the judicial civil servants of the Land and their surviving dependents, general approvals (e.g. medical expenses payments, pension payments and the like).

Saarland:

Saarland Clinic for Forensic Psychiatry (SKFP), estimated in Chapter 02 59:

The Clinic is a facility of the Land which is managed in the shape of a Land Agency in accordance with section 26 of the Land Budget Code (LHO). The facility is responsible for accommodating and treating criminal offenders in the entire Land who have no or diminished criminal responsibility by reason of psychological illness or addiction.

Saxony-Anhalt:

The remit of the MJ includes the Land Commissioner for the Documents of the State Security Service of the Former GDR. The expenditure for this is estimated in Chapter 1114.

Saxony:

cf. note re No. 13 and Annex 2.

12) Annual approved public budget allocated to legal aid, in €- If one or several data are not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Amount (in €)	Total annual approved public budget allocated to legal aid (12.1 + 12.2)	12.1 Annual public budget allocated to legal aid in criminal law cases	12.2 Annual public budget allocated to legal aid in non criminal law cases
	382382576	85 822 785	296 559 791

13) Total annual approved public budget allocated to the public prosecution services (in €). Please indicate in the "comment" box below any useful information to explain the figures provided.

Amount 479 916 106

Comment :

*) not including information from Mecklenburg-Western Pomerania and Thuringia. To the extent that the other Federal Länder have provided data, these were added to the total. Since individual Länder were unable to provide data (NA) , the information also remains incomplete in this regard.

Data provided by: BE, BB, HB, HH, HE, NI, SN, SH (NA stated by: BW, BY, NW, RP, SL, ST).
The following are accounted for by the Federation (included in the calculations above): 15,374,219

Baden-Württemberg:

The expenditure of the public prosecution offices is not collected separately.

Berlin:

Incl. personnel, materials and administrative expenditure, investments.

Brandenburg:

A small amount of other income may also be covered in Question 9. Question 10 contains the entire judicial budget, including planned surface construction expenditure for court buildings of individual plan 12. Information at Question 13 partly estimated, since not shown separately.

Hamburg:

Re 9.: The income does not include criminal and regulatory fines.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Re Question 9.: No information can be provided since the court fees are posted together with criminal and regulatory fines in one item (112 01/112 10).

North Rhine-Westphalia:

The expenditure for the public prosecution offices is estimated together with the expenditure for the courts. This cannot be shown separately.

Saarland:

cf. Annex at No. 7.

Saxony:

Apart from the reply to Question 9, which shows both the estimates in the budget plan and the actual income, in each case only the estimates in the budget plan are stated. The amount stated re Question 10 contains all expended funds that were available in 2010 within the remit of the Saxon State Ministry of Justice and for Europe. Its competence goes beyond the courts and public prosecution offices and the prison system, and includes for instance the areas of Europe, modernisation of the State and computer services for the state administration. In addition to the estimates contained in the relevant individual plan 06, the above amount also contains the expenditure carried over from the previous year in 2010. The same applies to the planned expenditure to be attributed to the remit of the Ministry for building activities and building maintenance of properties, which is shown with the corresponding expenditure for the entire state administration in individual plan 14, which is managed by the Saxon State Ministry of Finance and the Saxon State Agency for Real Property Services, which reports to it.

It should be pointed out with regard to the Question 11 that individual plan 06 is sub-divided into a total of 15 Chapters which do not tally with the categories contained in the question. A detailed breakdown of the funds approved in the budget plan and expended in the budget year among individual areas, e.g. courts of ordinary jurisdiction or public prosecution offices, is not possible since some of the expenditure (e.g. for further training or for information technology) is estimated in general chapter 06 02, and is centrally managed in some cases. The expenditure for investments on construction (major building activities) estimated in individual plan 14 can be attributed to individual items of property, and hence to the courts or public prosecution offices. Expenditure on the maintenance of the buildings, renting of buildings, etc., cannot however be broken down.

Saxony-Anhalt:

Re Question 9: The court costs cannot be shown separately.

Re Question 10: All expenditure from the main group 4 is included (personnel expenditure, including pensions expenditure), 5 (material administrative expenditure), 6 (allocations and subsidies), 8 (investments) and 9 (Special finance expenditure – pension fund) for the units estimated in the entire individual plan 11.

General remarks: Cf. information re Question 7.

Thuringia:

No information.

Federation:

Operating budget of the Office of the Federal Public Prosecutor General according to Question 6

14) Authorities formally responsible for the budgets allocated to the courts (multiple options possible) :

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	Yes	Yes	Yes	Yes
Other ministry	Yes	Yes	Yes	Yes
Parliament	Yes	Yes	Yes	Yes
Supreme Court	Yes	No	Yes	Yes
Judicial Council	No	No	No	No
Courts	Yes	Yes	Yes	Yes
Inspection body	Yes	Yes	Yes	Yes
Other	No	No	No	Yes

15) If any other Ministry and/or inspection body and/or other, please specify (considering question 14):

Baden-Württemberg:

The competence of the Ministry of Finance is shown by the constitutional provisions of the Land Baden-Württemberg.

Bavaria:

Ordinary courts/Other ministry:

State Ministry of Finance.

Finance courts/Other agency:

Bavarian Supreme Court of Audit.

Social and labour courts:

The labour and social courts in the Free State of Bavaria are subordinate to the Bavarian State Ministry of Labour and Social Affairs, Family and Women.

Administrative courts:

Bavarian State Ministry of the Interior.

Brandenburg:

Ministry of Finance is involved in the drafting of the overall Land budget, submission to Parliament, return of the adopted budget plan to the departments.

Berlin:

Senate Administration of Finance.

Hamburg:

Other Ministry is the revenue authority; other agency is the Court of Audit.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Supervisory authorities: Higher Regional Courts, Regional Labour Court, Higher Administrative Court, Regional Social Court.

North Rhine-Westphalia:

The supreme jurisdiction for the budget of the Land lies with the Ministry of Finance of the Land North Rhine-Westphalia.

The latter hence has competences when it comes to the drawing up and implementation of the budget, as well as in the subsequent accounting. A distribution of the funds among the courts is however not carried out by the Ministry of Finance. This task is within the sole remit of the Ministry of Justice as well as of the superior courts in the respective jurisdictions.

Saarland:

"Other ministry":

The Ministry of Finance estimates the amount of the staffing budget.

"Management of the budget":

A staff costs budget (i.e. reciprocal eligibility as cover of the personnel item of groups 422 to 429) and a materials costs budget (i.e. reciprocal eligibility as cover of the available titles of group 5) were estimated in the "judicial budgets portraying activities performed", in the remit of the courts and public prosecution offices (Chapters 02 60 to 02 65).

Moreover, the items of main groups 4 and 5 were declared reciprocally eligible as cover. These expenditure items can furthermore unilaterally strengthen the items of group 8, as well as items 511 61 and 812 61.

Decentralised budgetary responsibility enables the authorities within the budget prescribed by the Ministry of Justice to manage the available expenditure largely independently. Furthermore, a carrying over of the available expenditure remainder was agreed.

A further reciprocal eligibility as cover of the statutory expenditure items – spanning several chapters – makes it possible to delay any unplanned expenditure as long as possible and to identify the additional requirement using extrapolations as precisely as possible.

Saxony-Anhalt:

Other ministry = Ministry of Finance.

Inspection body = Regional Court of Audit.

The Regional Court of Audit has to supervise and examine the entire budget and economic governance of the Land administration, including its special assets and Land Agencies. To this end, the Regional Court of Audit pays particular attention to financial impact, lawfulness and economic viability, and for instance also makes statements on aspects of financial policy with regard to the draft budget plans.

Saxony:

See also remarks under item 13 re budget plan 14 (building activities/maintenance of the buildings). The Saxon Court of Audit is regarded as the inspection body.

Thuringia:

No information.

Federation:

Other ministry: Federal Ministry of Finance

Other agency which examines the use of funds: Federal Court of Audit

A.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years

- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Baden-Württemberg:

Characteristics of the budget system: cameralistic budget.

Major reforms in the last two years: None

Organisational charts: Not available.

Hamburg:

The budget of the justice system in Hamburg has been drawn up in accordance with the rules of the business invoicing

system.

North Rhine-Westphalia:

A reform of the budget system is currently being introduced with the NRW EPOS project. Integrated combined accounting ("Integrierte Verbundrechnung") is gradually being introduced in order to implement the modernisation of the budget and accounting system in the Land administration of North Rhine-Westphalia, with the components "statement of government income and expenditure", "statement of results", "cost and performance accounting", as well as "financial accounting" forming the basis for product-orientated budget management. The blanket expansion in the Land administration is planned to be carried out by 2016.

Re Question 6 No. 2: Expenditure for computerisation is centrally estimated. The budget plan does not provide for a distribution of the expenditure among the individual fields of the judiciary.

Re Question 6 No. 3: The fees to be paid by the parties are included in the amount since these are collected elsewhere and cannot be separately recorded.

Re Question 6 No. 5: The Land's own property is owned by the Construction and Property Agency of North Rhine-Westphalia (BLB) and is rented by the occupying administrations. The judicial budget therefore does not provide for investments in new court buildings.

Re Question 6 No. 6: These are only costs of training in the courts and public prosecution offices. The costs of the basic and further training facilities of the judiciary are estimated separately. This also applies to the costs of further training.

Saarland:
Reference is made to the information provided re No. 15.

Re No. 12: The assessment for the ordinary courts is carried out in Chapter 02 60 Item 532 01 "Disbursements in legal matters" with a total estimate of € 16.6 million. Of these, sub-item A "Fees and expenses of solicitors in accordance with the Act on Legal Aid" accounts for € 9 million; the "as is" expenditure for sub-item A was € 8,965,691.72.

Re Question 8:

The court is not to serve the action on the opposing party in civil disputes until the fee for the proceedings in general has been paid (procedural fee). As a matter of principle, therefore, the proceedings do not become pending through service of the action until the payment has been received. If the motion contained in the action is expanded, no activities are to be carried out by the court prior to payment of the procedural fee; this also applies to the appeal instance (section 12 subs. 1 of the Court Costs Act [GKG])

Please indicate the sources for answering the questions 6, 9, 10, 11, 12 and 13.

Baden-Württemberg:

State budget plan of the Land Baden-Württemberg for the budget years 2010/2011 in the version of the 4th addendum to the 2011 state budget plan and evaluations related to questions.

Bavaria:

Social and labour courts:

Central accounting of the Bavarian State Ministry of Labour and Social Affairs, Family and Women of the budget year 2010 regarding the income and expenditure of individual plan 10. Records of the competent Regional Labour Courts, of the Regional Social Court and of the specialist departments at the Bavarian State Ministry of Labour and Social Affairs, Family and Women.

Brandenburg:

2010 Budget Act, 2010 budget plan, individual plan 04, individual plan 12.

Berlin:

Land budget plan 2010/2011, ProFiskal specialist electronic budget application.

Hamburg:

Budget plan of individual plan 2 of the Free and Hanseatic City of Hamburg, as well as the SAP planning and management systems deployed.

Hesse:

The answers are provided on the basis of the budget plan and, with regard to legal aid, by an evaluation from the local accounting system.

Lower Saxony:

6.: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

9.: –

10: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

11: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

12: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

13: budget plan for the budget year 2010 – Lower Saxon Ministry of Justice –

North Rhine-Westphalia:

Budget plan of the judiciary for 2010.

Saarland:

Budget 2010 and budget accounting of the Saarland for the accounting year 2010

1) Individual plan 02 "Minister-President, State Chancellery and Ministry of Justice"; Chapter 02 51 – 02 65

2) Chapter 17 02 "Central services within the remit of the Minister-President, the State Chancellery and the Ministry of Justice"

3) Chapter 20 02 "State surface construction within the remit of the Minister-President, the State Chancellery and the Ministry of Justice"

4) Chapter 04 12 "Land Office for Central Services – Office for Construction and Property"

The construction expenditure is estimated in the business plan of the "ABL" Land Agency

Retrievable at http://www.saarland.de/haushalt_finanzen.htm.

Saxony-Anhalt:

Budget plan 2010/2011 for individual plan 11 (MJ) and individual plan 19 (IT) and 20 (construction/property).

Saxony:

- Budget plans and transaction overviews of the main judicial treasury, as well as of the Land judicial treasury
- Saxon Budget Code
- Administrative regulation on the Saxon Budget Code

Schleswig-Holstein:
2011/2012 budget

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

16) Does legal aid apply to:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	NAP	NAP

17) Does legal aid include the coverage of or the exemption from court fees?

Yes

No

If yes, please specify:

Civil cases:

If legal aid is approved, the party also no longer needs to pay advance court costs, cf. section 122 of the Code of Civil Procedure. The court may order that the recipient of legal aid has to pay (some of the) proceedings costs in instalments.

18) Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

Yes

No

If yes, please specify:

Civil cases:

Legal aid in compulsory enforcement is granted for the entire enforcement proceedings and not for individual enforcement measures.

19) Can legal aid be granted for other costs (different from questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc ? If yes, please specify it in the "comment" box below).

	Criminal cases	Other than criminal cases
	NAP	Yes

Comment :

Civil cases:

The approval of legal aid also includes the costs for the taking of evidence (witnesses, experts), as well as travel expenses of the recipient to attend a court hearing if personal attendance at the hearing is necessary. If a solicitor is appointed to the recipient, the appointed solicitor cannot charge any fees to the recipient, but only to the Treasury. Expenditure for the preparation of the proceedings, such as costs for expert witnesses, interpreters or private detectives, may be refundable as necessary expenditure of the appointed solicitor.

20) Number of cases referred to the court and for which legal aid has been granted. Please specify in the "comment" box below, when appropriate. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

[This question concerns only the annual number of cases for which legal aid has been granted to those referring a case to a court. It does not concern legal advice provided for cases that are not brought before the court.]

	Number
Total	705029
in criminal cases	NA
other than criminal cases	705029

Comment :

The information includes approvals of legal aid with instalment payments.

21) In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer? Please specify in the "comment" box below.

Accused individuals	No
Victims	No

Comment :

22) If yes, are individuals free to choose their lawyer within the framework of the legal aid system

Yes

No

23) Does your country have an income and assets evaluation for granting legal aid to the applicant ? Please provide in the "comment" box below any information to explain the figures provided. If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.

	amount of annual income (if possible for one person) in €	amount of assets in €
for criminal cases		
for other than criminal cases?		

Comment :

Civil cases:

The amounts and allowances to be deducted from income and assets emerge from section 115 of the Code of Civil Procedure. To put it simply: First of all housing and heating costs, a personal allowance of Euro 411 and – if the income is made from gainful employment – a working person's allowance of Euro 187 are to be deducted from the net income of an applicant who is unmarried (version: from 1 January 2012). From the remaining amount, instalments according to the table in section 115 of the Code of Civil Procedure are payable towards the proceedings costs. The applicant does not have to use up assets that are exempt from income testing from his/her assets, these including a suitable owner-occupied plot of land for a house and a small amount of cash up to approx. Euro 2,500.

24) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?

Yes

No

If yes, please explain the exact criteria for denying legal aid:

Civil cases:

Legal aid is rejected if the right intended to be pursued or defended has no sufficient prospects for success or appears to be frivolous. It is deemed to be frivolous if despite existing prospects for success a party which would have to fund the process itself would refrain from pursuing the proceedings in the applicant's concrete situation, for instance because there is a more favourable path to pursue or defend the right or because subsequent execution vis-à-vis the defendant appears to be devoid of prospects in the long term.

25) Is the decision to grant or refuse legal aid taken by :

the court?

an authority external to the court?

a mixed decision-making authority (court and external bodies)?

26) Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?

Yes No

If appropriate, please inform about the current development of such insurances in your country; is it a growing phenomenon?

27) Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in:

criminal cases?	No
other than criminal cases?	Yes

B.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Relating to criminal cases only:

16. What legal aid applies to

Accused persons

The participation of defence counsel may be necessary under certain circumstances. In cases of necessary defence, defence counsel is appointed to an accused person who does not yet have defence counsel.

Aggrieved persons

Aggrieved persons, particularly victims of acts of aggression, are entitled in accordance with the list contained in section 395 the Code of Criminal Procedure (Strafprozessordnung – StPO) to join the public charge as a private accessory prosecutor. As private accessory prosecutors, it is possible for counsel for the victim to be appointed to them under certain preconditions regardless of their economic circumstances, or they have a right to approval of legal aid if they are unable to adequately defend their interests themselves, or it is not reasonable to expect them to do so.

17. Does legal aid include the coverage of or the exemption from court fees?

Each judgment, each penal order and each ruling discontinuing an investigation must determine who is to pay the costs of the proceedings. The costs of the proceedings also include court costs.

Accused persons

Where the accused is acquitted, the initiation of the main proceedings against them is rejected or the proceedings against them are discontinued, the expenditure that is incurred by the Treasury, and the necessary expenditure of the accused, is incurred by the Treasury.

The defendant has to pay the costs of the proceedings where they arose through the proceedings because of an offence in respect of which they were convicted or a measure of reform and prevention is ordered against them. This applies regardless of whether or not a case of necessary defence applies. Outside of the competence of division R B 2, it is pointed out that the obligation of a person who has been convicted, and who is without means, to pay is ultimately unlikely to have any effect in a large number of cases since the costs are abated (in accordance with Land provisions?).

Aggrieved persons

Where legal aid has been granted to aggrieved persons as private accessory prosecutors, this also includes court costs.

19. Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

Accused persons

The accused person does not have to pay costs advance.

The principle of official investigations applies in criminal proceedings:

The court must include in the investigation of the truth, the taking of evidence ex officio for all facts and evidence which are of significance for the ruling.

Moreover, the accused person can lodge motions for the taking of evidence which the court is only able to reject within narrowly-defined limits.

The costs of the taking of evidence are initially advanced by the Treasury; this applies regardless of the financial circumstances of the accused person.

Aggrieved persons

With private accessory prosecutors – depending on their economic situation – legal aid may also be granted for their necessary expenses, such as the fees for a solicitor. The approval of legal aid entails the costs of the fees for a solicitor

initially being advanced by the Treasury.

21. In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?

Accused persons

As stated above, the assistance of defence counsel is necessary under certain conditions. In cases of necessary defence, defence counsel is appointed for an accused person who does not yet have defence counsel. The incomes and assets of the accused person are immaterial.

Aggrieved persons

Reference is made to the answer re Question 16.

22. If yes, are individuals free to choose their lawyer within the framework of the legal aid system?

Accused persons

Prior to appointing defence counsel, the accused person should be afforded the opportunity to name counsel of their choice within a determined period. The presiding judge appoints counsel if no important reasons stand in the way.

Aggrieved persons

The same provisions on the free selection of solicitor apply to private accessory prosecutors as apply to accused persons.

23. Does your country have income and assets evaluation for granting legal aid to the Applicant. If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.

Accused persons

As stated above, the question of necessary defence does not depend on income and assets. Necessary defence is regulated in sections 140 et seqq. of the Code of Criminal Procedure.

Aggrieved persons

Whether an income and assets evaluation of the applicant is carried out is in line with the preconditions stated in section 397a of the Code of Criminal Procedure.

In accordance with section 397a subs. 1 of the Code of Criminal Procedure, counsel for the victim may be appointed to victims of particularly serious crimes who have joined the proceedings as private accessory prosecutors under the preconditions named therein free of charge and with no income and assets evaluation.

In accordance with section 397a subs. 2 of the Code of Criminal Procedure, legal aid is to be granted to the other private accessory prosecutors upon application for the appointment of a solicitor under the preconditions named therein, their economic means being tested and the extent of the approval of legal aid being in line with the financial situation of the private accessory prosecutors.

27. Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in?

The decision on who is to pay the necessary expenses is taken by the court in the judgment or in the order concluding the proceedings.

Please indicate the sources for answering the questions 20 and 23

re 20: Federal Statistical Office:

Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"

Fachserie 10 Reihe 2.2 "Familiengerichte 2010"

Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"

Fachserie 10 Reihe 2.5 "Finanzgerichte 2010"

Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"

Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 23:

Sections 115 of the Code of Civil Procedure, 166 of the Code of Administrative Court Procedure, 73a of the Act on Social Court Procedure; 142 of the Code of Finance Court Procedure

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

28) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for which the general public may have free of charge access to the following:

The websites mentioned could appear in particular on the internet website of the CEPEJ. Please specify in the "comment" box below what documents and information the addresses for "other documents" include:

- legal texts
(e.g. codes,
laws,
regulations,

etc.)?

Internet
address(es): Yes

case-law
of the higher
court/s?

Internet
address(es):

Yes

:www.bundesverfassungsgericht.de
www.bundesgerichtshof.de
www.bundesverwaltungsgericht.de
www.bundesfinanzhof.de
www.bundesarbeitsgericht.de
www.bundessozialgericht.de
www.bundespatentgericht.de
www.justiz.de
appearing soon: online forms
and via the websites of the judiciary in the Länder, for instance

other
documents
(e.g.
downloadable
forms, online
registration)?

Yes

www.justiz.bayern.de, www.justizportal-bw.de, www.justiz.saarland.de
http://www.berlin.de/sen/justiz/gerichte/kg/formularserver/formularserver.html
www.service-bw.de
www.hmdj.hessen.de
www.justiz.schleswig-Holstein.de
www.justiz.hamburg.de
www.justiz.sachsen.de
www.amt24.de
http://www.sachsen-anhalt.de/index.php?id=2959
A summary can be retrieved via the link
http://www.justiz.de/bundlaender/index.php;jsessionid=0087EDFE19862EA593048F0FDBF679CF
Information can also be retrieved via the websites of the individual courts.

Comment :

The following information, inter alia, can be retrieved via the above website via links:

- Forms: applications retrievable via the judicial portals (demand for payment, insolvency application).
- Brochures: brochures on legal topics, retrievable via links (e.g. on custodianship proceedings, deaths, payment demand proceedings and legal advice aid).
- The following online services are described or offered:
 - Payment demand proceedings online (application, etc.)
 - Register online (for-a-fee, password-protected search)
 - Land registry online (for-a-fee, password-protected inspection)
 - Link to the information portal www.insolvenzbekanntmachungen.de
 - Specialist legal information:
 - Legal dictionary (statements on many circumstances and topics)
 - Procedural information regarding the course of criminal and civil proceedings
 - Information regarding ongoing legislative proceedings
 - Current laws
 - Information regarding victim protection and witness care
 - List of videoconferencing systems
 - Forms and information regarding various circumstances

29) Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?

Yes

No

If yes, please specify:

30) Is there a public and free-of-charge specific information system to inform and to help victims of crime?

Yes

No

If yes, please specify:

Crime victims are to be informed as quickly as possible, as a rule in writing and where possible in a language which they understand, of their powers and rights in criminal proceedings, as well as of potential support and further claims. As a rule, crime victims are provided on their first contact with public agencies (such as when filing a charge) with a leaflet informing them of their rights and powers, as well as further contact points offering assistance. The leaflet has been translated into many languages.

31) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons. If "other vulnerable person" and/or "other special arrangements", please specify it in the "comment" box below.

[This question does not concern the police investigation phase of the procedure and does not concern compensation mechanisms for victims of criminal offences, which are addressed under questions 32 to 34.]

	Information mechanism	Special arrangements in court hearings	Other
Victims of rape	Yes	No	No
Victims of terrorism	Yes	No	No
Children (witnesses or victims)	Yes	No	No
Victims of domestic violence	Yes	No	No
Ethnic minorities	No	No	No
Disabled persons	No	No	No
Juvenile offenders	Yes	Yes	Yes
Other (e.g. victims of human trafficking)	Yes	No	No

Comment :

The answer only refers to criminal cases. All aggrieved persons who are victims of criminal offences – regardless of the nature of the crime – are informed of their rights and powers. The special hearing modalities are however not primarily in line with the crime, but with the respective individual vulnerability of the victim in the respective specific hearing situation, where special protective measures can be taken. This question can therefore not be answered schematically. There is no information specifically for ethnic minorities or persons with a disability as such – regardless of their status as aggrieved persons. They are also informed of their rights, as aggrieved parties of criminal offences as other aggrieved parties, albeit it is to be ensured that it is possible to communicate with them. For juvenile criminal offenders the Youth Courts Law (Jugendgerichtsgesetz – JGG) contains both special provisions on the legal consequences of a criminal offence, on the jurisdiction of special youth courts and on other fields, as well as many special procedural provisions which do justice to the development situation and the vulnerability of minors in criminal proceedings (e.g. holding the main hearing in camera; rights of the statutory representative and legal guardian to be present and to participate; participation of the youth courts assistance service, which in addition to educational advice of the court is also to take care of the juvenile during the entire proceedings; avoidance of remand detention through alternative measures).

32) Does your country allocate compensation for victims of crime?

Yes

No

If yes, for which kind of offences

Compensation in accordance with the Act on Compensation for Victims of Violent Acts (OEG) is not contingent on the nature of the criminal offence. It is also not conditional on the offenders being prosecuted. It is, rather, conditional on a person having suffered harm to their health by an intentional, unlawful violent act within German state territory. Equally, surviving dependants of persons who died as a result of the health damage also have a right to benefits. Medical and healthcare benefits are provided, as are pensions to compensate for the health and economic consequences of the damage to health caused by the violent act, as well as benefits to ensure a person's livelihood. Pension payments are made if the damage to health is permanent and reaches a certain minimum level. Psychological damage is recognised as constituting health damage. Additionally, (restricted) benefits have also been provided since 1 July 2009 for damage caused by violent acts committed abroad.

The criminal offences which are normally connected with an intentional, unlawful violent attack and can cause damage to health, for instance include grievous bodily harm, murder/intentional manslaughter, rape and sexual coercion. Also, deprivation of liberty may constitute a physical attack.

According to the law, the following are deemed to be equivalent to a physical attack

- the intentional application of poison,
- the at least negligent bringing about of a risk to life and limb of another by virtue of a felony committed with means that pose a danger to the public (e.g. arson, explosives attack).

33) If yes, does this compensation consist in:

- a public fund?
- damages to be paid by the responsible person (decided by a court decision)?
- a private fund?

34) Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?

- Yes
- No

If yes, please inform about the recovery rate, the title of the studies, the frequency of the studies and the coordinating body:

35) Do public prosecutors have a specific role with respect to the victims (protection and assistance)?

- Yes
- No

If yes, please specify:

The guidelines for criminal proceedings and the regulatory fine proceedings, which primarily are to be complied with by public prosecutors, contain considerable discussion as to how the interests and needs of the aggrieved persons of criminal offences are to be taken into consideration in the proceedings where appropriate. The public prosecution office must inform the aggrieved persons in accordance with section 406d subs. 1 of the Code of Criminal Procedure on application of the discontinuation of the proceedings. Also, the public prosecution office must grant inspection of the files to the solicitor of an aggrieved person in accordance with section 406e of the Code of Criminal Procedure or provide information and duplicates from the files. Moreover, the public prosecution office is obliged in accordance with section 406h of the Code of Criminal Procedure to inform aggrieved persons who are victims of a criminal offence of specific entitlements and about victim assistance facilities.

36) Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case?

Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a judicial decision".

- Yes
- No
- NAP (the public prosecutor cannot decide to discontinue a case on his/her own. A judicial decision is needed).

If necessary, please specify:

If the public prosecution office does not comply with an application to prefer public charges, or if it orders the discontinuation of the proceedings after conclusion of the investigations (section 170 subs. 2 sentence 1 of the Code of Criminal Procedure), it must notify the applicant, stating the reasons. In the notice, the applicant, who is at the same time the aggrieved person, is to be informed of the possibility of challenge and of the deadline provided for this (section 172 subs. 1 of the Code of Criminal Procedure) (section 171 sentences 1 and 2 of the Code of Criminal Procedure).

If the applicant is at the same time the aggrieved person, they have a right to complain against the notice in accordance with section 171 of the Code of Criminal Procedure within two weeks of notification to the superior official at the public prosecution office (section 172 subs. 1 sentence 2 of the Code of Criminal Procedure). The applicant can request a court ruling (proceedings to enforce an action) against the rejection notice of the superior official of the public prosecution office, within one month of the notification. They are to be informed of this and of the form provided for this; the deadline does not run if the information has not been provided (section 172 subs. 2 sentences 1 and 2 of the Code of Criminal Procedure).

The application is not admissible if the proceedings refer exclusively to a criminal offence which can be pursued by the aggrieved person by means of a private action, or if the public prosecution office has refrained from prosecuting the offence for reasons of discretionary prosecution (for instance in accordance with section 153 et seqq. of the Code of Criminal Procedure and 45 subs. 1 of the Youth Courts Act). The Higher Regional Court has jurisdiction to rule on the application (section 172 subs. 4 sentence 1 of the Code of Criminal Procedure). Youth court proceedings can also be discontinued (decision by means of diversion) if adequate supervisory measures have already been taken outside of the criminal proceedings, or if the juvenile, who must have admitted guilt, has voluntarily complied with instructions or conditions of the youth court judge which were proposed by the public prosecution office (section 45 subs. 2 and 3 of the Youth Courts Act). Proceedings to enforce an action are also not admissible against such discontinuation.

2. 2. 2. Confidence of citizens in their justice system

37) Is there a system for compensating users in the following circumstances:

- excessive length of proceedings?
- non execution of court decisions?
- wrongful arrest?
- wrongful condemnation?

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

The law of state liability is only partly regulated by national law (a). There are in addition provisions of Land law (b), as well as common and judges' law.

(a) Provisions of federal law

If the parties to a legal dispute suffer damage because of excessive length of proceedings, a damage claim may ensue from section 839 of the Civil Code in conjunction with Article 34 of the Basic Law if a case of culpable refusal or delay of execution of the office in breach of duty applies, section 839 subs. 2 sentence 2 of the Civil Code. However, the manner in which a judge pursues the proceedings within the scope of section 839 subs. 2 sentence 2 of the Civil Code may only be examined for justifiability because of the constitutional principle of judicial independence.

A creditor's first port of call in procedural terms against the non-execution of court decisions by a bailiff is to lodge a reminder in accordance with section 766 subs. 2 of the Code of Civil Procedure. The execution court rules on the reminder. If a senior judicial officer of the execution court rejects a creditor's motion completely or in part to issue a compulsory enforcement measure, the creditor may lodge an immediate complaint (section 567 subs. 1 number 2 of the Code of Civil Procedure). If the execution organ has culpably delayed compulsory enforcement, there may be a compensation claim under section 839 subs. 1 of the Civil Code in conjunction with Article 34 of the Basic Law.

A claim may also exist under section 839 of the Civil Code in conjunction with Article 34 of the Basic Law in the case of wrongful arrest if the acting official can be accused of a culpable breach of official duty. With rulings of the judge responsible for matters of custody, as well as with discretionary decisions of the public prosecution office in the investigation proceedings, the decision may only be examined for its justifiability.

In the case of wrongful condemnation, there is an official liability claim under section 839 of the Civil Code in conjunction with Article 34 of the Basic Law if the breach of duty consists of a criminal offence, section 839 subs. 2 sentence 1 of the Civil Code.

The claim under section 839 of the Civil Code in conjunction with Article 34 of the Basic Law is to be asserted in the courts of ordinary courts.

Distinct from these claims are compensation claims under provisions of special statutes, which as a rule are not intended to compensate for the entire damage, but provide lump sums.

Section 2 subs. 1 of the Act on Compensation for Criminal Prosecution Measures (Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen – StrEG) provides in cases of acquittal, discontinuation of the proceedings or refusal to initiate the main proceedings for compensation for the damage suffered by remand detention or temporary arrest that have been carried out. Where the proceedings are discontinued in accordance with a discretionary provision, compensation can be granted ex bono, section 3 of the Act on Compensation for Criminal Prosecution Measures. The subject of the compensation is the property damage caused by the criminal prosecution measure, in the case of deprivation of liberty on the basis of a court ruling also immaterial damage, section 7 subs. 1 of the Act on Compensation for Criminal Prosecution Measures. The immaterial compensation is € 25 for each day of deprivation of liberty commenced.

The decision on the fundamental obligation to provide compensation is taken by the court in the judgment or in the order which closes the proceedings, so-called fundamental ruling in accordance with section 8 and 9 of the Act on Compensation for Criminal Prosecution Measures. If the public prosecution office discontinues the proceedings, the court takes the fundamental ruling on application of the accused persons, who must lodge this within one month of service of the discontinuation ruling with information on the application deadline, its right to apply and the court with jurisdiction. After the fundamental ruling has gained legal force, the claim must be lodged with the investigating public prosecution office within six months. If the deadline is missed, the claim is ruled out. When examining the compensation claim, there is no official investigation. Rather, applicants must explain and substantiate their claims. The Land administration of justice, which however may delegate the powers to the public prosecution offices or the chief public prosecutor rules on the application.

Anyone who has suffered damage from a criminal conviction is refunded by the Treasury if the conviction is quashed or reduced in the resumption proceedings or otherwise in criminal proceedings after having taken on legal force, section 1 subs. 1 Act on Compensation for Criminal Prosecution Measures. The same applies a measure of reform and prevention or a ancillary measure has been ordered if without a conviction, section 1 subs. 2 of the Act on Compensation for Criminal Prosecution Measures. The above information applies accordingly in other respects. The implementation of the Act is incumbent on the Länder.

The "Act to Protect against Excessive Length of Court Proceedings and Criminal

Investigation Proceedings" came into force on 3 December 2011. No information is yet available regarding case numbers and the outcome of proceedings.

- The Act makes provision for a claim to compensation in cases of excessive length of court proceedings.
- Special provision for criminal proceedings to take account of the specific aspects applying to such proceedings.
- Compensation can be claimed only by those who, in the original proceedings, have previously complained about the delay in question. The court dealing with the case can then act to redress the matter, in response to this complaint.
- If no redress is forthcoming, a court action for compensation can even be brought while the delayed original proceedings are still pending.
- The highest federal courts and the Federal Constitutional Court will be included in such provision.

(b) Provisions of Land law

Yes 1)

excessive length of proceedings? BE, BY, BB, HB, NI, NW
non execution of court decisions? 2) NI

*) not including information from Mecklenburg-Western Pomerania and Thuringia.

1) Where the Federal Länder specified in the overview have answered "Yes", the other Federal Länder have accordingly answered "No".

2) BB: No, not in criminal law.

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

Saxony-Anhalt:

As far as it could be established, only one set of proceedings was brought against Saxony-Anhalt in 2010 before a civil chamber in which property and non-property damage of approx. € 3 million was claimed for excessive length of proceedings. The plaintiff was awarded payment of € 10,000; the action was rejected in other respects.

Wrongful arrest / wrongful condemnation

Baden-Württemberg:

265 sets of compensation proceedings under the Act on Compensation for Criminal Prosecution Measures were pending with the public prosecution offices of the Land in 2009, this figure being 307 in 2010. No statistics are kept on the outcomes of the proceedings.

Bavaria:

No statistics or overviews are kept on the number of cases in Bavaria in which cases proceedings are pursued in accordance with the Act on Compensation for Criminal Prosecution Measures for wrongful arrest or wrongful condemnation. The same applies with regard to the amount of any compensation payments. There are also no statistics on the number of cases in which fundamental decisions are taken in accordance with the Act on Compensation for Criminal Prosecution Measures.

Brandenburg:

Reference is made to Annex 1 with regard to the case numbers.

Bremen:

Sets of proceedings in accordance with Act on Compensation for Criminal Prosecution Measures

Received Rulings Rejections Payments in €

2007 60 64 36 18,361.76

2008 60 54 28 25,102.73

2009 81 70 39 27,134.46

Hamburg:

In 1994, the last time when nationally-uniform statistics were gathered, all the Federal Länder together had made a total of an equivalent of € 2.74 million in compensation payments in accordance with the Act on Compensation for Criminal Prosecution Measures. 1,851 compensations were paid in one year.

Hesse:

The total amount of compensation paid in Hesse in accordance with the Act on Compensation for Criminal Prosecution Measures in the calendar year 2010 for a total of 120 compensation cases was € 224,551.35. Compensation for wrongful imprisonment after wrongful arrest or condemnation was granted in 54 cases (total: € 121,025.00).

Lower Saxony:

With regard to compensation in accordance with the Act on Compensation for Criminal

Prosecution Measures, information is only available on the separate procedures. 262 sets of proceedings were received in the public prosecution offices in accordance with the Act on Compensation for Criminal Prosecution Measures in Lower Saxony in 2010 (cf. Fachserie 10, Reihe 2.6 of the Federal Statistical Office 2010, table 1.2.2). There were 258 sets of such proceedings at the chief public prosecution offices in Lower Saxony (Table 5.2 in the above publication). A more detailed breakdown of the measures for which compensation was applied for is not provided in the statistics. Nor is there any statistical analysis of the compensation already made in the court ruling closing the proceedings (section 8 subs. 1 of the Act on Compensation for Criminal Prosecution Measures).

Schleswig-Holstein:

Compensation was paid as follows for wrongful deprivation of liberty on the basis of a court ruling, in Schleswig-Holstein in 2010 on the basis of the Act on Compensation for Criminal Prosecution Measures:

- in 21 cases of refund in each case on application
- for 1,959 days of wrongful remand detention
- compensation payments totalling € 48,975

Saxony:

The applications were rejected in more than 43 % of sets of proceedings for compensation for wrongful imprisonment in 2010. € 88,329.12 was disbursed in accordance with the Act on Compensation for Criminal Prosecution Measures. 39 sets of proceedings related to compensation because of remand detention suffered.

Saxony-Anhalt:

Compensation totalling € 58,615.00 in accordance with section 7 subs. 3 of the Act on Compensation for Criminal Prosecution Measures was paid in 2010 in the Land Saxony-Anhalt in 24 cases (including 23 cases of remand detention with a compensation amount of € 43,465.00 € and a case of interim custody with compensation of € 15,150.00). The cases on which the payments were based are likely not to have all taken place in 2010, but the compensation proceedings were each concluded in 2010.

38) Does your country have surveys aimed at legal professionals and court users to measure their trust and/or satisfaction with the services delivered by the judicial system? (multiple options possible)

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at the parties
- (Satisfaction) surveys aimed at other court users (e.g. jurors, witnesses, experts, interpreters, representatives of governmental agencies)
- (Satisfaction) surveys aimed at victims

If possible, please specify their titles, object and websites where they can be consulted:

Baden-Württemberg:

The members of the judiciary are regularly asked as to their level of satisfaction using questionnaires. The results are evaluated by an independent institute. Solicitors and parties to the proceedings are regularly asked as to their satisfaction with the judiciary; examples can be found here:

<http://www.justiz-intern.bwl.de/servlet/PB/show/1213338/Presseerklrung-RA-Befragung.pdf>

http://www.justiz-intern.bwl.de/servlet/PB/show/1213339/OLG_Anwaltsbefragung-Fragebogen.pdf

Bavaria (not incl. administrative courts):

None.

Bavaria (administrative courts):

Staff questionnaire every five years; implemented by the Bavarian Land Office for Statistics and Data Processing.

Bremen:

Virtually all Bremen courts, as well as and Bremen public prosecution office, have taken part in the national and Lower Saxony comparison groups since 2007;

AgIL Performance of the Local Courts compared

LiVe Performance of the Regional Courts compared

OLiVe Performance of the Higher Regional Courts compared

BenStA Benchmarking of the public prosecution offices

ArbPR Quality management of the Northern German labour courts

LOS Performance and organisation comparison in the social courts

VERGIL Administrative Courts in a comparison between the Länder.

The goal of the performance comparisons is to optimise workflows within the courts and public prosecution offices, as well as to improve cooperation with solicitors. To this end, questionnaires have been implemented to ascertain the level of satisfaction and identify potential improvements. The results were intended for internal quality management, but cf. the publications for instance at www.arbeitsgericht.bremen.de,

www.landessozialgericht.niedersachsen.de and www.verwaltungsgericht.bremen.de

Hesse:

Nothing.

Hamburg:

There are only individual questionnaires on the topic of confidence placed in the German judiciary. See for instance

<http://de.statista.com/statistik/daten/studie/167505/umfrage/vertrauen-in-die-deutsche-justiz/>. Moreover, studies exist which devote themselves to the abstract topic of institutional confidence or trust in the judicative, for instance <http://www.nccr-democracy.uzh.ch/publications/workingpaper/pdf/WP28.pdf>.

Lower Saxony:

In the projects "Performance of the Local Courts compared (AGIL)" and "Performance of the Regional Courts compared (LiVe)", the staff of the judicial authorities were asked how satisfied they are with their jobs. The procedure also exists for Higher Regional Courts ("OLiVe") and for public prosecution offices ("BenStA"). Public prosecutors and solicitors are also questioned in each case. Enquiries here relate amongst other things to satisfaction with cooperation with superiors and colleagues, as well as with working conditions, and to identification with the task area. The results were discussed in specialist groups and workshops, and proposals for improvements were worked out.

North Rhine-Westphalia:

As far as can be seen here, there have been such studies. Concrete information is however not available here. These are above all staff and "customer" questionnaires in court comparison groups.

Schleswig-Holstein: ./.

Saxony:

- In the social courts:

- questionnaire among honorary judges

- discussions with solicitors

- In ordinary courts:

project "Local and Regional Courts in a comparison" and "Higher Regional Courts in a comparison". Information can be obtained on the website www.justiz.sachsen.de/olg under the keyword "Quality management".

Saxony-Anhalt:

OLiVe – Performance of the Higher Regional Courts compared,

LiVe – Performance of the Regional Courts compared,

AGIL – Performance of the Local Courts compared,

BenStA – Benchmarking of the public prosecution offices,

ArbOR – Comparison of the labour court organisation.

These are all internal comparison groups which are not publicly accessible. Continuation and review take place in each case according to sector-specific establishments. The group of individuals included over and above the justice staff can deviate in the individual comparison groups.

39) If possible, please specify:

	Surveys at a regular interval (for example annual)	Occasional surveys
Surveys at national level	No	No
Surveys at court level	No	No

40) Is there a national or local procedure for making complaints about the functioning of the judicial system (for example the treatment of a case by a judge or the duration of a proceeding)?

Yes

No

41) Please specify which authority is responsible for dealing with such complaints and inform whether there is or not a time limit to respond and/or a time limit for dealing with the complaint (multiple options possible). Please give information concerning the efficiency of this complaint procedure in the "comment" box below.

	Time limit to respond (e.g. to acknowledge receipt of the complaint, to provide information on the follow-up to be given to the complaint, etc.)	Time limit for dealing with the complaint	No time limits
Court concerned	No	No	Yes
Higher court	No	No	Yes
Ministry of Justice	No	No	Yes
High Council of the Judiciary	No	No	Yes
Other external bodies (e.g. Ombudsman)	No	No	Yes

Comment :

cf. Question 37 on excessively-long court proceedings

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

42) Number of courts considered as legal entities (administrative structures) and geographic locations. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Total number
42.1 First instance courts of general jurisdiction (legal entities)	777
42.2 First instance specialised Courts (legal entities)	256
42.3 All the Courts (geographic locations) (this includes 1st instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts)	1 126

43) Number (legal entities) of first instance specialised courts (or specific judicial order). If "other specialised 1st instance courts", please specify it in the "comment" box below. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Total (must be the same as the data given under question 42.2)	256
Commercial courts	NAP
Labour courts	119
Family courts	NAP
Rent and tenancies courts	
Enforcement of criminal sanctions courts	NAP
Administrative courts	51
Insurance and / or social welfare courts	68
Military courts	NAP
Other specialised 1st instance courts	18

Comment :

Depending on the value at dispute, commercial cases are dealt with at Local or Regional Courts, on application in a chamber established at the Regional Court for commercial cases. There are no separate commercial courts, nor are there any independent rent courts, execution courts or courts for insurance cases. Depending on the caseload, special panels of judges are established for this purpose at the Local and Regional Courts. Family cases are dealt with at first instance in special departments of the Local Courts. The Federal Armed Forces do not have any military courts of their own; its members are subject to civil jurisdiction.

44) Is there a foreseen change in the structure of courts [for example a reduction of the number of courts (geographic locations) or a change in the powers of courts]?

Yes

No

If yes, please specify:

The possibility of combining courts of individual Federal Länder is being considered in order to reduce costs.

45) Number of first instance courts (geographic locations) competent for the following cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	number of courts

a debt collection for small claims	661
a dismissal	119
a robbery	661

Please give the definition for small claims and indicate the monetary value of a small claim:

Claims up to € 600 are regarded as "small claims" (section 495a of the Code of Civil Procedure).

*If a penalty of up to four years' imprisonment is anticipated, a robbery is charged at the Local Court, and at the Regional Court if a longer sentence is anticipated. Germany has a total of 116 Regional Courts.

Please indicate the sources for answering questions 42, 43 and 45:

The data are published by the Federal Ministry of Justice.

3. 1. 2. Judges and non-judge staff

46) Number of professional judges sitting in courts (if possible on 31 December 2010) (please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Please provide in the "comment" box below any useful comment for interpreting the data above.

[Please make sure that public prosecutors and their staff are excluded from the following figures (they will be part of questions 55-60). If a distinction between staff attached to judges and staff attached to prosecutors cannot be made, please indicate it clearly.]

Please indicate the number of posts that are actually filled at the date of reference and not the theoretical budgetary posts.]

	Total	Males	Females
Total number of professional judges (1 + 2 + 3)	19831,61	NA	NA
1. Number of first instance professional judges	14861,13	NA	NA
2. Number of second instance (court of appeal) professional judges	4055,58	NA	NA
3. Number of supreme court professional judges	914,90	NA	NA

Comment :

The information relates to job shares. There are no absolute figures for the number of persons. The information on the job shares counts a judge working full-time as 1. A judge working part-time is counted as a fraction of 1 which corresponds to the proportion of his/her working hours to full-time (e.g. 0.5 for a judge working half the usual number of hours).

The information from personnel deployment has been used as a basis re 1 and 2. Personnel deployment is ascertained according to a complex calculation scheme as an annual average of the actual personnel deployed.

The total staff from the two-year statistics on judges as per 31 December 2010 has been used as a basis re 3.

The personnel on file of judges at the end of the year, which does not permit a breakdown to be made by first instance and appeal court, shows the following total result in job shares:

A total of: 20,410.45, of which: Male 12,562.19, Female 7,848.26.

47) Number of court presidents (professional judges). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Total	Males	Females
Total number of court presidents (1 + 2 + 3)	NA	NA	NA
1. Number of first instance court presidents	NA	NA	NA
2. Number of second instance (court of appeal) court presidents	NA	NA	NA
3. Number of supreme court presidents	NA	NA	NA

48) Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December 2010). If necessary, please provide in the "comment" box below any information to explain the answer under question 48.

Gross figure		NA
If possible, in full-time equivalent		NA

Comment :

There are no figures available for this question. Number of professional judges includes the number of part-time occasional judges.

49) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December 2010) (e.g. lay judges and "juges consulaires", but not arbitrators and persons sitting in a jury).

Gross figure	<input checked="" type="checkbox"/> Yes	98 107
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50) Does your judicial system include trial by jury with the participation of citizens?

- Yes
 No

If yes, for which type of case(s)?

There are no jurors in German criminal procedure, but lay judges participate in a large share of the trial courts (court with lay judges in the Local Courts, grand and small criminal chambers, as well as youth chambers in the Regional Courts). They exercise their honorary judicial office (section 31 of the Courts Constitution Act – [Gerichtsverfassungsgesetz – GVG]) in the main hearing in full and with the same voting rights as professional judges (section 30 subs. 1 of the Courts Constitution Act). Professional judges and honorary judges rule together on the guilt of the defendant and the amount of the sentence. In accordance with section 240 subs. 2 of the Code of Criminal Procedure (StPO), they have the right to directly question defendants, witnesses and experts in the main hearing. They deliberate on the judgment together with the professional judges (section 260 of the Code of Criminal Procedure).

51) Number of citizens who were involved in such juries for the year of reference:

NAP

52) Number of non-judge staff who are working in courts for judges (if possible on 31 December 2010) (this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled). If "other non-judge staff", please specify it in the "comment" box below.

Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)	<input checked="" type="checkbox"/> Yes	53649
1. Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal	<input checked="" type="checkbox"/> Yes	8460
2. Non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, court recording, helping to draft the decisions) such as registrars	<input checked="" type="checkbox"/> Yes	29143
3. Staff in charge of different administrative tasks and of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)	<input checked="" type="checkbox"/> Yes	7477
4. Technical staff	<input checked="" type="checkbox"/> Yes	1280
5. Other non-judge staff	<input checked="" type="checkbox"/> Yes	7285

Comment :

The information relates to job shares of employees

- who were released for training and further training with no remuneration claim,
- who were released to work in staff representations and representations of persons with serious disabilities, and as equality commissioners,
- in a special facility,

- in the entry and security service,
 - in telephone exchanges,
 - in the car pool,
- in the area of cleaning and other wage-earners.

53) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and duties:

Senior judicial officers are civil servants of the executive judicial service who have completed three years of legal training at a university of applied sciences and have passed the state senior judicial officers' examination. As the "second pillar of the third power", they primarily take on tasks in the field of "voluntary jurisdiction" (including in inheritance cases, care cases, parent-and-child and adoption cases, land registry cases, commercial, cooperative and partnership register cases, insolvency cases, cases related to associations, cases related to the marriage property register, ship register cases, etc.), but are also responsible for a large number of further court activities, e.g. in the field of the court payment demand proceedings, legal aid, compulsory enforcement, forced sales and coercive administration, in the field of cost setting, execution of penalties, in the proceedings before the Federal Patent Court, as well as in international legal transactions. The number of senior judicial officers in the Local Courts is already higher today than the number of judges. The scope of the activities of senior judicial officers is regulated in the Act on Senior Judicial Officers (RPfIG). Senior judicial officers are factually independent and bound only by law and order in performing their tasks and in their rulings in the same way as judges (section 9 of the Act on Senior Judicial Officers). Admissible appeals exist (section 11 of the Act on Senior Judicial Officers) against their decisions in accordance with the general rules of procedure.

54) Have the courts delegated certain services, which fall within their powers, to private providers (e.g. IT services, training of staff, security, archives, cleaning)?

Yes

No

If yes, please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. Bremen was the only Land to answer "No"; all other Federal Länder answered "Yes".

Baden-Württemberg:

The judiciary in Baden-Württemberg has outsourced information and communication hardware and standard software since 1998, and has taken part in national calls for tender, which were implemented by the general administration.

The Ministry of Justice signed the currently-running outsourcing contract with "T-Systems GmbH" in 2009 on the basis of such a call for tender with roughly 8,200 workstations for the courts/public prosecution offices, as well as for the Ministry of Justice (185 workstations) and for the prison system (2,350 workstations). "Electronic Data Services (EDS - an HP company)" was the courts' outsourcing partner of the judiciary in the years before that.

The contracts encompass the provision of hardware and standard software, a user helpdesk, the active network components (incl. maintenance), as well as the entire data backups.

The outsourcing partners of the Land and the judiciary provide the information and communication infrastructure for the operation of the specialist judicial applications. Staff further training in information and communication remains in the hands of the judiciary, the support of private companies being bought in for the individual measures.

Bavaria:

Ordinary courts/finance, labour and social courts:

Firstly, this concerns security tasks such as guarding court buildings over night and at weekends/on bank holidays, as well as cleaning services. Secondly, this relates to data processing: provision and operation of the judicial network; delivery, installation and operation – including maintenance and error processing – of all IT jobs, of infrastructure servers and active components for local networks; care of IT users via a User Help Desk when it comes to problems in the fields of hardware, standard software and network.

Administrative courts:

Cleaning, security, further training, IT maintenance, health management.

Brandenburg:

Cleaning, security.

Berlin:

Partly archiving, janitor services, cleaning.

Hamburg:

Cleaning is very largely entrusted to private companies.

Guarding of the court buildings is partly entrusted to private companies.

Hesse:

Private service-providers work in the security services and in cleaning.

Lower Saxony:

Security: individual courts have commissioned security companies to carry out night patrols (Note: No information can be provided on the other private service-providers mentioned above).

North Rhine-Westphalia:

The cleaning services are provided by external cleaning firms. These contracts are however not put out to tender and awarded by the courts, but by Construction and Property Agency (BLB), since the Land Government has centralised this task at the BLB. Furthermore, entry security at courts is provided by individual private services which can also be found in some areas of the technical maintenance of appliances.

Saarland:

Completely or partly:

- building cleaning
- postal delivery
- occupational healthcare
- security
- maintenance of technical equipment

Saxony:

In various courts, differing individually:

- building cleaning
- postal delivery
- teaching activities in further training
- occupational healthcare
- security
- maintenance of technical equipment
- security service
- operation of mail rooms
- transport of files
- messenger services
- archiving of documents
- storage and administration of forms and office material
- copying
- janitor activities

Saxony-Anhalt:

The cleaning of the courts has been assigned to external cleaning companies almost without exception. Moreover, there are contracts with external service-providers for

winter clearing and driving services amongst other things (framework contracts with taxi companies). Furthermore, the implementation of entry checks has been transferred to external providers in pilot projects.
Schleswig-Holstein:
further training.

C.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

re No. 52: The information relates to job shares for employees without a judicial office from personnel deployment. The information in personnel deployment is not collected according to key dates. The annual average of four quarters is formed. There are no absolute figures for the number of persons. The information on the job shares counts a judge working full-time as 1. A judge working part-time is counted as the fraction of 1 which corresponds to the proportion of his/her working hours to full-time (e.g. 0.5 for a judge working half the usual number of hours). Figures for the Federal Courts are not included.

Baden-Württemberg:

Major reforms in the past two years:

1. Reform of the land registry system in Baden-Württemberg

On 21 July 2008, the Council of Ministers adopted the fundamentals of a comprehensive reform of the Baden-Württemberg land registry system on the basis of a submission by the Ministry of Justice. In line with the structure that has become the national norm, the management of the land registries is to be assigned successively to the land registry departments of eleven selected Local Courts of the Land from 2011 to 2018. The local authorities are to be relieved of the burden of managing the land registries. In place of the previously predominant extremely small-scale structure, this will enable modern, efficient units to be created with optimum technical equipment. For the citizens, as well as in particular for industry, this promises to shorten the processing times and to bring about a further improvement in the range of services.

A major element of the reform concept is also to keep all services relating to the land registry available at grassroots level despite the centralisation plans. This is to be ensured through the complete digitisation of the contents of the land registry and the establishment of land registry viewing units at all notaries and local authorities who so wish.

A further aspect of the reform of the land registries is the introduction of electronic justice. The legal framework has recently been created at federal level to enable applications to be submitted in electronic form with the Act on the Introduction of Electronic Justice and the Electronic Title Deed in Land Registry Proceedings (Gesetz zur Einführung des elektronischen Rechtsverkehrs und der elektronischen Grundakte im Grundbuchverfahren) – similar to that existing in the registers of companies. Against this background, the Ministry of Justice would like to implement a register concept in which newly-arriving parts of files are stored electronically from a key date onwards and the old stock remains stored in paper form. Where for procedural or information purposes it is necessary to access paper documents, these documents would be digitised on request, and also provided in electronic form. Since with this kind of “hybrid filing”, the existing paper-stored parts of applications are needed less and less frequently as time advances due to electronic submissions, it is planned to retain the paper files at a central location in the Land, in cooperation with the Land archive administration, and to provide them from there when they are needed. This obviates the need for Local Courts which manage land registers in future to put considerable effort into creating space for registers which will no longer be needed in the long term for land registry processing after electronic justice has been introduced. At the same time, the historically-significant documents are placed in the hands of specialists in order to conserve them for the long term.

The organisational aspects of the reform process, in which the currently 667 land registry offices of the Land are to be centralised in the eleven future locations within six years, are a major challenge for the justice system. To implement the project, working parties have been established in the Ministry of Justice with the involvement of the Higher Regional Courts and associations of the local authorities. The aim is to guarantee a trouble-free transition to the new land registry office structure. The burdens on the staff affected by the restructuring process are to be minimised.

2. Electronic land registry

The introduction of the electronic land registry is one of most significant, largest projects in the Land's justice system. The digital recording of the total of roughly 5.8 million land registry sheets is progressing well in the Württemberg legal territory and in the eleven state land registry offices of Baden.

The digitisation of the contents of the land registry is to be pushed in future with a view to the coming comprehensive reform of the land registry system. The Ministry of Justice would like to support the ongoing recording by the staff of the land registry offices, as well as the collection teams, by establishing collection centres which are exclusively responsible for the digitisation of the land registries, and hence are able to work particularly efficiently. A first collection centre started operations at Stuttgart Local Court in January 2009. On the basis of the experience collected here, it is to be examined whether this collection method should be expanded and whether the paper land registries remaining in the local land registry offices in the Baden legal territory can also be included by these means in the course of the reform of the land registry system after they have been taken over by the Land.

All land registries in the country will be recorded in electronic form at the latest on completion of the reform of the land registry system at the end of 2017.

3. Assistance for judges

The working conditions and the working methods in the field of the administration of the law are changing apace. A large number of young judges and public prosecutors in particular are carrying out more and more tasks themselves on their PCs. The rapid technical developments in the IT field, and above all the automatic specialist procedures and the work savings which these bring, will lead in the medium and long term to lower staff requirements in the service area. Further reductions in workload in the service area can be anticipated to ensue in the years from the introduction of electronic justice and the electronic file. On the other hand, necessary staffing increases among judges and public prosecutors cannot be achieved in the coming years due to the budgetary situation. In order to retain the functionality of the administration of justice and to avoid a loss of quality, therefore, a fair and optimal division of tasks in terms of workflow

organisational aspects is necessary between judges, senior judicial officers and service personnel. This is to be achieved with the project entitled "Assistance for judges/senior judicial officers".

The Länder Baden-Württemberg, North Rhine-Westphalia and Saxony, under the management of Baden-Württemberg, therefore agreed in the spring of 2008 to further develop the topic "Assistance for judges of the service units" together – which had initially been restricted to ordinary courts. In a workshop held in the summer of 2008, a nationwide project group was commissioned with representatives of judicial practitioners to take stock of the typing conduct of judges and to delegate assistant-type tasks to the service staff, and building on this to name potential other tasks that were suitable for assigning. In carrying out this task, the project group implemented and evaluated a full survey of judges and service staff of the Local, Regional and Higher Regional Courts of the three Länder in the spring of 2009.

The tasks which judges can assign to the service staff in the view of the respondents were summarised in a list. Ten pilot courts in Baden-Württemberg have been trialling the delegation of these tasks since April 2011, so that the proposals come "from practitioners for practitioners". Corresponding projects are running at the public prosecution offices and in the specialist courts.

Moreover, it is currently being examined whether tasks can also be assigned to senior judicial officers by judges and to service staff by senior judicial officers. This might, firstly, offer service staff a broader range of tasks, and compensate for activities removed. Secondly, assistance for judge/senior judicial officers could enable senior judicial officers to take on tasks from judges which do not fall within core judicial activities, ultimately also reducing burdens on the judges.

Hamburg:

There have been no major reforms of the legal system or reorganisations in the judicial field in the last two years.

Please indicate the sources for answering questions 46, 47, 48, 49 and 52

Source regarding Questions 46 and 52:

Federal Office of Justice, staffing overviews of ordinary courts and the specialist jurisdictions 2010, as well as judges' statistics (version: 31 December 2010)

3. 1. 3. Public prosecutors and staff

55) Number of public prosecutors (if possible on 31 December 2010) (please give the information in full-time equivalent and for permanent posts actually filled, for all types of courts – ordinary and specialised jurisdictions). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.

	Total	Males	Females
Total number of prosecutors (1 + 2 + 3)	5 245	3 093	2 152
1. Number of prosecutors at first instance level	4 769	2 755	2 014
2. Number of prosecutors at second instance (court of appeal) level	375	263	112
3. Number of prosecutors at supreme court level	100	75	25

Comment :

The information relates to the number of job shares for public prosecutors. There are no absolute figures for the number of persons. The information on the job shares count a judge working full-time as 1. A judge working part-time is counted as the fraction of 1 which corresponds to the proportion of his/her working hours to full-time (e.g. 0.5 for a judge working half the usual number of hours).

56) Number of heads of prosecution offices. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.

	Total	Males	Females
Total number of heads of prosecution offices (1 + 2 + 3)	NA	NA	NA
1. Number of heads of prosecution offices at first instance level	NA	NA	NA
2. Number of heads of prosecution offices at second instance (court of appeal) level	NA	NA	NA
3. Number of heads of prosecution offices at supreme court level	NA	NA	NA

Comment :

The total number of heads of the public prosecution offices is at least the number of Regional Courts (116) plus the number of Higher Regional Courts (24) at which the chief public prosecution offices are located.

57) Do other persons have similar duties to public prosecutors?

Yes

No

Number (full-time equivalent)

935

58) If yes, please specify their title and function:

Officials of the public prosecution office:

The office of the public prosecution office at the Local Courts can also be exercised by officials of the public prosecution office with a right of audience before the local courts (section 142 subs. 2 of the Courts Constitution Act). The jurisdiction of the officials of the public prosecution office does not encompass preparing public charges in local court proceedings in criminal matters falling under the jurisdiction of courts other than the local courts. In accordance with the Order regarding the Organisation and Service Operations of the Public Prosecution Offices (Anordnung über Organisation und Dienstbetrieb der Staatsanwaltschaft – OrgStA) issued by some Land administrations of justice, officials of the public prosecution office are only assigned criminal matters in which the criminal court judge rules, and then only the criminal matters designated in a list.

Trainee jurists:

Responsibility may be assigned to trainee jurists for discharging the duties of an official of the public prosecution office with a right of audience before the local courts and, in an individual case, for discharging the duties of a public prosecutor under the latter's supervision (section 142 subs. 3 of the Courts Constitution Act).

Civil party to criminal proceedings:

Under certain preconditions, some criminal offences can be prosecuted by aggrieved persons by means of a private charge without needing to first call on the public prosecution office. A private charge can also be filed by someone who is entitled to file a request to prosecute in addition to or in place of the aggrieved person.

Revenue authorities:

Tasks comparable to those of the public prosecution office are performed by the revenue authorities in the fiscal criminal proceedings: If the revenue authority conducts the investigation independently in accordance with section 386 subs. 2 of the Fiscal Code (AO), it has the same rights and obligations as the public prosecutor's office has in an investigation (section 399 subs. 1 of the Fiscal Code).

59) If yes, is their number included in the number of public prosecutors that you have indicated under question 55?

Yes

No

60) Number of staff (non-public prosecutors) attached to the public prosecution service (if possible on 31 December 2010) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).

Number

Yes

10 322

C.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

Please indicate the sources for answering questions 55, 56 and 60

Federal Office of Justice:

re 55: judicial statistics (version: 31 December 2010) – information in job shares

re 55, 56, 57, 60: staffing overviews of the Länder on the staff of the public prosecution offices at the Regional Courts and on the staff of the public prosecution offices at the Higher Regional Courts in 2010 - information in job shares -, figures at federal level are only available re Question 55.

[3. 1. 4. Court budget and new technologies](#)

61) Who is entrusted with responsibilities related to the budget within the court? If "other", please specify it

in the "comment" box below.

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	No	No	No
Court President	Yes	Yes	Yes	Yes
Court administrative director	Yes	Yes	Yes	Yes
Head of the court clerk office	Yes	No	Yes	No
Other	Yes	Yes	Yes	Yes

Comment :

*) not including information from Mecklenburg-Western Pomerania and Thuringia. Information for Bavaria is available on the individual jurisdictions, which diverges with regard to various items.

Bavaria

Labour and social courts:

The precise jurisdictions are defined in the respective business schedule of a court.

Other: The budget processing is as a rule a matter for civil servants of the executive level working in court administration.

Administrative courts:

Commissioners for the budget.

Brandenburg:

If a commissioner for the budget is appointed who is not the head of the court.

Bremen:

The court management is as a rule supported by a budget official.

Hamburg:

The responsibility for the planning, arbitration and allocation of the budget lies with the Authority for Justice and Equality as the competent ministerial level. It is carried out in close coordination with the courts.

The evaluation and verification of the use of the budget is carried out on the basis of the budget accounting by the Court of Audit and Parliament.

North Rhine-Westphalia:

Specially-commissioned staff of the court.

Saxony:

A budget commissioner is appointed for each court in accordance with section 9 of the Saxon Budget Code (SäHO) unless the Court President personally carries out the task. Individual tasks (cf. above table) of budget management can be transferred to other staff of the court by the Court President or the budget commissioner via the business schedule regardless of their function.

Saxony-Anhalt:

Other persons are the party empowered to issue orders and fund managers in the units.

62) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

Word processing	100% of courts
Electronic data base of jurisprudence	100% of courts
Electronic files	-10% of courts
E-mail	100% of courts
Internet connection	100% of courts

63) For administration and management, what are the computer facilities used within the courts?

Case registration system	100% of courts
Court management information system	+50% of courts
Financial information system	100% of courts
Videoconferencing	-50% of courts

64) For the electronic communication and exchange of information between the courts and their environment, what are the computer facilities used by the courts?

Website	100% of courts
Follow-up of cases online	100% of courts

Electronic registers	100% of courts
Electronic processing of small claims	0 % of courts
Electronic processing of undisputed debt recovery	0 % of courts
Electronic submission of claims	-50% of courts
Videoconferencing	-50% of courts
Other electronic communication facilities	100% of courts

65) The use of videoconferencing in the courts (details on question 65). Please indicate in the "comment" box below any clarification on the legal framework and the development of videoconferencing in your country.

	65.1 In criminal cases, do courts or prosecution offices use videoconferencing for hearings in the presence of defendants or witnesses?	65.2 Can such court hearing be held in the police station and/or in the prison?	65.3 Is there any specific legislation on the conditions for using videoconferencing in the courts / prosecution offices, especially in order to protect the rights of the defence?	65.4 Is videoconferencing used in other than criminal cases?
	Yes	Yes	Yes	Yes

Comment :

All in all, the courts, public prosecution offices, prisons and the judicial administration have approx. 160 systems at their disposal. The number has increased considerably in recent years. Essentially, all major judicial locations are adequately equipped.

It is also used in the administrative and finance courts.

The use of the systems is regulated in the respective codes of procedure. The basis for use in the civil and criminal proceedings is defined in section 247a of the Code of Criminal Procedure and section 128a the Code of Civil Procedure. There is now a considerable amount of case-law on the named provisions, including from the supreme courts.

Questioning of undercover investigators can be carried out in a secret location in criminal proceedings by disguising the voice and face.

Child victims and witnesses of violent crime are increasingly questioned in specially-equipped questioning rooms. These questioning rooms are for instance also used in custody cases, particularly if one parent is abroad.

The use of video conferencing has however not yet become implemented across the board in court practice. This is, firstly, because most courts, judicial authorities and law firms do not yet have the requisite equipment, but secondly also because of the codes of procedure requiring the consent of those concerned to the use of video conferencing.

The strict linking of the codes of procedure to the consent of those concerned is to be abolished by a Bill which is based on the Bundesrat initiative of Hesse to increase the use of video conferencing technology in court and public prosecution proceedings, and the use of video conferencing technology is to be largely placed at the duty-bound discretion of the court. This is also achieved for these jurisdictions by virtue of an amendment of section 128 a of the Code of Civil Procedure and via the reference provisions contained in the codes of procedure of the specialist jurisdictions. In addition, the provisions on interpreters and, in criminal proceedings, the provisions on the questioning of experts, accused persons and of the chair of the Bar, as well as of the defendant in questioning regarding a charge and the questioning of witnesses foregoing their personal presence have been newly regulated in the Courts Constitution Act. The Bundesrat has approved the draft, which has now been presented to the Bundestag. The Bill brings all the codes of procedure in line with the high-quality technology currently available, whilst at the same time setting the stage in normative terms for the future. The advantages of the intensified use of video conferencing technology in court and public prosecution office proceedings are plain to see:

Where the judicial administration provides this technology, above all lawyers, but also other parties to the proceedings are offered the opportunity, in suitable cases, to attend court proceedings without travelling from their own offices or from video conferencing studios provided by the judicial administrations. The little time required for all concerned and the court makes it easier to schedule oral hearings and discussion appointments, thus helping to accelerate proceedings and increase efficiency, not lastly among professional defence counsel.

The aspect of availability in time is of great importance with examinations, hearings, deliberation and questioning for the rapid processing of the proceedings and the more efficient employment of those concerned by the proceedings. The savings in travel expenses and reduced time spent will make the process cheaper overall. A further positive aspect can be seen in the possible reduction of prisoner transportation: The risk of prisoners escaping can be minimised by using video transmission technology; transport and surveillance become largely unnecessary.

The increased support of video conferencing at EU level is proving to be helpful. A corresponding proposal is also logical, given that the European Commission categorised the use of video conferencing as a vital pillar in eJustice efforts in Europe at the meeting held in the Slovenian Presidency.

The connection of the technical equipment via ISDN is currently being converted to IP in some Länder.

Increasing use is being made of the possibilities offered by video conferencing technology to reduce travel expenses and to accelerate workflows by the judicial administrations, including the use of desktop video conferencing.

C.3

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

re Question 64: The electronic court and administration pigeon hole (EGVP). Faxing and e-mail (if not ruled out by opposing formal provisions).

The equipment with networked computers has taken place across-the-board. The hardware and software are being gradually renewed at intervals (refresh).

Specialist procedures have now been developed for almost all applications in the judiciary.

Preparations are currently being made for the introduction of electronic justice and the electronic file. A schedule has already been drawn up.

3. 2. Performance and evaluation

3. 2. 1. Performance and evaluation

66) Is there a centralised institution that is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

Yes

No

If yes, please indicate the name and the address of this institution:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: "No" was stated for Bavarian ordinary courts; "Yes" was stated for the Bavarian specialist jurisdictions. The other Federal Länder all answered "Yes".

Baden-Württemberg: Ministry of Justice Baden-Württemberg, Schillerplatz 4, 70173 Stuttgart
 Bavaria: Ordinary courts: It should be pointed out in general terms that judicial business statistics are kept in the courts and public prosecution offices, with which statistical data on civil cases, family cases, criminal and regulatory fine proceedings, as well as public prosecution office investigation proceedings are recorded. The figures that are recorded permit evaluations to be carried out which however in our view are not to be considered as performance control within the meaning of Questions 66 to 69, 78, 79 and 83. Bavaria: Finance, administration, labour and social courts: Bavarian Land Office for Statistics and Data Processing <https://www.statistik.bayern.de/>.
 Berlin: Senate Administration of Justice, division I B (e-mail: : statistik@senjust.berlin.de. Brandenburg: Ministry of Justice of the Land Brandenburg, Heinrich-Mann-Allee 107, 14473 Potsdam. Bremen: Senator of Justice and Constitution, Richtweg 16/22, 28195 Bremen. Hamburg: <http://www.statistik-nord.de>. Hessen: Hesse Land Statistical Office in Wiesbaden. Lower Saxony: Lower Saxony Land Agency for Statistics and Communication Technology (LSKN) North Rhine-Westphalia: All Land administrations of justice rely on authoritative, topical data on proceedings and caseloads; verification of the rulings handed down is prohibited here for constitutional reasons. The Ministry of Justice of North Rhine-Westphalia is supported in carrying out its tasks by a data evaluation centre at Hamm Higher Regional Court, which at the same time also has to perform local tasks within the remit of the judiciary. Saarland: Ministry of Justice. Saxony: e.g. legal aid, type of proceedings, type of resolution, number of (main) hearings. Saxony-Anhalt: Land Statistical Office of Saxony-Anhalt, Merseburger Str. 2, 06110 Halle (Saale). Schleswig-Holstein: Statistical Office for Hamburg and Schleswig-Holstein (www.statistik-nord.de). Federation: Federal Statistical Office, Wiesbaden (www.destatis.de), rechtspflegestatistik@destatis.de. cf. also C 4 below

67) Are individual courts required to prepare an annual activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?

Yes

No

68) Do you have, within the courts, a regular monitoring system of court activities concerning:

The monitoring system aims to assess the day-to-day activity of the courts (namely, what the courts produce) thanks in particular to data collections and statistical analysis (see also questions 80 and 81).

- number of incoming cases?
- number of decisions delivered?
- number of postponed cases?
- length of proceedings (timeframes)?
- other?

If other, please specify:

*) Not including information from Mecklenburg-Western Pomerania, Thuringia, Rhineland-Palatinate, Saarland and Schleswig-Holstein.

 Bavaria:

labour and social courts:

Statistical collections according to the nationally-uniform order.

Administrative courts:

e.g. verification of the deadlines for the drafting of judgments.

Berlin:

Federal uniform statistics.

Brandenburg:

Figures are also collected on the stock of proceedings at the end of the period under report and on the changes in the number of new cases, with proceedings that have been dealt with and the numbers in comparison with the previous year/previous quarter, as well as on the ratio of finished proceedings as against new cases.

Hamburg:

In addition to the above data, statistics on the nature of resolution are kept (e.g. in civil cases: dealt with by contentious judgment/by acknowledgement/by settlement, etc.).

Within self-administration, the verification of the court's activities is a matter of the Presidiums of the courts, the Presidents of the courts, as well as the Land administration of justice. Judicial independence and the specialist independence of senior judicial officers form constitutional and legal boundaries which naturally are always to be respected.

Hesse:

Allocated among staff (caseload quota).

North Rhine-Westphalia:

cf. also answer re Question 66.

Saxony-Anhalt:

Finance benchmarks, e.g. item costs; standardised deployment of person hours related to product.

In other respects:

Provision of the business statistics at the courts for an overall evaluation by all units carrying out service supervision. The compilation of the individual items of data available differs for the individual areas of the proceedings.

Federation:

The collections of proceedings stated at Question 66 cover for each procedure included the number of incoming cases, the nature of the proceedings, the nature of the approach taken and the length of the proceedings. Moreover, information is collected on further characteristics of the proceedings (legal aid, value at dispute, field, appeals, etc.). All this information can be related to the evaluation. The regular evaluations can be found in the publications of the Federal Statistical Office. Because these are manual statistics, the data of the business overviews on the case-load as a rule do not contain any further information, particularly not on the duration of the proceedings.

69) Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?

The evaluation system refers to the performance of the court systems with prospective concerns, using indicators and targets. The evaluation may be of more qualitative nature (see questions 69-77). It does not refer to the evaluation of the overall (good) functioning of the court (see question 82).

- Yes
- No

Please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BB, HB, HE, ST stated "Yes"; the Länder answered "No" in other respects. The information for Bavaria differs with the respectively individually-stated jurisdictions: "Yes" was stated for the Bavarian Finance courts, "No" for the other Bavarian jurisdictions.

Bavaria

Finance courts:

Nationwide statistics ("Saxonstatistik").

Brandenburg:

The evaluation only covers the figures stated on incoming cases, cases dealt with, length of the proceedings, number of court staff working, etc., which may be used as indicators for evaluating the performance and/or the quality standard of the courts.

Bremen:

Benchmarking by code numbers.

Hesse:

Judicial statistics with comparison at Länder level.

Lower Saxony:

A regular check on the activities of the courts and public prosecution offices is carried out by service supervision. A system for a uniform view of the court activities is gradually being established in the shape of "JuMIS". A similar system already is already in operation ("InforMIS") at the public prosecution offices.

A qualitative evaluation of court activities is not possible with the introduced statistics, and is also not planned, given the constitutionally-guaranteed judicial independence.

North Rhine-Westphalia:

There is an extensive system of internal business tests; furthermore, there are "management information systems" in some areas with management-relevant statistical core data on incomings, durations of sets of proceedings and numbers of cases dealt with. Verification of the rulings handed down is also prohibited in this respect for court constitutional reasons; cf. in this respect answer re Question 66.

Rhineland-Palatinate:

Data are collected, but not evaluated.

Saarland:

Such an evaluation system would in our view not be compatible with judicial independence, which is protected by the Basic Law.

Saxony-Anhalt:

The tool of operative and strategic management of the courts is the management report. This has been orientated in line with the addressee – relating to the special information interests of the management of the authorities, and, within the meaning of the balanced scorecard approach, contains both monetary and process- and customer-orientated code numbers on the basis of judicial products. In a further aggregation level, these code numbers are introduced into the budget plan in output-orientated budgeting on the basis of judicial products/services, and support strategic political planning.

The unit comparison was defined as a central criterion in the conceptual (content) design of the management reports. According to this approach, firstly, a comparison is carried out of the individual unit with the average of all units and, secondly, in compliance with the basic concept of benchmarking, with the average of the best three units.

Concrete measures are agreed with calculable target values in agreed goals that are established between the Ministry of Finance and the Ministry of Justice and Equality, and are shaped within the units respectively budgeted. The foundation for this is formed amongst other things by the indicators of the management reports.

The following applies all over Germany at the level of the Federal Länder:

The statistics collected serve the purposes of the personnel requirements calculation of the judiciary according to "PEBBŞY" in each Federal Land. On the basis of the caseload, an evaluation is carried out according to nationally-uniform base figures. This demand is then compared to the posts and to the average staff deployment in the workload calculation. The judicial activities are depicted by products in "PEBBŞY". Each product has a specific base number expressed in minutes. The performance and output of each court can be established by this system at any time, making it possible to compare one court with another.

70) Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 72)

Yes

No

71) Please select the 4 main performance and quality indicators that have been defined:

incoming cases

length of proceedings (timeframes)

closed cases

- pending cases and backlogs
- productivity of judges and court staff
- percentage of cases that are processed by a single sitting judge
- enforcement of penal decisions
- satisfaction of court staff
- satisfaction of users (regarding the services delivered by the courts)
- judicial quality and organisational quality of the courts
- costs of the judicial procedures
- other:

If other, please specify:

72) Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?

- Yes
- No

73) Who is responsible for setting the targets for each judge?

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

74) Are there performance targets defined at the level of the court (if no please skip to question 77)?

- Yes
- No

75) Who is responsible for setting the targets for the courts?:

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council, Higher Court)
- other

If other, please specify:

76) Please specify the main targets applied to the courts:

77) Who is responsible for evaluating the performance of the courts (see questions 69 to 76)? (multiple options possible)

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, please specify:

Note: An evaluation within the meaning of section 3.5 is understood as a provisional estimate of the judicial procedures. Because of the constitutionally-guaranteed independence of the judiciary, it is not permissible to attempt to evaluate or influence judicial activities.

78) Are quality standards determined for the whole judicial system (are there quality systems for the judiciary and/or judicial quality policies)?

- Yes
 No

If yes, please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BB, NI and SH answered "Yes"; the other Federal Länder stated "No".

Baden-Württemberg:

The performance levels achieved by the courts are compared with regard to the number of sets of proceedings and their durations. Benchmarks are formed as to the performance of the courts, and these are compared at Land level.

Brandenburg:

Quality assurance in the judiciary is the part of quality management which is to guarantee that statutory quality requirements set by the judiciary itself are met, as well as those demanded by the plaintiff, whilst making optimum use of resources. A large number of strategies are currently being trialled and implemented in the Länder for quality assurance in the judiciary. Tools of quality assurance are the cost and performance accounting, judicial controlling, staff cost budgeting, benchmark proceedings, the Balanced Scorecard, the EFQM model, various tools of personnel and organisation development, personnel requirements calculation, business process optimisation, questionnaires among lawyers, citizens and staff, as well as evaluation tools both for the individual judicial and public prosecution work, and for the courts and public prosecution offices as organisational units. The increased use of modern technology (e.g. the Internet) enables the judiciary to reach a large number of citizens, and hence to offer to plaintiff an optimum service (register queries, downloads of information and applications or court rulings, information regarding addresses and directions, etc.). Also the ongoing expansion of electronic justice offers new possibilities to improve the quality of the judiciary with regard to the performance characteristics of proximity to citizens and service to citizens.

These developments and models are however not uniform in all Länder. This relates both to the methods used and to the intensity with which they are trialled or used.

Lower Saxony:

There is a quality strategy which was developed from the surveys "Local Courts in the performance comparison (AGIL)" and "Regional Courts in a comparison (LiVe)". This is based on the presumption that a comparison can be made between the courts by the collection of data. The comparison is followed by an analysis of the reasons why better figures are achieved at one court location than at another. This is then discussed in specialist groups, and measures are developed which can promote promising methods for dealing with tasks at all court locations. The surveys serve not to evaluate individual staff, but are intended to uncover performance-enhancing structures which can then be transferred. This quality management concept is carried out in cooperation with the judicial councils and the personnel representations.

Schleswig-Holstein:

A blanket quality management system has been introduced in the courts and public prosecution offices of the Land Schleswig-Holstein. The subject of the quality management can be all fields that are amenable to court administration. Judicial independence and the de facto independence of the senior judicial officers form constitutional and statutory boundaries which are always to be complied with as a matter of course. The quality objectives are defined by the court management itself in mission statements.

79) Do you have specialised court staff that is entrusted with these quality standards?

- Yes
 No

80) Do you monitor backlogs and cases that are not processed within a reasonable timeframe for:

- in civil law cases
 in criminal law cases
 in administrative law cases

81) Do you monitor waiting time during court procedures? Yes No

If yes, please specify:

82) Is there a system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan (plan of visits) agreed beforehand?
-----**This question does not concern the specific evaluation of performance indicators.** Yes No

Please specify the frequency of the evaluation:

83) Is there a system for monitoring and evaluating the performance of the public prosecution service? Yes No

If yes, please give further details:

*) Not including information from Mecklenburg-Western Pomerania, Thuringia and Lower Saxony. BW, BE, BB, HB, HE, NW, ST, SN stated "Yes"; the other Federal Länder stated "No".

C.4**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your court monitoring and evaluation systems

Re question 67

not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BE, BB, NI, NW, SH stated "Yes"; the Länder answered "No" in other respects. The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: the answer "Yes" was given for the Bavarian finance and administrative courts, for the Bavarian labour, social and ordinary courts, the answer was "No".

Re question 79

not including information from Mecklenburg-Western Pomerania and Thuringia. Only BW and BB answered "Yes"; "No" was stated in other respects.

Re Question 83:

There is no regular procedure for monitoring and evaluating the activities of the public prosecution offices within the meaning of a normed, and institutionalised procedure with a content-specific testing regime that is to be repeated at certain intervals. The activities of the public prosecution offices are however subject to supervision and direction in accordance with section 147 of the Courts Constitution Act

1. of the Federal Minister of Justice in respect of the Federal Prosecutor General and the federal prosecutors; 2. of the Land agency for the administration of justice in respect of all the officials of the public prosecution office of the Land concerned; 3. of the highest-ranking official of the public prosecution office at the higher regional courts and the regional courts in respect of all the officials of the public prosecution office of the given court's district.

Supervision encompasses how business is dealt with in formal and de facto terms, and is given concrete form in orders of the supreme service supervisory authorities, reports of the public prosecution offices particularly in significant matters to the supreme service supervisory authorities, the implementation of business tests, including the evaluation of business statistics and case-files in particular by the first civil servant of the public prosecution office at the Higher Regional Courts and the Regional Courts, and in the evaluation of the results of the business tests by the supreme service supervisory authorities.

Baden-Württemberg:

The chief public prosecution offices regularly carry out a review of the public prosecution offices in accordance with No. 10 of the Order regarding the Organisation and Service Operations of the Public Prosecution Offices (Anordnung über Organisation und Dienstbetrieb der Staatsanwaltschaft – OrgStA). These obtain for themselves an overview of the state and the development of the service circumstances in the respective public prosecution office, individual investigation proceedings also being subject to checks.

Berlin:

Public prosecution office statistics.

Brandenburg:

Business tests are carried out at intervals of two years in the public prosecution offices of the Land by the chief public prosecutor of the Land Brandenburg. In addition to the evaluation of the business tests carried out by the chief public prosecutor, the result is also passed to the Ministry of Justice for evaluation.

Bremen:

Reports on major investigation proceedings (BeStra).

Hesse:

Examination of the progress of each set of proceedings after six months.

North Rhine-Westphalia:

Regular business tests are implemented at the public prosecution offices.

Saxony:

Yes, with regard to "regular proceedings for testing" within the meaning of Question 68 (incoming, dealt with, cases pending, duration of proceedings, etc.); No with regard to "evaluation" within the meaning of Question 69; but there is no single procedure to test and evaluate the activities of the public prosecution offices.

Saxony-Anhalt:

Management report, cf. on this the information regarding the courts.

In other respects: evaluation of business statistics in the ongoing performance of service supervision, business tests (cf. also Question 68 for courts)

Lower Saxony:

Re Question 67: The statistics stated at Question 66 are recorded in all courts and public prosecution offices.

North Rhine-Westphalia:

Re Question 67: for comparisons cf. answer re Question 66.

Rhineland-Palatinate:

re Questions 66-68: The data are collected to record the "as is" state, but no activity reports are requested; no controlling takes place.

Saxony-Anhalt:

The information regarding Questions 68 to 77 and 80 to 82 relates to the ordinary courts.

Federation:

The Conference of Ministers of Justice launched a nationwide Committee for Judicial Statistics for structured data collection and to ensure comparability back in 1965. The standing chair is held by the Bavarian Land administration of justice. The voting members of the Committee include all Land administrations of justice. Representatives of the Federal Office of Justice, of the Federal Statistical Office and of the Land Statistical Offices of Bavaria, Baden Württemberg, Lower Saxony and North Rhine-Westphalia are invited as guests.

The Committee is responsible for introducing and revising the judicial business statistics. These are surveys coordinated nationwide of statistical data of the ordinary courts, of the public prosecution offices and of the special courts. The data collected from the statistics are used for allocating business, personnel requirements calculation, service supervision, Bills, verifying efficiency after legal amendments and public relations work. Against this background, it is necessary for the Committee to regularly verify the content of the justice business statistics and adjust them in line with the above concerns and with current information requirements. This hence simultaneously ensures that the statistical surveys are comparable at federal level.

The judicial statistics are nationally uniform. The following are kept as surveys of sets of proceedings:

the survey of statistical data in criminal and criminal fine cases (StP/OWi statistics),

the survey of statistical data in public prosecution offices and lower prosecution authorities (Amtsanwaltschaften) (StA statistics),

the survey of statistical data in family cases (F statistics),

the survey of statistical data in civil cases (ZP statistics),

the survey of statistical data in the administrative courts (Administrative Courts statistics),

the survey of statistical data in the finance courts (FG statistics),

the survey of statistical data in the social courts (SG statistics), and

the survey of statistical data in the labour courts (labour courts statistics).

The survey documents are completed by the courts and public prosecution offices. The evaluation is carried out centrally by the respective Land Statistical Office. The Federal Statistical Office summarises the principal results of the statistics and publishes them annually in Fachserie 10, Reihen 2.1 to 2.8.

In addition to the abovementioned surveys, the case-load of voluntary jurisdiction is collected in the nationwide business overview. The Länder compile the results for the Land in question. The Federal Office of Justice summarises the Länder results at federal level.

All courts and public prosecution offices prepare nationwide personnel overviews. In these, as a fixed-date survey as per 31 December the personnel present is listed by career path, gender and job share. Additionally, personnel deployment in the major branches of the justice system is collected as an average survey. The annual results are compiled by the administrations of justice of the Länder. The Federal Office of Justice creates an overall view of the principal results of the Länder overviews.

4. Fair trial

4. 1. Principles

4. 1. 1. General information

84) Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a legal professional)?

NAP

85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

- Yes
 No

If possible, number of successful challenges (in a year):

86) Number of cases regarding Article 6 of the European Convention of Human Rights on duration and non-execution. If data is not available, please indicate NA.

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	NA	1	17	0
Civil proceedings - Article 6§1 (non-execution)	NA	0	0	0
Criminal proceedings - Article 6§1 (duration)	NA	0	1	0

Please indicate the sources:

„Analysis of statistics 2011“ of the European Court of Human Rights;
 Report of the German Federal Government on the Case-Law of the European Court of Human Rights and on the Execution of its Judgments in cases against the Federal Republic of Germany in 2011

D.1

You can indicate below any useful comments for interpreting the data mentioned in this chapter

North Rhine-Westphalia:

Re Question 85: Yes, however information cannot be provided on the number of successful rejections because of a lack of corresponding statistical collections.

The figures re No. 86 relate to proceedings against the Federal Republic of Germany before the European Court of Human Rights in 2011. The precise number of applications declared inadmissible focussing on Article 6 is not known. The ECHR declared a total of 1,095 applications in proceedings against Germany inadmissible in 2011 or removed them from its register. Only seven of these rulings were served on the Federal Government. Most rulings of inadmissibility in cases related to Germany are carried out without the involvement of the Federal Government and are not reasoned in detail, nor are they published. Hence, no information is provided on the number of cases declared by the Court to be inadmissible which relate to Article 6 of the ECHR.

4. 2. Timeframes of proceedings

4. 2. 1. General information

87) Are there specific procedures for urgent matters as regards:

- civil cases?
 criminal cases?
 administrative cases?
 there is no specific procedure

If yes, please specify:

Civil cases:

Arrest and injunction in accordance with sections 926 to 945 of the Code of Civil Procedure

Criminal cases:

The principle of acceleration applies to each set of criminal proceedings.

Administrative cases:

Emergency rulings in the injunction proceedings

88) Are there simplified procedures for:

- civil cases (small disputes)?
- criminal cases (small offences)?
- administrative cases?
- there is no simplified procedure

If yes, please specify:

Civil cases:

Proceedings in accordance with section 495a of the Code of Civil Procedure with a value at dispute of up to € 600; proceedings for small claims in accordance with Regulation (EC) No 861/2007

Criminal cases:

Proceedings with penal orders

In proceedings before the criminal court judge and in proceedings which belong to the jurisdiction of the court with lay judges, on written application of the public prosecution office the legal consequences of the offence with misdemeanours may be settled by a written penal order without a main hearing (not admissible when criminal law relating to young people is applied to juveniles and adolescents). The public prosecution office lodges such an application if it does not consider a main hearing to be necessary according to the outcome of the investigations. The application is to target specific legal consequences. It serves to prefer public charges.

Only the following legal consequences of the offence, solely or together, may be imposed by penal order:

1. warning with sentence reserved, a driving ban, forfeiture, confiscation, destroying or making an item unusable, announcement of the decision, and imposition of a regulatory fine against a legal person or an association,
2. withdrawal of permission to drive, where the bar does not exceed two years, as well as
3. dispensing with punishment.

Where the indicted accused has defence counsel, imprisonment not exceeding one year may also be imposed, provided its execution is suspended on probation.

In case of an admissible objection being lodged in good time, the main hearing is scheduled.

Accelerated proceedings

In the proceedings before the criminal court judge and the court with lay judges the public prosecution office makes in writing or orally the application for a ruling in accelerated proceedings if the case is suited for an immediate hearing because the facts are simple or the evidence is unambiguous. No greater penalty than imprisonment of one year or a measure of reform and prevention may be imposed in such proceedings. The deprivation of the right to drive is permissible. Accelerated proceedings are not permissible against juveniles.

Simplified youth proceedings

In the simplified youth proceedings against juveniles, in the interest of simplification and accelerated proceedings, as well as proceedings suited to young people, it is permissible to deviate from the general procedural provisions if this does not impair the search for the truth and only sanctions below youth custody are anticipated.

Administrative cases:

The court can rule by court order without an oral hearing if the case does not show any particular difficulties and the facts are clarified (section 84 of the Code of Administrative Court Procedure).

89) Do courts and lawyers have the possibility to conclude agreements on arrangements for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

- Yes
- No

If yes, please specify:

Criminal cases:

The court can agree with those concerned by the proceedings regarding the continuation and the outcome of the proceedings in suitable cases. The obligation of official investigations remains unaffected.

The agreement may only relate to the legal consequences which may form the content of the judgment and of the concomitant orders, other procedural measures in the underlying trial proceedings, as well as the procedural conduct of the parties to the proceedings. An element of any agreement is to be a confession. The guilty verdict, as well as measures of reform and prevention, may not be the subject of an agreement.

4. 2. 2. Caseflow management and timeframes of judicial proceedings

90) Comment:

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and timeframes of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only if answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling a useful comparison between the systems.

91) First instance courts: number of other than criminal cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note 1: cases mentioned in categories 3 to 5 (enforcement, land registry, business register) should be presented separately in the table. Cases mentioned in category 6 (administrative law) should also be separately mentioned for the countries which have specialised administrative courts or separate administrative law procedures or are able to distinguish in another way between administrative law cases and civil law cases.

Note 2: check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means: "(pending cases on 1 January 2010 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2010. Vertical consistency of data means that the sum of the individual case categories 1 to 7 should reflect the total number of other than criminal law cases.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)*	3 248 143	15 069 925	10 175 609	3 660 699
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	803 757	1 581 762	1 586 654	798 865
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NA	NA	NA	NA
3. Enforcement cases	NA	NA	3 183 807	NA
4. Land registry cases**	NA	NA	5 832 858	NA
5. Business register cases**	NA	NA	580 801	NA
6. Administrative law cases (litigious and non-litigious)	658 466	693 913	668 664	683 715
7. Other cases (e.g. insolvency registry cases)	1 785 920	1 587 688	1 489 900	1 883 708

92) If courts deal with "civil (and commercial) non-litigious cases", please indicate the case categories included:

The value entered was calculated by deducting the contentious judgments from of all sets of proceedings that were resolved before the Local and the Regional Court in civil cases (not including those passed on within the court). Those sets of proceedings that are resolved other than by contentious judgment were particularly resolved by default, acknowledgement or waiver judgments (369,185), settlements (259,591), withdrawal of the charge or of the motion (182,384), staying of the proceedings or non-pursuance (73,392) and orders in accordance with section 91a of the Code of Civil Procedure (53,604).

93) If "other cases", please indicate the case categories included:

This includes family-court jurisdiction, labour courts and guardianship and custodianship courts. The figures do not

include 1,983,931 new legal matters related to registry office cases, declarations of death, inheritance cases, custody, agriculture, legal aid, deposit cases, public notice and insolvency proceedings with regard to which resolution or the number of cases pending at the beginning and at the end of the year are not recorded.

94) First instance courts: number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note: please check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means that: "(pending cases on 1 January 2010 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2010. Vertical consistency of data means that the sum of the categories 8 and 9 for criminal cases should reflect the total number of criminal cases.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	353 672	1 181 995	1 196 095	339 572
8. Criminal cases (severe criminal offences)	253 504	790 535	804 053	239 986
9. Misdemeanour and / or minor offences cases	100 168	391 460	392 042	99 586

95) The classification of cases between severe criminal cases and misdemeanour and/or minor criminal cases may be difficult. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedures).

Please indicate, if feasible, what case categories are included under "severe criminal cases" and the cases included under "misdemeanour and /or minor criminal cases".

The category "severe criminal cases" (line 8) includes proceedings in accordance with the Criminal Code and ancillary criminal laws. The category "minor criminal cases" (line 9) includes the regulatory offence proceedings pursued by the administrative authorities.

96) Comments on questions 91 to 95. You can indicate, for instance, the specific situation in your country, give explanations on NA or NAP answers or explain the calculation of the total number of other than criminal law cases or differences in horizontal consistency, etc.

re Question 91:

*) Not shown are 1,762,104 legal matters dealt with regarding Labour Court payment demand proceedings and legal advice aid cases on which new cases, cases pending at the beginning of the year and those at the end of the year are not covered.

97) Second instance courts: total number of "other than criminal law" cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note: the total of "other than criminal" cases includes all of the following categories (categories 1 to 7).

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)	NA	NA	202 419	NA
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	NA	NA	31 167	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NA	NA	79 430	NA
3. Enforcement cases	NA	NA	NA	NA
4. Land registry cases	NA	NA	NA	NA
5. Business register cases	NA	NA	NA	NA
6. Administrative law cases (litigious and non-litigious)	48 524	41 727	41 057	49 194

7. Other cases (e.g. insolvency registry cases)	21 427	52 077	50 765	22 739
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98) Second instance courts: total number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	20 787	68 684	68 837	20 634
8. Criminal cases (Severe criminal offences)	20 053	57 888	58 074	19 867
9. Misdemeanour and/or minor offences cases	734	10 796	10 763	767

Comment :

The category "severe criminal cases" (line 8) includes proceedings in accordance with the Criminal Code and ancillary criminal laws. The category "minor criminal cases" (line 9) includes the regulatory offence proceedings pursued by the administrative authorities.

99) Highest instance courts: total number of "other than criminal law" cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note: the total of "other than criminal law cases" includes all of the following categories (categories 1 to 7).

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)	9 560	12 812	13 506	8 866
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)	NA	NA	784	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	NA	NA	2 608	NA
3. Enforcement cases	NA	NA	NA	NA
4. Land registry cases	NA	NA	NA	NA
5. Business register cases	NA	NA	NA	NA
6. Administrative law cases (litigious and non-litigious)	4 240	7 232	7 534	3 938
7. Other cases (e.g. insolvency registry cases)	1 673	2 401	2 580	1 494

100) Highest instance courts: total number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	554	3 534	3 584	504
8. Criminal cases (severe criminal offences)	554	3 530	3 583	501
9. Misdemeanour cases (minor offences)	0	4	1	3

Comment :

1) The category "severe criminal cases" (line 8) includes the proceedings in accordance with the Criminal Code and ancillary criminal laws.

The category "minor criminal cases" (line 9) includes the regulatory offence proceedings pursued by the administrative authorities.

2) Total number of criminal law rulings of the Federal Court of Justice in 2010, including submission and regulatory offence cases in accordance with the Act on Regulatory Offences (OWiG)

3) Overview of the cases in the criminal senates of the Federal Court of Justice in 2010 columns 22, 45a, 58 in regulatory offences in accordance with the Act Against Restraints of Competition (GWB) and the Energy Act (EnWG)

101) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and processed by first instance courts. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Jan. '10
Litigious divorce cases	NA	NA	189 015	NA
Employment dismissal cases	NA	NA	172 015	NA
Robbery cases	NA	NA	7 381	NA
Intentional homicide	NA	NA	798	NA

102) Average length of proceedings, in days (from the date the application for judicial review is lodged). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

[The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure. New: the question concerns first, second and third instance proceedings.]

	% of decisions subject to appeal	% pending cases more than 3 years	Average length in 1st instance (in days)	Average length in 2nd instance (in days)	Average length in 3rd instance (in days)	Average total length of the total procedure (in days)
Litigious divorce cases	0.46	4.9 (1)	310	NA	NA	NA
Employment dismissal cases	3.77	2.1 (1)	96	4.5	NA	NA
Robbery cases	NA	NA	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA	NA	NA

103) Where appropriate, please inform about the specific procedure as regards divorce cases (litigious and non-litigious):

The family court has exclusive jurisdiction for marriage cases and other family cases. The family court is a department of the Local Court.

Anyone wishing to bring a marriage case to court, that is anyone wishing to divorce, must be represented by a solicitor. Also the respondent needs representation by lawyer if motions are to be lodged. As a rule, the spouses are to pay half the court costs of the divorce case and the ancillary cases; plus, each spouse pays their own legal costs.

It is possible to apply for legal aid. Spouses wishing to divorce can reduce the costs of the proceedings by the respondent agreeing to the divorce for the record of the court registry or in the oral hearing without appointing a solicitor.

The family court deliberates on the divorce application and the ancillary cases to the divorce made pending in good time together, and also rules on them as a matter of principle at the same time (comprehensive divorce proceedings). The divorce is hence as a rule not to be issued until clarity has been reached regarding all the ancillary cases. The purpose of the comprehensive divorce proceedings is to ensure for those concerned that nothing remains unresolved or uncertain after the divorce. The advantage of this is that those concerned are informed of all the consequences entailed by the divorce, particularly of the economic consequences. This is particularly significant for the economically weaker spouse, given that their rights are to be safeguarded before the divorce is granted. By virtue of the fact that all proceedings are placed in the hands of one single judge and dealt with at the same time, the family court also obtains a more profound insight into the situation of the marriage and the family and is able to help to bring about proper, coordinated rulings. Aspects that are deliberated on and ruled on by the family court in the comprehensive divorce proceedings include: pension settlement cases, maintenance cases, spousal home and budget cases, as well as property cases and parent-and-child cases.

In order to agree on an arrangement of the family relationships, mediation proceedings offer an alternative to court proceedings. In mediation, the persons concerned attempt with the aid of a neutral person who is not called on to make a decision – the mediator – to reach an agreed solution of their conflict for which they can take responsibility themselves. Unlike in court proceedings, the real interests and needs of those concerned can thus be worked out and used to form the basis of a solution that is tailor made to the respective conflict. Such a solution can do better justice to the respective interests of those concerned than a court ruling. The parties therefore find it easier to accept this, and it is as a rule more sustainable. For instance, contractual agreements can be reached on the maintenance, assets, property, on parental responsibility or on access to the children.

104) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

The judicial business statistics include in each case the day of the receipt of the proceedings and the date on which they are dealt with, recorded in the DD.MM.YYYY format.

On the basis of this information, the duration of the proceedings is calculated as follows:

duration of proceedings =
1
+ [date on which processed (number of days + (number of months * 30) +
(year * 360))]
- [date of receipt (number of days + (number of months * 30) + (year
* 360))]

105) Role and powers of the public prosecutor in the criminal procedure (multiple options possible):

- to conduct or supervise police investigation
- to conduct investigations
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to discontinue a case without requiring a judicial decision (ensure consistency with question 36!)
- to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision
- other significant powers

If "other significant powers", please specify:

- to conduct or supervise police investigation
- to conduct investigations

Unless otherwise provided by law (for instance in accordance with section 153 and section 153a of the Code of Criminal Procedure), the public prosecution office is obliged to intervene with regard to all prosecutable criminal offences where sufficient factual indications apply (section 152 subs. 2 of the Code of Criminal Procedure). As soon as the public prosecution office receives suspicion of a criminal offence by means of a charge or by other means, it must research the facts for its decision on whether a public charge is to be lodged (section 160 subs. 1 of the Code of Criminal Procedure).

To this end, the public prosecution office is entitled to demand information from all authorities and to carry out investigations of any kind, either itself or to have them performed by the authorities and officers of the police service unless other statutory provisions particularly regulate their powers. The authorities and officers of the police service are obliged to comply with requests or applications from the public prosecution office, and in this case are entitled to obtain information from all authorities (section 161 subs. 1 of the Code of Criminal Procedure).

- when necessary, to request investigation measures from the judge

If the public prosecution office considers it to be necessary for the court to carry out investigation measures, it makes an application prior to lodging of the public charge to the Local Court in the district in which it or its branch office making the application is located. If, additionally, it considers it to be necessary to issue an arrest or custody order, it can, regardless of section 125 and section 126a, lodge such a motion with the court referred to in sentence 1 (section 162 subs. 1 sentences 1 and 2 of the Code of Criminal Procedure). Once the public charge has been preferred, the court has jurisdiction which is seized of the case (section 162 subs. 2 sentence 1 of the Code of Criminal Procedure).

- to charge
- to present the case in the court

It is the public prosecution office which is called on to file the public charge (section 152 subs. 1 of the Code of Criminal Procedure). The written charge, which the public prosecution office has to present to the court which has jurisdiction for the main hearing, contains the application to open the main proceedings. The files are presented to the court (section 199 subs. 2 of the Code of Criminal Procedure) with the written charge.

- to discontinue a case without requiring a judicial decision (ensure consistency with question 36!)

In accordance with section 153 subs. 1 sentence 2 of the Code of Criminal Procedure (dispensing with prosecution of petty offences), section 153c of the Code of Criminal Procedure (non-prosecution of offences committed abroad), section 153d of the Code of Criminal Procedure (dispensing with court action on political grounds) and section 153f of the Code of Criminal Procedure (dispensing with prosecution of criminal offences under the Code of Crimes against International Law), the public prosecution office can discontinue the proceedings without a court ruling. The same applies in accordance with section 154 subs. 1 of the Code of Criminal Procedure with minor secondary criminal offences, and in accordance with section 154a subs. 1 sentence 1 of the Code of Criminal Procedure with individual severable parts of an offence or some of several violations of the law committed as a result of the same offence if these are not particularly significant in addition to a penalty or measure of reform and prevention that is anticipated or has already been imposed with binding effect.

Moreover, the public prosecution office may dispense with preferment of public charges if the accused is extradited to a foreign government because of the offence or is transferred out of the area of application of the Code of Criminal Procedure (section 154b subs. 1 and 2 of the Code of Criminal Procedure). The same applies if he/she is to be extradited to a foreign government or transferred to an international criminal court of justice because of another offence and the penalty or the measure of reform and prevention which might be the result of the domestic prosecution is negligible in comparison to the penalty or measure of reform and prevention which has been imposed on him with binding effect abroad or which he may expect to be imposed abroad (section 154b subs. 2 of the Code of Criminal Procedure).

If coercion or extortion (sections 240 and 253 of the Criminal Code) was committed by threats to reveal a criminal offence, the public prosecution office may dispense with prosecuting the offence, the disclosure of which was threatened, unless expiation is imperative because of the seriousness of the offence (section 154c subs. 1 of the Code of Criminal Procedure). If the victim of coercion or extortion (sections 240 and 253 of the Criminal Code) files charges in respect thereof (section 158) and if as a result a misdemeanour committed by the victim comes to light, the public prosecution office may

dispense with prosecution of the misdemeanour unless expiation is imperative because of the seriousness of the offence (section 154c subs. 2 of the Code of Criminal Procedure).

If the preferring of public charges for a misdemeanour depends on the evaluation of a question which must be determined according to civil law or administrative law, the public prosecution office may set a time limit to decide the question in civil proceedings or in administrative court proceedings. The person who reported the criminal offence shall be notified thereof. After this time limit has expired without any result, the public prosecution office may terminate the proceedings (section 154d of the Code of Criminal Procedure).

Public charges are not to be preferred for an erroneous suspicion or insult (sections 164 and 185 to 188 of the Criminal Code) as long as criminal or disciplinary proceedings are pending for the reported or alleged offence (section 154e subs. 1 of the Code of Criminal Procedure). If the absence of the accused or some other personal impediment prevents the opening or conduct of the main proceedings for a considerable time, and if public charges have not yet been preferred, the public prosecution office may provisionally terminate the proceedings after it has clarified the facts so far as possible and secured the evidence so far as necessary (section 154f of the Code of Criminal Procedure).

In accordance with section 45 subs. 1 of the Youth Courts Act, section 153 of the Code of Criminal Procedure is also applicable in criminal proceedings against juveniles (14 to under 18 years old at the time of the offence). Section 153 of the Code of Criminal Procedure applies either directly or via section 45 subs. 1 of the Youth Courts Act to adolescents (18 to under 21 years old at the time of the offence) if criminal law relating to young people applies to them. The other possibilities of ending the proceedings stated above are, by contrast, generally applicable in proceedings against juveniles and adolescents (cf. section 2 subs. 2 of the Youth Courts Act).

As a special feature, the public prosecution office dispenses with prosecution in the field of criminal law relating to young people in accordance with section 45 subs. 2 of the Youth Courts Act if a supervisory measure has already been enforced or initiated on the juvenile elsewhere and if it considers neither the participation of the judge pursuant to section 45 subs. 3 of the Youth Courts Act, nor the bringing of charges to be necessary. Supervisory measures are to encourage juveniles to gain an insight into the wrong which they have done, and can for instance be initiated by the youth welfare office, the school, the legal guardian or the trainer. Unlike section 45 subs. 1 of the Youth Courts Act and section 153 of the Code of Criminal Procedure, this arrangement applies not only to misdemeanours, but also to felony, and to juveniles in general, to adolescents (cf. previous paragraph for age limits) if the adolescent by his/her development on committing the offence was still equivalent to a juvenile or the offence is deemed to constitute youth misconduct (section 105 subs. 1 and section 109 subs. 2 of the Youth Courts Act).

to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision

In a case involving a misdemeanour, the public prosecution office may, with the consent of the court which has jurisdiction for the opening of the main proceedings and of the accused, dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle (section 153a subs. 1 sentence 1 of the Code of Criminal Procedure). In particular, the following conditions and instructions may be applied:

1. to perform a specified service in order to make reparations for damage caused by the offence;
2. to pay a sum of money to a non-profit-making institution or to the Treasury;
3. to perform some other service of a non-profit-making nature;
4. to comply with duties to pay a specified amount in maintenance;
5. to make a serious attempt to reach a mediated agreement with the aggrieved person (perpetrator-victim mediation) thereby trying to make reparation for his offence, in full or to a predominant extent, or to strive therefor; or
6. to participate in a course pursuant to section 2b subs. 2 second sentence, or section 4 subs. 8 sentence 4, of the Road Traffic Act (Straßenverkehrsgesetz) (section 153a subs. 1 sentence 2 of the Code of Criminal Procedure).

The consent of the court is not required in cases covered by section 153a subs. 1 sentence 2 Nos. 1 to 5 of the Code of Criminal Procedure in case of a misdemeanour which is not subject to an increased minimum penalty and where the consequences ensuing from the offence are minimal (section 153a subs. 1 sentence 7 in conjunction with section 153 subs. 1 sentence 2 of the Code of Criminal Procedure).

The public prosecution office sets a time limit within which the accused is to comply with the conditions and instructions, and which, in the cases referred to in numbers 1 to 3, 5

and 6 of the second sentence, is a maximum of six months and, in the cases referred to in number 4 of the second sentence, a maximum of one year. The public prosecution office may subsequently revoke the conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offence can no longer be prosecuted as a misdemeanour. If the accused fails to comply with the conditions and instructions, no compensation is given for any contribution made towards compliance (section 153a subs. 1 sentences 3 to 5 of the Code of Criminal Procedure).

Section 153a of the Code of Criminal Procedure is regarded as being partly supplanted by the special provisions of section 45 subs. 2 and 3 of the Youth Courts Act in youth court proceedings (cf. on this the information already provided on the above, as well as on the following item).

Supervisory measures on the discontinuation of proceedings against juveniles or adolescents in accordance with section 45 subs. 2 of the Youth Courts Act can in accordance with the Guidelines of the Länder to the Youth Courts Act also be introduced (disputed) by the public prosecution office themselves. It is thus considered that they themselves carry on a supervisory talk with the juvenile, reprimand him/her or for instance suggest compensation in the context of perpetrator-victim mediation. Here, however, the public prosecutor only has the power to suggest, but not to order. This is conditional on the accused person not seriously challenging the offence of which they are accused, being willing to comply with the suggestion made by the public prosecution office and that the legal guardian and statutory representative do not oppose this.

to propose a sentence to the judge

After the taking of evidence has been concluded, the public prosecutor is also afforded the opportunity to present his/her arguments in the main hearing (section 258 subs. 1 of the Code of Criminal Procedure). In its final pleading, it discusses the overall result of the main hearing and evaluates it in legal and factual terms (No. 138 subs. 1 sentence 1 of the Guidelines for Criminal and Administrative Fines Proceedings – RiStBV). If the public prosecutor considers the guilt of the defendant to be proven, he/she makes a statement on the penalty and other legal consequences which in his/her view should be imposed.

In proceedings before the criminal court judge and in proceedings within the jurisdiction of a court with lay judges, the legal consequences of the offence may, in the case of misdemeanours, be imposed, upon written application by the public prosecution office, in a written penal order without a main hearing. The public prosecution office files such an application if it does not consider a main hearing to be necessary given the outcome of the investigations. The application must refer to specific legal consequences. The application constitutes preferment of the public charges (section 407 subs. 1 of the Code of Criminal Procedure). Where criminal law relating to young people is applied against adolescents and across the board against juveniles, no penal order proceedings may be conducted (section 79 subs. 1 and section 109 subs. 2 of the Youth Courts Act).

If criminal law relating to young people is applied, the public prosecutor may in accordance with section 45 subs. 3 of the Youth Courts Act propose to the youth court judge to issue a reprimand, as well as conditions and instructions, if the accused admits his/her guilt and if the public prosecutor considers that the ordering of such a judicial measure is necessary but the bringing of charges not apposite. The background to this possibility is that the involvement of the judge in the informal ending of proceedings may have greater educational benefit. If the youth court judge agrees to the proposal, and if the juvenile complies with instructions or conditions, the public prosecutor dispenses with the prosecution. Compliance with such instructions or conditions cannot be enforced with coercive means since this is not sanctioning in the judgment after a charge and a main hearing. The youth court judge is also not bound to follow the proposal of the public prosecution office, but decides in exercise of his/her duty-bound discretion. Here, he/she may also impose another instruction or condition than the one proposed. Then, in turn, the public prosecutor must decide whether this is considered sufficient or whether to file charges after all. It is furthermore conceivable that the youth court judge does not consider the case to be suited to informal conclusion, whereupon the public prosecutor then files a charge. The described proceedings are also applicable to adolescents, subject to the preconditions of section 109 subs. 2 of the Youth Courts Act.

to appeal

The appellate remedies admissible against court decisions (also an appeal on points of fact and law) are open both to the public prosecution office and to accused persons. The public prosecution office can also make use of them for the benefit of the accused (section 296 subs. 1 and 2 of the Code of Criminal Procedure).

to supervise the enforcement procedure

The sentence in criminal cases against adults and adolescents sentenced according to general criminal law is executed by the public prosecution office as the executing authority (cf. section 451 subs. 1 of the Code of Criminal Procedure). In criminal proceedings against juveniles and – where criminal law relating to young people is applied to them – also against adolescents, the execution of the sentence is incumbent on the youth court judge as the enforcement officer (section 82 subs. 1 sentence 1 and section 110 of the Youth Courts Act).

106) Does the public prosecutor also have a role in civil and/or administrative cases?

Yes

No

If yes, please specify:

An application by the aggrieved person or his heir making a property claim against the accused with the effect of joining criminal proceedings (section 403 of the Code of Criminal Procedure) can be lodged with the public prosecution office at the same time as the criminal charge, i.e. before the case is pending with the court (cf. Meyer-Goßner, StPO, 54th ed., section 404 marginal No. 4).

In accordance with No. 173 of the Guidelines for Criminal and Administrative Fines Proceedings, the public prosecutor must therefore inform the aggrieved person or his/her heir as a rule and as early as possible of the possibility to assert a compensation claim in accordance with sections 403 et seqq. of the Code of Criminal Procedure. Here, the aggrieved person is informed of the possibility of legal aid (section 404 subs. 5 of the Code of Criminal Procedure), the form and content of the application (section 404 subs. 1 of the Code of Criminal Procedure) and of the right to attend the main hearing (section 404 subs. 3 of the Code of Criminal Procedure). Also he/she is to be informed that it is recommended as a rule to make the application as soon as possible, that he/she may assert the claim, if it is not awarded to him/her, in the civil courts (section 406 subs. 3 of the Code of Criminal Procedure) and that the court may dispense with a decision on the application for specific reasons (section 406 subs. 1 of the Code of Criminal Procedure).

In accordance with No. 174 subs. 1 of the Guidelines for Criminal and Administrative Fines Proceedings, the public prosecutor only makes a statement on the compensation application if this is necessary in order to award sufficient attention to the offence under criminal law or in order to prevent a delay in the criminal proceedings. In accordance with No. 174 subs. 2 of the Guidelines for Criminal and Administrative Fines Proceedings, the public prosecutor must rapidly transmit any compensation application which it receives to the court because the legal impact of the application (section 404 subs. 2 of the Code of Criminal Procedure) does not begin to apply until it has been received by the court.

107) Case proceedings managed by the public prosecutor: total number of 1st instance criminal cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Received by the public prosecutor	Cases discontinued by the public prosecutor (see 108 below)	Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Cases charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	4 615 485	2 493 032	199 144	1 081 255

108) Total cases which were discontinued by the public prosecutor. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Number
Total cases which were discontinued by the public prosecutor (1+2+3)	2 493 032
1. Discontinued by the public prosecutor because the offender could not be identified	
2. Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	
3. Discontinued by	

the public prosecutor for reasons of opportunity
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109) Do the figures include traffic offence cases?

- Yes
 No

D.2**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter**
 the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

Re Question 89: The dates and deadlines are determined by the court according to the statutory requirements. It is however customary and expedient in individual cases in particular to coordinate the dates for the oral hearing with the parties and with counsel. Re Question 97: The total number does not include Nos. 3 to 5. Re Question 99: This includes the contentious and non-contentious civil and commercial cases which are not covered in accordance with Nos. 1 and 2. Re Question 103: The Act to Reform the Procedure in Family Cases and in the Matters of Non-Contentious Litigation (Gesetz zur Reform des Verfahrens in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FGG-Reformgesetz) came into force on 1 September 2009 (Federal Law Gazette Part I 2008, page 2586). The Act on the Procedure in Family Cases and in the Matters of Non-Contentious Litigation (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit - (FamFG), which hence came into force, regulates proceedings before the family court, amongst other things.

Re Question 102

- (1) The percentage relates to legal matters pending for more than 24 months.
(2) The information regarding the average duration is stated in months.

Re Question 107

The information includes first-instance criminal cases at the public prosecution offices at the Regional Courts (proceedings against accused persons known by name) and the public prosecution offices at the Higher Regional Courts (proceedings against unknown).

not incl. proceedings against unknown. Investigation proceedings against unknown have not been shown since the year under report 2010.

Please indicate the sources for answering the questions 91, 94, 97, 98, 99, 100, 101, 102, 107 and 108.

re 91:

Federal Office of Justice: business overviews of the Local Courts for 2010;
Federal Statistical Office (ed.):
Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"
Fachserie 10 Reihe 2.2 "Familiengerichte 2010"
Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"
Fachserie 10 Reihe 2.5 "Finanzgerichte 2010"
Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"
Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 94 and 98:

Federal Statistical Office (ed.): Fachserie 10 Reihe 2.3 "Strafgerichte 2010"

re 97:

Federal Statistical Office (re):
Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"
Fachserie 10 Reihe 2.2 "Familiengerichte 2010"
Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"
Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"
Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 99:

Federal Statistical Office (re):
Fachserie 10 Reihe 2.1 "Zivilgerichte 2010"
Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2010"
Fachserie 10 Reihe 2.5 "Finanzgerichte 2010"
Fachserie 10 Reihe 2.7 "Sozialgerichte 2010"
Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 100: Federal Statistical Office: Fachserie 10 Reihe 2.3 "Strafgerichte 2010";
Overview of the workload at the criminal senates of the Federal Court of Justice 2010

re 101 and 102:

Federal Statistical Office (re):
Fachserie 10 Reihe 2.2 "Familiengerichte 2010"
Fachserie 10 Reihe 2.8 "Arbeitsgerichte 2010"

re 107 and 108:
Federal Statistical Office (re):
Fachserie 10 Reihe 2.6 "Staatsanwaltschaften 2010"

5. Career of judges and public prosecutors

5. 1. Recrutement and promotion

5. 1. 1. Recrutement and promotion

110) How are judges recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If other, please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the individual jurisdictions.

Bavaria:

Finance courts:

The posts in the finance courts are not occupied externally. Especially well-suited civil servants of the tax administration are selected to work as a judge in a finance court after an unspecified period spent working in the administration. There is hence no special appointment procedure.

111) Authority(ies) in charge: are judges initially/at the beginning of their carrier recruited and nominated by:

[This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former)].

- An authority made up of judges only?
- An authority made up of non-judges only?
- An authority made up of judges and non-judges?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of judges. If there are several authorities, please describe their respective roles:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the individual jurisdictions.

Baden-Württemberg:

Ministry of Justice and Presidial Council: The Minister of Justice decides on the appointment of judges on probation. Their employment beyond a period of 24 months must be approved by the Presidial Council, which is a judicial co-determination body. The Minister of Justice decides on life tenure in agreement with the Presidial Council. If no agreement is reached, a decision is taken by the Judicial Election Committee to which Landtag delegates as well as judges belong.

Bavaria:

Labour and social courts: Bavarian State Ministry of Labour and Social Affairs, Family and Women and respective "Chief President".

Administrative courts: appointment by the Bavarian State Ministry of the Interior, judicial career path however only with the consent of the President of the respective Administrative Court (= 2 interviews).

Brandenburg:

Ministry of Justice, as well as right of proposal by the President of the Brandenburg Higher Regional Court for ordinary courts. The election is carried out by the Judicial Election Committee.

Berlin:

Senator for Justice and Judicial Election Committee.

Bremen:

Senator for Justice and the Constitution, prepared by the President of the Superior Court.

Hesse:

Nominated by the Minister of Justice after consultation of the Judicial Election Committee, which is made up of judges and non-judges.

Lower Saxony:

Lower Saxony Ministry of Justice, Selection Commission with representatives of the intermediate authorities.

North Rhine-Westphalia:

President of the Higher Administrative Court for the Land North Rhine-Westphalia,

President of the Higher Regional Court,

President of the Regional Social Court of North Rhine-Westphalia,

President of the Finance Court,

President of the Regional Labour Court

(respectively for the remit in question).

Rhineland-Palatinate:

As a rule judges are seconded for a time to the Ministry of Justice and have a right of co-determination in personnel selection.

Saxony-Anhalt:

Ministry of Justice and Equality in agreement with the President of the respective Higher Court.

Schleswig-Holstein:

Ministry of Justice, Equality and Integration of the Land Schleswig-Holstein.

112) Is the same authority competent for the promotion of judges?

Yes

No

If no, which authority is competent for the promotion of judges ?

*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BY, BE, BB, HB, HH, NI, ST, SN, SH stated "Yes"; the other Federal Länder answered "No".

Baden-Württemberg:

The same procedure applies to promotion as to the award of life tenure.

Bavaria:

Finance courts:

In accordance with Art. 15 para. 1 sentence 2 first clause of the Bavarian Judiciary Act (BayRiG) in conjunction with Art. 2 second clause of the Implementing Act to the Code of Finance Court Procedure (AGFGO), the Bavarian State Minister of Finance is responsible for the nomination of judges at the finance courts. In accordance with Art. 15 para. 1 sentence 1 of the Bavarian Judiciary Act in conjunction with Art. 2 first clause of the Implementing Act to the Code of Finance Court Procedure, the Presidents of the finance courts are nominated by the State Government.

Brandenburg:

The President of the Brandenburg Higher Regional Court, but only within the meaning of a right of proposal.

Hesse:

The promotion of judges falls within the sole jurisdiction of the Hesse Ministry of Justice.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Lower Saxony Ministry of Justice.

North Rhine-Westphalia:

Ministry of Justice of North Rhine-Westphalia.

Rhineland-Palatinate:

Minister of Justice and Judicial Election Committee.

Saarland:

The Council of Ministers.

Schleswig-Holstein:

Ministry of Justice, Equality and Integration of the Land Schleswig-Holstein in cooperation with a Judicial Election Committee.

Thuringia:

No information.

113) Which procedures and criteria are used for promoting judges? Please specify.

Baden-Württemberg:

The selection decision is taken in line with the constitutional principle of the selection of the best. In doing so, the requirements of promotion offices are detailed in requirement profiles.

Bavaria:

Ordinary courts:

The promotion of judges is based on the criteria of aptitude, qualifications and achievements. The corresponding posts are advertised within the respective remit. In accordance with Art. 35 of the Bavarian Judiciary Act, the Presidial Council is to be involved in each assignment of a judicial office with a higher final basic salary than that of a starting office.

Finance courts:

The principle of performance applies (Art. 33 of the Basic Law and Art. 94 para. 2 in conjunction with section 71 of the German Judiciary Act (DRiG) and Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with 9 of the Civil Servant Status Act, as well as Art. 16 of the Performance Career Path Act [Leistungslaufbahngesetz]). Accordingly, the most suitable person is to be selected, relevant consideration being given to the official assessment.

Labour and social courts:

Advertisement, decision according to the principle of performance.

Administrative courts:

Aptitude, qualifications and achievements (assessment)

Berlin:

Principle of performance, selection of the best on the basis of current official assessments

Brandenburg:

Selection proceedings in accordance with Article 33 para. 2 of the Basic Law, Article 21 para. 2 of the Constitution of the Land Brandenburg. Further, the General "Trialling for Promotion Offices" Ordinance and specific requirement profiles apply.

Bremen:

Art. 33 of the Basic Law.

Hamburg:

Promotion office advertised, selection among the applicants on the basis of assessments and statements by the court presidents concerned.

Hesse:

Promotions are effected exclusively according to performance and aptitude criteria (selection of the best).

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Principle of performance; based on assessments

North Rhine-Westphalia:

Promotion offices are advertised in the Gazette of the Ministry of Justice for the Land North Rhine-Westphalia. Decisions on their occupation are taken acc. to the report of the President of the Higher Court with jurisdiction, the selection being made among several applicants according to aptitude, qualifications and professional achievements (Art. 33 para. 2 of

the Basic Law).

Rhineland-Palatinate:

Aptitude, qualifications and achievements.

Saarland:

Selection of the best according to aptitude, qualifications and professional achievements.

Saxony:

Aptitude, qualifications and professional achievements.

Saxony-Anhalt:

Criteria: aptitude, achievements, qualifications, proven in each case by recent (ad hoc) assessments (Art. 33 para. 2 of the Basic Law).

Procedure:

- promotion post advertised.
- applicants' ad hoc assessment drawn up by the President of the respective Higher Court if no sufficiently recent assessment available.
- report of the respective President to the Ministry of Justice and Equality on occupation of the post.
- vote by the Ministry of Justice and Equality.
- vote forwarded to the respective Presidial Council for approval (if not approved, first of all an attempt is made to reach an oral agreement between the Ministry and the Presidial Council. If this does not lead to an agreement, the arbitration unit can be called upon. This body rules by issuing an order. Within one month after the order of the agreement agency, the Minister-President may be seized with a request to make a decision.)
- Once the Presidial Council has approved, with promotions to remuneration group R2 the successful applicant is nominated by the Ministry of Justice and Equality. In case of promotions higher than R2Z, a personnel proposal is made to the Minister-President for approval.
- After the approval of the latter has been given, the nomination is made by the Ministry of Justice and Equality. Should the Minister-President refuse to consent, a new vote must be taken.

Schleswig-Holstein:

Selection of the best acc. to aptitude, qualifications and professional achievements.

Thuringia:

No information.

114) Is there a system of qualitative individual assessment of the judges' activity?

- Yes
 No

115) Is the status of prosecution services:

- Indépendant?
 Under the authority of the Minister of justice ?
 Other?

Please specify:

*) not including information from Mecklenburg Western Pomerania and Thuringia.
 Saxony-Anhalt was the only Federal Land to enter a cross at "independent"; the other Federal Länder all stated "subject to the Minister of Justice".
 Baden-Württemberg: The Minister of Justice exercises service supervision over the public prosecution offices. However, no individual instructions which relate to the public prosecution office activities are as a rule made in established practice.
 Bremen: cf. sections 141 et seqq. of the Courts Constitution Act, esp. section 147 No. 2 of the Courts Constitution Act
 Hamburg: The Authority for Justice and Equality carries out service supervision over the public prosecution offices.
 Mecklenburg-Western Pomerania: No information.
 North Rhine-Westphalia: The public prosecution offices are subject to the service and specialist supervision of the Ministry of Justice, but they are factually independent with regard to performance of their concrete procedures.
 Saarland: Bound by instructions in accordance with sections 146 and 147 of the Courts Constitution Act.
 Saxony-Anhalt: The chief public prosecutor is not a politically-appointed civil servant in Saxony-Anhalt. He/she is therefore not bound by instructions with regard to the investigation activities carried out in his/her district. In other respects reference is made to sections 147 and 150 of the Courts Constitution Act.
 Schleswig-Holstein: Bound by instructions in accordance with sections 146 and 147 of the Courts Constitution Act.
 Thuringia: No information.

116) How are public prosecutors recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
 Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
 A combination of both (competitive exam and working experience)
 Other

If "other", please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW and SH were the only Federal Länder to enter a cross at "a combination of both"; the other Federal Länder stated "mainly through a competitive exam".

Baden-Württemberg:

The Ministry of Justice does not distinguish in appointments between judges and public prosecutors since beginners are deployed both at the public prosecution office and at the court.

117) Authority(ies) in charge: are public prosecutors initially/at the beginning of their carrier recruited by:

[This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).]

- An authority composed of public prosecutors only?
- An authority composed of non-public prosecutors only?
- An authority composed of public prosecutors and non-public prosecutors?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of public prosecutors. If there are several authorities, please describe their respective roles:

*) not including information from Mecklenburg-Western Pomerania And Thuringia. Baden-Württemberg: Appointments and nominations are made by the Minister of Justice. With appointment to life tenure, the main council of public prosecutors, which is a co-determination body of public prosecutors, is involved. The main council of public prosecutors does not have any right of veto, but in practice nominations are made in agreement with the main council of public prosecutors. Berlin: as answer re Question 111. Brandenburg: The chief public prosecutor of the Land Brandenburg within the meaning of a right of proposal. Selections are effected by the judicial selection committee, and nominations are carried out by the Ministry of Justice. Bremen: Senator for Justice and the Constitution, prepared by the chief public prosecutor. Hamburg: Authority for Justice and Equality, together with a judicial selection committee. Hesse: cf. answer re Question 111 analogously. Lower Saxony: Lower Saxon Ministry of Justice, selection commission with representatives of the chief public prosecution offices. North Rhine-Westphalia: Chief public prosecutor. Rhineland-Palatinate: Ministry of Justice. Public prosecutors are as a rule seconded to the Ministry for a time, where they have a right of co-determination in personnel selection. Saarland: Ministry of Justice. Saxony-Anhalt: Ministry of Justice and Equality in agreement with the chief public prosecutor. Schleswig-Holstein: Ministry of Justice, Equality and Integration of the Land Schleswig-Holstein.

118) Is the same authority formally responsible for the promotion of public prosecutors?

- Yes
- No

If no, please specify which authority is competent for promoting public prosecutors:

*) not including information from Mecklenburg-Western Pomerania and Thuringia. BW, BY, BE, BB, HB, HH, NI, RP, SN, ST, SH stated "Yes"; the other Federal Länder answered "No".

Brandenburg:

The chief public prosecutor of the Land Brandenburg within the meaning of a right of proposal. Jurisdiction lies with the Ministry of Justice.

Hesse:

The promotion of public prosecutors falls in the exclusive jurisdiction of the Hesse Ministry of Justice.

Lower Saxony:

Lower Saxony Ministry of Justice.

North Rhine-Westphalia:

Ministry of Justice of North Rhine-Westphalia

119) Which procedures and criteria are used for promoting public prosecutors? Please specify:

Baden-Württemberg:

The selection decision is in line with the constitutional principle of the selection of the best. The requirements of promotion offices are detailed in requirement profiles.

Bavaria:

The promotion of public prosecutors is based on the criteria of aptitude, qualifications and achievements. The corresponding posts are advertised within the area of the authority. In accordance with Art. 48 of the Bavarian Judiciary

Act, the main council of public prosecutors is to be involved when any office of public prosecutor is conferred with a higher final basic salary than that of a starting office.

Berlin:

as answer re Question 111.

Brandenburg:

Selection procedure in accordance with Article 33 para. 2 of the Basic Law and Article 21 para. 2 of the Constitution of the Land Brandenburg. Further, the General Order on "Probation for Promotion Offices" (Allgemeine Verfügung "Erprobung für Beförderungssämter") and specific requirement profiles apply.

Bremen:

Art. 33 para. 2 of the Basic Law.

Hamburg:

Promotion office advertised, selection among the applicants on the basis of assessments and statements from the public prosecution offices involved.

Hesse:

Promotions are carried out exclusively according to performance and aptitude criteria (selection of the best).

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Performance principle, based on assessments.

North Rhine-Westphalia:

Promotion offices are advertised in the Ministry of Justice Gazette for the Land North Rhine-Westphalia. Decisions on occupation posts are taken acc. to the report of the competent chief public prosecutor, the selection being made among several applicants according to aptitude, qualifications and professional achievements (Art. 33 para. 2 of the Basic Law).

Rhineland-Palatinate:

Aptitude, qualification and performance.

Saarland:

Selection of the best according to aptitude, qualifications and professional achievements.

Saxony:

Aptitude, qualifications and professional achievements.

Saxony-Anhalt:

cf. Question 113.

Schleswig-Holstein:

Selection of the best according to aptitude, qualifications and professional achievements

Thuringia:

No information.

120) Is there a system of qualitative individual assessment of the public prosecutors' activity?

Yes

No

121) Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?

Yes

No

If yes, are there exceptions? (e.g. dismissal as a disciplinary sanction)? Please specify:

In accordance with section 64 subs. 2 of the German Judiciary Act, only the disciplinary measure of removal from office can be imposed on a judge of one of the supreme courts of the Federation. This ends the service relationship, cf. section 10 subs. 1 sentence 1 of the Federal Disciplinary Act (Bundesdisziplinargesetz). The respective provisions of Land law apply to judges in the service of a Land.

122) If there is a probation period for judges (e.g. before being appointed "for life"), how long is this period? If the situation is not applicable in your country, please indicate NAP.

Duration of probation period (in years)	
	5

123) Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?

Yes

No

If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify:

The employment relationship of a public prosecutor ends for instance
 – on a criminal judgment gaining legal force by means of which the public prosecutor has been sentenced to at least one year's imprisonment because of an intentional criminal offence (section 41 subs. 1 of the Federal Public Service Act (Bundesbeamtengesetz) and section 24 subs 1 of the Civil Servant Status Act),
 – if the disciplinary measure of removal from civil service employment is imposed on the public prosecutor because of a serious offence committed in office (section 10 of the Federal Disciplinary Act [Bundesdisziplinargesetz] and the corresponding provisions of the Land Disciplinary Acts [Landesdisziplinargesetze]),
 – as a matter of principle also on changing into a public law employment relationship with another employer (section 31 of the Federal Public Service Act and section 22 of the Civil Servant Status Act).

124) If there is a probation period for public prosecutors, how long is this period? If the situation is not applicable in your country, please indicate NAP.

	Duration of the probation period (in years)
	5

125) If the mandate for judges is not for an undetermined period (see question 121), is it renewable? What is the length of the mandate (in years)?

NAP

126) If the mandate for public prosecutors is not for an undetermined period (see question 123), is it renewable? What is the length of the mandate (in years)?

NAP

E.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

Bremen:

Re Question 114: cf. Article 97 of the Basic Law (apart from the assessment system).

Hamburg:

The probationary period of a public prosecutor is served as a judge on probation. Judicial appointments are proposed to the Senate by a judicial selection committee.

Hesse:

Re Question 122: In accordance with section 10 subs. 1 of the German Judicial Act, the judicial probationary period is fundamentally three years, but was extended by six months to three years and six months by a Hesse circular from 2003 for all judges on probation.

Re Question 122: Not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: "No" was stated for the Bavarian Finance Courts; for the Bavarian administrative courts "Yes" was stated, with 2 - 5 years.

Lower Saxony:

re Questions 122 and 124: incl. probation as a judge.

North Rhine-Westphalia:

In all jurisdictions, as well as at the public prosecution offices, appointments are made on the basis of a structured selection procedure which is closely orientated towards the requirement profiles for the starting offices of a judge of the respective jurisdiction or of a public prosecutor which were governed by a general order of the Ministry of Justice from 2005. The concrete design of the selection procedure differs depending on the competent appointment authority or jurisdiction.

Rhineland-Palatinate:

The basis for the selection decision is formed by the assessments made by the immediate superiors.

Saxony-Anhalt:

To appoint judges and public prosecutors, interviews take place with the applicants in the shape of identically-structured selection talks with the involvement of the President of the superior court involved in each case or of the chief public prosecutor and the equality commissioner.

The appointment as well as formal nomination is carried out by the Ministry for Justice and Equality.

Re Question 124: not including information from Mecklenburg-Western Pomerania and Thuringia.

5. 2. Training

5. 2. 1. Training

127) Training of judges

Initial training (e.g. attend a judicial school, traineeship in the court)	Compulsory
General in-service training	Optional
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Optional
In-service training for management functions of the court (e.g. court president)	Optional
In-service training for the use of computer facilities in courts	Optional

128) Frequency of the in-service training of judges:

General in-service training	Regular (e.g. every 3 months)
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. court president)	Regular (e.g. every 3 months)
In-service training for the use of computer facilities in courts	Regular (e.g. every 3 months)

129) Training of public prosecutors

Initial training	Compulsory
General in-service training	Optional
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Optional
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Optional
In-service training for the use of computer facilities in office	Optional

130) Frequency of the in-service training of public prosecutors

General in-service training	Regular (e.g. every 3 months)
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Regular (e.g. every 3 months)
In-service training for the use of computer facilities in office	Regular (e.g. every 3 months)

131) Do you have public training institutions for judges and / or prosecutors? If yes, please indicate in the "comment" box below the budget of such institution(s).

If your judicial training institutions do not correspond to these criteria, please specify it.

	Initial training only	Continuous training only	Initial and continuous training
One institution for judges	No	No	NAP
One institution for prosecutors	No	No	NAP
One single institution			

for both judges and prosecutors	No	No	Yes
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Comment :

€ 4 million (Federation)

*) Not including information from Mecklenburg-Western Pomerania, Thuringia, North Rhine-Westphalia and Bremen.

In addition to the German Judicial Academy, which is funded jointly by the Federation and the Länder, some Länder maintain their own judicial academies.

Baden-Württemberg:

Training until the conclusion of the "First Examination in Law" takes place at the Universities. The preparation period for the Second State Examination in Law is carried out in courts, public prosecution offices, solicitors' offices, authorities and other facilities, and is organised by the Higher Regional Courts.

The further training of judges and public prosecutors is carried out nationally by the German Judicial Academy. In other respects, the further training is organised at Land level by the Ministry of Justice and the courts and public prosecution offices of the Land. For all judicial officials (not including prisons and without the contribution towards the funding of the Judicial Academy) an amount of € 1,167,300 is available for this in 2010. The budget for training courses in the IT field was €1,373,600 for all judicial officials (not including prisons). A breakdown by judges and public prosecutors on the one hand and other judicial officials on the other cannot be provided.

The further training on the use of IT applications is obligatory in some cases and optional in others. It is optional with regard to office communication. Training in specialist applications is however obligatory (but does not entail sanctions).

Brandenburg:

Re Question 131:

Only the material costs for training (costs of the trainee jurist working parties at Higher Regional Courts and KG) and further training (speakers' fees and board and lodging costs for participants at Joint Legal Training Office of the Länder Berlin and Brandenburg) are stated. Including the remuneration of the staff of the court and Senate administrations participating in basic and further training, as well as the speakers themselves, which are not included in the figures above, would lead to a much higher amount.

Hamburg:

The Federation and the Länder operate the Judicial Academy jointly. The finance share of the Free and Hanseatic City of Hamburg in this is € 21,000. In other respects, local further training is offered as needed.

Lower Saxony:

Budget information cannot be provided since the individual basic and further training activities are paid for from different budget areas and no separate statistics on them are kept.

North Rhine-Westphalia:

In North Rhine-Westphalia the further training of all judicial officials, in other words not only that of judges and public prosecutors, is a matter for the Judicial Academy of the Land North Rhine-Westphalia. The share of the budget which is expended only on the further training of judges and public prosecutors is not recorded.

Saxony-Anhalt (from E.2):

An institution for the further training of judges and public prosecutors is the German Judicial Academy, which is jointly funded by the Federation and the Länder. Judges and public prosecutors from all over Germany receive further training at the Academy, with its two conference centres in Trier and Wustrau. The share of the costs for the Land Saxony-Anhalt is € 56,500 (2010). These conferences are organised by the Federal Länder and the Federation.

At Land level, the basic and further training division of the Ministry of Justice and Equality organises further training for judges and public prosecutors, as well as conferences for the other officials at the courts and public prosecution offices. Family law conferences have taken on a special focus in recent years through the reforms in the pensions settlement and in the Act on the Procedure in Family Cases and in the Matters of Non-Contentious Litigation. A one-day conference took place on European human rights protection in 2010. The conference provided an overview of European human rights protection in accordance with the ECHR, in particular on Art. 6 (excessive length of proceedings).

There is no separate budget for judges' further training (cf. 1.2 Budget data on the Judiciary Question 6.6).

E.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

Re Question 127:

not including information from Mecklenburg-Western Pomerania and Thuringia.

The information for Bavaria diverges with regard to the respective individually-stated jurisdictions: Labour and social courts: 2-month familiarisation at the beginning of the second instance; Finance Courts: completion of familiarisation period in accordance with section 5 subs. 2 of the Finance Officials Training Act (Steuerbeamten-Ausbildungsgesetz). Legal preparatory service.

Re Question 128:

not including information from Mecklenburg-Western Pomerania and Thuringia. The information for Bavaria diverges in some cases with regard to the respective individually-stated jurisdictions.

Re Question 129:

not including information from Mecklenburg-Western Pomerania and Thuringia. Bremen has also not provided any information, but refers in this context to the remarks made re E.2.

Re Question 130:

not including information from Mecklenburg-Western Pomerania and Thuringia.

Brandenburg:

The Joint Legal Training Office of the Länder Berlin and Brandenburg is responsible for the further training of judges and public prosecutors in the Länder Berlin and Brandenburg. The basic training ("Referendariat") takes place separately, for Brandenburg at Brandenburg Higher Regional Court and for Berlin at Berlin Court of Appeal; it is only the Second State Examination in Law after completion of the Referendariat for which the Joint Legal Training Office of the Länder Berlin and Brandenburg is responsible.

Re Questions 128 and 130:

The range of further training is regular in the sense that more than 120 of the Land's own further training events are offered annually for judges and public prosecutors. In 2010, a total of 1,730 participants from among judges and public prosecutors from Berlin and Brandenburg attended on a total of 2,626 days of the Land's own further training events which were organised and implemented by the Joint Legal Training Office of the Länder Berlin and Brandenburg.

Bremen:

German legal training is characterised by the fundamental concept of the "uniform lawyer". Anyone passing the Second State Examination has qualification for judicial office and can immediately become a judge, public prosecutor, solicitor or administrative official. Guidance by a "training judge", as well as mentoring programmes (help in departmental work) and "intervention" (collegial mutual support in everyday work) are obligatory for judges on probation in the Land Bremen. Moreover, monthly events take place on specific specialist topics for those starting off in the profession. Furthermore, younger officials may attend further training events in the "Northern Association". Further training for judges in special panels of deciding judges takes place primarily at the German Judicial Academy or at related facilities such as the Federal Finance Academy. Additionally, special further training is provided for administrative tasks, including supervisory tasks, and for IT tasks by the events organised by the Bremen judiciary itself and by the basic and further training centre of the Free and Hanseatic City of Bremen.

Beginners at the public prosecution office have to present all completed work to an appointed experienced public prosecutor for countersigning during their familiarisation period. The chief public prosecutor offers specific further training courses twice monthly on topics such as "emergency public prosecution service", "dealing with items of evidence", "telecommunication surveillance" and "the law on appeals on points of law".

5. 3. Practice of the profession

5. 3. 1. Practice of the profession

132) Salaries of judges and public prosecutors.

	Gross annual salary in €, on 31 December 2010	Net annual salary in €, on 31 December 2010
First instance professional judge at the beginning of his/her career	41 127	
Judge of the Supreme Court or the Highest Appellate Court (please indicate the average salary of a judge at this level, and not the salary of the Court President)	73 679	
Public prosecutor at the beginning of his/her career	41 127	
Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the salary of the Public prosecutor General)	73 679	

Comment :

1) average annual gross salary.

2) No information on annual net salary is available on the basis of the personal circumstances of judges and public prosecutors. The federal average was calculated here unweighted; this means that the annual salaries of the Federal Länder were added and divided by the number of Länder, regardless of how many judges work in the respective Federal Land. This is because it is unknown how many individuals draw the respective salary per Land.

3) The salary tables of the Federal Länder with remuneration group R1 - basic salary starting level (unmarried), no children, tax class I) in 2010 (as per year end) were included. Unweighted federal average (cf. Note 1).

4) The salary tables of the Federal Länder with remuneration group R2 - basic salary starting level (unmarried), no children, tax class III) in 2010 (as per year end) were included. Unweighted federal average (cf. Note 1).

133) Do judges and public prosecutors have the following additional benefits?

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	Yes	Yes
Housing	No	No
Other financial benefit	Yes	Yes

134) If other financial benefit, please specify:

Berlin:

Benefits towards medical expenses.

Mecklenburg-Western Pomerania:

No information.

North Rhine-Westphalia:

not applicable, cf. No. 133.

Saxony-Anhalt:

Re "Special pension": Unlike employees, judges and public prosecutors acquire a claim to pensions in accordance with the Civil Service Benefits Act (Beamtenversorgungsgesetz) and are not insured in the statutory pensions insurance. Re

"Other financial benefit": Unlike employees, judges and public prosecutors acquire a claim to benefits towards medical expenses and do not have to take up statutory health insurance. Pensions and benefits towards medical expenses in the Land Saxony-Anhalt largely correspond to the claims to which federal officials are entitled.

Thuringia:

No information.

135) Can judges combine their work with any of the following other functions ?

	With remuneration	Without remuneration
Teaching	Yes	Yes
Research and publication	Yes	Yes
Arbitrator	Yes	Yes
Consultant	Yes	Yes
Cultural function	Yes	Yes
Political function	Yes	Yes
Other function	Yes	Yes

136) If rules exist in your country (e.g. authorisation needed to perform these activities), please specify. If "other function", please specify.

With regard to the obligation to have ancillary activities approved, section 46 of the German Judiciary Act, sections 65 and 66 of the Federal Public Service Act and the Ordinance on the Ancillary Activities of Judges in the Federal Civil Service (Verordnung über die Nebentätigkeit der Richter im Bundesdienst) apply to federal judges. Sections 71 subs. 1 of the German Judiciary Act and section 42 of the Federal Civil Service Framework Act (Beamtenrechtsrahmengesetz) in conjunction with the provisions of the respective Land law apply to judges in the service of a Land. If no exceptional arrangement applies, non-remunerated ancillary activities do not have to be approved. Taking over care for someone other than a family member is for instance excepted from this. The following are furthermore not subject to approval: writing, artistic, academic or lecturing activities, administration of own property or of property that is at the disposal of the judge, as well as independent activity as an expert witness by academic staff of universities connected with teaching or research teaching and research connected with independent activity as an expert witness by judges at public universities and academic institutes and facilities, as well as activities in defence of professional interests in trade unions or professional associations or in judges' self-help facilities. All other ancillary activities are subject to approval.

Baden-Württemberg:

Ancillary activities of judges must be reported, and some must be approved. Approval is refused if there is reason for concern that the ancillary activity will impair official interests, or if the ancillary activity will impede the proper performance of official duties.

Bavaria:

Ordinary courts/finance, labour and social courts:

Other tasks can be carried out with or without remuneration if official interests are not impaired. Official interests are impaired particularly if the judge's working capacity is excessively burdened by the nature and the extent of the activity (criteria: remuneration and time) or the exercise of the tasks is harmful to the reputation of the public administration. For the exercise of such tasks there is as a matter of principle a requirement for approval in accordance with Art. 2 para. 1 of the Bavarian Judicial Act in conjunction with Art. 81 of the Bavarian Public Service Act (BayBG), unless referring to ancillary activities not requiring approval in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 82 of the Bavarian Public Service Act or if the activity is carried out at the request of the employer.

Administrative courts:

An application for approval/report of an ancillary activity is to be lodged in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 81 and 82 of the Bavarian Public Service Act and sections 6 and 7 of the Bavarian

Ancillary Activities Ordinance (Bayerische Nebentätigkeitsverordnung).

Brandenburg:

Judges' Ancillary Activities Ordinance (Richternebenstätigkeitsverordnung), Land Public Service Act.

Berlin:

Ancillary activities must be approved.

Bremen:

Arbitration: A judge may as a matter of principle act additionally as an arbitrator or conciliator if this was approved in advance. As to (non-)remuneration, no more detailed information is available on this (cf. section 40 of the German Judiciary Act).

Adviser: Judges may not draw up expert legal opinions, nor may they give legal advice for remuneration outside the course of their official duties. However, a professor of law or of political science who has civil servant status and who is also a judge may draw up expert legal opinions and give legal advice with the permission of the highest public authority administering the courts (cf. section 41 of the German Judiciary Act).

Hamburg:

Ancillary activities may be generally carried out if they do not run counter to official interests and are compatible with judicial office. They must however be reported as a matter of principle.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Remunerated, non-official ancillary activities must be reported, and are subject to a reserve of approval, as are some non-remunerated ancillary activities; judges may not draw up expert legal opinions outside the course of their official duties (section 41 subs. 1 of the German Judiciary Act).

North Rhine-Westphalia:

First of all, the provisions of the German Judiciary Act apply, above all: sections 4 subs. 2 and 39 et seqq. In other respects, via the provision on references contained in section 4 subs. 1 sentence 1 of the Land Judiciary Act of North Rhine-Westphalia - LRiG NRW - the Land Public Service Act North Rhine-Westphalia (Landesbeamtengesetz NRW) and the North Rhine-Westphalia Ancillary Activities Ordinance apply accordingly to judges as a matter of principle. Ancillary activities subject to approval are regulated in section 49 of the North Rhine-Westphalia Land Public Service Act. Prior approval is accordingly necessary in the following example cases: to take on a guardianship, custodianship or execution of a will; to take on an ancillary office; to take on ancillary employment for a fee, to engage in a commercial activity, to help out in a commercial operation or to exercise a liberal profession; to take up a place on the Board, Supervisory Council, Administrative Council or other body of a corporation or enterprise operated in another legal form if the latter pursues an economic purpose, as well as to take on a trusteeship. Moreover, approval is to be refused if the ancillary activity may impair official interests. This depends on the individual case (e.g. possible influencing of impartiality or independence; excessively high burden on working capacity by the nature and the extent of the ancillary activity; possible damage to the reputation of the public administration).

More conclusive details on "other function" cannot be provided. These include highly varying individual case constellations (e.g.: permissible: deputy honorary mayor; not permissible: honorary activity in an ethics commission of the Chamber of Physicians; activities in commercial bodies of local authority enterprises operating under private law)

Rhineland-Palatinate:

Academic activities must be reported; other ancillary activities must be approved. Approval is only given if the performance of the office is not impaired.

Saarland:

Section 4 of the Saarland Judiciary Act in conjunction with sections 84 et seqq. of the Saarland Public Service Act.

Saxony:

Via section 3 of the Saxon Judiciary Act (SächsRiG), provisions regulated for civil servants on the law on ancillary activities apply mutatis mutandis. A requirement of approval may emerge from section 82 subs. 1 of the Saxon Public Service Act (SächsBG) for activity as an adviser.

Saxony-Anhalt:

On activity as an adviser: A judge may not draw up expert legal opinions or give legal advice for remuneration outside of court (section 41 subs. 1 of the German Judiciary Act). He/she may give unremunerated legal advice if this does not constitute an expert legal opinion.

re political activities: With regard to political activities, judges must conduct themselves in and outside office in such a manner that confidence in their independence will not be endangered (section 39 of the German Judiciary Act).

Remunerated activity as a professional politician is hence not possible in addition to exercising judicial office. A function as a parliamentarian or member of the Government is ruled out in accordance with the principle of the separation of powers.

On the obligation to obtain approval: section 17 subs. 2 and 3 of the Judiciary Act of the Land Saxony-Anhalt (Landesrichtergesetz - LRiG) of 28 January 2011 (GVBl. LSA 2011, 30) regulate the obligation to obtain approval as follows:

"(2) The following shall be subject to an obligation to obtain prior approval

1. the following unremunerated ancillary activities:

a) ancillary offices the judge is not obliged to hold in accordance with subs. 1,

b) guardianships or custodianships of other persons than family members, but not a custodianship in accordance with section 26 subs. 4,

c) execution of wills,

d) commercial activities, the exercise of liberal professions or working in one of these activities, and

e) taking up membership of a body of a company, with the exception of a cooperation, as well as taking on a trusteeship,

2. all other ancillary activities not covered by subs. 3.

(3) Obligation for approval shall not be subject to

1. taking up ancillary activities which the judge is obliged to perform in accordance with subs. 1,

2. the administration of own assets or assets at the disposal of the judge,

3. writing, academic, artistic or lecturing activities of the judge,

4. activities as an examiner in the obligatory state specialist examination of the First Examination in Law, as well as in the first or second State Examination in Law or in a career path examination, as well as giving lessons for basic and further training in the public service,

5. activities to defend professional interests in trade unions or professional associations or in self-help facilities of the

public service,

6. unremunerated ancillary activities, unless otherwise determined in subs. 2 No. 1, and

7. activity as a custodian in accordance with section 26 subs. 4."

Schleswig-Holstein:

Section 6 subs. 1 of the Land Judiciary Act and sections 70 et seqq. of the Public Service Act in conjunction with the Ancillary Activities Ordinance.

Thuringia:

No information.

137) Can public prosecutors combine their work with any of the following other functions ?

	With remuneration	Without remuneration
Teaching	Yes	Yes
Research and publication	Yes	Yes
Arbitrator	Yes	Yes
Consultant	Yes	Yes
Cultural function	Yes	Yes
Political function	Yes	Yes
Other function	Yes	Yes

138) Please specify existing rules (e.g. authorisation to perform the whole or a part of these activities). If "other function", please specify:

Baden-Württemberg:

Ancillary activities of public prosecutors must be reported, and some must be approved. Approval is refused if there is reason for concern that the ancillary activity will impair official interests, or if the ancillary activity will impede the proper performance of official duties.

Bavaria:

Other tasks can be carried out with or without remuneration if official interests are not impaired. Official interests are impaired particularly if the judge's working capacity is excessively burdened by the nature and the extent of the activity (criteria: remuneration and time) or the exercise of the tasks is harmful to the reputation of the public administration. For the exercise of such tasks there is as a matter of principle a requirement for approval in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 81 of the Bavarian Public Service Act, unless referring to ancillary activities not requiring approval in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 82 of the Bavarian Public Service Act or if the activity is carried out at the request of the employer.

Administrative courts:

An application for approval/report of an ancillary activity is to be lodged in accordance with Art. 2 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 81 and 82 of the Bavarian Public Service Act and sections 6 and 7 of the Bavarian Ancillary Activities Ordinance.

Brandenburg:

Land Public Service Act.

Berlin:

Ancillary activities must be approved.

Bremen:

The exercise of ancillary activities by public prosecutors falls under the Civil Servant Status Act (BeamtStG). In accordance with section 40 of the Civil Servant Status Act, an ancillary activity must be reported as a matter of principle. It must be placed under a reserve of approval or prohibition insofar as it is likely to impair official interests. Additionally, because of Federalism there are separate Public Service Acts of the Federal Länder which regulate the nature and the extent of the ancillary activity in detail.

Hamburg:

Ancillary activities may be generally carried out if they do not run counter to official interests and are compatible with judicial office. They must however be reported as a matter of principle.

Hesse:

No information.

Mecklenburg-Western Pomerania:

No information.

Lower Saxony:

Remunerated, non-official ancillary activities must be reported, and are subject to a reserve of approval, as are some non-remunerated ancillary activities.

North Rhine-Westphalia:

The provisions of the North Rhine-Westphalia Land Public Service Act - LBG NRW - and the North Rhine-Westphalia Ordinance on Ancillary Activities (Nebentätigkeitsverordnung NRW) are applicable. Ancillary activities subject to approval are regulated in section 49 of the North Rhine-Westphalia Land Public Service Act. Prior approval is accordingly necessary in the following example cases: to take on a guardianship, custodianship or execution of a will; to take on an ancillary office; to take on ancillary employment for a fee, to engage in a commercial activity, to help out in a commercial operation or to exercise a liberal profession; to take up a place on the Board, Supervisory Council, Administrative Council or other body of a corporation or enterprise operated in another legal form if the latter pursues an economic purpose, as well as to take on a trusteeship. Moreover, approval is to be refused if the ancillary activity may impair official interests. This depends on the individual case (e.g. possible influencing of impartiality or independence; excessively high burden on working capacity by the nature and the extent of the ancillary activity; possible damage to the reputation of the public

administration). Additionally, the provisions of the German Judiciary Act apply in some cases. In particular section 41, in accordance with which the drawing up of expert legal opinions and the giving of legal advice are not permitted, is also to be applied mutatis mutandis to public prosecutors, section 122 of the German Judiciary Act.

Rhineland-Palatinate:

Academic activities must be reported; other ancillary activities must be approved. Approval is only given if the performance of the office is not impaired.

Saarland:

In accordance with sections 84 et seqq. of the Saarland Public Service Act, the performance of the ancillary activity of the public prosecutor falls under the Civil Servant Status Act. In accordance with section 40 of the Civil Servant Status Act, an ancillary activity must be reported as a matter of principle. It must be placed under a reserve of approval or prohibition insofar as it is suited to impair official interests.

Additionally, because of Federalism there are separate Public Service Acts of the Federal Länder which regulate the nature and the extent of the ancillary activity in detail.

Saxony:

Via section 3 of the Saxon Judiciary Act (SächsRiG), provisions normed for civil servants on the law on ancillary activities apply mutatis mutandis. A requirement of approval may emerge from section 82 subs. 1 of the Saxon Public Service Act for activity as an adviser.

Saxony-Anhalt:

The right of public prosecutors to exercise an ancillary activity is not in line with the provisions of the law on judges, but with the provisions of civil service law handed down for civil servants:

Civil Servants' Status Act (Beamtenstatusgesetz)

Public Service Act of the Land Saxony-Anhalt (Land Public Service Act - LBG LSA) of 15 December 2009 (GVBl. LSA 2009, 648), most recently amended by Act of 6 October 2011 (GVBl. LSA pp. 680 and 683).

The ancillary activities of public prosecutors are hence not subject to an obligation to obtain approval, but must largely be reported, and are placed under a reserve of prohibition where they may impair official interests:

Section 40 of the Civil Servant Status Act – Ancillary activity

An ancillary activity shall be subject to reporting as a matter of principle. It shall be placed under a reserve of approval or prohibition where it may impair official interests.

Section 75 LBG LSA - Ancillary activities exempt from reporting

(1) The following shall not be subject to a duty to report in accordance with section 40 sentence 1 of the Civil Servants' Status Act

1. ancillary activities which the civil servant is obliged to perform in accordance with section 74,
2. the administration of own assets or assets at the disposal of the civil servant,
3. activities to defend professional interests in trade unions or professional associations or in self-help facilities of civil servants, and
4. unremunerated ancillary activities, excepting:
 - a) performance of an ancillary office not falling under number 1,
 - b) taking over execution of a will or of any guardianship or custodianship other than as designated in section 73 subs. 4,
 - c) commercial or freelance activities or working in one of these activities, or
 - d) to take up a place on the Board, Supervisory Council, Administrative Council or similar body of an enterprise, with the exception of a cooperative.

(2) The civil servant shall on request provide information on an ancillary activity carried out which is exempt from reporting, in particular on its nature and extent, as well as on the remuneration and advantages equivalent to money resulting therefrom.

Section 76 LBG LSA - Prohibition of an ancillary activity

(1) An ancillary activity shall also be prohibited after it has been taken up if it may impair official interests. An impairment to official interests shall particularly be deemed to exist if an ancillary activity

1. by its nature and extent burdens the working capacity to such a degree that the proper performance of official duties may be hindered,
2. may bring the civil servant into conflict with the official duties,
3. is exercised in a manner in which the authority to which the civil servant belongs is active or may act,
4. may influence the impartiality of the civil servant in official activities,
5. may lead to a major restriction of the future official useability, or
6. may damage the reputation of the administration.

The prerequisite of sentence 2 No. 1 applies as a rule if the time required per week to perform one or several ancillary activities exceeds one-fifth of the weekly working hours in accordance with section 63 subs. 1 sentence 1.

(2) Writing, academic, artistic or lecturing activities, as well as independent activity as an expert witness by academic staff of universities connected with teaching or research may only be prohibited where a specific risk exists that their performance will breach official duties.

re advisory activities:

A remunerated advisory activity may be considered likely to influence the impartiality of the civil servant or public prosecutor in official activities, and is hence to be prohibited as a rule.

re political activities:

A remunerated political activity – as a professional politician – is also likely to influence the impartiality of the civil servant or public prosecutor in official activities, and is hence to be prohibited as a rule. There are specific rules such as on parliamentary mandates of civil servants (sections 34 et seqq. of the Lower Saxony Parliamentarians Act [AbgG LSA]) or on ministerial office (section 5 of the Lower Saxony Ministers Act [MinG LSA]).

Schleswig-Holstein:

Section 6 subs. 1 of the Land Judiciary Act and sections 70 et seqq. of the Public Service Act in conjunction with the Ancillary Activities Ordinance.

Thuringia:

No information.

139) Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)?

- Yes
 No

If yes, please specify the conditions and possibly the amounts:

5. 4. Disciplinary procedures**5. 4. 1. Disciplinary procedures****140) Who is authorised to initiate disciplinary proceedings against judges (multiple options possible)?**

- Citizens
 Relevant Court or hierarchical superior
 High Court / Supreme Court
 High Judicial Council
 Disciplinary court or body
 Ombudsman
 Parliament
 Executive power
 Other?
 This is not possible

If "executive power" and/or "other", please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia

- 1) Saxon State Ministry of Justice and for Europe as the highest official authority.
- 2) Citizens can lodge a service supervision complaint, which may lead to the initiation of disciplinary proceedings. The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.
- 3) The immediately superior President, as possibly the next higher service superior the President of the superior court and the Ministry of Justice, can initiate disciplinary proceedings against judges.
- 4) The higher (President of the Higher Regional Court) or the highest service authority (Hesse Ministry of Justice, Integration and Europe) may take over the disciplinary proceedings at any time.
- 5) The competent disciplinary authority for the initiation of disciplinary proceedings against judges at the finance court is the Bavarian Land Office for Tax in accordance with section 4 of the Ordinance on Jurisdictions to Implement the Disciplinary Act and to Represent the Free State of Bavaria in Disciplinary Matters (Verordnung über die Zuständigkeiten zur Durchführung des Bayerischen Disziplinalgesetzes und zur Vertretung des Freistaates Bayern in Disziplinarsachen). In exceptional cases, in accordance with Art. 67 para. 1 of the Bavarian Judiciary Act in conjunction with Art. 2 of the Bavarian Disciplinary Act, it is possible that a judge applies for the initiation of disciplinary proceedings against him/herself in order to eliminate the suspicion of an official misdemeanour.
- 6) The prosecution office at the Bavarian Administrative Courts is the disciplinary authority (section 2 of the Ordinance on Jurisdictions to Implement the Disciplinary Act and to Represent the Free State of Bavaria in Disciplinary Matters). "Other": the person concerned may also initiate disciplinary proceedings against themselves.
- 7) Judicial service court (cf. sections 40 et seqq. of the Bremen Judiciary Act [BremRiG]).
- 8) Ministry of Justice as the highest disciplinary authority.

141) Who has been authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):

- Citizens
 Head of the organisational unit or hierarchical superior public prosecutor
 Prosecutor General /State public prosecutor
 Public prosecutorial Council (and Judicial Council)
 Disciplinary court or body
 Ombudsman

- Professional body
- Executive power
- Other?
- This is not possible

If "executive power" and/or "other", please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia.

- 1) The head of the immediate superior agency, as possibly the next highest service superior of the chief public prosecutor and the Ministry of Justice, may initiate disciplinary proceedings against public prosecutors.
- 2) Citizens can lodge a service supervision complaint, which may lead to the initiation of disciplinary proceedings. The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.
- 3) Saxon State Ministry of Justice and for Europe as the highest official authority.
- 4) Ministry of Justice as the highest official authority.
- 5) The higher (chief public prosecutor) or the highest service authority may take over the disciplinary proceedings at any time.

142) Which authority has disciplinary power on judges? (multiple options possible):

- Court
- Higher Court / Supreme Court
- Judicial Council
- Disciplinary court or body
- Ombudsman
- Parliament
- Executive power
- Other?

If "executive power" and/or "other", please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia.

- 1) The agencies empowered to initiate disciplinary proceedings (see above) can impose a reprimand by means of a disciplinary order. All further disciplinary measures (including fines, reduction of remuneration, demotion, removal from judicial office) first and foremost require the lodging of a disciplinary action by the Ministry of Justice, on which the judicial service courts then rule.
- 2) The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.
- 3) Saxon State Ministry of Justice and for Europe as the highest official authority (imposition of a reprimand possible).
- 4) Ministry of Justice as the highest official authority.
- 5) The court is a service court within the meaning of section 77 of the German Judiciary Act, Art. 67 subs. 1 of the Bavarian Judiciary Act and Art. 42 et seqq. of the Bavarian Discipline Act (BayDG) as a part of the administrative courts
- 6) Service superior
- 7) Reprimand: service superior, section 60 subs. 3 in conjunction with section 37 subs. 2 of the Hesse Discipline Act (HDG); other disciplinary measures: The highest service supervision authority decides on lodging a disciplinary action, section 60 subs. 4 of the Hesse Judiciary Act (HRiG), the service court rules on the action and on the measures to be imposed, section 50 No. 1 of the Hesse Judiciary Act.
- 8) judicial service court (cf. sections 40 et seqq. of the Bremen Judiciary Act).

143) Which authority has the disciplinary power on public prosecutors? (multiple options possible):

- Supreme Court
- Head of the organisational unit or hierarchical superior public prosecutor
- Prosecutor General /State public prosecutor
- Public prosecutorial Council (and Judicial Council)
- Disciplinary court or body
- Ombudsman
- Professional body
- Executive power

Other?

If "executive power" and/or "other", please specify:

*) not including information from Mecklenburg-Western Pomerania and Thuringia.

1) Disciplinary power lies partly with the bodies also empowered to initiate disciplinary proceedings (including reprimand, fines, reduction in salary [only by the Ministry of Justice], in some cases – after the disciplinary action has been lodged by the Ministry of Justice – in the judicial service courts (including demotion, removal from the civil service).

2) The highest disciplinary authority – as a part of the executive – is the Ministry of Justice.

3) Saxon State Ministry of Justice and for Europe as the highest official authority (imposition of a reprimand possible).

4) Ministry of Justice as the highest official authority.

5) Reprimand and fines: service superior (head of the public prosecution office), section 37 of the Hesse Discipline Act; reduction in salary: highest service authority (Ministry of Justice) or chief public prosecutor, section 37 subs. 3 and 5 of the Hesse Discipline Act; demotion, removal from the civil service: disciplinary action by chief public prosecutor, section 38 subs. 1 and 2 of the Hesse Discipline Act; decision on the measure taken by the service court for judges, section 76 subs. 1 of the Hesse Judiciary Act.

144) Number of disciplinary proceedings initiated against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.

[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]

	Judges	Public prosecutors
Total number (1+2+3+4)	17	3
1. Breach of professional ethics	1	2
2. Professional inadequacy	10	0
3. Criminal offence	4	1
4. Other	0	0

Comment :

*) not including information from Mecklenburg-Western Pomerania and Thuringia. Brandenburg: information only for Qs 1 and 2 of 2010.

Data provided by: BW, BY, BB, RP (NA stated by: BE, HB, HH, HE, NI, NW, SL, SN, ST, SH; BB has not provided the total broken down, and has stated NA on items 1 to 4.).

145) Number of sanctions pronounced against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.

	Judges	Public prosecutors
Total number (total 1 to 9)	10	3
1. Reprimand	8	2
2. Suspension	0	0
3. Removal of cases	0	1
4. Fine	0	0
5. Temporary reduction of salary	1	0
6. Position downgrade	0	0
7. Transfer to another geographical (court) location	0	0
8. Resignation	0	0
9. Other	1	0

Comment :

*) not including information from Mecklenburg-Western Pomerania and Thuringia.

Data provided by: BW, BY, RP (NA stated by: BE, BB, HB, HE, NI, NW, SL, SN, ST, SH; HH has stated NA on items 1 to 6

stated and NAP on items 7 to 8).

Baden-Württemberg:

re item 9 (Other): Baden-Württemberg Land law provides for deprivation of pension as a sanction against judges who are already retired. This is the most serious sanction imposable on retired judges; it corresponds to the removal from service of judges who are still in active service. This sanction was imposed once in 2010.

Re Questions 144 and 145: The imbalance between the number of sets of proceedings initiated in 2010 (Question 144) and the proceedings concluded in the same year (Question 145) is explained by the fact that the recorded disciplinary proceedings were not completed in the year in which they were initiated.

Lower Saxony:

Disciplinary proceedings are subject to short-term deletion; no authoritative data are available.

E.3

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

Baden-Württemberg:

re Questions 140 to 143: In Baden-Württemberg the service superiors of the civil servants are empowered to initiate disciplinary proceedings against judges and public prosecutors. These are as a rule the president of the court or public prosecution office to which the judge or the public prosecutor belongs, furthermore the presidents of the higher courts and the offices of the chief public prosecutor, as well as, finally, the Ministry of Justice as the highest service authority. These "disciplinary authorities" can issue a reprimand. They only in have disciplinary powers in this sense. Serious disciplinary measures can only be imposed by the service court for judges ruling independently, which in this respect has jurisdiction for disciplinary proceedings against judges and public prosecutors.

Bavaria (administrative courts):

There is no separate judicial service court for the administrative courts, but a general one.

North Rhine-Westphalia:

No information is available.

Saxony-Anhalt:

Depending on the judge/public prosecutor concerned, the power of initiation lies with the authority employing the person concerned.

The term "disciplinary power" is understood in this context as the power to take decisions on the imposition of a sanction and the nature of the sanction to be imposed. Depending on the sanction intended to be imposed, this lies with the respective higher Regional Court (in the case of judges), with the chief public prosecution office (in the case of public prosecutors) or with the administrative court as the disciplinary court for the imposition of specific sanctions.

No statistics are kept regarding the number of sets of disciplinary proceedings initiated and the sanctions imposed, so that no information can be provided on this.

Please indicate the sources for answering questions 144 and 145

Baden-Württemberg:

Internal statistics of the Ministry of Justice of Baden-Württemberg

Lower Saxony:

Lower Saxony Disciplinary Act, Lower Saxony Judiciary Act

Rhineland-Palatinate:

Higher Regional Courts and chief public prosecution offices

6. Lawyers

6. 1. Status of the profession and training

6. 1. 1. Status of the profession and training

146) Total number of lawyers practising in your country.

155 679

147) Does this figure include "legal advisors" who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?

Yes

No

148) Number of legal advisors who cannot represent their clients in court:

NA

149) Do lawyers have a monopoly on legal representation in (multiple options are possible):

Civil cases?

Criminal cases - Defendant?

Criminal cases - Victim?

Administrative cases?

There is no monopoly

If there is no monopoly, please specify the organisations or persons that may represent a client before a court (for example a NGO, a family member, a trade union, etc) and for which types of cases:

Civil cases:

Representation by a lawyer is not obligatory before the Local Courts. The parties may either pursue the process themselves there, or may be represented by a solicitor or by one of the agents named in section 79 subs. 2 sentence 2 number 1. Agents can hence be persons employed by the party, adult family members, consumer advice centres and publicly-recognised consumer associations, as well as collection services.

Criminal cases:

Accused persons

Solicitors and law lecturers at German universities within the meaning of the Framework Act for Higher Education (Hochschulrahmengesetz) with qualification for judicial office can be selected as defence counsel.

Other individuals may only be selected with the approval of the court. If the person selected in the case of necessary defence is not one of the persons who may be appointed as defence counsel, they may also only be admitted as optional defence counsel together with a party who may be admitted.

Aggrieved parties

The provisions on the group of individuals to be selected as defence counsel apply mutatis mutandis to counsel of the private accessory prosecutor.

Administrative cases:

1. Employees of the party or of an enterprise affiliated with them (section 15 of the Companies Act [Aktengesetz]); authorities and legal entities under public law, including the associations formed by them to perform their public tasks, can also be represented by employees of other authorities or legal entities under public law, including the associations formed by them to perform their public tasks,

2. adult family members (section 15 of the Tax Code and section 11 of the Lifetime Partnership Act [Lebenspartnerschaftsgesetz]), persons with qualification for judicial office and joined parties if the representation is not connected with a remunerated activity,

3. tax advisors, tax representatives, certified public accountants, sworn auditors, persons and associations within the meaning of section 3a of the Tax Advice Act (Steuerberatungsgesetz), as well as companies within the meaning of section 3 Nos. 2 and 3 of the Tax Advice Act acting via persons within the meaning of section 3 No. 1 of the Tax Advice Act, in tax-related matters,

4. professional agricultural associations for their members,

5. trade unions and associations of employers, as well as combinations of such associations for their members or for other associations or combinations with a comparable orientation and their members,

6. associations whose statutory tasks largely encompass joint representation of interests, advice and representation of benefit-recipients in accordance with social compensation law or persons with disabilities and which, taking account of the nature and the extent of their activities, as well as of the group of their members, offer an assurance of proper representation in the proceedings, for their members in matters of welfare of victims of war and of the law on persons with serious disabilities, as well as the concomitant matters,

7. legal entities whose shares are all in the economic ownership of one of the organisations designated in numbers 5 and 6 if the legal entity exclusively provides legal advice and representation in proceedings of this organisation and of its members or of other associations or combinations with a comparable orientation and their members in accordance with their statutes, and if the organisation is liable for the activity of the agents.

There are special arrangements before social courts and finance courts.

150) Is the lawyer profession organised through? (multiple options possible)

- a national bar?
 a regional bar?
 a local bar?

151) Is there a specific initial training and/or examination to enter the profession of lawyer?

- Yes
 No

If not, please indicate if there are other specific requirements as regards diplomas or university degrees :

There is no special training for lawyers. Solicitors have the same training as the other classical legal professions of judge and public prosecutor (section 4 of the Federal Code of Lawyers: [Bundesrechtsanwaltsordnung – BRAO] - qualification for judicial office in accordance with section 5 of the German Judiciary Act). Qualification for judicial office is acquired by anyone who completes law studies at a university (at least four years) with the First Examination and a subsequent preparatory service (two years) with the second State Examination (sections 5, 5a and 5b of the German Judiciary Act). The training in the studies and in the preparatory service encompasses the requirements of the profession of lawyer.

152) Is there a mandatory general system for lawyers requiring in-service professional training?

- Yes
 No

153) Is the specialisation in some legal fields tied with specific training, levels of qualification, specific diploma or specific authorisations?

- Yes
 No

If yes, please specify:

Solicitors who have acquired special knowledge and experience in a field of law may be empowered to use a specialist lawyer's designation (section 43c of the Federal Code of Lawyers). The Bar decides on the application after they have examined the documentation which the lawyer must present. There are currently 20 different specialist lawyer's designations. The total number of specialist lawyer's titles was 41,569 on 1 January 2011, although it should be taken into account that a solicitor may acquire up to three specialist lawyer's designations. Anyone who is a specialist lawyer must prove to the Bar on an annual basis that they have attended at least ten hours of further training events; otherwise the specialist lawyer's designation can be withdrawn.

Even solicitors who have not acquired a specialist lawyer's designation can specialise and indicate this in their advertising (cf. section 7 of the Solicitors' Professional Code [Berufsordnung der Rechtsanwälte]).

F.1

Please indicate the sources for answering questions 146 and 148:

Comments for interpreting the data mentioned in this chapter:

source re Question 146: <http://www.brak.de/fuer-journalisten/zahlen-zur-anwaltschaft> (as on 1 January 2011)

Re Question 147: All solicitors in Germany are empowered to plead before court. No distinction is made between different groups of lawyers in Germany, such as between solicitors and barristers. The number of 155,679 solicitors stated re Question 146 does not include employee legal advisers. These are those solicitors who in addition to the profession of solicitor are active as a lawyer in a secondary profession with a non-legal employer (cf. section 46 of the Federal Code of Lawyers). In addition to solicitors, certain other individuals may also appear in court as "legal advisers" (cf. on this answer to Question 149); there are no statistical data on these individuals.

Re Question 150: Each solicitor is a member of a Bar. There are 28 Bars at the level of the Higher Regional Courts, as well as a Bar at the Federal Court of Justice. This total of 29 Bars form the Federal Bar.

Re Question 152: Each solicitor is obliged to undergo further training (section 43a subs. 6 of the Federal Code of Lawyers). For specialist solicitors, moreover, strict requirements apply, cf. answer to Question 153.

6. 2. Practising the profession

6. 2. 1. Practising the profession

154) Can court users establish easily what the lawyers' fees will be (i.e. do users have easy access to prior information on the foreseeable amount of fees, is the information transparent and accountable)?

- Yes
 No

155) Are lawyers' fees freely negotiated?

Yes No**156) Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?** Yes laws provide rules Yes standards of the bar association provide rules No, neither laws nor bar association standards provide rules**F.2****Useful comments for interpreting the data mentioned in this chapter:**

Re Question 154:

The amount of the fees of a solicitor is fundamentally defined in the Lawyers' Remuneration Act (Rechtsanwaltsvergütungsgesetz – RVG), and, in line with section 2 of the Lawyers' Remuneration Act, is orientated to the value of the subject of the professional activity (value fee system). The fee regulations in the Lawyers' Remuneration Act thus enable those involved in court proceedings to calculate in advance the legal costs likely to be incurred. Moreover, the solicitor is obliged to inform clients if the fees are in line with the value of the subject-matter prior to accepting the mandate (section 49b subs. 5 of the Federal Code of Lawyers).

Re Question 155:

Solicitors' statutory remuneration can be dispensed with under certain conditions by the solicitor's fee also being freely agreed, such as in the shape of a time fee measured by hours (section 3a of the Lawyers' Remuneration Act). However, it is not permitted to agree on a remuneration in court proceedings that is lower than the statutory fee (section 4 of the Lawyers' Remuneration Act). In accordance with German law, the agreement of a success-only fee is only possible subject to strict preconditions (section 4a of the Lawyers' Remuneration Act). The solicitor is however as a matter of principle to endeavour to agree on a fee for the giving of oral or written advice or information, for drafting a written opinion and for work as a mediator (section 34 of the Lawyers' Remuneration Act).

Re Question 156:

In accordance with the statutory provisions contained in the Federal Code of Lawyers, as a matter of principle a lower fee than that provided for in accordance with the Lawyers' Remuneration Act may only be agreed if the Lawyers' Remuneration Act specifically permits this. Equally, agreements by means of which a remuneration or its amount depends on the outcome of the case or on the success of the solicitor's actions or agreements in accordance with which the solicitor receives a part of the amount obtained as a fee (success-based fee) are only permissible to the extent stipulated in the Lawyers' Remuneration Act (section 49b of the Federal Code of Lawyers).

6. 3. Quality standards and disciplinary proceedings**6. 3. 1. Quality standards and disciplinary proceedings****157) Have quality standards been determined for lawyers?** Yes No

If yes, what are the quality criteria used?

Fundamental professional obligations are regulated by the Federal Code of Lawyers, which is a state statute. Supplementary regulations are contained in the Solicitors' Professional Code, which is issued on a statutory basis (sections 59b and 191a-e of the Federal Code of Lawyers) by the Statutory Assembly at the Federal Bar as a binding set of regulations. One should also point to the strictly-defined liability law for solicitors, as well as to the possibility to have the quality management of the office organisation certified in accordance with ISO 9001, which is also taken up by law firms.

158) If yes, who is responsible for formulating these quality standards: the bar association? the Parliament? other?

If "other", please specify:

cf. information re Question 157.

159) Is it possible to file a complaint about :

the performance of lawyers?

the amount of fees?

Please specify:

It is possible to lodge both civil actions and complaints with the Bar, whose job it is to supervise compliance with the professional duties by solicitors. If certain professional duties are violated, criminal prosecution can also be considered, for instance in case of breaches of lawyers' obligation of confidentiality (section 203 of the Criminal Code [StGB] violation of private secrets) or in case of demanding excessive fees (section 352 of the Criminal Code); those concerned can then prefer a criminal charge.

160) Which authority is responsible for disciplinary procedures?

the judge

the Ministry of justice

a professional authority

other

If other, please specify:

Breaches of professional duty are sanctioned by lawyers' courts in the proceedings before the lawyers' court. The initiation of the proceedings is the job of the public prosecution office (sections 113 et seqq. of the Federal Code of Lawyers).

161) Disciplinary proceedings initiated against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.

[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]

	Total number of disciplinary proceedings initiated (1 + 2 + 3 + 4)	1. Breach of professional ethics	2. Professional inadequacy	3. Criminal offence	4. Other
Number	NA	NA	NA	NA	NA

Comment :

162) Sanctions pronounced against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.

	Total number of sanctions (1 + 2 + 3 + 4 + 5)	1.Reprimand	2. Suspension	3. Removal	4. Fine	5. Other (e.g. disbarment)
Number	NA	NA	NA	NA	NA	NA

Comment :

F.3

You can indicate below any useful comments for interpreting the data mentioned in this chapter

7. Alternative Dispute Resolution

7. 1. Alternative Dispute Resolution

7. 1. 1. Alternative Dispute Resolution

163) Does the legal system provide for mediation procedures? If no skip to question 168

[Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).]

- Yes
- No

164) Please specify, by type of cases, the organisation of judicial mediation:

	Court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Public prosecutor
Civil and commercial cases	Yes	Yes	Yes	Yes	No
Family law cases (ex. Divorce)	Yes	Yes	Yes	Yes	No
Administrative cases	Yes	Yes	No	Yes	No
Employment dismissals	Yes	Yes	No	Yes	No
Criminal cases	No	No	No	No	No

165) Is there a possibility to receive legal aid for mediation procedures?

- Yes
- No

If yes, please specify:

Legal aid covers court annexed mediation in full when other requirements are fulfilled. In criminal conciliation cases legal aid concerns legal advice but usually not the representation in conciliation proceedings.

166) Number of accredited or registered mediators who practice judicial mediation:

NAP

167) Number of judicial mediation procedures.

Please indicate the source in the "comment" box below:

Total number of cases (total 1+2+3+4+5)	NAP
1. civil cases	NAP
2. family cases	NAP
3. administrative cases	NAP
4. employment dismissals cases	NAP
5. criminal cases	NAP

Comment :

168) Does the legal system provide for the following ADR.

If "other", please specify it in the "comment" box below:

Mediation other than judicial mediation?	Yes
Arbitration?	Yes
Conciliation?	Yes

Other alternative dispute resolution?	Yes
---------------------------------------	-----

Comment :

All forms of out-of court conflict resolution are possible as a matter of principle.

Arbitrational jurisdiction; arbitrational conflict resolution is possible in civil and commercial cases and also in family cases; provisions on arbitrational jurisdiction can be found in sections 1025 et seqq. of the Code of Civil Procedure.

G.1

**- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years**

re Question 167: Federal statistics are available only for intra-court mediation. Intra-court mediation was implemented in 2010 in civil, family, administrative, labour, social and finance courts. Judges working in intra-court mediation are however not entitled to hand down rulings, unlike the notes on Question 163. The federal statistics however do not record any cases in which the parties are referred to an out-of-court mediator.

Arbitrational conflict resolution in civil and commercial cases has considerably increased in recent years in terms of their number and of the values at dispute recorded. This kind of alternative conflict resolution is still rare in family cases, and is only selected for special reasons.

Please indicate the source for answering question 166:

the Ministry of Justice

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

169) Do you have enforcement agents in your judicial system?

- Yes
 No

170) Number of enforcement agents

5 862

171) Are enforcement agents (multiple options are possible):

- judges?
 bailiffs practising as private professionals under the authority (control) of public authorities?
 bailiff working in a public institution?
 other enforcement agents?

Please specify their status and powers:

The enforcement agents are a public facility, namely bailiffs who are tied to the judicial administration of the Länder.

The bailiff is responsible for coercive enforcement of monetary claims in moveable property (by pledging and public auction (section 808 et seqq. of the Code of Civil Procedure), as well as for compulsory enforcement because of other acts or omissions, namely the surrender of moveables and real estate (sections 883-885 the Code of Civil Procedure).

The enforcement court (a department of the Local Court) is responsible for the coercive enforcement of monetary claims in moveable property insofar as these are rights against third-party debtors. Coercive enforcement takes place in this case by means of pledging and transfer for seizure or instead of payment in accordance with sections 829 et seqq. and 835 et seqq. of the Code of Civil Procedure.

The land registry office (a department of the Local Court) is responsible for coercive enforcement of monetary claims on immoveable property if an equitable mortgage is to be entered (section 867 of the Code of Civil Procedure).

Compulsory enforcement of monetary claims on immoveable property by forced auctioning or forced administration is carried out by the enforcement court (a department of the Local Court) in accordance with the provisions contained in sections 15 et seqq. or 146 et seqq. of the Forced Sale Act (Zwangsversteigerungsgesetz).

As a rule senior judicial officers act at the enforcement court and at the land registry office. These are not enforcement agents in the strict sense of the word, but special court bodies which carry out special court tasks as the "second pillar of the third power" in addition to judges, largely in the field of "voluntary" jurisdiction (including in inheritance cases, custodianship cases, parent-and-child and adoption cases, in land registry cases, commercial, cooperative and partnership register cases, in insolvency cases, association-related cases, cases related to the marriage property register, ship register cases, etc.). Moreover, they carry out a large number of other judiciary activities, such as in the field of court payment demand proceedings, legal aid, setting of costs, execution of penalties, etc., and in proceedings for which the enforcement court has jurisdiction (pledging of receivables, forced auctioning, forced administration). The field of activity of senior judicial officers is regulated in the Act on Senior Judicial Officers (RPfIG). Just like judges, senior judicial officers are factually independent and only bound by law and order in carrying out their tasks and in their decisions (section 9 of the Act on Senior Judicial Officers). In this respect, they are not subject to any content-related instructions. The appeals that are admissible against their decisions apply as a matter of principle in accordance with the general provisions of procedural law (section 11 of the Act on Senior Judicial Officers).

172) Is there a specific initial training or examination to become an enforcement agent?

- Yes
 No

173) Is the profession of enforcement agents organised by?

- a national body?
- a regional body?
- a local body?
- NAP (the profession is not organised)

174) Are enforcement fees easily established and transparent for the court users?

- Yes
- No

175) Are enforcement fees freely negotiated?

- Yes
- No

176) Do laws provide any rules on enforcement fees (including those freely negotiated)?

- Yes
- No

Please indicate the source for answering question 170:

(of whom senior judicial officers: 1,181.16)

Federal Office of Justice:

Personnel overviews of the ordinary courts and of the public prosecution offices for 2010 – information in job shares

[8. 1. 2. Efficiency of enforcement services](#)

177) Is there a body entrusted with supervising and monitoring the enforcement agents' activity?

- Yes
- No

178) Which authority is responsible for supervising and monitoring enforcement agents?

- a professional body?
- the judge?
- the Ministry of justice?
- the public prosecutor?
- other?

If other, please specify:

The bailiffs are subject to the service supervision of the Presidents and the Directors of the Local Courts. They are examined, both announced and unannounced, by the service superiors or examination officials of the Land administrations of justice who are appointed to do so.

Senior judicial officers are also subject to the service supervision of the Presidents and Directors of the Local Courts. Senior judicial officers however work factually independently, and are only bound by law and order (section 9 of the Act on Senior Judicial Officers). Factual control is guaranteed by the appeals under procedural law. Reference is made to the answer re Question 171 for more details.

179) Have quality standards been determined for enforcement agents?

- Yes
- No

If yes, what are the quality criteria used?

To guarantee uniform enforcement, national uniform provisions of the Länder were created for the bailiff system in the shape of the Bailiffs Code (Gerichtsvollzieherordnung – GVO) and the Procedural Instructions for Bailiffs (Geschäftsanweisung für Gerichtsvollzieher – GVGA), which in each case are supplemented by arrangements specific to the Länder. Both sets of regulations contain clear instructions to the enforcement agents regarding the structure of the employment relationship, competence arrangements, dealing with enforcement requests, performing business operations, files, accounting and cash management, statistics to be kept (Bailiffs Code) and explicit provisions on the service activities which are incumbent on the bailiffs and the procedures they have to comply with (Procedural Instructions for Bailiffs).

In particular, the Procedural Instructions for Bailiffs contain regulations which serve to standardise the procedure and quality assurance.

Senior judicial officers work factually independently, and are only bound by law and order (section 9 of the Act on Senior Judicial Officers). The de facto control of their work is guaranteed by the appeals under procedural law, cf. answer to Question 171.

In general terms, the Federal Ministry of Justice is the final authority for the assurance of the quality standards relating to provisions of federal law. Land-specific provisions fall in the competence of the Land administrations of justice.

180) If yes, who is responsible for establishing these quality standards?

- a professional body
 the judge
 the Ministry of Justice
 other

If "other", please specify:
 cf. answer to Question 179

181) Is there a specific mechanism for executing court decisions rendered against public authorities, including for supervising such execution?

- Yes
 No

if yes, please specify

In accordance with section 882a the Code of Civil Procedure, unless rights in rem are being pursued, compulsory enforcement for a monetary claim against the Federation or against a Land may commence only four weeks following the time at which the creditor has given notice, to the public authority authorised to represent the debtor, of his/her intention to pursue compulsory enforcement and, to the extent such compulsory enforcement is to be effected against assets managed by another public authority, to the responsible Minister of Finance. Upon this being demanded, the receipt of the notice is to be confirmed to the creditor. Insofar as compulsory enforcement is to be implemented by the court-appointed enforcement officer in such cases, the enforcement officer is to be determined, upon the creditor filing a corresponding petition, by the court responsible for execution.

Compulsory enforcement is not permissible with regard to matters which are indispensable for the performance of public tasks of the debtor or where their sale is not in the public interest. Whether the prerequisites of sentence 1 apply is to be decided in accordance with section 766 of the Code of Civil Procedure in the event of a dispute. The competent Minister is to be heard before the decision is taken.

These provisions are to be applied to compulsory enforcement against corporations, facilities and foundations under public law on condition that the statutory representatives take the place of the authority. The above restrictions to not apply to public-law banks and credit agencies.

The announcement of compulsory enforcement and compliance with a waiting period in accordance with the procedure described is not needed when it comes to the enforcement of an injunction.

182) Is there a system for monitoring the execution?

- Yes
 No

If yes, please specify

There is a system for monitoring the activity. Creditors, debtors and third-party debtors have the procedural appeals at their disposal.

183) What are the main complaints made by users concerning the enforcement procedure? Please indicate a maximum of 3.

- no execution at all?
- non execution of court decisions against public authorities?
- lack of information?
- excessive length?
- unlawful practices?
- insufficient supervision?
- excessive cost?
- other?

If other, please specify:

All other items contained in the questionnaire also occur, but do not constitute the majority of complaints. The above information is based on experience. In particular, no statement is made on whether the complaints are justified in individual cases.

184) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

- Yes
- No

If yes, please specify:

No need for change is considered to exist as to the enforcement of court decisions against authorities. The keeping and administration of the register of debtors, as well as of the property registers, has been newly regulated by the Act to Reform the Clarification of Facts in Compulsory Enforcement (Gesetz zur Reform der Sachaufklärung in der Zwangsvollstreckung) of 29 July 2009 (Federal Law Gazette Part I, p. 2258). This mandates the Länder to appoint one Local Court each as a central enforcement court for the administration of the property registers (section 802k subs. 3 of the Code of Civil Procedure) and the keeping of the registry of debtors (section 882h subs. 2 of the Code of Civil Procedure) by a legal ordinance of the Land Government. Furthermore, the Act provides bailiffs with expanded powers to ascertain the whereabouts of the debtor, as well as rights to information for the bailiffs in the submission of information on assets. The amendments will come into force as per 1 January 2013.

185) Is there a system measuring the timeframes of the enforcement procedures:

- for civil cases?
- for administrative cases?

186) As regards a decision on debts collection, please estimate the average timeframe to notify the decision to the parties who live in the city where the court sits:

- between 1 and 5 days
- between 6 and 10 days
- between 11 and 30 days
- more

If more, please specify

187) Number of disciplinary proceedings initiated against enforcement agents. If other, please specify it in the "comment" box below.

[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]

Total number of disciplinary proceedings (1+2+3+4)	<input checked="" type="checkbox"/> number:	17
1. for breach of professional ethics	<input checked="" type="checkbox"/> number:	1
2. for professional inadequacy	<input checked="" type="checkbox"/> number:	13
3. for criminal offence	<input checked="" type="checkbox"/> number:	3
4. Other		NA

Comment :

*) Not including information from Mecklenburg-Western Pomerania, Lower Saxony and Thuringia.

1) information provided by: BW, BY, HE, RP, SH (NA stated by: BE, HB, NW, SL, SN, ST)

2) information provided by: HE

3) information provided by: BW, BY, HE, RP, SH

"Other":

North Rhine-Westphalia:

No information is available.

4) information provided by: BW, HE, RP

188) Number of sanctions pronounced against enforcement agents.

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.

Total number of sanctions (1+2+3+4+5)	<input checked="" type="checkbox"/> number:	7
1. Reprimand		NA
2. Suspension		NA
3. Dismissal		NA
4. Fine	<input checked="" type="checkbox"/> number:	2
5. Other	<input checked="" type="checkbox"/> number:	8

Comment :

*) Not including information from Berlin, Mecklenburg-Western Pomerania, Lower Saxony and Thuringia.

1) information provided by: BW, BY, RP, SH (NA stated by: HB, NW, SL, SN, ST)

2) information provided by: BY, HE, RP

3) information provided by: RP, SH

4) information provided by BW, HE, SH

"other":

Baden-Württemberg:

re No. 5: Baden-Württemberg Land disciplinary law facilitates discontinuation of disciplinary proceedings with the consent of the civil servant subject to conditions if the proceedings relate to a minor or medium-serious breach of official duty and the guilt of the civil servant is slight. Conditions that can be considered here include the restitution of the damage or the payment of an amount of money to a charity or to the employer (cf. section 37 subs. 2 of the Land Disciplinary Act [LDG]). This possibility of concluding the proceedings was employed on enforcement agents in two cases in 2010. Disciplinary proceedings were discontinued in a further case because the civil servant was dismissed from the service at his own request.

The imbalance between the number of sets of proceedings initiated in 2010 (Question 187) and the proceedings completed in the same year (Question 188) is explained from the fact that the disciplinary proceedings recorded were not completed in the year in which they were initiated.

Hesse:

1 set of proceedings discontinued; 2 sets of proceedings not yet complete; 1 discontinuation

North Rhine-Westphalia:

No information is available.

Rhineland-Palatinate:

One set of disciplinary proceedings was initiated in 2010 and not completed until 2011, with a sanction (suspension).

Schleswig-Holstein:

Other = here: issuing of a reprimand

H.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

Re Question 186:

Civil court judgments are served in accordance with sections 166 et seqq. of the Code of Civil Procedure. In the many cases in which a party is represented by a lawyer, as a rule by being served on the solicitor in accordance with section 172 of the Code of Civil Procedure.

Major reform of the enforcement of rulings in civil cases:

1. Act Reforming the Account Garnishment Act (Gesetz zur Reform des Kontopfändungsschutzrechts) of 7 July 2009 (Federal Law Gazette Part I, p. 1707).

- introduction of a garnishment protection account on which the debtor receives basic protection against pledging ensuring participation in cash-free payment transactions.

2. Act to Reform the Clarification of Facts in Compulsory Enforcement (Gesetz zur Reform der Sachaufklärung in der Zwangsvollstreckung) of 29 July 2009 (Federal Law Gazette Part I, p. 2258).

- cf. answer to Question 184.

Saxony-Anhalt:

There are no special characteristics of the system to enforce rulings in civil cases. It has not yet been agreed which Local Court in Saxony-Anhalt is to become the central enforcement court.

No statistics are kept as to the number of sets of disciplinary proceedings initiated and the sanctions imposed, so that no information can be provided on this matter.

Please indicate the source for answering the questions 186, 187 and 188:

Federal Office of Justice acc. to Länder information

Baden-Württemberg:

Internal statistics of the Ministry of Justice of Baden-Württemberg.

North Rhine-Westphalia:

No information is available.

Schleswig-Holstein:

Collected by the Ministry of Justice using available data.

8. 2. Execution of decisions in criminal matters

8. 2. 1. Execution of decisions in criminal matters

189) Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)

- Judge
 Public prosecutor
 Prison and Probation Services
 Other authority

Please specify his/her functions and duties (initiative or monitoring functions). If "other authority", please specify:

In adult criminal cases and cases involving adolescents sentenced in accordance with general criminal law the penalty is enforced by the public prosecution office as the enforcement authority. In criminal proceedings against juveniles, and against adolescents where youth criminal law is applied to them, the enforcement of the penalty is incumbent on the youth court judges as the enforcement officer (section 82 subs. 1 sentence 1 and section 110 of the Youth Courts Act); cf. at Question 105 with regard to the age limits relevant for juveniles and adolescents.

190) Are the effective recovery rates of fines decided by a criminal court evaluated by studies?

- Yes
 No

191) If yes, what is the recovery rate?

- 80-100%
 50-79%
 less than 50%
 it cannot be estimated

Please indicate the source for answering this question:

H.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years

9. Notaries

9. 1. Notaries

9. 1. 1. Notaries

192) Do you have notaries in your country? If no go to question 197

- Yes
 No

193) Are notaries:

If other, please specify it in the "comment" box below.

- | | | |
|--|--|-------|
| private professionals (without control from public authorities)? | <input type="checkbox"/> number | |
| private professionals under the authority (control) of public authorities? | <input type="checkbox"/> number | |
| public agents? | <input checked="" type="checkbox"/> number | 7 934 |
| other? | <input type="checkbox"/> number | |

Comment :

number of notaries on 1 January 2011 (source: <http://www.bnotk.de/Notar/Statistik/index.php>).

194) Do notaries have duties (multiple options possible):

- within the framework of civil procedure?
 in the field of legal advice?
 to certify the authenticity of legal deeds and certificates?
 other?

If "other", please specify:

The duties of a notary are set out in section 20 of the Federal Notarial Code (Bundesnotarordnung – BNotO), which is a state statute, namely to carry out authentication of all kinds, as well as to certify signatures, initials and duplicates. With authentication, which in particular are provided for real estate transactions and certain legal transactions under company law, the authentication is inseparably connected with impartial legal advice for the parties by the authenticating notary.

Further, notaries also carry out other tasks in the field of preventive administration of justice, cf. sections 20-24 of the Federal Notarial Code. e.g. in accordance with section 21 subs. 1 of the Federal Notarial Code they issue certificates of power to represent vis-à-vis a public register and mediate in certain legal matters.

195) Is there an authority entrusted with supervising and monitoring the the notaries' activity?

- Yes
 No

196) Which authority is responsible for supervising and monitoring notaries:

- a professional body?
 the judge?
 the Ministry of justice?
 the public prosecutor?
 other?

If other, please specify:

The supervision of notaries is carried out by the Land administrations of justice and the court presidents of the Higher Regional Courts and the Regional Courts which report to them.

I.1

You can indicate below:

- **any useful comments for interpreting the data mentioned in this chapter**
- **the characteristics of your system of notaries and the main reforms that have been implemented over the last two years**

The requirement of German nationality as a precondition for appointment as a notary (section 5 BNotO) was abolished at the end of 2011 as a result of ECJ judgment 22 May 2011, C-54/08.

10. Court interpreters

10. 1. Court interpreters

10. 1. 1. Court interpreters

197) Is the title of court interpreters protected?

- Yes
 No

198) Is the function of court interpreters regulated by legal norms?

- Yes
 No

199) Number of accredited or registered court interpreters:

10 554

200) Are there binding provisions regarding the quality of court interpretation within judicial proceedings?

- Yes
 No

If yes, please specify (e.g. having passed a specific exam):

201) Are the courts responsible for selecting court interpreters? If no, please indicate in the "comment" box below which authority selects court interpreters.

- Yes for recruitment and/or appointment for a specific term of office
Yes for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings
- No

Comment :

J.1

You can indicate below any useful comments for interpreting the data mentioned in this chapter:

Re Question 199: information according to survey www.justiz-dolmetscher.de as to interpreters whose swearing/authorisation/appointment took place (version 22 December 2011).

Please indicate the sources for answering question 199:

www.justiz-dolmetscher.de

11. Judicial experts

11. 1. Judicial experts

11. 1. 1. Judicial experts

202) In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):

- "expert witnesses", who are requested by the parties to bring their expertise to support their argumentation
- "technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal
- "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision)

203) Is the title of judicial experts protected?

- Yes
- No

204) Is the function of judicial experts regulated by legal norms?

- Yes
- No

205) Number of accredited or registered judicial experts (technical experts)

NA

206) Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?

- Yes
- No

If yes, please specify, in particular the given time to provide a technical report to the judge:
In accordance with section 411 subs. 1 of the Code of Civil Procedure, the court sets the experts a deadline within which the written opinion signed by him/her is to be transmitted to the court.

207) Are the courts responsible for selecting judicial experts?

If no, please indicate in the "comment" box below which authority selects judicial experts?

- Yes for recruitment and/or appointment for a specific term of office
- Yes for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings
- No .

Comment :

K.1

You can indicate below any useful comments for interpreting the data mentioned in this chapter:

Please indicate the sources for answering question 205:

12. Foreseen reforms

12. 1. Foreseen reforms

12. 1. 1. Reforms

208) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged. If possible, please observe the following categories:

1. (Comprehensive) reform plans

2. Budget

3. Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings)

4. High Judicial Council

5. Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc.

6. Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities

7. Enforcement of court decisions

8. Mediation and other ADR

9. Fight against crime and prison system

10. Other

3. Discussion of combining the specialist jurisdictions that are governed by public law, discussion of strengthening electronic legal transactions with the courts