

Questionnaire for evaluating judicial systems

I.

Concerning question 1:

Number of inhabitants 82.6 million

Concerning questions 2 and 3:

Reference is made regarding this to the statistics in the annex.

II.A.

Concerning question 4:

Public budget spent on legal aid (annually):

Duties relating to the field of justice within the Federal Republic of Germany, with very few exceptions, are handled by the Länder. In the previous year, as a result of a legislative procedure undertaken by the Federal Government, collection of data was made on the actual expenditures by the Länder in this area. Although not all the Länder reported on their expenditures, the findings are based on data collection made by individual Länder, and were then applied to the entire federal territory. According to the results of the surveys, expenditures in the year 2002 on legal aid in all branches of the justice system (with the exception of proceedings in criminal matters) amounted to approximately € 374 million nation-wide. There are no statistics on any partial efflux of contributions paid to the Land Treasuries (resulting from payments made by the person entitled to legal aid or the party obliged to pay remuneration upon conclusion of proceedings).

Concerning questions 5 to 7

Regarding public budget spent on legal aid, if possible, differentiation should be made between criminal cases and other legal matters (annually)

In the course of the aforementioned surveys conducted by the Federal Ministry of Justice, it was determined that Länder annual expenditures for cases requiring mandatory defence counsel in criminal matters (court appointed counsel) and for appointed attorneys in other criminal cases amounted to some € 88 million. In this context, as well, no information can be provided on the amount of any efflux to the Land Treasuries (e.g. as a result of recovery from the accused of costs advanced in the event of his conviction).

Under German Criminal Procedural law, the involvement of defence counsel in a proceeding is not obligatory in general, but rather only under special circumstances, e.g. due to the

severity of the alleged crime (section 140 of the Code of Criminal Procedure). The accused who has not yet hired an attorney, is appointed one by the court under these conditions. The court appointed attorney is compensated by the Treasury. Further parties involved in the proceedings (e.g. plaintiff in a private prosecution or the joint plaintiff and the injured party) can, upon request, also have an attorney provided or appointed to them by the court.

The number of cases with legal aid (if for the number of cases with legal aid a differentiation is to be made between criminal matters and other cases, there is no available data on criminal matters):

Civil matters:

civil process matters concluded before the Local Court (*Amtsgericht* – AG), in which

| | |
|--|-------|
| a decision concerning legal aid was made, total cases: | 60902 |
| of those, legal aid was awarded (also concurrently) | |
| to the plaintiff (claimant) | 23386 |
| to the defendant (respondent) | 23326 |

civil process matters concluded before the Regional Court (*Landgericht* – LG) at first instance

| | |
|---|-------|
| in which a decision was made concerning legal aid | |
| Total proceedings: | 26855 |
| of those, legal aid was awarded (also concurrently) | |
| to the plaintiff (applicant) | 11011 |
| to the defendant (respondent) | 6687 |

civil matters concluded before the LG at the appellate instance on fact and law,

| | |
|---|------|
| in which a decision concerning legal aid was made, total cases: | 4844 |
| of those, legal aid was awarded (also concurrently) | |
| the appealing plaintiff | 1163 |
| the defendant | 1792 |

Appellate matters concluded before the Higher Regional Court (*Oberlandesgericht* – OLG)

| | |
|---|------|
| in which a decision concerning legal aid was made, total cases: | 4132 |
| of those, legal aid was awarded (also concurrently) | |
| the appealing plaintiff | 1062 |

| | |
|--|--------------|
| the defendant | 1446 |
| <u>Legal aid awarded / civil matters total</u> | <u>69873</u> |

source: Fachserie 10 / Reihe 2.1 Zivilgerichte 2002,
Statistisches Bundesamt (StaBu)

Family matters:

| | |
|---|---------------|
| Family matters concluded before the AG | 559592 |
| of those, legal aid was awarded | 413162 |
| ... only to the plaintiff (applicant) | 150838 |
| ... only to the defendant (respondent) | 33606 |
| ... to both parties. | 114359 |
| | |
| Appeals and complaints concluded before the OLG | |
| against final rulings in family matters | 27560 |
| of those, legal aid was awarded | 12651 |
| ... only to the appellant | 1952 |
| ... only to the opponent | 3463 |
| ... to both parties. | 3618 |
| | |
| <u>Legal aid awarded / family matters total</u> | <u>425813</u> |

source: Fachserie 10 / Reihe 2.2 Familiengerichte 2002, StaBu

Legal aid awarded / civil and family matters total **495686**

Concerning question 8:

Yes.

Concerning question 9:

The question cannot be answered in this way. Pursuant to the provisions of section 115 of the German Code of Civil Procedure (*Zivilprozessordnung – ZPO*), the granting of legal aid is contingent upon the results of an evaluation of the person's need (*Bedürftigkeitsprüfung*). In brief, this procedure is as follows: First, the applicant's income is evaluated. In doing so, the

first step is an adjustment, i.e. taxes and social security contributions are subtracted. Then, reasonable subtractions are made for housing costs. Then an amount is subtracted that reflects how much the applicant needs to provide a living for themselves and their family (currently € 353 for one person). If after these calculations are made, no income remains, legal aid is granted without the applicant being obligated to pay back the amount granted in instalments. If, however, there is income left over, then legal aid is granted on the condition that the applicant is to pay back the court costs in instalments, whereas the amount of the instalments depends on the remaining income; a maximum of 48 monthly instalments are to be paid. A maximum income level only exists to the extent that for a remaining income of over € 750, instalments of € 300 are to be made and the amount of income exceeding € 750 is to be used to its full extent to pay court costs.

Concerning question 10:

An application for legal aid can be refused pursuant to section 115 ZPO if the intended complaint does not have a sufficient prospect for success or appears malicious. The decision is handed down by a judge.

Concerning question 11:

Do litigants have to pay a fee to start a proceeding at a general jurisdiction court? Are there exceptions?

In civil litigation, proceedings are initiated by the submission of an applicant's written complaint or motion to the court. The fees for the proceedings are immediately due upon entry of the complaint or motion. The service of the summons on the opposing party is generally not to be done until the plaintiff has paid the fees for the proceedings. In non-contentious matters, transactions which are to be carried out upon application are to be covered by an adequate payment by the applicant in advance. The undertaking of the transaction applied for is, as a rule, to be made contingent upon the payment of this advance payment.

Exceptions to the obligation of advance payment exist in particular where the applicant has been granted legal aid, he/she is exempted from fees by law or, in certain cases, where damages would be incurred which either could not be compensated at all or only with difficulty due to a delay in service of the summons or in proceedings. Furthermore, exceptions may be made for special proceedings. For example, the filing of a cross-complaint and the pending of an ancillary matter in respect of a divorce do not require the prepayment of any fees that may incur as a result of handling these matters.

In criminal matters, an obligation of payment in advance only exists for the private prosecutor and for the private accessory prosecutor at courts of higher instance. Costs which are to be paid by the person convicted do not become due until the judgment has become final and binding.

Concerning question 12:

The possibility to take out legal protection insurance policies exists, which exempt individuals from the costs connected to conducting proceedings.

Concerning question 13:

Judgments in criminal and civil proceedings, as well as court decisions handed down from administrative, social and labour jurisdictions entail decisions on costs.

Concerning question 14:

No.

II.B.

Concerning question 15:

In the Federal Republic of Germany, in particular, open access to the Bundestag's website is available. This website has, among other things, a research and search function for questions regarding the drafting and issuing of legislation (www.bundestag.de).

The Federal Constitutional Court and all the federal courts have their own websites with information and search functions for finding decisions handed down there:

Federal Constitutional Court: www.bundesverfassungsgericht.de

Federal Labour Court www.bundesarbeitsgericht.de

Federal Administrative Court: www.bundesverwaltungsgericht.de

Federal Social Court: www.bundessozialgericht.de

Federal Court of Justice: www.bundesgerichtshof.de

Federal Finance Court: www.bundesfinanzhof.de

Concerning question 16:

Yes.

In accordance with the State's federal structure, the organisation of aid to victims of crimes is decentralised in the Federal Republic of Germany. In addition to a large number of private aid organisations, in the individual Länder foundations for victims have been launched and there are also officers in charge of victim protection at the police inspector's offices, as well as, in part, at local police stations. The most well-known private victim support groups are "*Der Weiße Ring*" (the White Circle) and the working group "*Opferhilfen in der Bundesrepublik Deutschland - AdO*" (Aid to victims in the Federal Republic of Germany). *Der Weiße Ring*, a non-profit organisation toward the support of victims of crime and prevention of criminal acts, which was founded in 1976, has a broad network of points of contact for victims of crime. The second largest German organisation for aid to victims, the AdO, working group on aid to victims in the Federal Republic of Germany, is the parent organisation of different local victim aid institutions in different Länder. In addition to this, there are numerous institutions at the local and regional levels in the Länder, which take in victims of criminal acts and have diverse and, in part, interconnected aid programs. This includes not only socio-psychological counselling, e.g. also consultation in investigation proceedings and accompaniment to appointments for medical examinations.

Concerning question 17:

There is no public information system on the follow up to complaints by victims of crime, but see the explanations give on question 18.

Concerning question 18:

Yes; Comment: The state compensation fund for victims is governed under the "Act on Compensation for Victims of Violent Acts" (*Opferentschädigungsgesetz – OEG*), which was enacted in 1976. This law is part of the social law on compensation, which falls under the competency of the Federal Ministry of Health and Social Security. Behind this law is the basic notion that, if the state community does not manage to completely hinder violent crimes in spite of efforts towards crime prevention, it must at least support the victims of these crimes.

The Act on Compensation for Victims of Violent Acts provides for the following services:

- Therapeutic treatment of all services toward physical recovery and participation in professional life are provided by the state; for children, in addition non-medical paediatric/remedial education services;

- Pensions are paid to individuals, as well as to their widows and orphans, whose ability to make a living has been restricted or destroyed.

The financing of the Act on Compensation for Victims of Violent Acts is structured such that the federal government carries 40 % of the expenditures accrued by the Länder pursuant to this law. The budget amounted in 2002 to: Federal government approx. € 25000000; Länder approx. € 87000000.

Concerning question 19:

Regular statistical studies to measure the trust and satisfaction with the services delivered by the judiciary are not done.

Concerning questions 20 and 21

Aside from formal legal remedies in respect of court decisions, there is also the possibility of filing a disciplinary complaint. There are no provisions in respect of a time limit, within which these complaints must be responded to or dealt with.

III.A.

Concerning question 22:

See hereinafter the explanations given in respect of questions 23 and 24; in addition to the courts mentioned there, there are also the five federal courts.

Concerning question 23:

Number of ordinary courts at first instance:

| | |
|------------------------|-----|
| Local Courts | 687 |
| Regional Court | 116 |
| Higher Regional Courts | 25 |

source: Federal Ministry of Justice, *Zahlen aus der Justiz*, date: 1 January 2003

Concerning question 24:

Number of ordinary courts at first instance outside of the ordinary jurisdiction:

| | |
|------------------------------|------------|
| Labour Courts | 122 |
| Tax Courts | 19 |
| Social Courts | 69 |
| <u>Administrative Courts</u> | <u>52</u> |
| <u>Total:</u> | <u>262</u> |

source: Federal Ministry of Justice, *Zahlen aus der Justiz*, date: 1 January 2003

Concerning question 25:

Number of professional judges in office, most probably full time or in an office similar to a full time position (in all branches of courts)

Number of judges (life-long appointment, by order and in trial period)*

Total: 20901

*counted according to number of work forces, not by head

Of the judges, number of those working:

| | |
|--|-------|
| at the Federal Constitutional Court | 16 |
| at the ordinary courts | 15456 |
| at the Administrative Courts | 2316 |
| at the Tax Courts | 661 |
| at the Labour Courts | 1154 |
| at the Social Courts | 1274 |
| at the Federal Disciplinary Court (and Federal Military Courts) | 24 |

source: Federal Ministry of Justice, *Zahlen aus der Justiz*, date: 31 December

2002

Concerning question 26:

Number of honorary judges:

Number of honorary judges in the criminal jurisdiction (lay judges):

Adult ruling bodies 24280

| | |
|--|--------------|
| (Full Bench of the Local Court and penal chambers) | |
| Youth ruling bodies | 11501 |
| <u>(Juvenile Court and youth divisions)</u> | |
| <u>Total:</u> | <u>35781</u> |

source: *Schöffenstatistik* - Federal Ministry of Justice, Division R B 6, date: 1 January 2001

No figures are available for the remaining jurisdictions.

Concerning question 27:

Number of persons employed at courts (not holding a judicial office)

| | |
|--|-----------------|
| <u>Number of staff at the ordinary courts (not including personnel in training):</u> | |
| Total personnel at Local Courts | 45.298,92 |
| " " at Regional Courts | 10743.33 |
| " " at Higher Regional Courts | 4044.82 |
| <u>Total:</u> | <u>60087.07</u> |

There are no statistics on the number of personnel at the Federal Court of Justice or for the special jurisdictions.

source: *Fachserie 10 / Reihe 1 Rechtspflege 2002 / 2003*; StaBu

Concerning questions 28 to 30

Concerning the annual budget allocated to federal and Land courts and the development in this area, reference is made to the statistics in the enclosed **annex**.

Question 31:

The procedure for setting up the federal and Land budgets can basically be outlined as follows:

First, the justice ministries work together with the courts on proposals for the next annual budget and, in a further step, work together with the respective tax ministry to seek their approval. Then, preliminary proposals are decided upon by the respective Land government and the federal government (cabinet decision), together with those of the other divisions, and

acts as an annex to draft budget legislation. The government proposal is then – as is also the case in normal legislative procedure – discussed in the Parliament and finally pronounced law.

Question 32:

The federal courts receive budgets and manage them on their own. The person principally responsible for the use of the budgets is the President of the Court, who is supported by a special officer – the Agent in charge of the budget. However, it is possible in a legal sense for the respectively competent Federal Ministry to exercise influence in respect of the allocation of the budgets.

Concerning question 33:

In criminal proceedings as well as in other proceedings, the court is responsible for arranging the court hearings/sessions, the summoning of the parties and other measures required for the preparation of oral hearings.

III.B.

Concerning question 34:

The number of criminal cases received by the public prosecutor (*Staatsanwaltschaft* – StA)

| | |
|---|----------------|
| New cases | |
| received by the StA at the LG and by the StA at the AG | 4616477 |
| <u>New cases received at the public prosecutor at the OLG</u> | <u>31</u> |
| <u>Total:</u> | <u>4616508</u> |

source: Fachserie 10 / Reihe 2.6 Staatsanwaltschaften 2002, StaBu

Concerning question 35:

Number of criminal cases dropped by the public prosecutor

Cases dropped by the public prosecutor

Investigation proceedings by the StA at the LG and by the StA at the AG
4598290

of those, cases dropped with / without the condition: lack of capacity to be
adjudged guilty 2474 227

| | |
|--|----------------|
| <u>of those, preliminarily suspended</u> | <u>116018</u> |
| <u>Total cases dropped at the LG</u> | <u>2590245</u> |

Investigation proceedings (at first instance – cases with file ref.: OJ) concluded
by the StA at the OLG 32
of those, cases dropped of all kinds 22

Investigation proceedings (criminal matters – cases with file ref.: J) concluded by
the StA at the OLG 3111
of those, cases dropped of all kinds 1.037
Total cases dropped at the OLG 1059

Total number of cases dropped by StAs 2591304

source: Fachserie 10 / Reihe 2.6 Staatsanwaltschaften 2002, StaBu

Concerning questions 35 and 36 (supplementary)

If the question as to the number of dropped criminal cases also refers to criminal matters
dropped by the criminal courts which were pending with the court, the following figures can
be provided:

Cases dropped by the criminal courts

| | |
|---|---------------|
| Cases concluded before the AG | 857046 |
| <u>Cases dropped of all kinds</u> | <u>188197</u> |
| Proceedings concluded before the LG (first instance) | 14204 |
| <u>Cases dropped of all kinds</u> | <u>1040</u> |
| Cases concluded before the LG (appellate instance) | 54976 |
| <u>Cases dropped of all kinds</u> | <u>5243</u> |
| Proceedings concluded before the OLG (first instance) | 15 |
| <u>Cases dropped of all kinds</u> | <u>0</u> |
| Cases concluded before the OLG (appellate instance) | 5191 |
| <u>Cases dropped of all kinds</u> | <u>58</u> |

Cases dropped by the criminal courts Total: 194538

source: Fachserie 10 / 2.3 Strafgerichte 2002, StaBu

Concerning question 37:

Number of criminal cases which were brought before the court

New cases in criminal and regulatory fine matters

Criminal cases

| | |
|--|----------------|
| Proceedings at first instance / AG | 856238 |
| Requests for issuance of penal orders without penal orders pursuant to section 408a StPO / AG | 604060 |
| Proceedings at first instance / LG | 14417 |
| Proceedings at first instance / OLG | 16 |
| Appeal proceedings / LG | 55423 |
| Appeal proceedings / OLG | 5128 |
| Federal Court of Justice: | 3020 |
| <u>Total new cases in criminal matters</u> | <u>1538302</u> |

Regulatory fine matters

| | |
|---|---------------|
| Proceedings at first instance / AG | 352519 |
| Appeal proceedings / OLG | 6402 |
| <u>Total new cases in regulatory fine matters</u> | <u>358921</u> |

Total new cases 1897223

source: *Fachserie 10 / Reihe 1 Rechtspflege, 2002/2003,*

Fachserie 10 / Reihe 2.3 Strafgericht, 2002, StaBu

... Object of a simplified administrative proceeding

Only a regulatory fine proceeding is to be seen as a simplified administrative proceeding, which is conducted by the administrative office, but not administrative fine proceedings before the Local Court.

Division RB6 has no figures on regulatory fine proceedings before the administrative authority.

Concerning questions 38 to 43

Number of decisions [in criminal matters] on the merits, which were handed down by the court subsequent to an open contentious hearing

Proceedings for criminal offences:

| | |
|---|---------------|
| Proceedings at first instance / AG | 408070 |
| Proceedings at first instance / LG | 10305 |
| " " / OLG | 13 |
| Appeal proceedings / LG | 26995 |
| Appeal proceedings / OLG (Appeals on points of law) | 379 |
| Proceedings / BGH (Appeals on points of law) | 165 |
| <u>Total number of decisions*</u> | <u>449434</u> |

Regulatory fine proceedings:

| | |
|--|--------------|
| Proceedings at first instance / AG | 85834 |
| <u>Appeal proceedings / OLG (appeals on points of law)</u> | <u>3507</u> |
| <u>Total number of decisions*</u> | <u>89341</u> |

Total number of criminal and regulatory fine proceedings 538775

*listed here are the number of those cases concluded by the handing down of a judgment subsequent to a contentious open hearing.

Concerning questions 44 to 49

Number of decisions on [non-criminal] matters on the merits, which were handed down by the court after an open contentious hearing (listed here are the number of contentious judgments, not the number of concluded proceedings):

Ordinary jurisdiction:

Civil jurisdiction, not including Family Courts 509819

Special jurisdictions:

Labour jurisdiction 47206

| | |
|-------------------------------------|---------------|
| Tax jurisdiction | 17493 |
| Social jurisdiction | 63361 |
| <u>Administrative jurisdiction</u> | <u>71812</u> |
| <u>Total* special jurisdictions</u> | <u>199872</u> |

Decisions by the ordinary courts and special jurisdictions

| | |
|----------------|---------------|
| <u>Total *</u> | <u>963616</u> |
|----------------|---------------|

*listed here are the number of contentious judgments, not the number of concluded proceedings.

source: Fachserie 10 / Reihe 1 Rechtspflege, 2002/2003,
Fachserie 10 / Reihe 2.2 Familiengerichte 2002, StaBu
Ergebnisse der Statistik der Sozialgerichtsbarkeit 2002, BMGS

Number of decisions in appellate matters:

a) in civil matters

| | |
|------------------------|--------|
| Total: | 147377 |
| Regional Court | 84134 |
| Higher Regional Courts | 63243 |

b) in administrative matters

| | |
|--|-------|
| Appeals, Complaints in respect of decisions on the merits, Appeals with requests for admission | 24207 |
|--|-------|

Concerning questions 47 to 49

Decisions by the Family Courts (listed here are the number of contentious judgments, not the number of concluded proceedings):

| | |
|----------------------------|---------------|
| <u>Family jurisdiction</u> | <u>253018</u> |
|----------------------------|---------------|

Number of decisions on the merits handed down at first instance in divorce matters

Proceedings concluded at the Family Courts

| | |
|--|---------------|
| Local Courts, family matter proceedings concluded by judgment, | 207088 |
| <u>number of those cases whose ruling was for divorce</u> | <u>205897</u> |

source: *Fachserie 10 / Reihe 2.2. Familiengerichte*, 2002 StaBu

Number of decisions in appellate matters in family disputes: 27560

Concerning questions 50 to 52

Number of decisions in the labour jurisdiction: 47206

(listed here are the number of contentious judgments, not the number of concluded proceedings).

IV.

Concerning question 53:

There is no information available on this.

Concerning question 54:

Judges: Judges are generally provided with computers.

Non-judicial service: As a rule, if word processing and administration duties are involved.

Concerning question 55:

Yes.

For the federal government, the competent institution is the Federal Office of Statistics, Gustav-Stresemann-Ring 11, 65189 Wiesbaden.

The Federal Länder each have their own Land statistics offices. The addresses can be found on the website located at <http://www.destatis.de/allg/d/link/link981.htm>.

Concerning questions 56 and 57

In principal, written observations, applications, case matters etc. must be submitted in writing. Written observations submitted via fax also meet these requirements. However, the

justice administrations now have the possibility to allow the submission of electronic documents to courts through the issuance of ordinances. But there is no information available as to whether and to what extent this authorisation clause has been made use of.

V.

Concerning question 58:

Criminal matters, first instance (AG, LG, OLG)

| | |
|--|---|
| Total concluded cases: | 871265 |
| Total number of individual accused persons | 981859 |
| Acquittal: | 35717 (= 3.6 %, related to the number of accused persons) |

Concerning question 59:

Yes.

Concerning question 60:

Yes.

Concerning question 61:

Yes.

Concerning question 62:

There is only general statistical data available, which is not broken down by particular crime.

Concerning question 63:

Average length per proceeding

| | |
|--------------------|------------|
| First instance | 4.0 months |
| Appellate instance | 3.6 months |

From the date of receipt by the public prosecutor

| | |
|--------------------|-------------|
| First instance | 7.8 months |
| Appellate instance | 15.9 months |

Proceedings concluded by judgment

First instance 4.1 months

Appellate instance 4.2 months

Concerning question 64:

Family Court, divorce proceedings 10.2 months

Concerning question 65:

OLG appeals and complaints in respect of final and binding decisions 5.4 months

Upon initiation, first instance 25.1 months

Concerning question 66:

No data on average length

Concluded within a period of up to six months: 82%

Concerning question 67:

No data on average length

Concluded within a period of up to six months: 89.8 %

Concerning question 68:

Yes.

Concerning question 69:

The length of proceedings at the individual courts is basically analysed by collecting the statistical data with regard to cases concluded. By considering the point in time of the initiation of proceedings and the point in time of the conclusion of the matter, the length of proceedings of every court case can be calculated.

VI.

Preliminary remarks on questions 70 to 78

In Germany, as of 31 December 2002, there were 20901 professional judges active, of which 489 were in the federal service and 20412 in service at the Land level. The German Judiciary Act (*das Deutsche Richtergesetz – DRiG*) contains in its first part common provisions for judges in service at the federal and Land levels, in particular on tax regulations. The second part regulates the legal relationship of the judges in the federal service. And finally, the third part sets up principles for the judges in service at the Land level in the form of framework provisions. These framework provisions are fulfilled by the respective Land laws concerning judges – each of the 16 Länder has its own Land law concerning judges. Within this context, each question can be answered with a yes or a no, since different regulations exist in different areas.

Concerning question 70:

Annual salary: € 35542.68 Year: 2004
Source: *Besoldungsgruppe R 1 der Bundesbesoldungsordnung R, Anlage IV des Bundesbesoldungsgesetzes*

Concerning question 71:

Annual salary: € 82787.28 Year: 2004
Source: *Besoldungsgruppe R 6 der Bundesbesoldungsordnung R, Anlage IV des Bundesbesoldungsgesetzes*

Concerning question 72:

Yes. Pursuant to section 4 DRiG, a judge may not simultaneously take on judiciary as well as legislative or executive duties. However, in addition to duties related to the judiciary, a judge may take on

- duties related to court administration,
- other duties, which have been delegated to courts or judges by law,
- research and instruction duties at a university, public instructional institution or an official training institute
- examination matters.

An additional position as an arbitrator or as an expert solicited to give an opinion in an arbitration matter are only permitted if the parties to the arbitration agreement jointly commission him or if he has been appointed by an impartial office. The approval is to be denied if at the time of the decision on the granting of the approval the judge is involved with handling the matter, or could be involved by way of delegation of duties, section 40 (1) DRiG.

A judge may not allow external legal opinions, nor may he give binding legal advice, section 41 DRiG.

Concerning question 73:

Pursuant to Article 95 (2) Basic Law, a federal committee for the selection of judges and the Federal Minister who is competent for the respective court decide on the appointment of the judges to the highest federal courts (Federal Court of Justice, Federal Administrative Court, Federal Finance Court, Federal Labour Court, Federal Social Court).

Pursuant to Article 98 (4) Basic Law, the Länder may provide that Land judges be chosen jointly by the Land Minister of Justice and a committee for the selection of judges. A committee for the selection of judges is involved in appointing judges in the following Länder: In Berlin, Brandenburg, Bremen, Hamburg, Hesse, Schleswig-Holstein and Thuringia. The committee for the selection of judges in Baden-Württemberg and the arbitration committee in Rhineland-Palatinate only function as conflict resolution committees, which are implemented if the competent minister and the presidential council disagree over the appointment of a judge. The judge selection committees consist mainly of delegates or of these appointed persons; occasionally, representatives of the judiciary are also part of these committees, in some Länder also one or two attorneys.

The judge selection committee is, as mentioned earlier, regulated by law.

Concerning question 74:

Yes.

In principle, judges are obligated to take part in further training. In order to properly perform the office of a judge, further training is necessary which is to be accomplished parallel to the entire duration of their professional career. However, the type of training can be decided by the judge.

In the year 2003, 4327 judges and public prosecutors participated in seminars held by the German Judicial Academy (*Deutsche Richterakademie*), the cross-regional educational facility for judges and public prosecutors. Since, in addition to this, the Länder also have a great number of their own further education seminars, an average number in percent cannot be provided.

Concerning question 75:

Section 26 (1) DRiG provides that a judge principally be under service supervision, as long as their independence (Article 97 Basic Law) is not interfered with. Service supervision does not apply to the determining of the legal position on a matter, which is a core area of judicial service, but instead entails only those duties of a judge which have to do with the peripheral form of the fulfilment of public service (e.g. conducting meetings in conference rooms, the use of uniform documents etc.). In the event of a judge's unprofessional conduct, the service supervision has two measures available to them pursuant to section 26 (2) DriG: The judge may be charged with a disorderly mode and performance of a public duty, and he can receive written warning that he must properly and immediately fulfil such duty. Service supervision is carried out by the presidents of the courts, in the last instance the competent ministries, regularly the justice ministries.

Further serious disciplinary measures may only be imposed in the course of a formal disciplinary proceeding conducted by the judicial service court; this is intended to ensure the most extensive possible independence from executive bodies on the part of the judges. Disciplinary law for judges is not independently regulated at the federal, nor the Land level. For judges in federal service, the applicable law pertaining to public officers is the Federal Disciplinary Law (*Bundesdisziplinargesetz* – BDG); for judges in service at the Land level, the respective Land disciplinary laws apply according to the individual Land laws governing judges.

Suitability and performance of all judges are to be regularly assessed by those in charge of service supervision, the court presidents. Judges have a right to proper and fair assessments of their performances; this serves the objectivity of personnel decisions. In view of the obligation on the part of the State to guarantee the enforcement of justice, performance assessments are indispensable. An assessment of the judge's personality, his qualifications and his performance under pressure are needed in order to be able to select the best suited judge in appointments to the judiciary. Also, it is only in this way that the required performance principle (qualification for professional civil service according to aptitude, qualifications and professional achievements, Article 33 (2) Basic Law) can be met with. Performance assessments also form the basis of every decision on promotion.

Concerning question 76:

Judges in Germany generally receive life-long appointments. Exceptions to this are judges at the administrative courts. Thus, the term of office of a judge at the Federal Constitutional Court is twelve years.

No.

Concerning question 77:

There is no information available on this.

Concerning question 78:

There is no information available on this.

VII.

Question 79:

It can be seen in the federal budget plan for 2004 that, for the chapter of the Federal Public Prosecutor General at the Federal Court, the budget has been set at € 45550000.

There is no data on the public prosecutors in the Länder.

Concerning question 80:

Number of public prosecutors in office, most probably full time or in an office similar to a full time position

| | |
|-----------------------------------|--------------|
| Number of public prosecutors | 5150 |
| <u>Number of public attorneys</u> | <u>957</u> |
| <u>Total:</u> | <u>6.107</u> |

* not including delegate legal officers and other staff in public service with the Federal Public Prosecutor General

source: *Zahlen aus der Justiz*, date: 31 December 2002

Concerning question 81:

The gross annual salary of a public prosecutor at the start of his career **** begin at approx. € 40366

** Presumption: Judges at grade scale R 1, 29 year of age, 12.6 salaries (not including adjustments)

Concerning question 82:

On the basis of grade scale R 6, federal prosecutors with the Federal Public Prosecution Office (Federal Public Prosecutor at the Federal Court of Justice) are paid on average the following salaries:

| | | |
|------|---------|--|
| | € 89903 | (12.6 x € 7135.16 (fixed salary for R 6 judges)) |
| plus | € 4266 | (adjustment for working at the highest federal courts) |
| | € 94169 | (Gross annual salary) |

This can also increase in certain cases when calculating the household-related portions of the salary (marital status/no. of children, etc.).

Concerning questions 83 and 84

Reference is made in this respect to the answers to questions 72 and 73; the statements made there also apply in the same sense here.

Concerning question 85:

See also the response to question 74 regarding this.

In the year 2003, 4327 judges and public prosecutors participated in seminars held by the German Judicial Academy (*Deutsche Richterakademie*), the cross-regional educational facility for judges and public prosecutors. Since, in addition to this, the Länder also have a great number of their own further education seminars, an average number in percent cannot be provided.

Concerning question 86:

Since public prosecutors are civil servants, unlike judges, they are subject to the instructions of their supervisor. In this context, inspections or monitoring can be conducted.

Concerning question 87:

There is no information available on this.

Concerning question 88:

There is no information available on this.

VIII.

Concerning question 89:

Number of lawyers admitted to the bar

2004: 126799

2003: 121420

2002: 116305

2001: 110367

2000: 104067

1999: 97791

Concerning question 90:

Yes.

Concerning question 91:

Standards are set by the legislative branch of the government. Basic duties and obligations are regulated under state law by the Federal Regulations for Practising Lawyers (*Bundesrechtsanwaltsordnung* – BRAO). Additional regulations are contained in the Professional Code for Practising Lawyers (*Berufsordnung für Rechtsanwälte*), which is issued as a binding statute on the basis of law (sections 59 b, 191 a – e BRAO) by the body for the drafting of such statutes (*Satzungsversammlung*) which is set up by the Federal Chamber of Practising Lawyers (*Bundesrechtsanwaltskammer*).

Concerning question 92:

Yes.

Concerning question 93:

In 1994 (more recent statistics are not available) 482 disciplinary proceedings against lawyers were initiated in the “old” Länder .

Concerning question 94:

There are no statistics available on this.

Concerning question 95:

Yes.

Concerning question 96:

This question cannot be answered in a general way. Divorce cases are generally bundled proceedings, in which, in addition to the decision on the divorce, further decisions (e.g. alimony, settlement on surplus of assets gained from the marriage [*Zugewinnausgleich*], and settlement of spousal pension rights accrued during marriage [*Versorgungsausgleich*]) must also be made. In reaching these decisions, the amount of the respective claims are adjusted according to the amount of the costs, which makes it impossible to give a general statement as to what amount of attorney's fees can be reimbursed through legal aid.

IX.

Concerning question 97:

Mediation proceedings are not regulated by law in the Federal Republic of Germany. The professional career of mediators is not regulated by law either, and is not subject to any restrictions or accreditation procedures. Anyone can pursue a career as a mediator. Only special interest associations have their own statutes which pertain to the training and prerequisites to becoming a mediator. Therefore, there are no admissions procedures for mediators, nor are there any statistics on the registration of mediators practising in the Federal Republic of Germany.

Concerning question 98:

There is public funding in the individual Länder for projects devoted to mediation that is closely tied to the court. However, there is no statistical data on these individual projects, nor is there a specific state budget for mediation.

Concerning question 99:

Due to a lack of a legal regulation for mediation proceedings, the number of mediation cases conducted cannot be statistically determined either. Therefore there are no figures on this.

Concerning question 100:

No figures (see also response to 99).

Concerning question 101:

No figures (see also response to 99). Family mediation is currently one of the most important areas of application of mediation in the Federal Republic of Germany.

Concerning question 102:

For the area of criminal law, enforcement officers (*Strafvollzugsbeamten*) are responsible, and for the area of civil law, an officer of the court or bailiff (*Gerichtsvollzieher*).

In the Federal Republic of Germany, there are a total of 4574 bailiffs in office (specific number of persons).

Concerning question 103:

Yes. Bailiffs (*Gerichtsvollzieher*) are officers at the Land level within the intermediate public service; they fall under the supervision of the Director of the Local Court to whom they are assigned.

Concerning question 104:

We have no figures on the number of disciplinary proceedings against enforcement agents in the Federal Republic of Germany.

Concerning question 105:

There is no data available on the number of criminally convicted enforcement agents.

Concerning question 106:

Yes. Creditors and debtors may file an appeal in the form of an objection (section 766 ZPO) with regard to the manner in which the enforcement was carried out by the bailiff. In addition to this, a bailiff can be sued, if in the course of enforcement he has made himself liable for damages in respect of the creditor or debtor.

Concerning question 107:

Yes. In the course of enforcement, the Local Courts are competent to act as Execution Courts to the extent that they are assigned by law to the duty of ordering acts of enforcement and are involved in such acts. The Enforcement Courts play a very important role in the

enforcement of sentences in claims and other rights to property on the part of the debtor (section 828 et seq. German Code of Civil Procedure) and in the enforcement of sentences regarding real property pursuant to the Law on Compulsory Sale of Real Property (*Zwangsversteigerungsgesetz* - ZVG). In addition, the Local Court, being a trial court, can order enforcement measures to compel the debtor to act, as well as to compel him to refrain from certain acts (sections 887, 888, 890 German Code of Civil Procedure).

Concerning question 108 part 1

Yes.

Concerning question 108 part 2

Yes.

Basically, the same applies here as does to the enforcement of decisions in respect of individuals (cf. response to question 107)