

Questionnaire “B” on the role of training institutions in recruitment and initial training of judges and prosecutors

I. What are the ways of acceding (and the respective related procedures) to the functions of judge and prosecutor (examination, selection based on a file, etc..)?

Germany, as a rule, has career judges, which means that judges spend all or most of their working life in the judiciary. Their career usually begins at a court of first instance and therefore in the employment of one of the Länder. Consequently, it is the Länder administrations that have to organise the system of primary recruitment for the judiciary. Within the Länder it is usually the Ministry of Justice where this process is organised; in some of the Länder, appointments for the social and labour courts come within the scope of the Ministry of Labour and Social Affairs. In half of the 16 Länder judicial electoral committees (*Richterwahlausschüsse*) participate in the process of recruitment and appointment.

Whoever concludes his legal studies at a university by taking the first examination and completes a subsequent period of preparatory training by taking the second state examination shall be qualified to hold judicial office (*Befähigung zum Richteramt*). In spite of the term this qualification is the prerequisite for practising nearly all legal professions, as provided by statute.

II. How, following which periodicity and by whom is the assessment of vacancies to be filled done?

Recruitment proceedings invariably start with an application by the respective candidates. From then on, proceedings differ greatly in detail, and this irrespective of whether a judicial electoral committee is involved or not. In some of the Länder candidates have to appear before a recruitment commission and present their application, and it is on the basis of the vote of this commission that the competent authority (the ministry or the president of the higher regional court) decides on recruitment where no judicial electoral committee is involved. Proceedings before these recruitment commissions vary greatly. In some of the Länder, such commissions have not been established and it is the respective authority itself

that decides, mostly on the basis of the documents supplied and in the light of an interview with the candidate. In those cases where the Länder have electoral committees, recommendations as to which candidate should be selected are quite often given to the electoral committee. Such recommendations may be based on the vote of a recruitment commission, they may be given by the president of the higher regional court on his own account or there may have been a formal process involving another commission in some cases consisting of judges. In addition, details of recruitment procedure may vary even within a Land - from judicial branch to judicial branch (i.e. ordinary courts, administrative courts etc.), from district to district and in relation to the courts vis-à-vis the prosecution office. In all the Länder, regulations on equal opportunity for female applicants (gender mainstream rules) require the person who has to observe and control the application of these regulations ("*Gleichstellungsbeauftragte*", such offices exist in all administrations) to take part at some stage in the proceedings.

III. What are the bodies which proceed to the selection of the candidates to the initial training for the function of judge or prosecutor? According to the way of acceding to the function of judge or prosecutor (cf. question I. above), please specify: a) the qualification of the persons proceeding to the selection: members of these selection bodies are they: i) exclusively judges and prosecutors? ii) in majority judges and prosecutors? iii) in majority persons who are neither judge nor prosecutor? and b) the selection procedure; do members of these selection bodies benefit from a specific training, for instance in the field of assessment techniques? If so, please give details;

The process of recruitment and appointment of career judges is in the hands of the Länder judicial administrations. In some of the Länder, this matter is dealt with in full by the ministry of justice whereas in other administrations the authority to decide on recruitment and on the (first) appointment has been transferred to the president of the higher regional courts (i.e. the Länder courts of appeal). In some administrations candidates can apply at any time, and selection proceedings are held continuously throughout the year as vacant positions have to be filled, whereas in other cases applicants for judicial office are sought by job advertisement (*Ausschreibung* – public tender). Job advertisements are intended to ensure that applicants have equal opportunities of access to public offices and that at the same time the most suitable applicant can be selected from as large a group as possible. Where proceedings are commenced without prior advertisements it is assumed that those interested in the judiciary will try to acquaint themselves with the procedure that has been adopted and apply on their

own initiative; it is expected that this is the group most interested and most suitable for judicial office.

In half of the 16 Länder, judicial electoral committees (Richterwahlausschüsse) also participate in recruitment. The recruitment is only valid with the concurring votes of the competent minister and the electoral committee. There are some differences between the electoral committees of each Land in regard to composition. They consist mainly of members of the respective Land parliament or persons commissioned by them.

The participation of the judiciary by a representative organ of the judges exists in the form of a "Präsidialrat" (council for appointment) in the case of a promotion of a judge. The council gives an advisory opinion on the personality and the aptitude of the candidate.

IV. What qualifications are requested from candidates (university degrees, previous professional experience)?

The general criteria for appointment to any public office – and this includes any position in the civil service and any judicial office - are laid down in article 33 paragraph 2 of the basic law (*Grundgesetz*). According to this article all German citizens have equal access to public office according to their aptitude, qualifications and professional ability. This guarantees equal access to a judicial office for everyone. In addition, section 9 of the (federal) German Judiciary Act prescribes that judicial tenure may only be given to a person who

1. is a German in terms of Article 116 of the Basic Law (*Grundgesetz*),
2. makes it clear that he will at all times uphold the free democratic basic order within the meaning of the Basic Law (*Grundgesetz*),
3. is qualified to hold judicial office (sections 5 to 7), and
4. has mastered the requisite social skills (social competence).

The professional qualification to hold judicial office is regulated in section 5 of the (federal) German Judiciary Act. Section 5 states that whoever concludes his legal studies at a university by taking the first examination and completes a subsequent period of preparatory training by taking the second state examination shall be qualified to hold judicial office (*Befähigung zum Richteramt*).

Generally, no previous professional experience is required. But previous professional experience in other professions, especially legal professions, may indicate requisite social skills.

V. In the case of a selection done by way of an examination, what are the selection modalities (multiple choice questionnaire, written and oral examinations, psychological tests, etc...)?

The (first) state examination is held by a state-administered examination office which is usually attached to a higher regional court or a department of the ministry of justice. Examiners are university professors, judges and - occasionally - other practising lawyers. The examination consists of 6 to 8 papers written under supervision (duration of one written examination: five hours) and an oral examination. Papers to be written under supervision deal with cases or legal problems with (mostly) undisputed facts, in the fields of civil, criminal and public law. The oral examination, which usually lasts four hours and where a group of up to six students usually meets a panel of four examiners, covers various subjects, again discussing simple legal problems.

As regards the part of the first examination which is held by the law faculties in their and their students' fields of specialisation ("Schwerpunktbereiche"), it is open to the law faculties to decide about the details.

Every student who passes the first state exam has access to the preparatory courses.

VI. What is the value of passing of initial examination (access to initial training as a tool for further selection, or as a tool to begin the professional career)? What are the consequences on curricula and assessment of training?

Their chance to be appointed as a judge or employed as a lawyer in the civil service, however, depends not only on their passing these two law examinations but also on how well they have passed them. Only a better than "average" performance in the examinations, for example, may open the way to becoming a judge; in spite of the meaning of the word, only about 15 % of all students receive marks that are called "above average". The rate of failure in the final exam lies around 10 to 15 % with an additional rate of failure of about 30 to 35 % in the first exam. The remaining 70 % "average" lawyers may have to look for jobs in industry

or go into private practice. With the number of successful law students rising steadily (in former West Germany from 4653 in 1981 to 7522 in 1991 and to about 10,800 in the whole of Germany in 2002) there is an ever-increasing number of self-employed lawyers in private practice who have a hard time earning their living. At the end of 2003, about 126,000 lawyers were admitted to private practice in Germany.

VII. Please give information on:

a) the framework of initial training:

According to section 5 a German Judiciary Act, the course of study at university lasts (on average) four years. Subjects of study have to include central fields of civil law, criminal law, administrative law, constitutional law, procedural law plus legal theory and the historical, sociological and philosophical foundations of law, including the relevant aspects of European law. In addition to the compulsory subjects, students must also study further legal subjects of their choice ("Schwerpunktbereiche", for example, international law, European law, insurance law, law of the media etc.). The course of study is concluded by passing a first examination.

After the first exam there is a period of practical training, literally called preparatory service, followed by the second state examination. It is the rather unique concept of the German system of legal education that it is essential for all future lawyers to do this preparatory service and to pass the second state exam. The reason for this is that the professional qualification to hold the office of a judge as laid down in section 5 of the German Judiciary Act, a qualification which is finally acquired by passing the second state exam, is at the same time the professional qualification necessary to be admitted to the Bar or to be employed as a lawyer in the civil service.

The aim of education in these various stages is to instruct trainees in the practical skills concerning the application of the law. Students are supposed to learn how to draft judgements, to weigh and evaluate evidence, to write indictments, to produce written pleadings. The idea also is that a trainee should accompany the lawyer who is instructing him during daily work as often as possible. He should work under the instructor's supervision and take over some of his workload so that he can, for example learn how to examine witnesses (which under German procedural rules is mostly done by the judges), how to plead in court and how to meet clients.

b) the duration of initial training;

The duration of preparatory service is 2 years, and it entails various different stages of training. The students are employed by the state (the judicial administration) as or similar to civil servants in training and are paid a small monthly allowance while in preparatory service. They have to spend a few months each in a court for civil law suits, in a criminal court or a prosecutor's office, in a local or government administration, with a practising lawyer (barrister/solicitor) and at other places of their choice. In North-Rhine/Westphalia for example, trainees have to spend

5 months with a court for civil law suits at first instance,

3 months with a prosecutor or in a criminal court,

3 months with an administrative office (usually on the local level),

10 months with a practising lawyer (solicitor, barrister),

3 months at a place of choice - where training is offered in a special subject of his or her choice.

c) the qualification and the selection of trainers;

The criterias for the choice of the trainers are competence on the field they are teaching and great professional experience.

d) the method used in initial training (seminars, training periods in a jurisdiction, training period in other places, period of the curriculum during which these training periods take place);

Practical training in these stages is accompanied by courses which are given by experienced practitioners (mostly judges but also prosecutors and other lawyers). These courses cover practical questions. Their purpose is to make students familiar with the methods of analysing and deciding court cases, especially teaching them to find the issues of fact which are relevant to the decision of the case. In future, courses will have to bring more emphasis on a lawyer's practical skills in private practice, in order to take account of the goals of the reform of 2002 / 2003. Courses also serve the purpose of preparing students for the final state

examination and to ensure an equal standard of practical training because the quality of individual instruction during practical stages may differ a lot.

e) the content of the initial training programmes and its link with university curricula;

The content of the initial training is linked up with the subjects of the studies at university. They have to include central fields of civil law, criminal law, administrative law, constitutional law and – more important in the preparatory courses, the procedural law.

VIII. Is there an exit examination? If so, what is the value of this exit examination? Please give details about the methods of selection, the selection bodies and their membership;

The second and final examination is again held before a state office that is usually attached to the Ministry of Justice of the Land. In contrast to the first examination, mostly practising lawyers, the overwhelming majority being judges of all courts (civil courts, administrative courts, industrial relations courts, even tax courts), but increasingly members of the Bar are volunteering to sit as examiners. The importance which is attached to this examination may be shown by the fact that a large number of court presidents regularly serve as chairpersons of the panels of examiners.

The subjects of this examination are by and large identical with those of the first exam, they include however procedural law at a much deeper level. Papers and questions are usually set not from the abstract point of view of a legal scholar but almost invariably from the point of view of the court that has to give the decision in a case or of the practising lawyer who has to deal with a given situation for his client. Again there are papers under supervision and an oral examination. The papers written under supervision usually require the drafting of a judgement, of an indictment and, to an increasing extent, of a pleading or application - given from the barrister's point of view. Oral examinations start out with a short speech which the candidate has to give on a simple practical case, again mostly from a practising lawyer's point of view; he is presented with the case on the morning of the examination and is allowed one hour of preparation; the speech is to last no more than ten minutes and should end in a proposal for a practical decision. After every candidate has given his speech, the following oral examination takes place in the form of a discussion covering everyday practical situations, for example, simulating the visit of a client to a solicitor, a procedural situation during a trial in court, a factual or legal problem that may arise in local administration. In short, in all phases of this examination, candidates do not only have to show their abstract

knowledge of the law but also their ability to work with the law in a practical situation and to weigh and choose between a number of options which seem to be open to them.

IX. Are there provisions for the training and tutoring for judges and prosecutors in the first years of their career (complementary training)? If so, what are the modalities?

Young judges and public prosecutors are obliged to attend courses and seminars organised by the ministry or court. Arrangements vary from one federal state to another. For example, a four-week introductory course in one *Land* may be completed by two one-week follow-up courses. In other *Laender*, young judges and public prosecutors have to attend only a one-week advanced training event at the beginning of their career. Some *Laender* offer courses to all judges regardless of the branch they work in, other *Laender* differentiate between civil judges, judges in criminal courts and public prosecutors. At such events, references are given as to the planning and implementation of hearings in civil cases, or of a trial in a criminal case. Moreover, reports are given concerning the drawing up of judgments, settlement in civil proceedings, the activities of examining magistrates, and the independence of the judiciary. In the second part of the introductory course, special problems of taking evidence, particularly of evidence given by witnesses and experts, are discussed, and simulations using video recorders are conducted under the direction of experienced judges.

In addition, some courts and prosecutor offices organise a tutoring system for judges and prosecutors in their first years, where experienced colleagues help in giving assistance in questions and problems of everyday work.