



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2007

Country: Germany

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

82351000

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	282788000000
Regional / entity level	414423000000

3) Per capita GDP (in €)

28012

4) Average gross annual salary (in €)

41952

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2007

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Please indicate the sources for the questions 1 to 4

Re number of inhabitants (question # 1):

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

Re expenses (question # 2):

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

Re GDP (queston # 3):

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

Re average salary (question # 4):

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

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

1. 2. Budgetary data concerning judicial system

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

6) Total annual approved budget allocated to all courts (in €)

8731000000

7) Please specify

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

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	5000000000
Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	192000000
Annual public budget allocated to justice expenses	<input checked="" type="checkbox"/> Yes	1376000000
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	268000000
Annual public budget allocated to investments in new (court) buildings	<input type="checkbox"/> Yes	
Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	
Other (please specify):	<input checked="" type="checkbox"/> Yes	1895000000

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years? Yes No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years)

10) In general are litigants 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? Please specify:

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

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

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

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

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

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

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in €)

3977000000

12) Total annual approved budget allocated to the whole justice system (in €)

12396000000

13) Total annual approved public budget allocated to legal aid (in €)

557000000

14) If possible, please specify

	the annual public budget allocated to legal aid in criminal cases	the annual public budget allocated to legal aid in other court cases
Amount		

15) Is the public budget allocated to legal aid included in the court budget ?

- Yes
- No

16) Total annual approved public budget allocated to the public prosecution system (in €)**17) Is the budget allocated to the public prosecution included in the court budget?**

- Yes
 No

18) Authorities formally responsible for the budget allocated to the courts:

	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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other ministry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parliament	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Supreme Court	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Judicial Council	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Inspection body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

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

Other authority responsible for the evaluation: Court of Auditors

You can indicate below:

- any useful comments for interpreting the data mentioned above
- 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

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

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

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

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

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

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

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

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

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

This question cannot be answered, because the budgeting system differs from Land to Land. Legal aid usually

means that a Land abstains from requesting court costs. This exoneration is not entered into the budgets in all Länder.

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

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

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

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

Please indicate the sources for the questions 6, 7, 13 et 16

Re budget and items (questions 6, 7, 8 and 12):
Federal Budget 2006 and Länder information

Re budget for legal aid (question # 13):
Information by federal courts and from Länder

2. Access to justice

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Legal advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

21) If other, please specify (in regards to question 20):

For cases other than criminal cases:

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

22) Does legal aid foresee the covering or the exoneration of court fees?

Yes

No

If yes, please specify:

a) Criminal cases:

No.

b) Other cases:

Yes.

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

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

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

Yes

No

If yes, please specify:

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

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities:

	Number
Total	
Criminal cases	N/A
Other than criminal cases	592367

25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

- Yes
 No

26) Does your country have an income and asset test for granting legal aid:

	No	Yes	Amount
for criminal cases?	no		
for other than criminal cases?		income+asset	see below

27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

- Yes
 No

28) If yes, is the decision for granting or refusing legal aid taken by:

- the court?
 an authority external to the court?
 a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

- Yes
 No

Please specify:

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

30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

	yes	no
criminal cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
other than criminal cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

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

a) Criminal cases

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

b) Other cases

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

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

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

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

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

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

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

a) Criminal cases

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

b) Other cases

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

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

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

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

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

Civil and labour law courts (Zivilgerichte und Arbeitsgerichte):

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

Administrative and financial courts (Verwaltungsgerichte und Finanzgerichte):

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

Social courts (Sozialgerichte):

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

Please indicate the sources for the questions 24 and 26

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

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

2. 2. Users of the courts and victims

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

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

legal texts (e.g. codes, laws, regulations, etc.)?	<input checked="" type="checkbox"/> yes	http://www.gesetze-im-internet.de
case-law of the higher court/s?	<input checked="" type="checkbox"/> yes	http://www.bundesgerichtshof.de - supreme court for civil and criminal matters http://www.bundesfinanzhof.de - supreme court for tax matters http://www.bundesverwaltungsgericht.de - supreme court for administrative matters http://www.bundesarbeitsgericht.de - supreme court for labour matters http://www.bundessozialgericht.de - supreme court for social security matters http://www.bundesverfassungsgericht.de - Federal Constitutional Court
other documents (for example forms)?	<input checked="" type="checkbox"/> yes	http://www.justiz.de - comprehensive judicial portal

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

Yes

No

If yes, please specify:

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

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

Yes

No

If yes, please specify:

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

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

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

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

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

A second booklet addresses young people and is titled "I Have Rights" ("Ich habe Rechte"). The same topics are covered as in the booklet mentioned above, but this one focuses on young people's needs in language, lay-out and the examples given in the

booklet. All the information aims at making young people less afraid to report a crime and this is why not only the course of a criminal proceeding is described, but also its purpose. Authentic cases are reported in which young people talk about their experience as victims of a crime.

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victims of terrorism	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Children/Witnesses/Victims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victims of domestic violence	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ethnic minorities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disabled persons	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Juvenile offenders	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

35) Does your country have a compensation procedure for victims of crimes?

- Yes
 No

36) If yes, does this compensation procedure consist in:

- a public fund?
 a court decision?
 private fund?

If yes, which kind of cases does this procedure concern?

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

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

- Yes
 No

If yes, please specify:

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

- Yes
 No

If yes, please specify:

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

39) Do victims of crimes have the right to contest a decision of the public prosecution to discontinue a case?

- Yes
 No

If yes, please specify:

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

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

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

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

If yes, please specify (fund, daily tariff):

* Wrongful arrest or condemnation:

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

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

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

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

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

The StrEG only provides for pecuniary compensation.

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

* prolonged processing period:

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

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction with the services delivered by the judiciary system?

- (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 citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

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

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

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

The survey results are in parts online on

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

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

42) If yes, please specify:

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	<input type="checkbox"/>	<input type="checkbox"/>
Surveys at court level	<input type="checkbox"/>	<input checked="" type="checkbox"/>

43) Is there a national or local procedure for making complaints about the performance (for example the length of proceedings) or the functioning (for example the treatment of a case by a judge) of the judicial system?

Yes

No

44) If yes, please specify:

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	<input type="checkbox"/>	<input type="checkbox"/>
Higher court	<input type="checkbox"/>	<input type="checkbox"/>
Ministry of Justice	<input type="checkbox"/>	<input type="checkbox"/>
High Council of the Judiciary	<input type="checkbox"/>	<input type="checkbox"/>
Other external organisations (e.g. Ombudsman)	<input type="checkbox"/>	<input type="checkbox"/>

Can you give information elements concerning the efficiency of this complaint procedure?

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

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table)

	Total number
First instance courts of general jurisdiction (legal entities)	782
Specialised first instance courts (legal entities)	261
All the courts (geographic locations)	1136

46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

- Constitutional law jurisdiction:

Constitutional courts at Land level: 15

Federal Constitutional Court: 1

- Ordinary jurisdiction (general civil and criminal law):

Courts at Land level: 806

Federal court: 1

- Administrative law:

Courts at Land level: 67

Federal court: 1

- Financial law:

Courts at Land level: 18

Federal court: 1

- Labour law:

Courts at Land level: 139

Federal court: 1

- Social security law:

Courts at Land level: 84

Federal court: 1

- Patent law:

Federal court: 1

47) Is there a change in the structure of the courts foreseen (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 majority of the Länder is not planning any changes of the court structure at the moment. The changes in the few Länder that have planned or already implemented changes, these largely aim at the reduction in the number of local courts (Amtsgerichte).

48) Number of first instance courts competent for a case concerning:

	Number
a debt collection for small claims	666 local c.
a dismissal	121 labour
a robbery	666 local c.

Please specify what is meant by small claims in your country (answer only if the definition has changed compared to the previous evaluation round):

No changes since the last survey.

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

Please indicate the sources for the question 45

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

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (present the information in full time equivalent and for permanent posts)

20138.31

50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:

	Number
gross figure	
if possible, in full time equivalent	

51) Please specify (answer only if the information has changed compared to the previous evaluation round):

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

52) Number of non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs. Please specify (answer only if the information has changed compared to the previous evaluation round):

98002

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

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

53) Does your judicial system include trial by jury with the participation of citizens?

- Yes
 No

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

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

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

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

35995

55) Number of non-judge staff who are working in courts (present the information in full time equivalent and for permanent posts)

57529.53

56) If possible, could you distribute this staff according to the 4 following categories:

non-judge staff (Rechtspfleger), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal	<input checked="" type="checkbox"/> Yes	11821.49
non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars	<input checked="" type="checkbox"/> Yes	37034.86
staff in charge of different administrative tasks as well as 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	11977.09

technical staff

 Yes**Please indicate the sources for the questions 49, 50, 52, 53 and 55**

Re number of professional judges (question # 49):

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

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

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

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

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

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

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

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

3. 1. 3. Prosecutors**57) Number of public prosecutors (present the information in full time equivalent and for permanent posts)**

5083.64

58) Do any other persons have similar duties as public prosecutors? Yes No

If yes, please specify:

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

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

59) Number of staff (non prosecutors) attached to the public prosecution service (present the information in full time equivalent and for permanent posts)

11731.09

Please indicate the sources for the questions 57 and 59

Re number of public prosecutors (question # 57):

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

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

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

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

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

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

There are no figures available for the federal level.

3. 1. 4. Budget and New technologies

60) Who is entrusted with the individual court budget?

	Preparation of the budget	Arbitration and allocation of the budget	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court President	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Court administrative director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Head of the court clerk office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

61) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organization scheme with a description of the competencies of the different authorities responsible for the budget process in the court

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

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

	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Word processing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic data base of jurisprudence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic files	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E-mail	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet connection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court management information system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial information system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

64) For the communication between the court and the parties, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Special Website	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other electronic communication facilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

65) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary (answer only if this information has changed compared with the previous evaluation round)?

- Yes
 No

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

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

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

You can indicate below:

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

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

Please indicate the sources for the questions 62, 63 and 64

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and Evaluation

66) Are the courts required to prepare an annual activity report?

- Yes

No

67) Do you have a regular monitoring system of court activities concerning the:

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

Please specify:

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

68) Do you have a regular system to evaluate the performance of each court?

- Yes
 No

Please specify:

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

69) Concerning court activities, have you defined performance indicators?

- Yes
 No

70) Please select the 4 main performance and quality indicators that are used for a proper functioning of courts.

- Incoming cases

- Length of proceedings (timeframes)
- Closed cases
- Pending cases and backlogs
- Productivity of judges and court staff
- Percentage of cases that are treated by a single sitting judge
- The enforcement of penal decisions
- Satisfaction of employees of the courts
- Satisfaction of clients (regarding the services delivered by the courts)
- Judicial and organisational quality of the courts
- The costs of the judicial procedures
- Other

Please specify:

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

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

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

71) Are there performance targets defined for individual judges?

- Yes
- No

72) Are there performance targets defined at the level of the courts?

- Yes
- No

73) Please specify who is responsible for setting the targets:

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

Please specify

74) Please specify the main targets applied:**75) Which authority is responsible for the evaluation of the performances of the courts:**

- the High Council of judiciary
- the Ministry of Justice
- an Inspection authority
- the Supreme Court
- an external audit body
- other?

Other, please specify:

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

76) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

- Yes
- No

If yes, please specify:

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

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

The Ministry of Justice of the state of Baden-Wurttemberg initiated a survey in the different Länder on citizens' service and customer orientation of the judiciary in 2005. One of the questions asked was about projects for the promotion of a modern judiciary that is citizen-friendly. The survey showed that across the Länder great importance was attributed to citizens' service and customer orientation in the judicial system. The increased use of modern technology (such as the Internet) offers the judiciary the possibility to reach a large number of citizens and provide those looking for justice the best possible service (register queries, download of information and application forms,

information on addresses and how to get there etc).

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

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

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

77) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

Yes

No

78) Is there a system enabling to measure the backlogs and to detect the cases which are not processed within a reasonable timeframe for:

civil cases?

criminal cases?

administrative cases?

79) Do you have a way of analysing waiting time during court procedures?

Yes

No

If yes, please specify:

80) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

Yes

No

Please specify (including an indication of the frequency of the evaluation):

81) Is there a system for monitoring and evaluating the functioning of the prosecution services?

Yes

No

If yes, please specify:

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

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

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

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

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your court monitoring and evaluation system

Comment on specialised court staff (question # 77):

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

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

In Germany there are regular evaluations at the courts in the Länder, carried out by the superior authority (e.g. the presidents of the higher regional courts for all the regional courts in the district covered by the higher regional court; the presidents of the regional courts for all the local courts in the district covered by the regional court). The activities of the courts are their subject matter (particularly the number of pending or closed cases and their duration). Additionally, the development of the work in progress (number of unfinished proceedings), how long they have been pending, the length of the proceedings and unfinished work (number of files that have been presented, but not processed) is continuously monitored. Older proceedings and unfinished work can generally also be the subject of individual evaluations.

Please indicate the sources for the the question 70,71, 72 and 76

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

82) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements) ?

83) 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):

84) Please give the following data concerning the number of cases regarding Article 6 of the European Convention on Human Rights (on duration and non-execution), for the year of reference

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	2	2	3	0
Civil proceedings - Article 6§1 (non-execution)	0	0	0	0
Criminal proceedings - Article 6§1 (duration)	1	0	0	0

Please indicate the sources for the questions 82 and 84

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

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

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

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

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

4. 2. Timeframes of proceedings

4. 2. 1. General information

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

- civil cases?
- criminal cases?
- administrative cases?

If yes, please specify:

Civil cases: attachment and arrest, interim injunction

Administrative cases: interim injunction

86) Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

If yes, please specify (for example if you have introduced a new law on simplified procedures):

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

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

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

87) Do courts and lawyers have the possibility to conclude agreements on the modalities 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:

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

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

Administrative cases: as a basic principle: No. Dates and deadlines are determined by the court. However, consensual behaviour is common. The court is also authorised to

do without an oral trial if all the parties concerned agree.

4. 2. 2. Penal, civil and administrative law cases

88) Total number of cases in the first instance courts (litigious and non-litigious); (please complete the table)

	Pending cases on 1 January 2006	Incoming cases	Decisions	Pending cases on 31 December 2006
Total of civil, commercial and administrative law cases (1-7)	2725286	3617025	22250438	2687295
1 Civil (and commercial) litigious cases*	615454	1104828	1588198	544751
2 Civil (and commercial) non-litigious cases*	1500708	1931275	10614058	1543969
3 Enforcement cases			3601586	
4 Land registry cases**			5122001	
5 Business register cases**			733127	
6 Administrative law cases	609124	580922	591468	598575
7 Other				
Total criminal cases (8+9)	392624	1236815	1254114	375325
8 Criminal cases (severe criminal offences)	297355	854099	864231	287223
9 Misdemeanour cases (minor offences)	95269	382716	389883	88102

89) * The cases mentioned in categories 3 to 5 (enforcement, land registry, business register) are excluded from this total and should be presented separately in the table. The cases mentioned in category 6 (administrative law cases) are also excluded from this total for the countries which have specialised administrative courts or units in the courts of general jurisdiction.

**** if applicable**

Note: for the criminal law cases there may be a problem of classification of cases between severe criminal law cases and misdemeanour cases. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedure). Please indicate if possible what case categories are included under "severe criminal cases" and the cases included under "misdemeanour cases (minor offences)".

Explanation

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

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

90) Total number of cases in the second instance (appeal) courts (litigious and non-litigious); (please complete the table)

	Pending cases on 1 Jan. '06	Incoming cases	Decisions on the merits	Pending cases on 31 Dec. '06
Total of civil, commercial and administrative law cases (1-7)	51391	57270	180113	52011
1 Civil (and commercial) litigious cases*	31461	89719	129551	29671
2 Civil (and commercial) non-litigious cases*			85420	
3 Enforcement cases				

4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases	51391	57270	56651	52011
7 Other				
Total criminal cases (8+9)	21657	69860	70378	21139
8 Criminal cases (Severe criminal offences)	20632	61792	62235	20189
9 Misdemeanour cases (minor offences)	1025	8068	8143	950

91) Total number of cases in the highest instance courts (litigious and non-litigious); (please complete the table)

	Pending cases on 1 Jan. '06	Incoming cases	Decisions on the merits	Pending cases on 31 Dec. '06
Total of civil, commercial and administrative law cases (1-7)	9481	14113	13607	9987
1 Civil (and commercial) litigious cases*	4868	5906	2895	5229
2 Civil (and commercial) non-litigious cases*			2650	
3 Enforcement cases				
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases	4613	8207	8062	4758
7 Other				
Total criminal cases (8+9)	451	3266	3326	391
8 Criminal cases (Severe criminal offences)	451	3265	3326	390
9 Misdemeanour cases (minor offences)		1		1

92) Number of divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts (complete the table)

	Pending cases on 1 Jan. '06	Incoming cases	Decisions	Pending cases on 31 Jan. '06
Divorce cases			236548	
Employment dismissal cases			231588	
Robbery cases				
Intentional homicide case				

93) Average length of proceedings (from the date of lodging of court proceedings)

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance	2nd instance	Total procedure
Divorce cases	1.8 %		10.7 months		
Employment dismissal cases					
Robbery cases					
Intentional homicide					

94) Where appropriate, please specify the specific procedure as regards divorce:

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

95) How is the length of proceedings calculated for the four case categories? (please give a description of the calculation method)

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

The date of lodging court proceedings means

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

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

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

96) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- to conduct or supervise police investigation?
- to conduct investigation?
- 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 the enforcement procedure?
- to end the case by dropping it without the need for a judicial decision?
- to end the case by imposing or negotiating a penalty without a judicial decision?
- other significant powers?

Please specify:

Explanation of the options that have not been ticked:

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

The public prosecutor can end a proceeding by imposing conditions such as a fine or community service, but this is not a sentence in its actual meaning. If the imposing of conditions is covered by “sentence“, the answer to this question would be: Yes.

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

- Yes
 No

If yes, please specify:

None in both civil and administrative cases.

98) Functions of the public prosecutor in relation to criminal cases – please complete this table:

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	4917575	see below	see below	1294747	241102	1187323

You can indicate below:

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

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

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

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

On # 1:

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

On # 6:

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

On # 7:

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

a) first instance courts

pending incoming decisions pending

1/1/2006 cases 31/12/2006

Family law cases 424,478 521,769 553,183 393,064

Labour law courts 190,976 583,059 575,254 151,687

Voluntary jurisdiction 1 500,708 1 931,275 2 006,301 1 543, 969

b) Courts of appeal

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

c) Supreme Courts

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

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

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

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

Please indicate the sources for the questions 92 to 94 and question 98

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

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

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

Federal Statistical Office, Series 10 Volume 2.4 "Administrative Courts 2006" (Fachserie 10 Reihe 2.4 "Verwaltungsgerichte 2006" des Statistischen Bundesamtes)

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

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

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

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

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

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

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recrutement, nomination and promotion

99) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

If other, please specify:

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

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

100) Are judges initially/at the beginning of their carrier recruited and nominated by:

- an authority composed of judges only?
- an authority composed of non-judges only?
- an authority composed of judges and non-judges?

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

- Yes
- No

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

Yes, for judges employed at Länder level

No, for judges employed at federal level

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

102) Which procedures and criteria are used for promoting judges? (please specify).

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

103) How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

If other, please specify:

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

104) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- an authority composed of prosecutors only?
- an authority composed of non-prosecutors only?
- an authority composed of prosecutors and non-prosecutors?

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

- Yes
- No

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

106) Which procedures and criteria are used for promoting prosecutors (please specify)

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

107) Is the mandate given for an undetermined period for judges ?

Yes

No

Are there exceptions? Please specify:

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

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

108) Is the mandate given for an undetermined period for prosecutors?

Yes

No

Are there exceptions? Please specify:

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

109) If no, what is the length of the mandate?**Is it renewable?**

for judges

yes, please specify the length

for prosecutors

yes, please specify the length

You can indicate below:

- any useful comments for interpreting the data mentioned above
- 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

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

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

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

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

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

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

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

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

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

5. 1. 2. Training

110) Nature of the training of judges.

Is it compulsory?

- Initial training
- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president, court managers)
- In-service training for the use of computer facilities in the court

111) Frequency of the training of judges:

	Annual	Regular	Occasional
Initial training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General in-service training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In-service training for specialised judicial functions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
In-service training for management functions of the court	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
In-service training for the use of computer facilities in the court	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

112) Nature of the training of prosecutors.

Is it compulsory?

- Initial training
- General in-service training
- Specialised in-service training (e.g. specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service

113) Frequency of the training of prosecutors:

--	--	--	--

Initial training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General in-service training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Specialised in-service training	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
In-service training for management functions of the prosecution services	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
In-service training for the use of computer facilities in the public prosecution service	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

You can indicate below:

- any useful comments for interpreting the data mentioned above
- comments regarding the attention given to 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 have been implemented over the last two years

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

5. 2. Practice of the profession

5. 2. 1. Salaries

114) Salaries of judges and prosecutors (complete the table)

	Gross annual salary (euro)	Net annual salary (euro)
First instance professional judge at the beginning of his/her career	38828,52	
Judge of the Supreme Court or the Highest Appellate Court	86478,12	
Public prosecutor at the beginning of his/her career	38828,52	
Public prosecutor of the Supreme Court or the Highest Appellate Instance	86478,12	

115) Do judges and public prosecutors have additional benefits?

	Judges	Prosecutors
Reduced taxation	<input type="checkbox"/>	<input type="checkbox"/>
Special pension	<input type="checkbox"/>	<input type="checkbox"/>
Housing	<input type="checkbox"/>	<input type="checkbox"/>
Other financial benefit	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

116) If other financial benefit, please specify:

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

117) Can judges combine their work with any of the following other professions?

	Yes with remuneration	Yes without remuneration	No
Teaching	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Research and publication	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Arbitrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consultant	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cultural function	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other function	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

118) If other function, please specify:

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

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

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

119) Can prosecutors combine their work with any of the following other professions?

	Yes with remuneration	Yes without remuneration	No
Teaching	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Research and publication	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Arbitrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consultant	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cultural function	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other function	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

120) If other function, please specify:

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

121) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?

- Yes
 No

If yes, please specify:

Please indicate the source for the question 114

Bundesbesoldungsgesetz (Federal Civil Service Remuneration Act)

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

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

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

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

5. 2. 2. Disciplinary procedures

122) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

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

Disciplinary proceedings against public prosecutors are initiated by their supervisors.

123) Which authority has the disciplinary power on judges and prosecutors? Please specify:

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

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

124) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of disciplinary proceedings initiated

	Judges	Prosecutors
Total number (1+2+3+4)	ca. 55	ca. 26
1. Breach of professional ethics	ca. 10	ca. 2
2. Criminal offence	ca. 22	ca. 6

3. Professional inadequacy	ca. 20	ca. 17
4. Other	ca. 3	ca. 1

125) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of sanctions pronounced

	Judges	Prosecutors
Total number (total 1 to 9)	ca. 25	ca. 4
1. Reprimand	ca. 13	
2. Suspension		ca. 2
3. Withdrawal of cases		
4. Fine	ca. 3	
5. Temporary reduction of salary	ca. 3	ca. 1
6. Degradation of post		
7. Transfer to another geographical (court) location	ca. 1	
8. Dismissal	ca. 3	ca. 1
9. Other	ca. 2	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- 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

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

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

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

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

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

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

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

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

126) Total number of lawyers practising in your country

138104

127) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?

- Yes
 No

128) Number of legal advisors?

129) Do lawyers have a monopoly of representation:

- Civil cases*
 Criminal cases - Defendant*
 Criminal cases - Victim*
 Administrative cases*

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases.

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

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

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

Under certain circumstances listed in § 140 StPO, the representation of the accused by a

defence lawyer is obligatory (Pflichtverteidigung).

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

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

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

130) Is the lawyer profession organised through:

a national Bar?

a regional Bar?

a local Bar?

Please specify:

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

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

Please indicate the source for the question 126

Annual statistics of the Federal Bar Association

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

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

6. 1. 2. Training

131) Is there a specific initial training and/or examination to enter the profession of lawyer?

- Yes
- No

132) Is there a mandatory general system for lawyers requiring continuing professional training?

- Yes
- No

133) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?

- Yes
- No

If yes, please specify:

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

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

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

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

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

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

6. 1. 3. Fees

134) Can users establish easily what the lawyers' fees will be?

- Yes
- No

135) Are lawyers fees:

- regulated by law?
- regulated by the Bar association?
- freely negotiated?

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

136) Have quality standards been formulated for lawyers?

- Yes
 No

137) If yes, who is responsible for formulating these quality standards:

- the Bar association?
 the legislature?
 other?

Please specify (including a description of the quality criteria used):

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

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

138) Is it possible to complain about :

- the performance of lawyers?
 the amount of fees?

Please specify:

139) Which authority is responsible for disciplinary procedures:

- the judge?

- the Ministry of Justice?
- a professional authority or other?

Please specify:

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

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

**140) Disciplinary proceedings and sanctions against lawyers:
Disciplinary proceedings initiated**

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number				

**141) Disciplinary proceedings and sanctions against lawyers:
Sanctions pronounced**

	Reprimand	Suspension	Removal	Fine	Other
Annual number					

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

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

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

142) If appropriate, please specify, by type of cases, the organisation of judicial mediation:

	Possibility of private mediation or court annexed mediation	Private mediator	Public authority	Judge	Prosecutor
Civil and commercial cases	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family law cases (ex. Divorce)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative cases	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment dismissals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Criminal cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

143) Is there a possibility to receive legal aid for mediation procedures?

Yes

No

If yes, please specify:

144) Can you provide information about the number of accredited mediators?

Yes

No

If yes, please provide the number of mediators:

145) Can you provide information about the total number of judicial mediation procedures concerning:

civil cases?

yes,
number:

family cases?

yes,
number:

administrative cases?

yes,
number:

employment dismissals? yes,
number:

criminal cases? yes,
number:

Please indicate the source for the question 145

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

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

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

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

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

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

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

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

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

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

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

7. 1. 2. Other forms of alternative dispute resolution

146) Can you give information concerning other forms of alternative dispute resolution (e.g. Arbitration, conciliation)? Please specify:

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

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

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

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

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

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

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

147) Number of enforcement agents

4920

148) Are enforcement agents:

- judges?
- bailiff practising as private profession ruled by public authorities?
- bailiff working in a public institution?
- other enforcement agents?

Please specify their status:

149) Is there a specific initial training or examination to enter the profession of enforcement agent?

- Yes
- No

150) Is the profession of enforcement agent organised by?

- a national body?
- a regional body?
- a local body?

151) Can users establish easily what the fees of the enforcement agents will be?

- Yes
- No

152) Are enforcement fees:

- regulated by law?
 freely negotiated?

Please indicate the source for the question 147

Statistics of the Länder

8. 1. 2. Supervision

153) Is there a body entrusted with the supervision and the control of the enforcement agents?

- Yes
 No

154) Which authority is responsible for the supervision and the control of enforcement agents:

- a professional body?
 the judge?
 the Ministry of Justice?
 the prosecutor?
 other?

Please specify:

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

155) Have quality standards been formulated for enforcement agents?

- Yes
 No

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

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

what procedures they need to apply (GVGA).

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

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

156) Do you have a specific mechanism for executing court decisions rendered against public authorities, including for monitoring the execution?

Yes

No

If yes, please specify:

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

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

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

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

Please indicate the sources for the questions 155 and 156

The regulations mentioned above.

8. 1. 3. Complaints and sanctions

157) What are the main complaints of 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?

Please specify:

Frequency:

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

158) 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:

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

159) Is there a system measuring the timeframes of the enforcement of decisions:

- for civil cases?
- for administrative cases?

160) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

- between 1 and 5 days
- between 6 and 10 days
- between 11 and 30 days
- more

Please specify:

161) Disciplinary proceedings initiated against enforcement agents:

Breach of professional ethics	<input checked="" type="checkbox"/> yes, number:	5
Professional inadequacy	<input checked="" type="checkbox"/> yes, number:	29
Criminal offence	<input checked="" type="checkbox"/> yes, number:	14
Other	<input checked="" type="checkbox"/> yes, number:	9

162) Sanctions pronounced against enforcement agents:

Reprimand	<input checked="" type="checkbox"/> yes, number:	14
Suspension	<input checked="" type="checkbox"/> yes, number:	2
Dismissal	<input checked="" type="checkbox"/> yes, number:	2
Fine	<input checked="" type="checkbox"/> yes, number:	14
Other	<input type="checkbox"/> yes, number:	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in civil matters and the main reforms that have been implemented over the last two years

Please indicate the sources for the questions 157 and 160

On complaints (question 157):

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

On sanctions against enforcement agents (question 162):

In addition, five proceedings were discontinued.

In four cases, the salaries were lowered.

In two cases, the agents were reprimanded.

Source: Statistics of the Länder

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

163) Is there a judge who is in charge of the enforcement of judgments?

Yes

No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor).

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

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

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

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

164) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

Yes

No

If yes, please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- 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. Statute

9. 1. 1. Functioning

165) Do you have notaries in your country? If no, go to question 170.

- Yes
 No

166) Is the status of notaries:

- | | | |
|---|---|------|
| a private one (without control from public authorities)? | <input type="checkbox"/> yes,
number: | |
| a status of private worker ruled by the public authorities? | <input type="checkbox"/> yes,
number: | |
| a public one? | <input checked="" type="checkbox"/> yes,
number: | 8513 |
| other? | <input type="checkbox"/> yes,
number and
specify: | |

167) Do notaries have duties:

- within the framework of civil procedure?
 in the field of legal advice?
 to authenticate legal deeds?
 other?

Please specify:

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

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

Please indicate the source for the question 166

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

9. 1. 2. Supervision

168) Is there an authority entrusted with the supervision and the control of the notaries?

- Yes
 No

169) Which authority is responsible for the supervision and the control of the notaries:

- a professional body?
 the judge?
 the Ministry of Justice?
 the prosecutor?
 other?

Please specify:

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

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system of notaries and the main reforms that have been implemented over the last two years**

10. Functioning of justice

10. 1. Foreseen reforms

10. 1. 1. Reforms

170) Can you provide information on the current debate in your country regarding the functioning of justice? Are there reforms foreseen? (for example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc). If yes, please specify.

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

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

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

II. In more detail:

1. Incoming cases

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

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

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

2. Court organisation and procedures

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

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

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

More recent reform ideas also aim at establishing a system of functional cooperation and purposeful allocation and limitation of responsibilities to avoid duplication of work by more than one judicial body (judge, judicial officer) within one proceeding (at least for long stretches throughout the proceeding). The reform models

foresee further shifts of functions of judges or the judicial officers to members of the service units or functions of the judicial officers to the deeds officials in the registries of members of the service units.

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

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

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

3. Results

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

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

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

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

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

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