



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Questionnaire indicators independence and accountability of the Judiciary
Version adopted by GA Warsaw 2016

Please fill in your country of origin: Germany

Preliminary remark:

As a federal state, the Federal Republic of Germany is characterized by decentralized structures. Therefore the court system is also structured federally. Jurisdiction is exercised by federal courts and by the courts of the 16 federal states (Länder).

The German court system is divided into five specialised branches or jurisdictions: ordinary, labour, general administrative, fiscal and social. In addition, there is the constitutional jurisdiction, i.e. the Federal Constitutional Court and the constitutional courts of the Länder. The highest ordinary court is the Federal Court of Justice. At regional level there are Local Courts (Amtsgerichte) and Regional Courts (Landgerichte), which are the first or the second instance courts depending on the character of the case, and Higher Regional Courts (Oberlandesgerichte). The administrative, labour and social jurisdictions have three tiers and the fiscal jurisdiction has two.

The administration of justice lies chiefly with the Länder.

The questionnaire doesn't coincide with the German judiciary system. The provided answers are not representative for every Land respectively every court - and the situation can differ from Land to Land or from court to court.

INDEPENDENCE INDICATORS

Objective Indicators

Objective independence of the Judiciary as a whole

1. Legal basis of the independence of the Judiciary as a whole

1a. Is the independence of the Judiciary or the judge formally guaranteed¹?

- Yes
 No

1b. If the answer to 1a. is yes, is this done in/by:

- The Constitution or equivalent documents²
 Law³
 Constitutional court

1c. Are judges formally bound only by law?

- Yes
 No

1d. If the answer to 1c. is yes, is this guaranteed in/by:

- The Constitution or equivalent texts
 Law
 Jurisprudence

1e. Is the mechanism to fix the salary of judges determined by law?

- Yes
 No

Remark:

The basis for remuneration is the so-called maintenance principle, which is one of the principles of the professional civil service guaranteed by the Constitution [Art. 33 para. of the Basic Law]. According to this, the employer is obliged to provide suitable maintenance commensurate to the office assigned (but not the specific function) to active judges, also if they become disabled or reach retirement age. Remuneration is intended to ensure that

¹ See question 1b.

² Equivalence means here specifically that the position of the Judiciary cannot be changed by simple majority.

³ That can be changed by simple majority.

judges are able to devote themselves entirely to their jobs; only a financially independent judiciary is able to fulfil the functions assigned to it by the Constitution. Unlike that of public employees, the remuneration of civil servants and judges is not a direct payment for individual work done, but compensation for their service as a whole, in other words for civil servants and judges making their entire working capacity available to the general public and carrying out their duties to the best of their ability.

In a judgment pronounced 2015, the Second Senate of the Federal Constitutional Court defined the criteria for assessing whether the salary of judges and prosecutors complies with the principle of appropriate support (Grundsatz der amtsangemessenen Alimentation). The standard for determining the constitutionality of the legal bases for the salaries of judges and prosecutors results from Art. 33 sec. 5 GG. These principles are equally applicable to officials. On a first level of review, five parameters shall be analysed that have indicative value; if at least three of them are fulfilled, the salary is presumed to be below the constitutional requirements. The parameters are: a clear discrepancy between the development of salaries of judges and prosecutors on the one hand and the developments of standard wages in public service, the money wage index as well as the consumer price index on the other, furthermore an internal comparison of salaries as well as a cross-comparison with salaries paid by the Federation or, respectively, by other Länder. On a second level, this presumption may be further corroborated or rejected by taking into account further criteria in order to strike an overall balance. On a third level of review, one shall – if applicable – balance the need for appropriate support with conflicting constitutional values like the prohibition on taking on new debt; in exceptional cases, insufficient support may be justified under the Constitution.

The further details of the salaries of judges in federal courts and in the courts of the Länder are regulated by law (for the federal level and each Land separately). The elements of the remuneration and the mechanism to fix the salary of judges is stipulated by law.

Remuneration, which is paid monthly in advance, consists primarily of the basic salary. This is supplemented by the family allowance, as well as allowances in specific cases. In addition at federal level and in some of the Länder judges receive annual special payments and capital-forming benefits.

Basic salary: The basic salary is the main element of remuneration; it is determined in accordance with the pay grade of the office held. It is therefore not a matter of which function the civil servant actually performs, but solely of the pay grade of the office assigned to him/her. The offices and their pay grades are governed by the Federal Remuneration Schemes (Judges at federal level) or the respective Land Remuneration Schemes (Judges at the Länder level), which are laws. Remuneration scheme R governs the remuneration of judges and public prosecutors. Remuneration scheme R (for judges and public prosecutors) contains both incremental and fixed salaries (depending on the office assigned).

In all German Länder, the remuneration of judges and prosecutors is closely interconnected with the salaries of government employees (Beamte) with a formal university training (teachers, administrators, engineers ea.). However, considering their special position and duties within the state judges' and prosecutors' salaries are fixed in a special salary scale which differs from the salary scale of government employees. The amount of salary is predetermined according to the level of judicial office and the time in office. This design of remuneration scheme protects judicial independence, because judges are not dependent on promotions.

The legal instrument to adjust the income to a general pay increase or inflation is proposed by cabinet and approved by Parliament for all state employees

1f. If the answer to 1e is yes, is this guaranteed in:

The Constitution or equivalent texts

Law

Remark:

1. Recently the federal constitutional Court gave a ruling about the indispensable criteria for a minimum salary for judges guaranteed by the constitution. The standard for determining the constitutionality of the legal bases for the salaries of judges and prosecutors and the standards for fixing the salaries results from Art. 33 sec. 5 GG, which is also applicable for officials

a) The traditional principles of the professional civil service under Art. 33 sec. 5 GG include the principle of appropriate support. The state is required to appropriately support judges and prosecutors as well as their families throughout their lifetime as well as to provide them with subsistence that is appropriate to their rank, the responsibility they have in their respective office and to the importance the judicial branch and the professional civil service have to the public. This subsistence must correspond to general economic and financial developments as well as to developments of the standard of living. In implementing these requirements, the legislature possesses broad discretion, which corresponds to limited judicial review that merely determines whether decisions were based on evidently inadequate or inappropriate considerations (*Maßstab der evidenten Sachwidrigkeit*). Material review is limited to establishing whether the salaries of judges and prosecutors are evidently deficient. This is determined by conducting an overall assessment of various criteria taking into account the specific groups that may be compared.

b) In order to better conduct this overall assessment, it seems natural to use parameters that are derived from the principle of appropriate support and that are economically reasonable to determine a framework with specific numeric values. There are five suitable parameters that are based on the Federal Constitutional Court's jurisprudence on the principle of appropriate support and that have indicative value in determining the level of support required under the Constitution. If a majority of these parameters are fulfilled, the salary is presumed to be below the constitutional requirements (1st level of review).

aa) The first parameter is a clear discrepancy between the development of salaries of judges and prosecutors and the development of standard wages in the civil service of the respective Land, or – in case of federal salaries – at federal level. If the discrepancy between the results of collective bargaining and the adjustment of the salary in question amounts to at least 5 % of the raised salary's index value, there is an indication for an evident violation of the principle of appropriate support. The assessment shall be made of the fifteen years preceding the period of time that is subject of the proceedings.

bb) The second parameter is a clear discrepancy between the development of salaries of judges and prosecutors and the development of the money wage index in the Land in question. There shall be an indication for an evident violation of the principle of appropriate support if the discrepancy over a period of fifteen years amounts to at least 5 % of the raised salary's index value. Due to the relational character of this assessment, distortions caused by progressive taxation or by the obligation to make social security contributions have no significant impact and can be taken into account in the necessary overall balancing where appropriate.

cc) The third parameter is a clear discrepancy between the development of salaries of judges and prosecutors and the development of the consumer price index of the respective Land, or – in case of federal salaries – of the Federation. If the development of the salaries during the period in question is at least 5 % below the development of the consumer price index during the last fifteen years, there is a further indication for an evident violation of the principle of appropriate support.

dd) The fourth parameter is an internal comparison of salaries. From the principle of performance under Art. 33 sec. 2 GG and the principle of support under Art. 33 sec. 5 GG follows a requirement of fixed intervals between salary grades (Abstandsgebot) that – notwithstanding its broad discretion – prevents the legislature from permanently closing those intervals. Therefore, should the intervals between the salary grades' gross salaries have notably decreased due to varying linear adjustments in individual salary grades or due to salary adjustments with delayed effect, this shall indicate a violation of the requirement of fixed intervals. As a rule, there shall be a violation if the intervals between two comparable salary grades have been decreased by at least 10 % in the past five years.

ee) The fifth parameter is the cross-comparison with salaries paid by the Federation and by other Länder. Considerable discrepancies between the salary in question and the average salaries paid in the respective salary grade by the Federation or the other Länder suggest that the support paid no longer fulfils its task of ensuring high-quality work. The question of when discrepancies are considerable cannot be generally answered. If the gross annual income in question including possible special payments [translator's note: e.g. holiday or Christmas bonuses, which are paid independently of the judges and prosecutors' performance] is 10 % below the average paid by the Federation and by other Länder during the same period, this also indicates that the salary is below the constitutional requirements.

c) If three of the above-mentioned parameters are fulfilled, the salary is presumed to be below the constitutional requirements; this presumption may be confirmed or rejected by taking into account further support-related criteria in order to strike an overall balance (2nd level of review).

aa) These criteria include the public reputation of the office in question as well as the effort and education required of the officeholder.

bb) The question of whether the support paid fulfils its function of ensuring high-quality work is also answered by whether the Land in question succeeds in hiring personnel for its higher judicial service that is qualified above average. This is not the case if over a period of five years the grade point average of the persons hired considerably decreases and/or the entry requirements for the higher judicial service are notably reduced.

cc) The level of the salary also reflects the particular nature of the work and the responsibility of a judge or prosecutor. It is in particular the judicial independence, protected by Art. 97 sec. 1 and sec. 2 GG, that must, inter alia, be secured by the judges' salaries.

dd) Whether the support paid is appropriate to the office the person in question holds must also be determined with a view to the level of the benefits [translator's note: i.e. health care benefits] that are provided. If the general salary is thinned out by illness-related expenses, this may under the Constitution require a correction of the salary and benefit laws. The same holds true if the legislature, by a large number of individual cuts that are each constitutional if assessed for themselves, bit by bit reduces the benefits and thereby the salary available to ensure general subsistence in an inappropriate way ("salami tactics" [translator's note: tactics that employ a large number of small steps to achieve their goal]). Pension cuts can also lead to the salary dropping below the constitutional requirements.

ee) The question of whether the support paid is appropriate to an office that is intended to attract personnel with above-average qualifications is also answered by comparing the level of the salary in question with the average gross salary paid to employees liable to social security contributions with comparable education and responsibility in the private sector. In doing so, one must take into account the particularities of the status of judge or prosecutor and of the civil service's salary and benefit system.

d) If the overall assessment shows that, in principle, the challenged salary is below the constitutional requirements, one needs to determine whether this deficiency can be justified under the Constitution by way of exception. The principle of appropriate support is part of the institutional guarantee of a professional civil service enshrined in Art. 33 sec. 5 GG, which is linked with the traditional principles of a professional civil service. To the extent that this principle conflicts with other constitutional values or institutions, it must – as is true everywhere – in accordance with the principle of practical concordance be reconciled with them by striking a careful balance (3rd level of review).

The prohibition on taking on new debt in Art. 109 sec. 3 sentence 1 GG (“debt brake”) is of constitutional value. According to Art. 143d sec. 1 sentence 4 GG, the budgets of the Länder for the fiscal years 2011 to 2019 must be designed to ensure that the requirement in Art. 109 sec. 3 sentence 5 GG – no structural net borrowing – will be met in the fiscal year 2020. This requirement must be taken into account by the budget-setting legislature when adjusting the salaries of judges and civil servants.

However, neither the state’s budgetary situation nor the aim of budget consolidation alone can restrict the principle of appropriate support; otherwise the protective function of Art. 33 sec. 5 GG would be to no avail. Nor does the special relationship of loyalty require judges and civil servants to contribute more than others to budget consolidation. Restrictions on the principle of appropriate support for purely financial reasons may be justified to deal with exceptional situations (cf. Art. 109 sec. 3 sentence 2 GG) if, as evidenced by a sound reasoning provided in the preparatory material, the legislative decision in question is part of a coherent and comprehensive concept for budget consolidation.

e) Apart from the minimum support required under the Constitution resulting from the overall assessment described above, the existing support provided for by law is protected to a certain extent (relativer Normbestandsschutz). Cuts or other changes may be justified by reasons that are inherent to the system of support for civil servants. In addition, financial considerations may play a role; however, the aim to reduce expenses cannot serve as a legitimate reason to cut the salaries, unless it forms part of a coherent overall concept to achieve the goal of budget consolidation enshrined in Art. 109 sec. 3 GG.

f) When setting the level of salaries, the legislature has to adhere to certain procedural requirements. In particular, the legislature is under a duty to state reasons. The parameters identified and the balance struck between them that are used to determine the constitutionally required extent of adjusting salaries have to be stated and explained in the legislative procedure.

2. Remuneration scheme R (see above remark to question 1e) contains both incremental and fixed salaries (depending on the office assigned).

1g. Is there a formal mechanism to adjust the salaries of judges to keep pace with the average development of salaries in the country and/or with inflation?

Yes

No

Remark: The Länder are in open, regular communication with each other regarding remuneration of judges.

1h. Is the involvement of the Judiciary in law and judicial reform⁴ formally guaranteed?

- Yes
 No

1i. If the answer to 1h. is yes, is this done in:

- The Constitution or equivalent documents
 Law
 Constitutional court

1j. If the answer to 1h. is yes, does the Judiciary have:

- The right to put forward a formal proposal to change a law
 The right to advise on legislative proposals

1k. Is the Judiciary involved in the formation and the implementation of judicial reform?

- Yes
 No

1l. Has the Judiciary initiated judicial reform?

- Yes
 No

2. Organizational autonomy of the Judiciary

2a. Does your country have a Council for the Judiciary⁵?

- Yes
 No

Remark: *As a federal state, the Federal Republic of Germany is characterised by decentralised structures. In addition, due to historical developments, the Federal Republic of Germany does not have a self-regulatory organisational system with councils for judicial administration. But the German justice system does include numerous self-regulatory mechanisms with far-reaching authority in the form of committees for the selection of judges, court presidia, and bodies for the representation of judges (councils of judges, councils for judicial appointments). These existing self-regulatory mechanisms serve to ensure the comprehensive independence of the judiciary.*

⁴ The objective of a judicial reform process should be to improve the quality of justice and the efficacy of the judiciary, while strengthening and protecting the independence of the judiciary, accompanied by measures to make more effective its responsibility and accountability. See the ENCJ Report on Judicial Reform 2011-2012.

⁵ See article 6 ENCJ Statutes. National institute which is independent of the executive and legislature, or which is autonomous and which ensures the final responsibility for the support of the Judiciary in the independent delivery of justice.

2b. Is the position of the Council for the Judiciary formally guaranteed?

- In the Constitution or equivalent documents
- Law
- No

Remark:

As a federal state, the Federal Republic of Germany is characterised by decentralised structures. In addition, due to historical developments, the Federal Republic of Germany does not have a self-regulatory organisational system with councils for judicial administration. But the German justice system does include numerous self-regulatory mechanisms with far-reaching authority in the form of committees for the selection of judges, court presidia, and bodies for the representation of judges (councils of judges, councils for judicial appointments). These existing self-regulatory mechanisms serve to ensure the comprehensive independence of the judiciary.

The German Judiciary Act [Deutsches Richtergesetz, DRiG] stipulates the establishment of bodies for the representation of judges, thereby enabling the judiciary to put forward its viewpoint in decision-making processes while at the same time allowing for interests to be balanced, conflicts to be resolved, and the efficiency of administrative action to be improved. At both the federal and the Länder level, the duties related to legal aspects of representation are performed by councils for judicial appointments and councils of judges, the competence of which is regulated in detail by law.

2c. Is the Council organized in accordance with ENCJ Guidelines concerning:

- At least 50% of the members of the Council are judges⁶ Yes No
- At least 50% of the members of the Council are judges
who are chosen by peers Yes No
- Minister of Justice is not a member of the Council Yes No
- The Council controls its own finances independently of
both the legislative and executive branches⁷ Yes No
- The Council controls its own activities independently of
both the legislative and executive branches Yes No

2d. Is the Council responsible⁸ for the following:

⁶ Only in case of a Council representing judges and prosecutors, please read magistrates.

⁷ The finances of the Council for the Judiciary refer to the budget of the Council itself and not to the budget of the Judiciary as a whole.

⁸ Responsible implies that the Council executes these tasks. But it can also mean that the Council has delegated these tasks to a separate body.

- The appointment and promotion of magistrates Yes No
- The training of magistrates Yes No
- Judicial discipline Yes No
- Judicial ethics Yes No
- Complaints against the Judiciary Yes No
- The performance management of the Judiciary Yes No
- The administration of courts Yes No
- The financing of the courts Yes No
- Proposing legislation concerning the courts and the Judiciary⁹ Yes No

2e. If the answer to question 2a. is no or if the Council is not responsible in the following areas do judges have decisive influence on decisions in the following areas?

- The appointment and promotion of magistrates Yes No

Remark: *With regard to the appointment of judges, the German Judiciary Act provides that the judiciary must be involved in the process via councils for judicial appointments [Präsidentialräte]. These have the task of representing the jurisdiction's interests in negotiations with the competent highest service authority and with the committee for the selection of judges which is likewise involved in the appointment of judges. Councils for judicial appointments must be established at the federal level and in the Länder. However, the legislation provides the Länder with leeway in terms of how these should be individually structured.*

At the federal level, the appointment of judges is done with the participation of a committee for the selection of judges [Richterwahlausschuss]. Pursuant to Article 95 (2) of the Basic Law, this committee decides on the appointment of judges at the supreme federal courts (the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court, and the Federal Social Court) in conjunction with the Federal Minister competent for the respective court. With regard to the Land level, Article 98 (4) of the Basic Law stipulates that the Länder may provide that Land judges shall be chosen by the Land minister of justice in conjunction with a committee for the selection of judges. Going beyond the wording of this constitutional provision, the participation of the committee for the selection of judges can be stipulated not just for the (initial) recruitment of judges but also for their promotion. In half of the 16 Länder, there are committees for the selection of judges which participate at the recruitment stage, and others which are not involved until the stage of appointment for life and promotion.

- The training of magistrates Yes No

⁹ To the Parliament or the Ministry of Justice.

Remark: The councils of judges must be involved in matters concerning general and social issues. For example, their participation is mandatory in setting the organisational rules at the workplace, in determining the design and structure of the working environment, in the further training of judges, in drafting guidelines for the assessment of judges, in measures to reduce the workload, etc. Section 72 of the German Judiciary Act provides that councils of judges must be established in the individual Länder and that their members must be elected from the ranks of the judiciary in direct and secret elections. Each Land legislature is free to regulate the further particulars concerning the organisation and formation of the councils of judges. However, it is obligatory for the Land legislatures to have statutory provisions guaranteeing the comprehensive representation of all judges serving at the Land level.

- Judicial discipline Yes No

Remark: In some of the Länder Präsidialräte and/ or the Council of judges (Richterrat) participate in judicial discipline procedures.

- Judicial ethics Yes No

Remark: The German judiciary is a bastion of high ethical standards in all areas. In accordance with the historically established structure of German law, the rules governing judicial ethics are embedded in provisions on the factual matter in question. The ethical standards and requirements of German law for the administration of justice and the role of the judiciary, for the conduct of court proceedings, for regulating judicial service, and for assessing secondary activities and employment, are to be found in pinpointed provisions in the respective pieces of legislation governing each of these areas as a whole. The same applies for public prosecutors. The judiciary is involved in the decision making process.

- Complaints against the Judiciary Yes No

Remark:

The council of judges [Richterrat] is conceived as a body with the task of representing the interests of a court's individual judges and its judiciary as a whole in negotiations with the court's management. At the federal level, councils of judges exist at all the supreme courts and at the Federal Patent Court. The councils of judges at the federal level are composed of elected judges, with the court's president and his deputy not being allowed to be members of the council of judges. The number of members of a council of judges is regulated by law and depends on the number of represented judges at the specific court in question. The councils of judges must be involved in matters concerning general and social issues. Its responsibilities include taking receipt of and dealing with complaints of judges, which may be motivated by complaints of citizens and submit suggestions to the Court president.

Section 72 of the German Judiciary Act provides that councils of judges must be established in the individual Länder and that their members must be elected from the ranks of the judiciary in direct and secret elections. Each Land legislature is free to regulate the further particulars concerning the organisation and formation of the councils of judges. However, it is obligatory for the Land legislatures to have statutory provisions guaranteeing the comprehensive representation of all judges serving at the Land level. Some Länder stipulate in their laws that the Councils of judges participate in all organisational, social and internal matters of the respective court.

The court presidents, which are judges by profession, deal with complaints of citizens regarding the judiciary.

- The performance management of the Judiciary Yes No

Remark: The presidium is established at every court and is composed of the court president and up to ten additional judges, depending on the size of the court. The presidium is responsible for the court's internal organisation. The presidium and its members are not bound in their activities by instructions. It reaches its decisions with complete judicial independence. The presidium is tasked with determining the principles for the allocation of court business. The roster allocating court business is set for the duration of one year and automatically expires at the end of the year. The roster allocating court business distributes the duties on the basis of general and objective criteria. It is also authorised to redistribute the allocation of court business in the course of the business year if there is a particular objective reason to do so.

- The administration of courts Yes No

Remark: The council of judges [Richterrat] is conceived as a body with the task of representing the interests of a court's individual judges and its judiciary as a whole in negotiations with the court's management. At the federal level, councils of judges exist at all the supreme courts and at the Federal Patent Court. The councils of judges at the federal level are composed of elected judges, with the court's president and his deputy not being allowed to be members of the council of judges. The number of members of a council of judges is regulated by law and depends on the number of represented judges at the specific court in question. The councils of judges must be involved in matters concerning general and social issues. For example, their participation is mandatory in setting the organisational rules at the workplace, in determining the design and structure of the working environment, in the further training of judges, in drafting guidelines for the assessment of judges, in measures to reduce the workload, etc. Section 72 of the German Judiciary Act provides that councils of judges must be established in the individual Länder and that their members must be elected from the ranks of the judiciary in direct and secret elections. Each Land legislature is free to regulate the further particulars concerning the organisation and formation of the councils of judges. However, it is obligatory for the Land legislatures to have statutory provisions guaranteeing the comprehensive representation of all judges serving at the Land level.

The presidium is responsible for the court's internal organisation. Legal disputes are allocated to a specific adjudicating body or judge. The allocation within the competent court, and thus the attribution to a specific judge or a specific division, is regulated by the allocation plan which is adopted by the court's presidium in an act of judicial self-governance prior to the beginning of the business year. The presidium is composed of the court president and a maximum of ten additional judges, depending on the size of the court. It is not possible to influence which adjudicating body will decide in a specific case that is brought to the court in the course of the business year. There are also detailed deputisation rules set up in advance for when the adjudicating body responsible for a particular case according to the allocation plan is unavailable.

- The financing of the courts Yes No

Remark: Although the bodies for the representation of judges do not exert any direct influence on the budget for the justice system or on how that budget should be spent, the activities of these bodies can have an indirect impact on the spending of the budget due to the fact that some of the matters requiring their participation give rise to costs, such as the acquisition of new furniture or computers for example.

The Presidents of the Courts of Appeal and the Prosecutors general are consulted regarding the preparation of the preparation of the budget. However, the Presidents of the Courts of Appeal do not represent the judiciary of the Land or their court district, but are, within their administrative tasks, part of the court administration of the Land. The Presidents do not have judicial independence when acting in their executive capacity.

- Proposing legislation concerning the courts and the Judiciary¹⁰ Yes No

3. Funding of the Judiciary

3a. Is the funding of the Judiciary sufficient as to allow the courts:

[several answers possible]

- To handle their caseload
- To engage experts/translators/etc. in cases when necessary if fees paid by court
- To keep the knowledge and skills of judges up to date
- To keep the knowledge and skills of court staff up to date
- To facilitate judges and other personnel in matters of IT-systems, buildings etc.

3b. Who makes the decisions?

[Please insert an "x" into the box that corresponds to the situation in your country.]

- a) Involvement in the preparation of the "budget allocated to courts"
- b) Formal proposal on the budget allocated to courts
- c) Adoption of the budget allocated to courts
- d) Control of the budget allocated to courts
- e) Evaluation/audit of the budget allocated to courts

	a)	b)	c)	d)	e)
The Judiciary	<input checked="" type="checkbox"/>				
The executive¹¹	<input checked="" type="checkbox"/>				
The legislature	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹⁰ To the Parliament or the Ministry of Justice.

¹¹ Such as the Minister of Justice

Remark:

1. Process by which the budget is funded:

The annual budget estimate (draft budget) is, both at state and federal level, prepared by the ministry of finance after consultation with the ministry of justice.

The Presidents of the Courts of Appeal and the Prosecutors general are consulted regarding the preparation of the budget. However, the Presidents of the Courts of Appeal do not represent the judiciary of the Land or their court district, but are, within their administrative tasks, part of the court administration of the Land. The Presidents do not have judicial independence when acting in their executive capacity.

a. Federal level:

At the federal level the draft budget and draft Budget Act are drawn up by the Federal Ministry of Finance, then deliberated on and adopted by the Federal Government. After this, they must be passed by the Bundestag and the Bundesrat before they can enter into force. The preparation of the budget is regulated precisely in the Federal Budget Code.

The process by which the budget is drawn up begins in the divisions responsible for budgetary affairs within the federal ministries and supreme federal authorities. They have to assemble proposals for their budgets, weigh them up against each other and forward them to the Federal Ministry of Finance as preliminary estimates. Each year, the courts put forth their financial requests for the upcoming fiscal year.

Even at this early stage, there are uniform principles that have to be complied with. They include the principle that a new budget is drawn up each year, the principle that all expected revenues and expenditure are to be set out in full, the principle that all revenues have to be used to pay for all expenditure and the principle that the sum of the revenues must ultimately be equal to the sum of the expenditure. The preliminary estimates are subsequently gathered together, checked and consolidated by the Federal Ministry of Finance. The Ministries of Justice and Finance then work together to develop cost estimates and to draft the final budget. When this is done, the planned expenditure is balanced with the tax revenues forecast by fiscal experts.

Once the Federal Minister of Finance has gathered and consolidated all the departmental budgets, the Federal Government adopts the draft of the overall budget. The budget is divided into an overall budget and the various departmental budgets. The departmental budgets set out in detail the levels of revenue and expenditure for each ministry and supreme federal authority.

The draft budget and draft Budget Act are forwarded simultaneously to the Bundesrat and the Bundestag. Here, the proposals are reviewed by working groups and compared with the financial plan, which sets out the prospective development of the budget over the next five years. The financial plan is also drawn up by the Federal Minister of Finance and adopted by the Federal Government. The Bundesrat delivers its comments on the draft budget within six weeks. The Federal Government issues a counterstatement to the Bundesrat's comments, then transmits both to the Bundestag. This means the Bundestag is able to take account of the attitude of the Länder in its deliberations.

The deliberations in the Bundestag involve three readings. During the first reading, the Federal Minister of Finance presents the budget. After several days of debate, the draft budget is then transmitted to the Budget Committee. The rapporteurs on the Committee examine all individual items of expenditure, discussing them in depth in the ministries and delivering their recommendations to the Budget Committee. These recommendations are then scrutinised in what are known as departmental budget deliberations. In the end, the Committee presents the Bundestag with a more or less heavily amended draft budget. This is followed by the second reading, during which debates again take place between the government and the opposition. Each departmental budget is voted on at this stage. During the third reading, the whole piece of legislation, including all amendments, is put to a final vote.

Lastly, the budget adopted in the Bundestag is again presented to the Bundesrat. If the Bundesrat agrees to it immediately, the Budget Act is signed by the Federal Minister of Finance, the Federal Chancellor and the Federal President, then published in the Federal Law Gazette.

b. Länder level:

The above principles are generally true of the budget process in the Länder. Although slight variations appear from state to state. Based on the budget from the preceding financial year, each ministry of justice of each Land starts consultations with the Presidents of the Courts of Appeal, who act in their capacity as part of the executive in this matter, and the Prosecutors general. A draft budget is drawn which is the basis for consultations with the ministry of finance on a working level. If no consent can be reached between the civil servants of each ministry, the questions in dispute are being taken up finally by the ministers themselves. The final decision always stays with the minister of finance. If the budget for the government as a whole is finalized, it is transmitted to the local Parliament. The budget for the judiciary is being treated as all other budgets of the state executive. The size depends very much on the standing of the minister of justice within cabinet.

2. Administration of the approved budget:

The ministries of Justice of the federation or the respective Länder (other ministries according to the specialization of courts) administer the budget resources, with the exception of the Federal Constitutional Court and the Constitutional Courts of the Länder, which has granted organizational autonomy as an independent constitutional organ.

In some of the Länder there are so-called "budgeting-models" which represent an increasingly growing form of judicial self-governance, especially in the courts of the Länder. "Budgeting" here refers to the decentralized and independent management of budget funds by the courts. Each court is allocated a certain amount of funding to administer independently. While such funding is derived from total justice budgets of the respective Länder, the courts may nevertheless dispose of the fund independently without outside influence. This budgeting procedure enables courts to make independent decisions on personnel and material budgets and especially on setting priorities for the expenditure of funds. Not least, available funds can therefore also be employed in a more targeted and economical manner, The concrete regulations (i.e. allocation, control etc.) of these budgeting models are different from Land to Land.

For example in North Rhine-Westfalia the project EPOS.NRW was launched in order to initiate a reform of the budgetary system in place. By way of modernising the budget and accounting system, the administrative services of the Land of North Rhine-Westfalia are introducing the integrated budgeting and accounting system (Integrierte Verbundrechnung) in a staged procedure; this includes the components: capital accounting, economic outturn accounting, cost/performance accounting, and financial accounting; this integrated system forms the basis of a product-oriented budget management. It is intended to roll out the system throughout the Land administrative services by 2017. The first courts in North Rhine-Westfalia have started to run the new accounting system in April of 2015. From October of 2015 until April of 2016, the courts of law and the public prosecutors' offices are to successively follow suit.

3. Control/ Evaluation of the budget:

Following the end of the financial year, the Federal Court of Audit examines the actual levels of revenue and expenditure meticulously, then formulates "observations" on the budgetary management of the Federal Government or the respective Land. These observations are important because they provide the basis for the discussion in Parliament when it eventually has to discharge the Federal Government or the Government of the respective Land.

3c. In case the government does not allocate sufficient funds, may the Judiciary address the parliament?

- Yes
 No

3d. Is the funding of the Judiciary based upon transparent and objective criteria?

- Yes
 No

Remark: The ministries control the allocation of the courts budget, with the exception of the budget of the Constitutional Court. The annual budget estimate is, both at state and federal level, prepared by the relevant ministry. It is then discussed and approved by the cabinet and then sent for final approval to parliament. The budget passed by Parliament contains an item „judiciary“. The fund is earmarked.

The amount allocated to each court is fixed each year by law in close coordination with the ministries and courts, depending on the size, workload and importance of the respective court. Criteria for allocating funds are: The budget from preceding years (staff requirements and material expensens), requests from the courts for special expenditure (eg. refurbishing of courts rooms) and political decisions taken at ministerial level (eg. electronic equipment for courts).

3e. If the answer to 3d is yes, is the funding based on:

[several answers possible – highest score counts]

- Actual costs¹² (e.g. number of judges and court staff)
 Workload of courts
 Fixed percentage of government expenditure or GDP 2
 Other (specify): ...

Remark: Criteria for allocating funds are: The budget from preceding years (staff requirements and material expensens), requests from the courts for special expenditure (eg. refurbishing of courts rooms) and political decisions taken at ministerial level (eg. electronic equipment for courts).In Germany figures statistically collected in each Land serve the calculation of personnel requirements for the justice administration pursuant to “PEBB\$Y”. Based upon workload an evaluation in accordance with uniform national base figures is undertaken. In the workload calculation these needs are then compared against the agencies and the average deployment of personnel. Judicial activities are depicted as products in the “PEBB\$Y” framework. Each product has a specific base number set forth in minutes.

3f. Where have these criteria been defined?

¹² Figure based upon historic or realized costs.

In well-established practice

In law

Other (specify)

4. Court management¹³

4a. Which authorities can take the following decisions?

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) General management of a court
- b) Appointment of court staff (other than judges)
- c) Redeployment of judges to address temporary workload issues
- d) Other human resource management decisions on court staff
- e) Decisions regarding the implementation and use of Information and Communication Technology in courts
- f) Decisions regarding court buildings
- g) Decisions regarding court security
- h) Decisions regarding outreach activities¹⁴

	a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary	<input checked="" type="checkbox"/>							
The executive	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The legislature	<input type="checkbox"/>							

Remark:

Note to point a) (General management of a court):

- **Court presidents:** German courts are typically managed by a court president, a judge with life tenure, and some combination of administrative staff. This will be illustrated by the example of the ordinary jurisdiction at the Länder level. All of the regional courts have presidents, as do some of the Amtsgerichte, depending on their size and on the legislative requirements of each particular Land. The court president is responsible for the administrative aspects of running a court. This includes for example:
 - Staff administration/ human resources (Engagement of new staff (non-judges); Staff evaluation; Training management; Personnel deployment planning of non-judges ...)
 - Infrastructure management of the court

¹³ Court management also refers to non-budgetary decisions with impact on the functioning of the courts.

¹⁴ This includes all communication and promotional activities aimed to inform society about the Judiciary.

- Security management of the court
- Financial and budget management of the court
-

Court president does not assign cases to judges and cannot choose the composition of judicial panels. Legal disputes are allocated to a specific adjudicating body or judge. The allocation within the competent court, and thus the attribution to a specific judge or a specific division, is regulated by the allocation plan, which is adopted by the court's presidium (see below) in an act of judicial self-governance prior to the beginning of the business year.

To respect the principles of judicial independence, the court president does not get involved in managing individual cases assigned to other judges or set case management priorities. As such, the court president is not viewed as the superior of other judges in any aspect other than court administration and management issues.

- **senior non-judicial civil servant – Geschäftsleiter** :German courts also have a type of senior non-judicial civil servant – Geschäftsleiter – to provide support with the implementation of court administration and management responsibilities. Geschäftsleiter cannot act independently.
- **Presidium**: A presidium, an independent judicial body, is established at each court and comprises the president of the court and, depending on the size of the court, up to a maximum of ten other judges. In the case of small local courts the presidium comprises all the judges who are eligible to stand for election; no election is held (section 21a (2) no. 5 of the Courts Constitution Act [Gerichtsverfassungsgesetz, GVG]). In all other cases, members are elected for four years. Half of the members of the presidium resign every two years (section 21b (4), first and second sentences, of the Courts Constitution Act). The presidium is responsible for determining the principles on which the allocation of court business is based.
- **Bodies for the representation of judges**: The German Judiciary Act stipulates the establishment of bodies for the representation of judges, thereby enabling the judiciary to put forward its viewpoint in decision-making processes while at the same time allowing for interests to be balanced, conflicts to be resolved, and the efficiency of administrative action to be improved. At both the federal and the Länder level, the duties related to legal aspects of representation are performed by councils for judicial appointments (Präsidialrat) and councils of judges (Richterrat), the competence of which is regulated in detail by law.

The council of judges [Richterrat] is conceived as a body with the task of representing the interests of a court's individual judges and its judiciary as a whole in negotiations with the court's management. The councils of judges must be involved in matters concerning general and social issues. For example, their participation is mandatory in setting the organisational rules at the workplace, in determining the design and structure of the working environment, in the further training of judges, in drafting guidelines for the assessment of judges, in measures to reduce the workload, security of the court etc.

At the Länder-level councils for judicial appointments [Präsidialräte] are not only involved in the process regarding appointment of judges, they are also involved in several other human resources decisions regarding judges.

Note to point b) (Appointment of court staff (other than judges))

Court presidents are responsible for the administrative aspects of running a court. This includes decisions regarding staff administration/ human resources (Engagement of new staff (non-judges), Training management, Personnel deployment planning of non-judges ...).

Staff Committees are invited to participate in the recruitment procedures. In some Länder the council for judicial appointments [Präsidentialräte] are also invited to participate in the recruitment procedures.

In some of the Länder there are so-called “budgeting-models” which represent an increasingly growing form of judicial self-governance, especially in the courts of the Länder. “Budgeting” here refers to the decentralized and independent management of budget funds by the courts. Each court is allocated a certain amount of funding to administer independently. While such funding is derived from total justice budgets of the respective Länder, the courts may nevertheless dispose of the fund independently without outside influence. This budgeting procedure enables courts to make independent decisions on personnel and material budgets and especially on setting priorities for the expenditure of funds. Not least, available funds can therefore also be employed in a more targeted and economical manner, The concrete regulations (i.e. allocation, control etc.) of these budgeting models are different from Land to Land.

Note to point c) (Redeployment of judges to address temporary workload issues):

Judges in Germany are generally appointed for life in order to guarantee their independence. They are appointed at a particular court.

A judge for life can in principle only be transferred to another office or discharged from office without his own written consent.

Redeployment of judges within a court (redeployment to other panels of judges) is done by the presidium. A presidium, an independent judicial body, is established at each court and comprises the president of the court and, depending on the size of the court, up to a maximum of ten other judges. In the case of small local courts the presidium comprises all the judges who are eligible to stand for election; no election is held (section 21a (2) no. 5 of the Courts Constitution Act [Gerichtsverfassungsgesetz, GVG]). In all other cases, members are elected for four years. Half of the members of the presidium resign every two years (section 21b (4), first and second sentences, of the Courts Constitution Act). The presidium is responsible for determining the principles on which the allocation of court business is based. The presidium draws up, in advance, an annual business allocation plan for the whole of the coming year. This plan details how the adjudicating tasks are to be distributed, based on general, abstract and objective criteria, across the panels of judges, thereby safeguarding judicial independence. The business allocation plan must clearly specify which judges are called to issue a decision in regard to cases received by the court. It is in principle valid for the duration of a business year (calendar year) and automatically ceases to have effect at the end of that year. The presidium is tasked with ensuring that work is distributed as equally across the judges as possible. The presidium may only change the business allocation plan under certain legally specified conditions, namely where such a change becomes necessary due to the excessive or insufficient workload of one judge or adjudicating body or as a result of the transfer or prolonged absence of individual judges (section 21e (3) of the Courts Constitution Act).

Note to point d) (Other human resource management decisions on court staff):

court presidents are responsible for the administrative aspects of running a court. This includes decisions regarding staff administration/ human resources (Engagement of new staff (non-judges), Training management, Personnel deployment planning of non-judges ...).

Court presidents have the power to impose minor disciplinary sanctions, such as warnings or reprimands, against other judges and administrative personnel. However, only specialized administrative courts may dismiss judges and court staff, following a formal dismissal proceeding.

Note to point e) to g) (Decisions regarding the implementation and use of Information and Communication Technology in courts; Decisions regarding court buildings; Decisions regarding court security)

The court presidents are responsible for the administrative aspects of running a court. This includes for example:

- *Staff administration/ human resources (Engagement of new staff (non-judges); Staff evaluation; Training management; Personnel deployment planning of non-judges ...)*
- *Infrastructure management of the court*
- *Security management of the court*

The council of judges [Richterrat] is conceived as a body with the task of representing the interests of a court's individual judges and its judiciary as a whole in negotiations with the court's management. The councils of judges must be involved in matters concerning general and social issues. For example, their participation is mandatory in setting the organisational rules at the workplace, in determining the design and structure of the working environment, in the further training of judges, in drafting guidelines for the assessment of judges, in measures to reduce the workload, security of the court etc.

Objective independence of the judge

5. Human resource decisions about judges

5a. Selection, appointment and dismissal of judges and court presidents

Which authorities or bodies have the power to deliver the following decisions in the judiciary?

[Please insert an "x" into the box that corresponds to the situation in your country.]

- a) Proposal of candidates¹⁵ for the appointment as judges (not supreme court judges)
- b) Decision¹⁶ on the appointment of a judge
- c) Proposal for the dismissal of a judge
- d) Decision on the dismissal of a judge
- e) Proposal of candidates for the appointment as court presidents

¹⁵ The final proposal of candidate(s) which is transmitted to the body that appoints/elects them.

¹⁶ In the context of this question a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

- f) Decision on the appointment of a court president
- g) Proposal for the dismissal of a court president
- h) Decision on the dismissal of a court president

	a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary	<input checked="" type="checkbox"/>							
The executive	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The legislature	<input type="checkbox"/>							

Remark:

Note to point a (Proposal of candidates for the appointment as judges (not supreme court judges)) and note to point b (Decision on the appointment of a judge):

Due to the Länder competence to regulate the selection process, the procedures of recruitment and appointment of career judges varies between the Länder. Recruitment proceedings invariably start with an application by the respective candidate. From then on, proceedings differ greatly in detail, and this irrespective of whether a judicial electoral committee (Richterwahlausschuss) is involved or not. In half of the 16 Länder, 15 judicial electoral committees (Richterwahlausschüsse) participate in recruitment. In some of the Länder, this matter is dealt with in full by their Ministry of Justice whereas in other administrations the authority to decide on recruitment and on the (first) appointment has been transferred to the presidents of the higher regional courts (i.e. the Länder courts of appeal). Some Länder provide for mandatory participation of the judges council ("Präsidialrat"). Others require a joint appointment by the competent minister and a conciliation committee if the judges council objects.

Note to point c (Proposal for the dismissal of a judge), point d (Decision on the dismissal of a judge), point g (Proposal for the dismissal of a court president) and point h (Decision on the dismissal of a court president):

Judges appointed to full-time positions may not in principle be removed from office or transferred to another court against their will. The principles of irremovability and immovability apply to federal and state judges alike. In the absence of his own written consent a judge for life or for a specified term can only be dismissed on the strength of a judicial decision that has entered into final and binding effect (see Section 21 para 3 DRiG).

Reasons for Dismissal:

Article 97 (2) Basic Law provides: « Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary. »

The reasons for dismissal are specified in the Federal Judges Act (Section 21 to 24 DRiG). The reasons are predominantly formal and seek to ensure the independent status of the judge by inter alia preventing incompatibility. Employment in a different public service, entry into the armed forces as a soldier and loss of German citizenship regularly result in automatic dismissal.

A judge is to be released in the following cases: a judge refuses to take the necessary oath pursuant to § 38 Federal Judges Act; is a member of parliament; reaches the retirement age or becomes unfit for service; becomes a resident of a foreign country without permission.

Dismissal on the basis of a judicial decision is provided for if a judge is sentenced to at least one year imprisonment for the commission of a willful crime, if a judge is sentenced for treason, endangering the democratic legal order or endangering German national security, if a judgement denies a judge's professional capability for public office or in case of forfeiture of civil rights pursuant to Article 18 Basic Law (Section 24 of the Judiciary Act).

Finally, the Federal Constitution provides for judicial impeachment. Article 98 para of the Basic Law reads: "If a federal judge infringes the principles of this Basic Law or the constitutional order of a Land in his official capacity or unofficially, the Federal Constitutional Court, upon application of the Bundestag, may by a two-thirds majority order that the judge be transferred or retired. In the case of an intentional infringement it may order him dismissed. » Pursuant to Article 98 (5), the states may enact corresponding provisions with respect to state judges. The states have exercised this competence in their constitutions. The decision in cases of judicial impeachment rests with the Federal Constitutional Court.

Body: As a general rule, judges may only be dismissed on the basis of a court decision. There is a specific chamber at the Federal Court of Justice for matters of supervision over federal judges ("Dienstgericht"). It renders final decisions in disciplinary proceedings, on transfer of judges, dismissal, and retirement due to disablement and decides appeals against secondment and on complaints against disciplinary measures allegedly interfering with judicial independence. The chamber also decides on revision against decisions by state disciplinary courts. In the interest of judicial independence the term "disciplinary measures" is interpreted broadly to encompass also measures by the supervisory board having indirect influence on the judicial function. Any measure which has the potential to influence a judge's professional conduct may be subject to challenge.

5b. Selection, appointment and dismissal of Supreme Court judges and the President of the Supreme Court

[Please insert an "x" into the box that corresponds to the situation in your country.]

- i) Proposal of candidates for the appointment as Supreme Court judges
- j) Decision¹⁷ on the appointment of a Supreme Court judge
- k) Proposal for the dismissal of a Supreme Court judge
- l) Decision on the dismissal of a Supreme Court judge
- m) Proposal of the candidate(s) for the appointment of the President of the Supreme Court
- n) Decision on the appointment of the President of the Supreme Court
- o) Proposal for the dismissal of the President of the Supreme Court
- p) Decision on the dismissal of the President of the Supreme Court

¹⁷ In the context of this question a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

	i)	j)	k)	l)	m)	n)	o)	p)
The Judiciary	<input checked="" type="checkbox"/>							
The executive	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The legislature	<input type="checkbox"/>							

5c. Is the appointment of judges in compliance with the ENCJ guidelines?

- Is the appointment process open to public scrutiny and fully and properly documented Yes No
- Is the appointment process undertaken according to published criteria Yes No
- Is the appointment of judges solely based on merit Yes No
- Is there in place a written policy designed to encourage diversity in the range of persons available for appointment Yes No
- Does the appointment process provide for an independent complaint procedure Yes No

5d. Evaluation, promotion¹⁸ and training of judges.

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Decision¹⁹ on the evaluation of a judge
- b) Evaluation of the performance management of courts
- c) Decision on the promotion of a judge
- d) Adoption of ethical standards
- e) Application of ethical standards
- f) Decision on the program/content of training for judges

	a)	b)	c)	d)	e)	f)
The Judiciary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

¹⁸ Promotion of judges in the sense of this sub-question and sub-question 5e also covers applications by judges to a new judicial position within the judicial system.

¹⁹ In the context of this question 5d) a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

The executive	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The legislature	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Remark:

Note to point a):

Professional evaluation of judges at the Länder level throughout their career is the responsibility of the Länder. All the Länder employ systems of evaluation which are designed to provide a certain ranking of the judicial staff as a basis for decisions on promotion. It is not possible to describe these systems in all their details and variations. Their basic structure, however, is as follows: The occasion of evaluation is either general or specific. Most of the Länder have regulations providing for evaluation of judges in regular intervals. In addition to this general evaluation there may occur specific reasons for evaluation which will lie in the person of the judge who is to be evaluated. These reasons can be manifold, for instance when he/she applies for an open position in another court, especially for a promotion.

The person who evaluates is invariably the president of the regional court or (in case of judges of the higher regional court) the president of the higher regional court. Evaluation is the personal responsibility of the court presidents which means that it cannot be delegated to anyone else.

Note to point c):

Councils for judicial appointments [Präsidialräte] are involved in the process regarding promotion of judges.

Basic Law stipulates that the Länder may provide that Land judges shall be chosen by the Land minister of justice in conjunction with a committee for the selection of judges. Going beyond the wording of this constitutional provision, the participation of the committee for the selection of judges can be stipulated not just for the (initial) recruitment of judges but also for their promotion. In half of the 16 Länder, there are committees for the selection of judges which participate at the recruitment stage, and others which are not involved until the stage of appointment for life and promotion.

Note to point d) and e):

The German judiciary is a bastion of high ethical standards in all areas. In accordance with the historically established structure of German law, the rules governing judicial ethics are embedded in provisions on the factual matter in question. The ethical standards and re-quirements of German law for the administration of justice and the role of the judiciary, for the conduct of court proceedings, for regulating judicial service, and for assessing secondary activities and employment, are to be found in pinpointed provisions in the respective pieces of legislation governing each of these areas as a whole. The same applies for public prosecutors. The judiciary is involved in the decision making process and is responsible for the application of ethical standards.

5e. Is the promotion²⁰ of judges in compliance with the ENCJ standards?

- Is the promotion process open to public scrutiny and fully and properly documented Yes No
- Is the promotion process undertaken according to published criteria Yes No
- Is the promotion of judges is solely based on merit Yes No
- Is there in place a written policy designed to encourage diversity in the range of persons available for promotion Yes No
- Does the promotion process provide for an independent complaint procedure Yes No

6. Disciplinary measures

6a) Are disciplinary measures against judges in accordance with ENCJ standards, namely:

- Is there a list of types of judicial conducts/ethics the breach of which would be unacceptable? Yes No
- Is there a time limit for the conducting of the investigation, the making of a decision and the imposition of any sanction? Yes No
- Is the name of the judge withheld prior to any sanction being imposed? Yes No
- Does a judge have the right to be legally represented or assisted by a person of her/his choosing? Yes No
- Is there is a right of appeal by way of judicial review or cassation appeal? Yes No

6b) Which is the competent body to make the following decisions in the context of disciplinary procedures against judges?:

- (a) Proposal for the appointment of a member of the disciplinary body for judges
- (b) Decision on the appointment of a member of the disciplinary body for judges
- (c) Investigation of a complaint against a judge
- (d) Proposal for a disciplinary decision regarding a judge
- (e) Disciplinary decision regarding a judge
- (f) Decision on the follow-up to a complaint against the judiciary/a judge

a)	b)	c)	d)	e)	f)
----	----	----	----	----	----

²⁰ Promotion of judges in the sense of this sub-question and sub-question 5d also covers applications by judges to new judicial position within the judicial system.

The Judiciary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The executive	<input checked="" type="checkbox"/>					
The legislature	<input type="checkbox"/>					
	<input type="checkbox"/>					

7. Non-transferability of judges²¹

7a. Can a judge be transferred (temporarily or permanently) to another judicial office (to other judicial duties, court or location) without his/her consent?

- Yes (If you have answered yes, continue at question 7c)
 No

Remark: Judges in Germany are generally appointed for life in order to guarantee their independence. They are appointed at a particular court.

Article 97 para 2 of the Basic Law reads as follows: "Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary."

7b. If no, is the non-transferability guaranteed in:

- The Constitution or equivalent text
 Law
 Jurisprudence

7c. If yes, which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent?

- The Judiciary
 The executive
 The legislature

Remark:

Article 97 para 2 of the Basic Law reads as follows: "Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of

²¹ Not including neither a measure following disciplinary proceedings nor the situations of withdrawal, recusal and/or challenge of judges and of reallocation of cases.

their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary."

Section 30 of the German Judiciary Act stipulates the following:

"Transfer and discharge from office

(1) A judge for life or for a specified term can only be transferred to another office or discharged from office without his own written consent

- 1. in judicial impeachment proceedings (Article 98 paragraphs 2 and 5 of the Basic Law),*
- 2. in formal disciplinary proceedings,*
- 3. in the interests of the administration of justice (section 31),*
- 4. on changes being made in the organization of the courts (section 32).*

(2) Save in the case of subsection (1) number 4, a transfer or discharge from office can only be ordered on the strength of a judicial decision that has entered into final and binding effect."

Section 31 of the German Judiciary Act stipulates the following:

"Transfer in the interests of the administration of justice

A judge for life or for a specified term can be

- 1. transferred to another judicial office with the same final basic salary,*
- 2. provisionally retired, or*
- 3. retired*

where facts unconnected with his judicial occupation make a measure of this kind imperative in order to avoid grave prejudice to the administration of justice."

Section 32 of the German Judiciary Act stipulates the following:

"Changes in the organisation of the courts

(1) Where a change is made in the organisation of the courts or their districts another judicial office can be conferred on a judge for life or for a specified term who is attached to the courts concerned. Where employment is not possible in a judicial office with the same final basic salary, a judicial office with a lower final basic salary can be conferred on the judge concerned.

(2) Where it is not possible for another judicial office to be conferred on the judge concerned he can be discharged from office. A new judicial office can be conferred on him at any time, including one with a lower final basic salary.

(3) Conferment of another judicial office (subsection (1)) and discharge from office (subsection (2), first sentence) shall be effected not later than three months after the change has entered into force."

Section 34 of the German Judiciary Act stipulates the following:

"Retirement on account of unfitness for service

A judge for life or for a specified term can only be retired on account of unfitness for service without his own written consent on the strength of a judicial decision that has entered into final and binding effect. The first sentence shall apply mutatis mutandis to decisions concerning partial fitness for service."

**7d. For what reasons can a judge be transferred (temporarily or permanently) without his/her consent?
[several answers possible]**

For organizational reasons such as:

- Closure of a court
- Redeployment of resources on the basis of workload
- For other reasons (specify): see question 7c

7e. At what level are these reasons prescribed?

- In law
- Other (specify): [Click or tap here to enter text.](#)

7f. In case a judge is transferred (temporarily or permanently) without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?

- Yes
- No

7g. Can a judge appeal if he/she is transferred (temporarily or permanently) without his/her consent?

- Yes
- No

7h. If yes, which authority or body decides on such an appeal?

- The Judiciary
- The executive
- The legislature
- Other (specify): [Click or tap here to enter text.](#)

7i. Can a judge be taken off a case without his/her consent?

- Yes
- No

8. Internal independence

8a. In your system, can higher ranked judges change a verdict of a lower ranked judge (outside of an appeal system, the precedent doctrine or a preliminary ruling system)?

- Yes
- No

8b. What kind of decisions can higher ranked judges deliver on their own initiative to ensure the uniformity or consistency of judicial decisions (outside of an appeal system or the precedent doctrine)?

- None
- Non-binding guidelines
- Binding guidelines

8c. Can judges at the same level develop guidelines to ensure uniformity or consistency of judicial decisions?

- None
- Non-binding guidelines
- Binding guidelines

***Remark:** In the German view, were any binding requirements to be made, in terms of uniformity, consistency or timeliness of judicial decisions, then this would interfere with the independence of judges as guaranteed by Article 97 paragraph 1 of the Basis Law (Grundgesetz – GG), which protects the very core of the work done by judges. This core sphere includes the adjudication by judges, with all the appurtenant activities directly tied to the service of justice and to the rulings on the substance of the case and on procedural matters indirectly entailed by it.*

8d. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the uniformity/consistency?

- Yes
- No

***Remark:** See remark to question 8c*

8e. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the timeliness/efficiency of judicial decisions?

- Yes
- No

***Remark:** See remark to question 8c*

Subjective independence

9. Independence as perceived by society

Please don't answer these questions. The data will be filled in by the secretary of the project group for each member and observer.

9a. Perceived independence according to [Flash Eurobarometer 435](#) Perceived independence of the national justice systems in the EU among the general public and [Flash Eurobarometer 436](#) - Perceived independence of the national justice systems in the EU among companies

Data: Click or tap here to enter text.

Percentage of respondents that rate very good or fairly good.

9b. Perceived independence according to the [World Economic Forum Competitiveness Report 2015-2016](#), item 1.06. Score on 7-point scale. Click or tap here to enter text.

Data:

9c. Perceived independence according to the [World Justice Rule of Law Index 2015](#), item 1.2. Percentage of respondents

Data: Click or tap here to enter text.

Total score: Click or tap here to enter text.

10. Trust in Judiciary

10a. Are national opinion surveys available of the past three years in which the trust in the Judiciary is compared with the executive (national government) and legislature (national parliament)?

Yes

No

10b. If yes, is the Judiciary:

Ranked higher than the executive and legislature²²;

Ranked approximately equal to the executive and legislature?

Ranked below the executive and legislature?

11. Perceived Judicial corruption

Please don't answer this question. The data will be filled in by the secretary of the project group for each member and observer.

11a. Perceived Judicial corruption according to [EU Anti-Corruption report 2014](#) is. Percentage of respondents that believe corruption is widespread.

²² The other two branches of government are Parliament and Executive.

12. Independence as perceived by the clients of the courts

12a. Are national client satisfaction surveys available of the past three years which contain a question with respect to the perceived independence of the Judiciary?

Yes

No

Remark:

In Germany is a national satisfaction survey available, which is carried out on behalf of a legal protection insurance company (Rechtsschutzversicherung), it is named Roland Rechtsreport.

Furthermore there are numerous studies carried out on behalf of the individual federal states in Germany. As a federal state, the Federal Republic of Germany is characterised by decentralised structures. Therefore the federal states make their own decision on whether surveys are required and if so, the type of surveys and their timing.

12b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good 63%

Remark: *The specification refers to Roland Rechtsreport 2015.*

13. Independence as perceived by judges

Please don't answer these questions if your country participated in the ENCJ Survey among professional judges about their independence. The data will be filled in by the secretary of the project group for each member and observer: question 14 of the survey. [Click or tap here to enter text.](#)

13a. Are surveys available of the past three years which contain questions with respect to external and internal pressures judges experience during their daily work?

Yes

No

13b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good [Click or tap here to enter text.](#)

Remark: *As a federal state, the Federal Republic of Germany is characterised by decentralised structures. Therefore the federal states make their own decision on whether surveys are required and if so, the type of surveys and their timing. There are judges satisfaction surveys in some of the Länder (see above remark to question 12a). Due to the decentralised structures it is not possible to insert a specific percentage here for the whole of Germany.*

1. Allocation of cases

1a. Is there a well-defined mechanism for the allocation of cases?

- Yes
- No

1b. If yes, where have these criteria been defined? [several answers possible]

- In well-established practice of the court
- In an act adopted by the court
- In implementing regulations
- In law
- Other (specify): Click or tap here to enter text.

1c. What are the criteria for the allocation of cases?

- Random-based
- Specialization
- Experience
- Workload
- Other (specify):

1d. Who assigns the cases to judges at the courts?

[several answers possible]

- President of the court assigns cases
- A member of the court staff assigns cases (e.g. listing officer)
- A special chamber of the court assigns cases
- The cases are assigned randomly (e.g. through a computerized system)
- Other (specify *The presidium is established at every court and is composed of the court president and up to eight additional judges, depending on the size of the court. The presidium is responsible for the court's internal organisation. The presidium and its members are not bound in their activities by instructions. It reaches its*

decisions with complete judicial independence. The presidium is tasked with determining the principles for the allocation of court business. The roster allocating court business is set for the duration of one year and automatically expires at the end of the year. The roster allocating court business distributes the duties on the basis of general and objective criteria. It is also authorised to redistribute the allocation of court business in the course of the business year if there is a particular objective reason to do so.

1e. Is the allocation of cases subject to supervision within the Judiciary?

Yes

No

1f. Is the method of allocation of cases publicly accessible?

Yes

No

1g. Are the parties entitled to be informed about the allocation of the case prior to the start of the hearing of the case?

Yes

No

1h. Is the mechanism of allocation being applied uniformly within the country?

Yes

No

Remark: *The allocation of court business is the responsibility of the presidium, an independent judicial body. The presidium draws up, in advance, an annual business allocation plan for the whole of the coming year. This plan details how the adjudicating tasks are to be distributed, based on general, abstract and objective criteria, across the panels of judges, thereby safeguarding judicial independence. The business allocation plan must clearly specify which judges are called to issue a decision in regard to cases received by the court. It is in principle valid for the duration of a business year (calendar year) and automatically ceases to have effect at the end of that year. The presidium is tasked with ensuring that work is distributed as equally across the judges as possible. The presidium may only change the business allocation plan under certain legally specified conditions, namely where such a change becomes necessary due to the excessive or insufficient workload of one judge or adjudicating body or as a result of the transfer or prolonged absence of individual judges (section 21e (3) of the Courts Constitution Act [Gerichtsverfassungsgesetz, GVG]). Both prior to the drawing up of the business allocation plan and following a change in the original business allocation plan drawn up for a particular year in the course of that business year, the judges affected by the business allocation plan or changes thereto are to be given the opportunity to be heard (section 21e (2) and (5) of the Courts Constitution Act).*

1i. Is the motivation for any derogation recorded?

- Yes
 No

2. Complaints procedure

2a. Does the Judiciary or do the individual courts have a complaint procedure?

- Yes
 No

2b. If the answer on 2a. is yes, does this procedure provide for external participation in the complaint procedure²³:

- Yes
 No

2c. Is it admissible to complain about: [several answers possible]

- Behaviour of the judge
 Timeliness

Remark: In Germany exist the following possibilities to complain regarding timeliness:

- *inactivity complaint*
- *compliant regarding the behavior of the judge in respect of timeliness*
- *court action to enforce compensation due to unreasonable length of court proceedings. Section 198 German Courts Constitution Act reads as follows: "(1) Whoever as the result of the unreasonable length of a set of court proceedings experiences a disadvantage as a participant in those proceedings shall be given reasonable compensation. The reasonableness of the length of proceedings shall be assessed in the light of the circumstances of the particular case concerned, in particular the complexity thereof, the importance of what was at stake in the case, and the conduct of the participants and of third persons therein. ..."*

- Administrative mistakes
 Other (specify): behaviour of other court staff; decisions of the court administration (e.g. decisions regarding data protection...)

2d. Is an appeal against a decision on a complaint possible?

- Yes
 No

²³ External participation in the complaints procedure refers to the participation of representatives of civil society in the said procedure.

3. Periodic reporting on the Judiciary

3a. Is an annual report published on how the Judiciary has discharged its functions?

- Yes
- No

3b. If the answer to 3a is yes, who publishes the report?

- The Judiciary
- The Executive

3c. If the answer on 3a. is yes, does this report include data on:

[several answers possible]

- The number of completed cases?
- Duration of cases?
- Disciplinary measures
- (Successful) complaints
- (Successful) requests for recusal

3d. Are the courts periodically and publicly benchmarked with respect to their performance, e.g. timeliness?

- Yes
- No

Remark: See note to Independence Indicators - question 12a.

4. Relations with the press

4a. Do officials (communication officers or press judges) of the courts explain judicial decisions to the media?

- Yes
- No

4b. Has the Judiciary established press guidelines?

- Yes
- No

4c. Does the Judiciary give authorization to broadcast court cases that draw particular public interest on television?

- Yes
 No

Remark: Section 169 of the Courts Constitution Act (Gerichtsverfassungsgesetz) is read as follows: "The hearing before the adjudicating court, including the pronouncement of judgments and rulings, shall be public. Audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content shall be inadmissible."

5. External review

5a. Is the performance of the courts regularly reviewed or evaluated by external bodies?

- Yes
 No

5b. Who can commission an external review of the Judiciary?

[several answers possible]

- The Judiciary
 The executive
 The legislature

Objective accountability of the judge

6. Code or guidelines of judicial ethics

6a. Does the Judiciary have a code or guidelines of judicial ethics?

- Yes
 No

Remark: Germany has no separate code of judicial ethics, but there are provisions on ethical standards in a lot of laws. The ethical standards and requirements of German law for the administration of justice and the role of the judiciary, for the conduct of court proceedings, for regulating judicial service, and for assessing secondary activities and employment, are to be found in pinpointed provisions in the respective pieces of legislation governing each of these areas as a whole. This historically established system has the great advantage of offering

highly tailored rules for each individual context. This means that their effect can be felt in those areas where regulation is specifically required.

6b. If the answer to 6a. is yes, is it available to the public?

- Yes
- No

6c. Is judicial training on judicial ethics available?

- Yes
- No

6d. Is there a body with responsibility to provide judges with guidance or advice on ethical issues?

- Yes
- No

7. Withdrawal and recusal

7a. Is a judge obliged to withdraw from adjudicating a case if the judge believes that impartiality is in question or compromised or that there is a reasonable perception of bias?

- Yes
- No

7b. If yes, what is the source of the obligation to withdraw from adjudicating a case?

[one answer possible]

- A well-established practice of judges
- Set in an act adopted by a court
- Set in an act adopted by the Council for the Judiciary
- Set in an act adopted by the Minister of justice
- Set in law
- Other (specify):

7c. If a judge disrespects the obligation to withdraw from adjudicating a case, which sanctions could the judge be subjected to?

[several answers possible]

- Oral warning

- Written warning
- Suspension
- Disciplinary dismissal
- None

7d. Which authority or body takes the first decision on a request for recusal by a party who considers that a judge is partial / biased? [several answers possible]

- The Judiciary
- The executive
- Other (specify): [Click or tap here to enter text.](#)

7e. Is an appeal against a decision on a request for recusal possible?

- Yes
- No

7f. If yes, which authority or body decides on such an appeal?

- The Judiciary
- The executive
- Other (specify): [Click or tap here to enter text.](#)

8. Admissibility of accessory functions and disclosure of interests

8a. Are judges allowed to have other functions?

- Yes
- No (If you have answered no, continue at question 8f)

8b. Is an authorisation for the exercise of accessory functions by judges necessary?

- Yes
- No

8c. If the answer to 8b. is yes, who gives authorisation?

- The Judiciary
- The Executive
- The Legislature

8d. If 8a is yes, is there a register of the other jobs and/or functions judges have?

- Yes
- No

Remark: There is an internal information to court administration on the annual income a judge draws besides his/her income from his/her judicial function.

8e. If the answer to 8d is yes is this register public?

- Yes
- No

8f. Is there a register which discloses financial interests judges may have?

- Yes, please specify the minimum amount which needs to be disclosed: [Click or tap here to enter text.](#)
- No

Remark: Depending on the kind of secondary employment an internal information of the court administration or an approval of the court administration is necessary. The disclosure does not depend on a minimum amount.

8g. If the answer to 8f is yes, is this register public?

- Yes
- No

9. Understandable proceedings

9a. Are judges obliged to assist parties and court users in understanding the proceedings?

- Yes
- No

9b. In providing the assistance referred to in question 9a, are judges required to have particular regard for any of the following categories of court users?:

- Children
- Youth
- Disabled people (physically/mentally)
- Victims
- Those for whom the national language is not their mother tongue
- Self-represented litigants

9c. Do judges get training in how to: [several answers possible]

- Conduct hearings in an understandable manner to court users?
- Explain the proceedings in an understandable manner to court users?
- Explain the decisions in an understandable manner to court users?
- Conduct hearings/explain the proceedings/explain the decisions in an understandable manner, in particular in relation to the categories identified in question 9b)?