European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Response questionnaire project group Timeliness

Ministry of Justice Germany

1. The Court System and Available Statistics

1.1. The Court System

Organisation of justice – judicial systems

Because of the federal order of the Federal Republic of Germany, the court system is also structured federally. Jurisdiction is exercised by federal courts and by the courts of the 16 federal states (Länder). The main workload of the administration of justice lies with the Länder. The German court system is divided into five independent specialised branches or jurisdictions:

- Ordinary jurisdiction
- Labour Jurisdiction
- General administrative jurisdiction
- Fiscal jurisdiction
- Social jurisdiction.

In addition to these specialised jurisdictions, there is the constitutional jurisdiction, which consists of the Federal Constitutional Court and the constitutional courts of the Länder.

The courts of the Länder are generally administered by the ministries of justice. At the federal level, the Federal Minister of Justice is responsible for the Federal Court of Justice, the Federal Administrative Court and the Federal Finance Court. The Federal

Ministry of Labour and Social Affairs is responsible for the Federal Labour Court and the Federal Social Court. The responsible ministries also administer the necessary budgetary resources. The only exception is the Federal Constitutional Court, which has been granted organisational autonomy as an independent constitutional organ. It presents its own court budget for approval.

Ordinary courts - Jurisdiction in civil matters

The local courts (Amtsgerichte) as courts of first instance are competent in civil cases – mainly in cases with a litigation value of up to €5000. They are also competent in matters independent of the value of litigation, such as rental disputes and family and maintenance matters.

Cases in local courts can be heard by an individual judge.

The regional courts (Landgerichte) as courts of first instance are competent in civil law cases involving all disputes not assigned to the local courts. These are usually disputes with a litigation value of more than €5000.

In principle, cases before the regional courts are also heard by an individual judge. Difficult matters and cases of fundamental importance are, however, decided in chambers: i.e., a tribunal made up of three professional judges.

Regional courts of second instance hear cases in civil tribunals within the regional courts. These are usually composed of three judges, who hear appeals against the judgements of the local courts.

Furthermore, chambers for commercial matters can be established at regional courts. These are usually responsible for disputes of first and second instance between businesspeople/merchants. These chambers are composed of one professional judge and two lay judges who are merchants.

The higher regional courts (Oberlandesgerichte) are usually courts of second instance. In civil cases, they hear appeals against judgements of the regional courts, and appeals against judgements of the local courts in family matters.

The senates of the higher regional courts consist in principle of three professional judges. Civil cases that present no special difficulties and are not of fundamental importance can, however, be transferred to individual judges.

The highest ordinary court is the Federal Court of Justice (Bundesgerichtshof), which is the court of last resort and deals with appeals on points of law only. The senates of the Federal Court of Justice are composed of five professional judges.

Ordinary Courts - Jurisdiction in criminal matters

Courts of first instance

The Courts Constitution Act (Gerichtsverfassungsgesetz – GVG) sets out the competence of courts in criminal proceedings. The Local Court (Amtsgericht) is the court of first instance in criminal matters, unless the jurisdiction of the regional court or the higher regional court is established. In principle a decision is taken by one criminal court judge, if it

- concerns an offence (Vergehen) or
- is pursued by private prosecution and
- if a penalty more severe than a two-year sentence of imprisonment is not anticipated.

In aggravated cases, a judicial panel is responsible, which is composed of one professional judge and two lay assessors.

Cases assigned to the judicial panels concern criminality of medium severity, for which the local court is competent, unless they have been assigned to a criminal court judge. This involves cases where the anticipated penalty is imprisonment for between two and four years. Moreover, a so-called extended judicial panel can hear such a case on request by the public prosecutor's office – if the public prosecutor's office and the court consider that there is a need for additional consultation with a second professional judge because of the extent of the matter.

The competence of the Regional Court (Landgericht) of first instance is provided for all crimes for which neither the Local Court nor the higher regional courts are responsible: i.e. where a longer period of imprisonment is anticipated.

It should be noted that German criminal law distinguishes between an ‘offence’ (Vergehen) on the one hand, and a ’crime’ (Verbrechen) on the other. A crime in this sense (according to the Federal Criminal Code) is a criminal act for which the law provides a minimum penalty of at least one year. Thus, crimes are the most serious criminal acts.

The Regional Court is also responsible for all other criminal offences where the anticipated penalty exceeds four years. It is also competent if the prosecutor's office decides to bring an indictment in the Regional Court because of the special importance of a case, even if the Local Court is competent.

Tribunals at the Regional Court are heard by the criminal division. Decisions of first instance are taken by a Grand Criminal Division (Große Strafkammer) and are generally heard by three professional judges and two lay assessors. Under certain conditions a Grand Criminal Devision can decide at the opening of a trial that the case can be heard by two professional judges and two lay assessors only.

The Higher Regional Court is court of first instance for the crimes and offences, most of which concern the security/existence of the Federal Republic of Germany. The senates are generally composed of three professional judges.

Appeals

When appealing against a judgement of the local court, the usual remedy is to appeal to the regional court, where the appeal is heard by the so-called Small Criminal Division (Kleine Strafkammer). This is composed of one professional judge and two lay assessors. In the case of appeals against the judgement of an extended judicial panel of the local court, a second professional judge is added. In addition a so-called ‘leap frog appeal’ (’Sprungrevision’) is possible against judgements of the Local Court of first instance, on which the Higher Regional Court can decide.

An appeal on points of law (Revision) can be lodged against all judgements in courts of first instance – both the Regional Court and the Higher Regional Court. The Federal Court of Justice is the court of appeal instance (Revisionsinstanz) against all decisions of the Higher Regional Court and the large criminal divisions of the Regional Court. The senates of the Federal Court of Justice can decide on the revision with five professional members, including the presiding judge. Appeals against (other) judgements by the regional courts are decided by the higher regional courts.

Specialised courts

Labour courts

Labour courts deal essentially with labour law disputes arising out of contractual relationships between employees and employers (individual labour law). They also deal with disputes between the parties to a collective agreement, such as trades' unions and employers' associations (collective labour law).

The courts of first instance are the labour courts (as courts of the Länder). Cases are heard in chambers by one professional judge and two lay judges, one representing the employee(s) and one the employer(s). The higher labour courts (also courts of the Länder) decide on appeals against the judgements of the labour tribunals. Here again, the chambers are composed of one professional and two lay judges. Decisions in the last instance are taken by the Federal Labour Court (as the court of the Federation), whose senates are composed of three professional judges and two lay judges.

Administrative courts

Three different branches of the court system are responsible for examining administrative decisions: the general administrative jurisdiction, the social courts and the fiscal courts. An important characteristic of the general administrative and the social and fiscal jurisdiction is that they apply the ex officio (by right of office) principle. Thereafter, the courts must investigate the facts of the case on their own initiative (i.e. not only at the request of a party and without being bound by requests for evidence). This is because the material correctness of the decision of the case affects the public interest.

General administrative courts

The general administrative jurisdiction has three instances.

1. In the first instance are the regional administrative courts (Verwaltungsgerichte).
2. In the second instance are the higher administrative courts for each federal state (Land – called Oberverwaltungsgericht or Verwaltungsgerichtshof).
3. At the highest instance is the Federal Administrative Court (Bundesverwaltungsgericht).

The regional administrative courts are courts of first instance. The higher administrative courts are primarily appeal tribunals, which examine the decisions of courts of first instance from a legal and factual point of view. With very few exceptions, the Federal Administrative Court is an appeal court that examines points of law only (revision).

The general administrative jurisdiction is, in principle, responsible for all disputes between administrations and private persons concerning the correct application of administrative laws and regulations. However (in place of the administrative courts) the ordinary courts become responsible when the case involves the participation of the administration in the economy under civil law (acting like a private business) and for all disputes arising from such activities. Furthermore, disputes that are assigned by law to the ordinary courts, the social courts or to the fiscal jurisdiction are exempted from general administrative jurisdiction.

In principle, decisions in the administrative jurisdiction are taken by tribunals. The regional administrative courts are composed of three professional judges and two lay judges. The Higher Administrative Court is usually composed of three professional judges. The Federal Administrative Court consists of five professional judges. However, in the regional administrative courts, cases can be referred to an individual judge.

Social courts

The **social jurisdiction** has, like the administrative jurisdiction, three instances encompassing an appropriate division of tasks. Besides the Social Court (Sozialgericht) as a court of first instance, there is a Higher Social Court (Landessozialgericht) in each

federal state, and the Federal Social Court (Bundessozialgericht), which acts as the supreme court of appeal on points of law (revision).

The **social courts** are responsible mainly for hearing disputes in matters of social insurance (pensions, accident and sickness insurance, insurance for convalescent care, unemployment insurance) and social welfare. In the social jurisdiction, too, decisions are taken, in principle, by tribunals. A social court tribunal is composed of one professional judge and two lay judges. The Higher Social Court and the Federal Social Court consist of three professional judges and two lay judges.

Fiscal courts

The **fiscal jurisdiction** consists of financial courts of first instance and the Federal Finance Court (Bundesfinanzhof), which acts as a supreme court of appeal purely on points of law. The competence of the fiscal jurisdiction covers mainly disputes on public levies and taxes and customs. The tribunals of finance courts are composed of three professional judges and two lay judges; those of the federal finance court are composed of five professional judges. Cases can be referred to an individual judge in the financial courts.

Federal Constitutional Court (Bundesverfassungsgericht)

The Federal Constitutional Court exercises jurisdiction over constitutional matters at the federal level. Its decisions are based on the Basic Law (Grundgesetz). By far the largest number of proceedings before the Federal Constitutional Court are constitutional complaints. These are lodged by citizens claiming a violation of their fundamental rights in respect of judgements, government actions or legislative acts. Generally, a constitutional complaint is admissible only if no other appeal is possible (e.g. last instance judgements).

There are several other types of proceedings. These include, in particular, the abstract and concrete judicial review of the constitutionality of laws, and procedures to verify whether the limits of competence by federal constitutional institutions have been respected. Certain decisions of the Federal Constitutional Court can acquire legal force. The court consists of two senates, each composed of eight judges. The court decides in

chambers, each of which is composed of three judges, or by a senate of eight judges, mostly without oral hearings.

State constitutional courts (Landesverfassungsgerichte

State constitutional courts or high courts of state are constitutional courts of the respective federal states (Länder). They decide mainly on constitutional disputes under state law (Landesrecht), which also governs their establishment, administration and competence.

See also schematic 1 added as annex to this paper.

1.2. Statistic information on Courts, judges and cases

Civil and criminal cases are heard before the courts of ordinary jurisdiction. As per 31 December 2008, these were:

- 665 local courts
- 116 regional courts
- 24 higher regional courts
- 1 federal court (Federal Court of Justice)

14,925 judges worked in ordinary jurisdiction. 240 of them worked for the Federation; the remainder were employed at the courts of the *Länder*.

The following numbers of **cases received** were recorded in the **civil matters** in 2009:

	First instance	Appeal proceedings
Local court	1,243,951	-
Regional court	368,692	59,794
Higher regional court		53,154
Federal Court of Justice		5,152

The following **conclusions** were counted in civil matters in 2009:

	First instance	Appeal proceedings
Local court	1,250,582	-
Regional court	359,525	59,386
Higher regional court		52,215
Federal Court of Justice		5,146

Added to this are 33,765 complaints to be processed before the higher regional courts (not recorded by receipt and conclusion). None of the figures include family matters; these are recorded separately. Family cases are however counted among civil cases at the Federal Court of Justice.

The following **cases received** were counted at the **criminal matters** in 2009:

	First instance	Appeal proceedings
Local court	803,465	-
Regional court	14,204	52,344
Higher regional court	12	6,151
Federal Court of Justice	-	3,525

The following **conclusions** were counted in criminal matters in 2009:

	First instance	Appeal proceedings
Local court	818,593	-
Regional court	13,924	53,091
Higher regional court	14	6,077
Federal Court of Justice	-	3,443

1.3. Statistic information on processing time

Civil law disputes

Of the proceedings before the **local courts** that were concluded **in 2009** the following were pending:

up to and incl. 3 months .....49.5 %
more than 3 up to and incl. 6 months .....26.8 %

more than 6 up to and incl. 12 months .....17.3 %
more than 12 up to and incl. 24 months .....5.4 %
more than 24 months .....1.1 %

The average length of the proceedings was 4.6 months; where the proceedings were concluded with a contentious judgment it was 7.1 months.

The following applies to **regional courts at first instance**:

Of the total sets of proceedings concluded, the following were pending in court
up to and incl. 3 months .....32.5 %
more than 3 up to and incl. 6 months .....24.4 %
more than 6 up to and incl. 12 months .....24.2 %
more than 12 up to and incl. 24 months .....12.6 %
more than 24 months .....6.3 %

The average length of the proceedings was 8.2 months; where the proceedings were concluded with a contentious judgment it was 13.1 months.

The following applies to **regional courts in appeal on points of fact and law proceedings**:

Length of the concluded proceedings from initial receipt at first instance:
up to and incl. 1 year .....39.6 %
more than 1 up to and incl. 2 years .....44.6 %
more than 2 up to and incl. 3 years .....1.1 %
more than 3 up to and incl. 4 years .....2.9 %
more than 4 up to and incl. 5 years .....0.9 %
more than 5 years .....0.8 %

The average length of the proceedings was 16.8 months; where the proceedings were concluded with a contentious judgment it was 19.5 months.

The following applies to **higher regional courts** for appeal on points of fact and law proceedings:

Length of the concluded proceedings from initial receipt at first instance
up to and incl. 1 year .....20.8 %
more than 1 up to and incl. 2 years .....41.7 %
more than 2 up to and incl. 3 years .....19.6 %
more than 3 up to and incl. 4 years .....8.4 %
more than 4 up to and incl. 5 years .....4.8 %
more than 5 years .....4.7 %

The average length of the proceedings was 24.8 months; where the proceedings were concluded with a contentious judgment it was 28.5 months.

The following applies to the Federal Court of Justice in civil cases, including family cases, with regard to appeals on points of law, non-admission complaints, appeals on points of law in lieu of an appeal on fact and law (*Sprungrevision*) and appeals on points of fact and law against judgments of the Federal Patent Court:

Length of the proceedings before the Federal Court of Justice from the receipt of the appeal until the judgment

up to and incl. 6 months .....5.3 %
more than 6 months up to and incl. 12 months .....36.6 %
more than 12 months up to and incl. 18 months .....26.2 %
more than 18 months up to and incl. 24 months .....12.1 %
more than 24 months……..**.....**19.8 %

Criminal proceedings

The length of the proceedings in **criminal matters** averaged **in 2009** (in months):

- before the **local court** 3.9 months,
- before the **regional court** at first instance 6.2 months and in appeal proceedings 4.4 months,
- before the **higher regional court** at first instance 11.6 months and in appeal proceedings 1.3 months.

At the **Federal Court of Justice** the average length of the proceedings from being received at the court until the ruling on the appeal on points of law for 2009 was as follows:

Of the sets of proceedings concluded by judgment in 2009 (4.7% of rulings on appeal on points of law) before the Federal Court of Justice the following were pending:

up to and incl. 3 months .....75.6 %
more than 3 up to and incl. 6 months .....18.5 %
more than 6 up to and incl. 9 months .....3.0 %
more than 9 up to and incl. 12 months .....1.5 %
more than 12 months .....1.5 %

Of the sets of proceedings concluded by an order in 2009 (judgment quashed by the preliminary instance) (14.5% of rulings on appeal on points of law) before the Federal Court of Justice the following were pending:

up to and incl. 3 months 92.5%
more than 3 up to and incl. 6 months 6.3%
more than 6 up to and incl. 9 months 0.2%
more than 9 up to and incl. 12 months 0.2%
more than 12 months 0.7%

Of the sets of proceedings concluded by an order in 2009 (appeal on points of law manifestly unfounded) (79.9% of rulings on appeal on points of law) before the Federal Court of Justice the following were pending:
up to and incl. 3 months 97.9%
more than 3 up to and incl. 6 months 1.9%
more than 6 up to and incl. 9 months 0.0%
more than 9 up to and incl. 12 months 0.1%
more than 12 months 0.0%

Of the sets of proceedings concluded by an order in 2009 (appeal on points of law inadmissible) (0.9% of rulings on appeal on points of law) before the Federal Court of Justice the following were pending:
up to and incl. 3 months 96.2%
more than 3 up to and incl. 6 months 3.8%
more than 6 up to and incl. 9 months 0.0%
more than 9 up to and incl. 12 months 0.0%
more than 12 months 0.0%

2. Statistics, Requirements and Transparency

2.1. What statistics are provided for on a regular basis?

The Federal Statistical Office records the figures presented below on numbers of courts and judges, as well as on the conclusion and length of proceedings. The data are collected annually, broken down by Federal *Länder*, and are therefore also presented in the publication in their sub-division by Federal *Länder*.

The following are also recorded **in civil cases** in addition to these data:

- what type of proceedings was selected,
- which field was affected,
- by what means the proceedings were concluded,
- what was the value at dispute of the case,

- how frequently and in what dimension legal aid was granted,
- whether they were preceded by reminder proceedings or arbitration proceedings,
- which side (plaintiff or respondent) entirely or predominantly won,
- whether an appeal was granted,
- how many oral hearings took place,
- whether evidence was taken, and
- whether with panels of judges the chamber/the senate or an individual judge ruled.

2.2. Are provided statistics published?

Yes, the Federal Statistical Office publishes the figures on the administration of justice in Germany on its website available free for downloading.
http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Navigation/Publikationen/Fachveroeffentlichungen/Rechtspflege.psml

The figures on the length of the proceedings before the Federal Court of Justice are published by the court itself on its website:
http://www.bundesgerichtshof.de/cln_136/DE/BGH/Statistik/statistik_node.html

If not published, to whom are they available?
Not applicable.

Is bench marking encouraged?

Yes. Borrowing from successful examples from the local authority sphere, the judiciary has opted for a decentralised model of self-management, by means of institutionalised benchmarking in comparison rings. Within a globally-adopted system, the managers of the courts and public prosecution offices are grouped in these rings to form appropriate comparison groups, meeting with the support of specially-trained controllers and organisation consultants in order to engage in a constructive exchange on costs and performance benchmarks, as well as on organisational solutions for their units. Comparison rings covering more than one *Land* have also been formed in addition to comparison rings within the *Länder*.
A current project has for instance dealt with the situation of the criminal chambers at 16 regional courts, where in particular the lengths of the sets of criminal proceedings and

various factors which might influence them were also studied (e.g. detention matters, size of the file, applications on grounds of bias, number of defence counsel, accessory prosecutors, experts, witnesses abroad.)

2.3. Is processing time of individual cases transparent?

The duration of individual sets of proceedings is not published as a rule.

2.4. Are requirements for processing time stipulated?

The Code of Civil Procedure (*ZPO*) only provides for a general obligation for those concerned to promote the procedure and to conclude the proceedings quickly. This obligation is structured by a number of individual provisions. The principle of expediation applies in criminal proceedings. Criminal proceedings are to be carried out as quickly as possible. In particular in detention cases, the accused has a right to an expedited conviction. The execution of remand detention for the same offence is only to be maintained beyond a six-month period if the particular difficulty or the special scope of the investigations, or another important reason, do not yet permit the judgment to be handed down and justify the continuation of detention. If the main hearing has commenced before the six-month deadline has run out, the period ceases to run until the judgment is announced.

For the announcement and writing up of the written judgment there are, both in civil and criminal proceedings, specific deadlines set out in the law.

2.5. What are the consequences of exceeding required/reasonable processing time according to national rules or practice?

If the proceedings are excessively long in **criminal proceedings,** various possibilities for compensation can be considered. With slight breaches of the expediation principle, it is sufficient to explicitly ascertain the breach in the reasoning of the judgment. In cases of extraordinarily serious breaches, it is possible in particular to refrain from sentencing; the proceedings may be discontinued for discretionary prosecution reasons or because of a hindrance to the proceedings, or a part of the punishment that has been imposed may be declared to have been already executed.

A new type of compensation claim against the State is to be created in Germany for **excessively long court proceedings in general**. A corresponding draft Bill has been adopted by the Government and submitted to the legislative procedure. The central prerequisite for the claim for compensation is the "unreasonable" length of court proceedings. The circumstances of the individual case are to be material to the assessment of the reasonableness of the length of the proceedings, in particular the conduct of those concerned, the difficulty of the case and the importance of what is at stake both for those concerned and for the general public. It is not to be held against the person concerned that the proceedings were delayed because of structural problems in a court, given that the State is responsible for court organisation and equipment.

A further prerequisite for a claim is the lodging of a "delay complaint" (*Verzögerungs-rüge*) by the party who considers him/herself to have been affected by excessively long court proceedings. In accordance with the government draft, they must initially make clear in the proceedings which they consider to have been too long that they are not in agreement with the length of the proceedings. If a delay complaint appears to be justified, the court will provide a remedy and promote the proceedings.

The envisioned claim is to comprise both compensation for property disadvantages and that for non-property disadvantages. Compensation in money for intangible disadvantages may however only be demanded if, in an individual case, compensation by other means appears to be insufficient. A main case of this is the explicit finding of excessive length by the compensation court. Another particularity is to apply to

excessively long criminal proceedings: A compensation claim can only be considered if the excessive length of a set of proceedings cannot be compensated for in the length of the execution of the sentence.

2.6. Can the parties and others make a complaint about the processing time?
If so to whom?

It should be added to the remarks at 2.5 that the compensation claim described there is not asserted towards the court which pursued the excessively long proceedings, but is pursued before the compensation courts which have jurisdiction for such matters. The claim can already be asserted whilst the excessively long proceedings are pending.

2.7. Are user surveys on processing time carried out?
If so how often?

The Federal Ministry of Justice is unaware of whether, to what degree and at what intervals the *Länder* administrations of justice carry out any "user surveys".

3. Reduction of Caseload and Facilitating Court Procedures

3.1. Which means of reduction of caseload are used?

For **civil proceedings**:
Appeals on points of fact and law are only admissible if the value of the object of the complaint is in excess of 600 Euro or the court of first instance has admitted the appeal on points of fact and law. Similarly, complaints on costs are only admissible if the value of the object of the complaint is higher than 200 Euro.
Appeals on points of law are only admitted if the appeal on points of fact and law court or the appeal on points of law court are only in response to the non-admission complaint of the appellant of the appeal on points of law and only admit the appeal on points of law. Complaints against the non-admittance of the appeal on points of law are only admissible if the value of the complaint is in excess of Euro 20,000. A sunset clause has initially been imposed on this provision until 31 December 2011.

The *Länder* were empowered by means of a *Land* Act in certain proceedings such as legal disputes regarding monetary claims below Euro 750 or those between neighbours for specific claims emerging from ownership of land, in order for an attempted amicable agreement before an arbitration tribunal as a prerequisite for the admissibility of any subsequent court action. Some Federal *Länder* have availed themselves of this empowerment.

There are moreover projects in most *Länder* which, during the ongoing legal dispute, provide for the possibility to assign the case to a mediating judge (*Güterichter*) with the consent of the parties, or indeed to an internal court mediator, in order to reach a settlement. Since it is fundamentally preferable to solve a problem which is initially contentious by reaching an agreed solution, the Federal Government has also taken the European Mediation Directive as an occasion to promote out-of-court conflict settlements across the board, and to promote mediation in particular. What is more, the various forms of mediation are to be placed on a uniform legal footing.

Certain legal disputes which are pending with a panel of judges (regional court) are from the outset to be heard and ruled on by one judge of the chamber (original individual judge) or if suited can be transferred from the chamber to the (obligatory) individual judge.
The same applies before the panels of judges at the appeal on points of fact and law instance (regional court/higher regional court). In individual cases, the court can therefore transfer the proceedings for a hearing and a ruling to an individual judge or assign the preparation of the ruling to him/her.

Criminal proceedings:
Also in criminal proceedings, the law provides under specific conditions for the possibility of hearings before the regional court to be held with a “reduced composition” (i.e. with two in place of three professional judges in addition to the two lay judges). Apart from that, there are regulations making it easier to deal with large numbers of cases. It is possible, in particular, to discontinue proceedings under specific conditions on monetary conditions, or subject to other instructions (e.g. compensation for damage done) or in consideration of another more serious conviction.

3.2. Are any special easy procedures available?

There is a special procedure **in civil matters** in (petty) cases in which the value at dispute is below Euro 600. Here, the local court can determine its procedure at its reasonably-exercised discretion if it hopes to obtain from this a simpler, more effective and/or cost-saving conclusion of the proceedings. It may then rule in written proceedings – if no motion is lodged to carry out an oral hearing, it may however also set a date for an oral hearing ex officio. The judge may not only take evidence according to the rules of strict evidence, but also via informal evidence. Thus, for instance, written or telephone information from (neutral) individuals or institutions can be consulted to which one of the parties has referred. Equally, it may make sense for the local court judge to consult an expert prior to the hearing and to input the information imparted to him/her in the legal dispute. Also witness, party and expert hearings may take place by e-mail or by other means of telecommunication.

The reminder proceedings, with due claims to payment of a certain amount of money for creditors are a rapid, simple means of obtaining an executory title against the debtor to enforce their claims. They were created for the many cases in which the debtor does not seriously dispute the claim but is unable or unwilling to pay. The reminder proceedings are much cheaper than action proceedings. A review of whether the asserted claim in fact exists is only carried out in response to an objection on the part of the respondent.

In criminal matters, the Code of Criminal Procedure (*StPO*) provides, in cases of not too serious crime, for the written punishment order proceedings (oral hearing only after objection of the accused) and the expedited procedure (i.e. implementation of an immediate main hearing if the evidence is clear and the facts are simple).

3.3. What simplifications of ordinary procedures are applied?

The following applies to **civil law disputes**:
In agreement between the parties, written proceedings can be ordered.

In taking evidence, the court may order the written questioning of a witness. Expert reports from other sets of proceedings may be used.

If it cannot be anticipated that the judgment can be executed abroad, judgments which can no longer be appealed (that is above all those whose subject-matter of complaint is not above Euro 600 for any of the parties) and judgments based on the defendant's acknowledgement, as well as default judgments, may be abridged.

In the appeal on points of fact and law proceedings, the appeal on points of fact and law court must take as a basis the facts ascertained by the court of first instance unless concrete indications give rise to doubts as to correctness and completeness. New means of attack and defence are only admissible to a restricted. The appeal on points of fact and law instance is hence not to be a repeat of the trial court, but to provide for a possibility to check and remedy errors.

Audio and video transmission technology may already be used under certain conditions in both **civil and criminal proceedings**. A current draft Bill provides for the expansion of the use of videoconferencing technology, including in criminal matters, such that for instance interpreters, experts or the accused may also participate in the hearing via audio and video transmission.

3.4. Give examples of practices used within ordinary procedures to speed up ordinary procedures.

A common practice to expedite conclusion of a **civil legal dispute** is likely to be the setting of an early date, at which an attempt is made to reach an amicable settlement of the legal dispute, if possible before the points of view of the parties have become entrenched. The law provides over and above this for various possibilities to expedite the proceedings by setting deadlines. These are flanked by the provisions regulating delays. These provide that a late submission is only to be admitted under certain preconditions, such as if it does not delay the conclusion of the legal dispute or the lateness is adequately excused.

It is possible to state for **criminal proceedings** that well-structured planning and management of the main hearing is to rapidly implement proceedings. Once an oral hearing has been commenced, the law stipulates that it may as a rule only be interrupted for a relatively short period (three weeks) and must be continued quickly.

4. Increase of Capacity and Improvement of Processing

4.1. Do you try to limit processing time by an increase of courts or increase or reallocation of judges or cases?

Responsibility for the creation of new posts of judges at the courts of the *Länder* lies with the *Land* administrations of justice of the individual Federal *Länder* and depends on the respective budget situation.
Distribution of judges' work in a manner aiming to roughly even out their caseloads is already achieved by the **court business schedules** which are to be re-established each year in advance of each court by the administrative boards (*Präsidium*). A retroactive change to the business schedule is possible in exceptional cases, for instance if a judge or a panel of deciding judges of the court is overburdened or a judge is permanently prevented (e.g. by illness) from carrying out his/her official duties. Pending proceedings are not, as a rule, transferred to other judges if caseloads become excessive. A reduction in the burden is achieved by less new business being allotted in future to the judge or panel of deciding judges with a too heavy caseload.

Judges are generally not transferred. A judge with life tenure may however be seconded for a certain period to another court with his/her consent. Without his/her consent, he/she may only be seconded to deputise for another judge for a maximum total of three months out of a business year at another court of the same branch of the judiciary.

4.2. Do you try to limit processing time by taking on assistance from deputy judges, trainee judges, or juridical assistants?

The German court system does not have deputy judges equipped with their own powers. Sub-areas of originally judicial tasks (e.g. in the area of inheritance matters and in coercive executions) are taken on by **Rechtspfleger** who thus relieve the judge

(indirectly). However, Rechtspfleger work independently in their field of competence just like judges and do not support the judge in carrying out his/her official tasks.

Do you try to limit processing time by facilitating processing of cases?

Sub-dividing the jurisdictions into five specialist jurisdictions achieves a certain **specialisation** of judges. The law further prescribes the formation of certain special senates at the higher regional courts (e.g. senates for family cases, building land cases, agricultural cases, cartel senates). Additionally, by means of the business schedule certain senates, or at the regional courts certain chambers, may be allocated specific legal cases as a special jurisdiction. This specialisation is further supported by offering appropriate training.

The equipment of the courts with **IT systems** and the provision of standardised forms fall within the competence of the respective *Land* administrations of justice. In general terms, IT systems are already being used across the board. Standardised texts are provided for drafting judgments and (written) orders. Furthermore, electronic aids – such as maintenance calculation programmes and legal online databases containing current statutes, case-law and literature – are available.

In some Federal *Länder* in the public prosecution offices particular proceedings, with many accused persons, are kept via so-called electronic assistance files by which the inspection of files can also be provided at once by several defence counsels.

The creation of the legal framework for an **electronic file** in German criminal proceedings is currently being worked on in the Federal Ministry of Justice, as are accompanying technical implementation proposals for the parliaments handing down regulations at *Land* level.

4.3. Do you try to limit processing time by giving secretary or juridical assistance to individual judges?

The judges are supported by their **service unit**, which carries out typing work, keeps records, maintains files and can carry out the function of a special applications office (*Rechtsantragsstelle*) providing assistance with court applications.

By contrast, judges have no legally-trained assistants. One exception is support for judges at the supreme courts, who are aided by research assistants. These staff members work for the judge and prepare their rulings, albeit judges alone bear the ultimate responsibility for their rulings.

4.4. Do you try to improve court proceedings or increase the capacity of courts by any scientific, experimental or technical project?

The *Land* administrations of justice attempt by using the so-called new steering models (e.g. benchmarking, budgeting, cost-benefit calculation, personnel calculation systems) to achieve more effective use of personnel and physical resources. An exchange between the *Länder* takes place for this.

Also, the synergistic effect is to be used of combining smaller local courts and increasingly forming justice centres.

There are further innovative projects in the IT area, in addition to the project on the electronic file in criminal proceedings mentioned at 4.2, which are to serve to simplify the course of proceedings in the organisational field in particular.

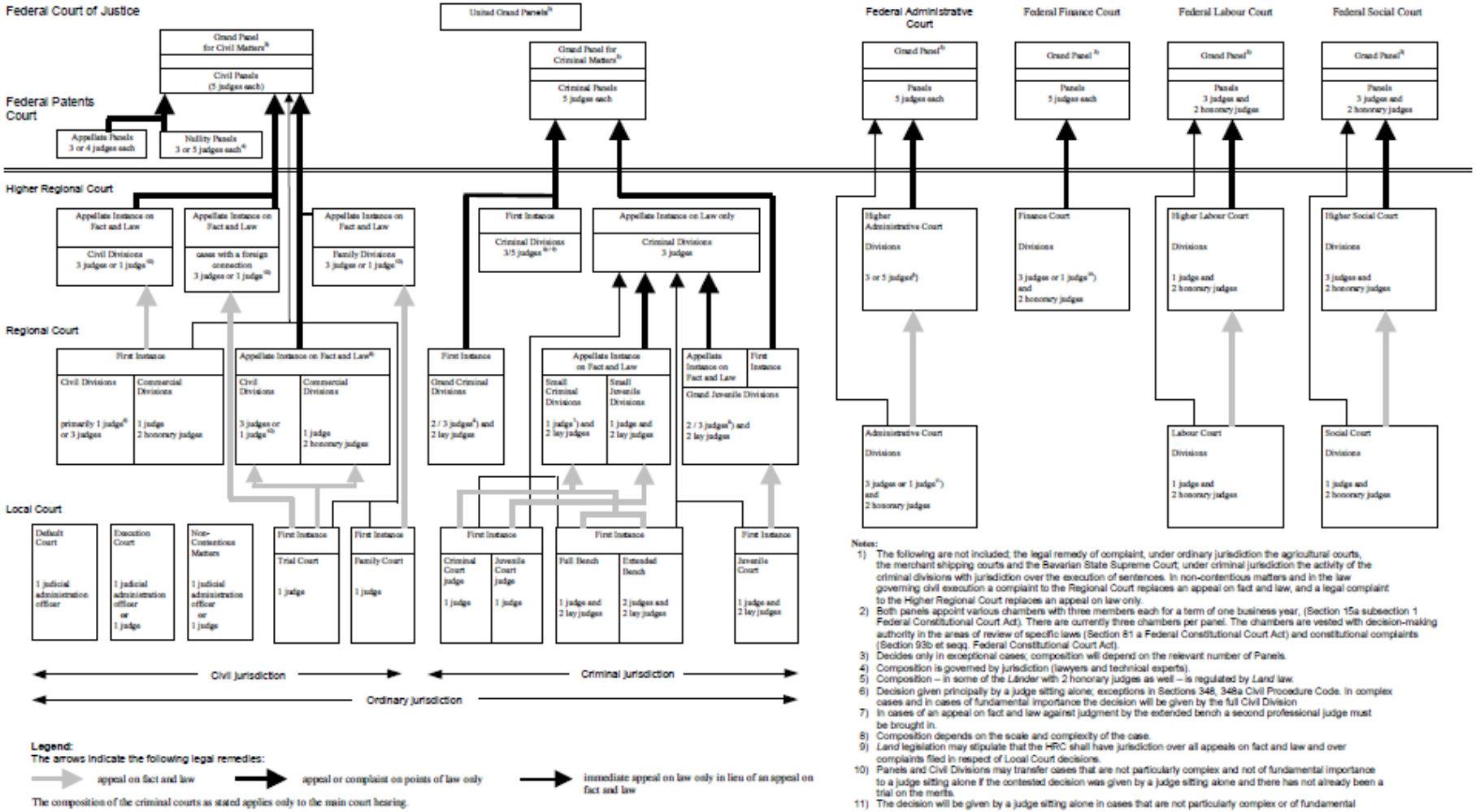
5. Other initiatives

5.1 Have other initiatives concerning timeliness been undertaken or are they contemplated?

cf. 2.2, 2.5 and 4.2.

The Courts of Law in the Federal Republic of Germany[1)]

Information correct as of April 2005



Legend:
The arrows indicate the following legal remedies:

appeal on fact and law — appeal or complaint on points of law only — immediate appeal on law only in lieu of an appeal on fact and law

The composition of the criminal courts as stated applies only to the main court hearing.

Notes:

1) The following are not included: the legal remedy of complaint, under ordinary jurisdiction the agricultural courts, the merchant shipping courts and the Bavarian State Supreme Court; under criminal jurisdiction the activity of the criminal divisions with jurisdiction over the execution of sentences. In non-contentious matters and in the law governing civil execution a complaint to the Regional Court replaces an appeal on fact and law, and a legal complaint to the Higher Regional Court replaces an appeal on law only.
2) Both panels appoint various chambers with three members each for a term of one business year, (Section 15a subsection 1 Federal Constitutional Court Act). There are currently three chambers per panel. The chambers are vested with decision-making authority in the areas of review of specific laws (Section 81 a Federal Constitutional Court Act) and constitutional complaints (Section 93b et seqq. Federal Constitutional Court Act).
3) Decides only in exceptional cases; composition will depend on the relevant number of Panels.
4) Composition is governed by jurisdiction (lawyers and technical experts).
5) Composition – in some of the *Länder* with 2 honorary judges as well – is regulated by *Land* law.
6) Decision given principally by a judge sitting alone; exceptions in Sections 348, 348a Civil Procedure Code. In complex cases and in cases of fundamental importance the decision will be given by the full Civil Division.
7) In cases of an appeal on fact and law against judgment by the extended bench a second professional judge must be brought in.
8) Composition depends on the scale and complexity of the case.
9) *Land* legislation may stipulate that the HRC shall have jurisdiction over all appeals on fact and law and over complaints filed in respect of Local Court decisions.
10) Panels and Civil Divisions may transfer cases that are not particularly complex and not of fundamental importance to a judge sitting alone if the contested decision was given by a judge sitting alone and there has not already been a trial on the merits.
11) The decision will be given by a judge sitting alone in cases that are not particularly complex or of fundamental