



Training and Recruitment of Judges in Germany

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Abstract:

Training of German judges is part of general legal education which is the same for all regulated legal professions (judges, prosecutors, practicing lawyers, lawyers in administration and private employment). This uniform qualification is acquired by passing two exams administered by the state, i.e. the Länder (not the Federation), the first exam after university studies and the second exam after state-organized practical training. The paper gives an overview of this system of legal education.

Germany, as a rule, has career judges. Courts of first and second instance are administered by the Länder, therefore the Länder judicial administrations are also responsible for recruitment of young career judges. General criteria for appointment to any public office are laid down in the German constitution (Grundgesetz). Apart from this, selection proceedings differ in detail, although elaborate lists of criteria (employee profiles, competence profiles) are widely used. Professional competence is judged with emphasis on exam results; personal competence and social competence are assessed in interviews with appointment commissions or staff managers of ministries of justice. The paper provides details of these proceedings and also gives the author's personal experience with recruitment proceedings in the Court of Appeal district of Cologne.

Keywords: Legal education; Recruitment; Competence Profiles; Judges; Germany

1. Introduction

Germany is a federal state. Judicial authority in Germany is shared between the Federation ("Bund") and the sixteen "Länder" (states, provinces). Under article 92 of the Grundgesetz (constitution), judicial power is exercised by the Federal Constitutional Court (Bundesverfassungsgericht), by the other federal courts provided for in the Grundgesetz itself, and by the courts of the Länder. Federal courts are the Federal Constitutional Court in Karlsruhe and the five highest courts of the Federation, i.e. the Federal Court of Justice in Karlsruhe (Bundesgerichtshof, civil and criminal cases), the Federal Labour Court in Erfurt (Bundesarbeitsgericht, labour cases), the Federal Administrative Court in Leipzig (Bundesverwaltungsgericht, administrative law cases), the Federal Social Court in Kassel (Bundessozialgericht, social security and social insurance cases) and the Federal Finance Court in Munich (Bundesfinanzhof, tax cases). The five highest courts of the Federation are courts of last instance, generally hearing appeals on points of law only. By contrast, the courts of first instance in all five branches are courts of the Länder. Likewise, the higher regional courts (regional courts of appeal, Oberlandesgericht, Landesarbeitsgericht, Oberverwaltungsgericht, Landessozialgericht) existing in all branches except in tax cases are administered by the Länder. Thus, the German judicial system is peculiar in that the courts of first and second instance, in general, are the responsibility of the Länder whereas the final courts of appeal are the responsibility of the Federation. Cases usually begin at a Länder court of first instance, may go through a (Länder) regional court of appeal and eventually may end up in the relevant federal court. Therefore, the system establishes a single jurisdiction quite unlike the system in the United States of America with both state and federal courts of first instance and of appeal. Judges in the courts for which the Länder are responsible are employed by the Länder whereas

¹ The following article is based on a former publication in "Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe", Bologna, 2005; this publication was the result of a research project conducted by the Research Institute on Judicial Systems, National Research Council, Italy, in partnership with the Centre for Judicial Studies of the University of Bologna. Parts three and four of this paper are based on a paper given by the author at a workshop on Evaluating Judicial Performance which took place in May 2013 at the International Institute for the Sociology of Law in Onati, Spain. The author is president (chief justice) of the court of appeal in Cologne, Germany. For over 30 years, he has been working as a judge in courts of law in Bonn and Cologne in judicial work as well as in the judicial self-administration of the courts and as a civil servant in the Ministry of Justice of North-Rhine/Westphalia in Düsseldorf in the function of head of the department for legal education, training, continuing education, international activities and also in the function of director of the state law exam office. While every attempt has been made to collect reliable data, the great diversity of rules, regulations and their practical application in the German judicial administrations and the fact that many procedures are under review has made it nearly impossible to give a detailed up-to-date account. Although the author is confident that the overall picture is correct he is well aware of the risk that some of the details reported may not or no longer give the exact state of the relevant practice.

those appointed to the federal courts are employed by the Federation. The main features of the German system of jurisdictions are shown in table 1.

In this paper, emphasis is put on recruitment of judges in what in Germany are called the “ordinary” courts of justice, i.e. the courts hearing civil, family and criminal cases. These are the courts where about 75% of all judges are employed; administrative court judges make up about 11%, social and labour court judges about 5% each and tax court judges about 4%. The ratio of “ordinary” court judges and prosecutors is about 3 to 1. The overall number of judges in Germany is approximately 20,000 and the total number of prosecutors about 5,000.²

The following account is an attempt to report the present situation and the rules and regulations applied in the German Länder. The great diversity of these rules and regulations and of their practical application as well as the fact that many procedures are under constant review, however, presents the risk that some of the details reported may not or no longer give the exact state of the relevant practice.

2. General Requirements and Training of Judges

2.1 General requirements

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 organize the system of first recruitment for the judiciary. Within the Länder the Ministry of Justice of the Land usually organises this process; 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 about half of the 16 Länder, judicial electoral committees (Richterwahlausschüsse) participate in the process of recruitment and appointment.

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 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 Act³ prescribes that judicial tenure may only be given to a person who is:

- a German national in terms of article 116 Grundgesetz,
- prepared to at all times uphold the free democratic basic order within the meaning of the Grundgesetz,
- qualified to hold judicial office (according to sections 5 to 7 of the act),
- able to provide the social competence necessary for the office.

These criteria are binding on the bodies competent to decide on recruitment and appointment. Any alleged violation of equal access to public office is open to judicial review before the administrative courts.

2.2 Professional Qualification – Legal Education

Professional qualification to hold judicial office is regulated in section 5 of the (federal) German Judiciary Act. Professional qualification to hold judicial office is also a necessary prerequisite for admission to professional legal practice, according to section 4 of the Lawyers Act.⁴ These two provisions are the technical legal foundation for the long-standing German tradition of unified theoretical and practical training for practising lawyers, judges, prosecutors and also lawyers in the civil service. Consequently, Germany does not have specific initial training for future judges and there does not exist specific initial training for future practising lawyers. The professional qualification to hold judicial office (Befähigung zum Richteramt) as certified by passing law exams organized by the state is the (only) professional entrance qualification for all regulated legal professions.⁵

Section 5 German Judiciary Act states that in order to qualify to become a judge (or via section 4 of the lawyers act to become a member of the bar) an applicant has to complete legal studies at university, pass a first exam, do an apprenticeship and pass a second state examination. The course of study at university lasts (on average) four years.⁶

² cf. table 2

³ Deutsches Richtergesetz (DRiG) of April 19, 1972, Bundesgesetzblatt 1972 I p. 713, as amended per December 12, 2011, Bundesgesetzblatt 2011 I p. 2515; the most recent amendment concerning legal education was by the act to reform legal education of July 11, 2002; the amendment introduced the requirement of “social competence”

⁴ Bundesrechtsanwaltsordnung (BRAO) of August 1, 1959, Bundesgesetzblatt 1959 I p. 565, as amended per December 6, 2011, Bundesgesetzblatt 2011 I p. 2515.

⁵ Certain exceptions for lawyers from other countries, especially from within the European Union, are neglected here.

⁶ s. 5a DRiG, cf. note 3, supra

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 relevant aspects of European law. In addition to compulsory subjects, students must also study further legal subjects of their choice (“Schwerpunktbereiche”, for example, international law, European law, insurance law, media law etc.).⁷ The course of study is concluded by passing a first examination which is split up in two parts, an exam on compulsory subjects before a state exam board and an exam on subjects of choice before the law faculty.

University education is largely theoretical. Studies concern the knowledge of important codes and acts and court decisions. Students rely mainly on textbooks. Casebooks are rare, because emphasis of the courses lies more on principle than on precedent. Practical implications of legal principles are not covered in depth; procedural law is dealt with only briefly. In spite of this emphasis on theory, a decisive element of university education in law is training in the methods of “solving” a case, a legal problem. Strict logical thinking, exact interpretation of statutes and precise deduction from principles (“Subsumtion”) lie at the centre of this methodical training. In addition, the reform of 2002 placed more emphasis on practical aspects of the law, above all on the way a practising lawyer deals with legal problems, how he perceives the case and how he can act to influence the outcome of legal disputes. It is in the course of this reform that many law faculties have introduced courses on the law of the legal professions, on drafting contracts and also moot courts. According to the law on legal education in the Land North-Rhine/Westphalia⁸, essential fields of study include, for example, the law of contract, tort, chattels, real property, consumer credit,

- an overview of family law and the law of succession upon death,
- an overview of exemplary parts of mercantile law, of company law, of labour law,
- core subjects of criminal law,
- an overview of criminal procedure,
- constitutional law, general principles of administrative law including procedure, the law of local government,
- European law and an overview of private international law.

This covers a wide range of legal fields. In addition, what may belong to “principles” or “overview” in any given field is open to discussion. Universities or examination boards do not have strict or binding curricula. Students are free to choose the time when they want to enter the exam on compulsory subjects before the state exam board. In fact, more than half of the students enter their first exam after about 4 years of study. The reason for this is that students who enter their first examination after only four years at university are entitled to an extra attempt if they fail the examination.⁹

The state part of the first examination is organized by a state-administered examination office which is usually attached to a higher regional court. Examiners are university professors, judges and - occasionally - other practising lawyers. The examination consists of six or seven written (supervised) tests and an oral examination.¹⁰ Supervised written tests deal with cases or legal problems of (mostly) undisputed facts. The oral examination usually lasts four hours and covers various subjects, again discussing simple legal problems. A group of up to six students is examined by a panel of three examiners; in some of the Länder candidates also have to give a short speech on a legal problem being presented to them at the morning of the oral exam. The panels of examiners for the oral examination are composed by the director of the examination office; as a rule, one of the three examiners is an expert in civil, one of them in criminal and the third an expert in administrative law. As regards the part of the first examination administered by the law faculties in fields of specialisation (“Schwerpunktbereiche”), it is open to the law faculties to decide on the details. As it appears at present, most faculties require students to write some kind of thesis and at least one supervised test; in addition, there are also oral exams.

After the first exam there is a period of practical training, literally called preparatory service, followed by the second state examination. As pointed out above, it is the rather unique concept of the German legal education system that it is essential for all future lawyers (i.e. judges, prosecutors, barristers / solicitors) to do this preparatory service and to pass

⁷ The law of legal education was reformed substantially in 2002. Before 2003, apart from compulsory subjects students had to study subjects of their choice which were then part of the exam set by a state exam office. The aim of the reform was to put more emphasis on profile building both for universities and for students and so the exam in special subjects chosen by students is now set by the law faculties (“universitäre Schwerpunktbereichsprüfung”, cf. s. 5, 5d DRiG, note 3, supra)

⁸ s. 11, Gesetz über die juristischen Prüfungen und den juristischen Vorbereitungsdienst (Juristenausbildungsgesetz Nordrhein-Westfalen – JAG NRW) of March 11, 2003, in force since July 1, 2003 (Gesetz- und Verordnungsblatt – GV.NRW. - für das Land Nordrhein-Westfalen 2003 p. 135), as amended per April 21, 2009 (GV.NRW. 2009 p. 224); all the other Länder have passed similar legislation in order to regulate the details left open by the federal act of July 11, 2002, cf. note 3, supra

⁹ s. 25 JAG, cf. note 8, supra; as a rule, the examination can be repeated once if the student fails; with the so-called „free shot“ attempt, students are offered a third try.

¹⁰ s. 10 JAG, cf. note 8, supra

the second state exam. The overriding idea of this uniform legal education is to provide young lawyers with inside knowledge of most legal professions and to guarantee an equal level of competence for all legal professions. The duration of preparatory service is 2 years, and it entails various different stages of training. Students are employed by the state (the judicial administration) as 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/Westphalia¹¹, trainees have to spend:

- a) 5 months with a court for civil law suits at first instance,
- b) 3 months with a prosecutor or in a criminal court,
- c) 3 months with an administrative office (usually on the local level),
- d) 10 months with a practising lawyer (solicitor, barrister),
- e) 3 months at a place of choice - where training is offered in a special subject of his or her choice.

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 the 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 (an art which is rarely exercised) and how to meet clients.

Practical training in these stages is accompanied by courses¹² that are given by experienced practitioners (mostly judges but also prosecutors and increasingly practicing 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 that are relevant to the decision of the case. Increasingly, these courses bring more emphasis on a lawyer's practical skills in private practice. They also serve the purpose of preparing students for the final state examination and to ensure an equal standard of practical training because quality of individual instruction during practical stages may differ markedly.

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, only few law professors serve as examiners, the majority being judges of all courts (civil courts, administrative courts, labour courts, even tax courts), but increasingly members of the Bar are sitting as examiners. The importance 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. Again, examiners are usually appointed by the Ministry of Justice of the Land on the basis of a proposal of the director of the examination office.

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 written (supervised) tests and an oral examination. Written tests 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 (five to six candidates being examined by a panel of three examiners, selected by the director of the examination office) begin with a short speech which the candidate has to give on a simple practical case, again mostly from a practicing lawyer's point of view. The candidate is presented with the case on the morning of the examination and is allowed one hour of preparation; the speech should not last more than ten minutes and should end in a proposal for a practical decision.¹³ After every candidate has given his speech, the 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.

¹¹ cf. s. 35 JAG, note 8, supra; the emphasis that the reform is putting on training for private practice is shown by the fact that, under previous regulations, the stage with a practising lawyer was only 4 months whereas now it is 10 months; federal law prescribes at least 9 months, s. 5b para. 4 DRiG, cf. note 3, supra. This takes account of the fact that more than 80 percent of successful candidates end up in private practice.

¹² s. 43 JAG, cf. note 8, supra

¹³ s. 51 paragraph 3 JAG, cf. note 8, supra; conditions vary a bit in detail among the Länder but are generally comparable

At the end of all this, those who are successful are qualified to hold any position as a lawyer (i.e. judge, prosecutor, barrister). By that time, the average age of a student is about 28 to 30 years. Their chance of being 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 opportunity to becoming a judge; in spite of the meaning of the word "average", only about 15% of all students receive marks that are called "above average". The rate of failure in the final exam lies around 15% with an additional rate of failure of about 30 % in the first exam. The remaining 70 % "average" lawyers have to look for jobs in industry or go into private practice. With the number of successful law students having grown steadily until a few years ago, the number of self-employed lawyers in private practice has risen dramatically with the result that some of them have a hard time earning their living. At present, about 160,000 lawyers are admitted to private practice in Germany although the rise has somewhat slowed down in recent years.

2.3 Further Prerequisites

Federal law does not provide for any further prerequisites. As far as can be seen, no further requirements are laid down by the laws of the Länder either. Apart from the professional qualification acquired by the two law exams (Befähigung zum Richteramt within the meaning of section 5 of the Judiciary Act) no further professional experience is necessary. There is no policy of recruiting judges from the ranks of other legal professions although applicants who have been in private practice for a few years with some experience in litigation are generally welcome. In addition, for the purposes of appointment for life, time spent in other legal professions may be taken into account.¹⁴ There is no minimum or maximum age although, of course, when appointing future career judges, the duration of future working life until the compulsory retirement age of 67 may be taken into account. Likewise applicants for the judiciary - like all applicants for the civil service - have to provide a health certificate in order to allow a prognosis whether the retirement age is likely to be reached in their case. On the other hand, the law requires preference to be given to handicapped persons in cases where they have met all other criteria at a level equal to that of other applicants. Finally, as is the case with all applicants to the civil service, they should be of good moral standing, i.e. they have to provide a report from the registry of criminal convictions and they have to make a declaration as to whether and in what way they are indebted. It can be assumed that if these matters give rise to objections they will not be appointed.

3. Procedure of Recruitment and Selection

3.1 Competent Authority

As has been shown, 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 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). 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 office 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,¹⁵ judicial electoral committees (Richterwahlausschüsse) also participate in recruitment. These committees are parliamentary committees. Their members are appointed for a parliamentary election period and, as a rule, chosen by a parliamentary vote, in some cases on the basis of nominations of relevant professional groups (e.g. the judiciary, the bar). 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; sometimes members of the judiciary and lawyers are included. The recruitment is only possible on the basis of concurring votes of the competent minister and the electoral committee.

Generally speaking, both in proceedings where only the Land's Ministry of Justice or the higher regional court are involved as well as in those where electoral commissions have to decide together with the Ministry of Justice, some kind of evaluation of the credentials of candidates is taking place. Because of the different nature of these proceedings, the process of evaluation may vary. Invariably, the criteria listed above will have to be taken into account. These are:

¹⁴ s. 10 paragraph 2 DRiG, cf. note 3, supra

¹⁵ Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Schleswig-Holstein, Thüringen

- General criteria (German citizen, health, moral standing)
- Professional qualification (state exams, Befähigung zum Richteramt)
- Social competence

3.2 Details of the Procedure of Recruitment and Selection

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 is involved or not. In most 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. Recruitment commissions are set up on the administrative level, usually by the Ministry of Justice; in general, they are composed of high-ranking civil servants of the Ministry of Justice and / or court presidents. 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 the recruitment procedure may vary even within a Land - from judicial branch to judicial branch (i.e. ordinary courts, administrative courts etc.) and from district to district. There has so far been no evaluation of the value of these various procedures. The general impression of those involved in the process is that the grade in law exams is of high if not overriding importance. In addition, the overall impression of those responsible for judicial staff is that all the Länder have a judiciary of very high and very homogenous competence, which can be seen, e.g. when judges meet for professional exchange in seminars or professional meetings or where judges are being transferred on their own initiative to another judiciary.

3.3 Judicial Review

Regardless of these various systems of selection employed, all decisions by the competent authorities are - at least in theory - subject to judicial review. An unsuccessful applicant can challenge the decision to recruit somebody else on the basis that his/her right under article 33 of the constitution (Grundgesetz) has been violated. It is accepted that it follows from article 33 that authorities are under a duty to recruit the person who is best qualified for the vacant position. On the other hand, because strict criteria do not exist, it is equally accepted that there is a certain prerogative for the authorities to decide on which criteria they are going to place the most emphasis. Applicants have a right to be treated fairly and equally in the proceedings and also have a right to be informed of the intended decision on selection. This is to enable them to seek judicial review before the decision is implemented because, once another candidate is appointed and the vacant position has been filled, the recruitment procedure is closed.

3.4 Federal Judges

The judges of the highest federal courts (Bundesrichter) are elected jointly by the electoral committee of the Federation and the Federal Minister competent for the court concerned, in general the Federal Minister of Justice. The electoral committee of the Federation consists of the respective Länder ministers (16) and 16 members of the Federal Parliament (Bundestag) or persons commissioned by parliament (article 95, para 2, Grundgesetz). The Federal Minister competent for the type of court concerned chairs the sessions of the electoral committee but has no voting right. Each individual member of the electoral committee has a right to present candidates, and it follows from this that a strict recruitment procedure does not exist. There is, however, participation of the judiciary through a body representing the judges (presidential council or "Präsidialrat", i.e. a council for judicial appointments at the respective federal court which represents the judges of the court).¹⁶ This council gives an advisory opinion on the personality and the aptitude of the candidate and this opinion has to be presented to the electoral committee.¹⁷

4. Evaluations made in the Recruitment Process

Invariably, it is the aim of the various recruitment and selection proceedings to ensure that the most suitable applicants are selected. In trying to reach a broader basis for their selection decisions some of the Länder have attempted to define further criteria in addition to the general criteria and general professional qualifications as laid down by the law and explained above. Whereas in the past recruitment of judges has generally taken place on the basis of results of the final

¹⁶ cf. s. 54 et sequ. DRiG, note 3 supra

¹⁷ The process of election and appointment to federal courts is closer to promotion than to initial recruitment. Vacant positions, however, will not be publicly advertised, applications are quite uncommon; instead prospective candidates have to rely on being presented by a member of the electoral committee. The electoral committee decides on the basis of written evaluations. Decisions are subject to judicial review. The electoral process is subject to some critical discussion because it is not considered sufficiently transparent.

state exams it is now increasingly accepted that further abilities and skills are necessary to make a good judge, and this has been underlined by inserting the requirement “social competence” in section 9 of the Judiciary Act.¹⁸ Some Länder administrations have drawn up lists of further criteria which have to, or should be, fulfilled by candidates. In some cases, these lists (employee profiles, competence profiles, „Anforderungsprofile“) have been established only for higher judicial office (their fulfilment being prerequisite for a chance of promotion) whereas in other cases they include initial appointment.

Very elaborate profiles do exist in most of the Länder.¹⁹ These profiles cannot be presented here in all their detail, but it may suffice to describe their basic structure. Requirements are listed in various classes, and it is invariably the classes “professional competence” and “personal competence or ability” that can be found; in some cases “social competence” is listed separately and also “competence to lead” may be found. Within these classes, rather long lists of detailed requirements have been put together. The list of North-Rhine/Westphalia, for instance, contains, *inter alia*, the following elements many of which can also be found in the profiles of the other Länder:

I. Professional competence

Professional qualification

- Wide knowledge of the law
- Ability to apply the law in practice
- Ability to acquaint oneself with new legal fields
- Good judgement
- Ability to apply information technology

Understanding of judicial office

- Impartiality
- Prepared to actively uphold the values of the constitution
- Prepared to defend against undue influence
- Prepared to take responsibility for judicial decisions
- Awareness of the influence of private conduct on judicial office

Ability to present arguments and to convince

- Precise phrasing
- Ability to define issues in complex cases
- Giving reasons thoroughly, with respect to the individual case
- Openness

Ability to conduct hearings and interrogations

- Being thoroughly prepared
- Knowledge of the court files and documents
- Planning and structuring of trials
- Respect for the interests of the parties
- Understanding, sensitiveness and patience with parties
- Clear view of chances for settlements

Competence in teaching

- Prepared to instruct students in preparatory service
- Diligent correction of students’ papers

II. Personal competence

General elements of personality

- Broad interests
- Natural authority
- Prepared to accept difficult duties
- Awareness of one’s strengths and weaknesses
- Control of one’s emotions

Sense of duty and responsibility

- Awareness of social responsibility
- Prepared to accept responsibility for the judicial administration
- Able to assess consequences of decisions
- Responsible handling of a large workload

¹⁸ cf. note 3 supra

¹⁹ Anforderungsprofil für Richter und Staatsanwälte, published as internal regulations by the respective Ministry of Justice, e.g. Bayern, Schleswig-Holstein, Nordrhein-Westfalen

Openness towards lay judges and court staff

Ability to cope with the workload

Physical and psychological fitness

Prepared to accept additional duties

Able to work fast under pressure and with concentration

Maintaining standards even with a larger work load

Ability to manage and to organise work

Set priorities

Optimise work flow

Able to motivate oneself and others

Delegate work reasonably

Take available resources into account

Ability to decide

Decide swiftly and responsibly

Prepared to face necessary disputes

Flexibility and preparedness for innovations

Openness towards new technologies

Openness towards modernisation of courts

Prepared to work in different court structures

Ability to develop new solutions

III. Social competence

Ability to work in a team

Ability to communicate

Ability to deal with conflicts and to mediate

Prepared for compromises

Fairness, positive approach in dealing with colleagues

Constructive criticism

Ability to mediate

Being accepted as an authority

Awareness of service aspects

Respect for interests and concerns of parties and witnesses

Politeness

Keeping to schedules

Taking the necessary amount of time

IV. Competence to lead

Clear instructions

Trust in staff and colleagues

Openness for concerns of staff

It is the aim of recruitment and selection proceedings described above to evaluate applicants with respect to elements like these and to reach a prognosis as precise as possible as to the performance of candidates in their future office. There are, however, no reliable data as to the weight that the Länder attach to all or any of these elements. But it is fair to say that the group of elements listed under “professional competence” is widely accounted for by referring to the results of the second and final state exams, sometimes including the result of the first exam and other professional qualifications. In fact, many of the Länder have set a mandatory limit for invitations to interviews or for other selection proceedings. With “above average” exams starting at 9.00 points at a scale reaching up to 18.00 points most of the Länder have set their limit at between 7.75 and 9.00 points to reach the assessment centre or other further stages of the selection process. Bearing in mind that only about 15% of successful examinees reach 9.00 points, this means that there is a very high barrier for prospective candidates.

It has to be noted, however, that these limits have been set in the light of a job market where Länder judicial administrations can recruit candidates for the judiciary from a large group of well-qualified applicants. Even where the limit is lower than 9.00 points (which is the equivalent of the mark “fully satisfactory” reached by only about 15% of the candidates) applicants with fewer than 9.00 points face a high number of competitors with much better marks. This means that to get selected these candidates would have to show a much better performance with respect to the other criteria of the “profiles”.

The reliability of the other criteria is subject to rather intensive discussion. Regardless of the list employed and the different selection procedures in the Länder, persons in charge of selection tend to maintain that their respective systems provide satisfactory results and that the number of (junior) judges who leave (or will have to leave) office before they are appointed for life is significantly low. This is hardly surprising when the group of applicants from which successful candidates are selected is itself recruited from the top 15% of those holding the professional qualification required by law.

5. Personal Experience

In addition to these rather general descriptions of different recruitment procedures in Germany, it might be of some interest to give a more detailed account of specific experiences. The author of this paper can look back to about 20 years involvement in recruiting young career judges in the Cologne district. The following observations concern the procedure in Cologne and are, of course, based on very personal experience.

In North-Rhine-Westphalia, first appointments are the responsibility of the presidents of the Courts of Appeal (higher regional courts). In Cologne, the president is advised by a commission consisting of one of the court presidents of the regional courts of the district, the gender representative, the judge who heads the judicial staff department and a member of the judicial staff council of the district. The commission is presided over by the president or the vice-president of the court of appeal. Usually a group of up to eight applicants is invited for one day of "assessment". At the end of the day the commission discusses the results, forms an opinion whom to appoint and advises the president accordingly. Usually, decisions are unanimous.

The day starts with a group discussion on a given theme, usually a controversial issue of legal politics or of court organization.²⁰ The group has about half an hour to prepare and they then discuss in the presence of the appointment commission. They are encouraged to discuss among themselves, not towards the commission as spectators. The aim of this exercise is to see how applicants behave in an internal discussion; they are not expected to try to convince the commission. It is not the force of the argument that is regarded as relevant but the way the applicants behave, whether they show the ability for a structured discussion, for moderation, whether they are open for other arguments and for reconsidering their opinions, or whether they stubbornly hold on to their views.

The next step is a small working exercise with about 10 different tasks from the point of view of a local court judge. The problems are usually a mix of civil and criminal procedural situations, some quite simple, some more complicated, some urgent, some not. The idea of this test is to determine whether the applicant has an ability to decide swiftly about the next move, whether he or she can prioritize work according to urgency (e.g. an application for an arrest warrant or an interlocutory application would have to be treated first) or whether the applicant is a hesitant person. The test is usually evaluated by a judge who assists the commission or by the commission itself.

Next the applicants are asked to fill in a form which is called "Visitenkarte", which in this context is probably best described as some kind of self-reference. Questions to be answered are, e.g. "what are my greatest achievements", "what do I strive for in the next years", "three items I would take to a lonely island", "things I am good at", "things I am not good at", "what should be changed in the world", "things that make me angry", "things that make me happy", "something else worth knowing about me". Here, the aim is not so much to ask the applicant to do some sort of coming-out but rather to supplement the curriculum vitae which may become subject of the following interview. It is clear that some applicants use this tool to try to steer the interview in certain directions.

The final and important step is the interview of each individual applicant by the commission. It is usually begun by the president of the court of appeal. When the author sits in the commission, he would normally reference the curriculum vitae and ask the applicant to explain, e.g., why he or she has read law in the first place, what his or her experiences were at university, what impressed him or her in the various stages of practical training, etcetera. As many applicants have spent some time abroad, we would normally touch on these experiences and on the relevant other legal systems or systems of legal education. We are also searching for information regarding the wide field of social skills, depending on where the applicant has engaged him- or herself, e.g. in the school or students' representation, in social work, in the (until a few years ago) compulsory service in lieu of armed service, in programs in developing countries, etcetera. In a second part, the interview would then turn to why the applicant wants to become a judge and not a practicing lawyer. We would discuss the great variety of judicial work, interesting and not so interesting work. Great emphasis will be put on the fact that even highly qualified applicants might have to adjudicate traffic accident or even traffic violation cases for some years. Boring aspects of judicial work will be discussed in order to find out whether there is sufficient motivation for all judicial duties. We

²⁰ E.g. introduction of electronic filing systems; circumcision and criminal law; judicial appointments by parliament, by government or by judicial councils etcetera.

would also try to discuss how the candidate sees his or her abilities to direct court trials, to discuss matters with lawyers and with ordinary litigants, to seek settlements of controversial issues.

After the president, the head of the judicial staff department would continue. He would, as a rule, discuss questions of which court the applicant would aim to be assigned to, of part time work, of career aspects etcetera. The gender representative would then normally touch on similar issues, quite often also on general motivation for the profession. The president of the regional court might then discuss results of the 10 test cases or present the applicant with a procedural problem. Quite often the relations between judge and court president and the limitations of hierarchy due to judicial independence are also discussed.²¹ The last person to discuss with the applicant is the representative of the judicial staff council. He or she would normally also touch questions of judicial work, self-understanding, the role of the judge etcetera.

At the end of the day, the commission determines which of the applicants should be appointed. Positive and critical aspects and observations are discussed, and usually there is a unanimous decision, although, theoretically, the president, because of his sole responsibility, could overrule the opinion of the commission. In most cases, little discussion is necessary because all the members of the commission have the same (positive or negative) view, so the discussion is limited to listing the main reasons for or against appointment. Whenever a member of the commission dissents or where the observations of the members differ in substance, the discussion of the merits is more intensive. There is no clear ranking of the criteria, let alone a point system. The author, however, tries to control his overall opinion by awarding points; in this process, double points are awarded for the impression in the interview and for the overall documentary profile of the candidate (exam marks, doctorate, LL.M., other merits as documented in the c.v.) whereas only single point value is given for the group discussion and the working test. The final and overall test, in view of the commissions, is whether the members of the commission can envisage the applicant working as a judge in all his/her capacities – i.e. whether he/she can handle the caseload, whether he/she can strike a good and conscientious balance between thorough and swift work, whether he/she can communicate with professionals and litigants, whether he/she is well balanced for work as a single judge, whether he/she can also work as a team player without causing endless discussions in the panel but also without sheepishly following senior judges' views. He/she should be a good and conscientious worker but the judiciary should not be solely on his/her mind. We do not want people who are preoccupied with making a career in the judiciary. These are quite a lot of requirements, and the question quite often is whether certain reservations in one or more aspects can be overruled.

The author's personal observation is that our commissions tend to give too much weight to the impression given in the interview. Shy and more thoughtful candidates may have a hard time whereas bright, open-minded and eloquent applicants have better chances. Occasionally, it appears necessary to ask the members of the commission to also have a close look at all the other merits of candidates as documented by exam papers, exam marks, evaluations during practical training, evaluations of former professional work, etcetera, so as to mirror the impression of the moment against the merits of months or years of professional training and work.

6. Initial Training

As has been pointed out above, it is the aim of general legal education in Germany to qualify for judicial office. General legal education, therefore, to a large extent deals with specific skills deemed necessary for judges and prosecutors, especially the drafting of judgements and of indictments which are part of the second state exam. Unlike in most other countries, in Germany young lawyers can be appointed to the bench without additional (initial) training, and it is quite common that they sit and work as judges with almost no or only a short introduction in their field of work.

Despite this, it has been accepted for decades that there is a certain need for additional training at an early phase after appointment in order to acquire a certain amount of expertise and know-how concerning day-to-day business in court. Various methods have been used in this respect in the Länder.

First of all, for some period of time it was rather common to assign only a certain portion of the average workload (usually between 50 and 70 percent) to junior judges, the idea being that at the beginning of their career it would take them more time to deal with a given case. In addition, in some judicial administrations experienced judges have been asked to act as advisors or tutors for junior judges and prosecutors. In the case of prosecutors, it is still the rule that beginners are not entitled to sign indictments, but that their drafts have to be counter-signed by a superior. In the courts, however, this is not possible, because even a junior judge is accorded full judicial independence to perform his or her duties. This does not preclude, however, voluntarily asking more senior judges for their opinion and advice.

²¹ Questions e.g., are whether a presiding judge of a panel is allowed to make changes in a draft judgment prepared by a junior judge, whether the court president can demand that the judge sits during specific hours and so on.

In the so-called ordinary courts, junior judges would, as a rule, be assigned to a panel of three judges at a regional court (Landgericht); this enables them to share the responsibility of decision-making with senior colleagues of the panel and, at the same time, gain experience by observing their work. This is not possible in courts like labour or social courts where even a newly appointed judge, as the sole professional judge, presides over a panel that includes two lay judges. In these jurisdictions, some courts have introduced a somewhat informal period of initial instruction, between two and eight weeks, where newly appointed junior judges do not have cases assigned to them but during which time they can accompany and watch a senior judge in his or her work. This may increasingly become necessary in ordinary courts because, due to an amendment to the procedural codes, more civil law suits will have to be decided at first instance by single judges which may result in a substantial reduction of panels comprising three professional judges.

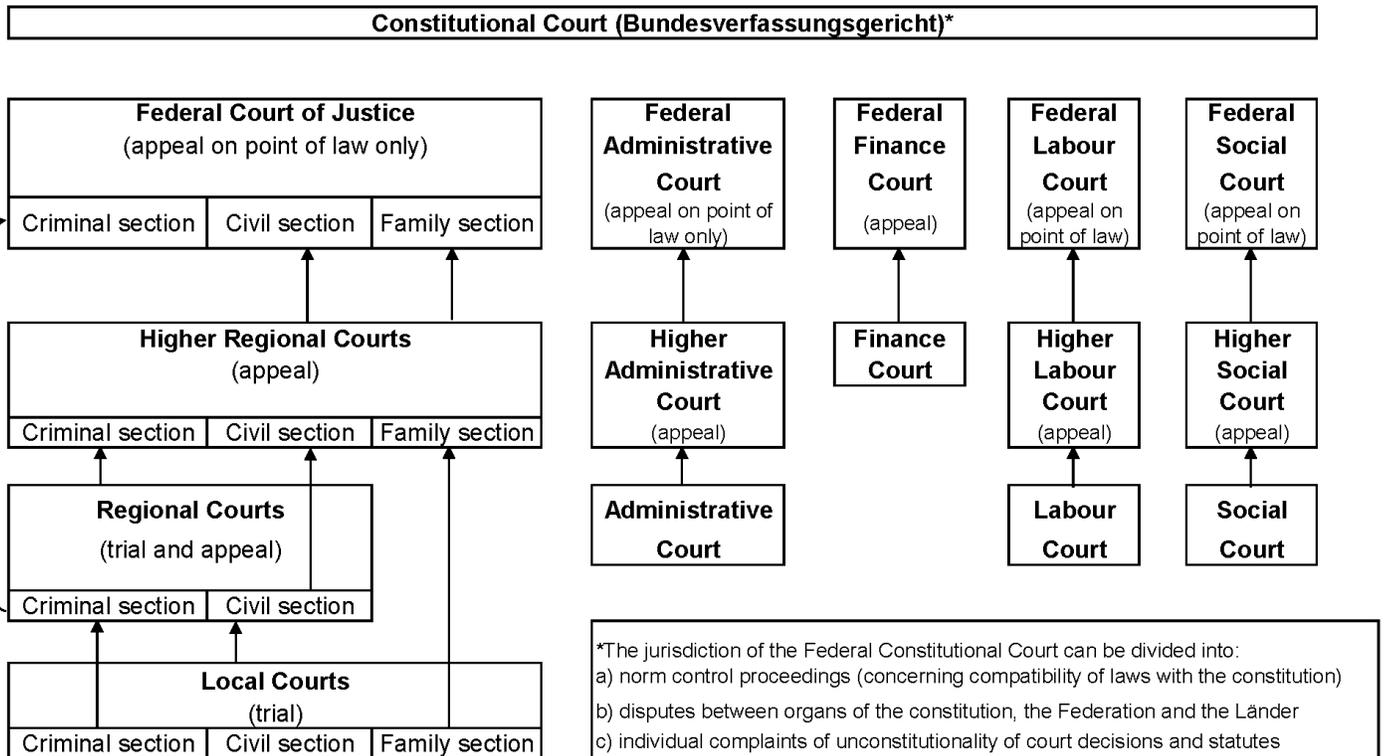
In addition, some of the Länder have introduced compulsory seminars for junior judges and prosecutors. Strictly speaking, these seminars are part of continuing education (Fortbildung, formation continue). It is, however, justified to discuss them here because they are limited to the time served prior to lifetime appointment, because participation is compulsory,²² and because their aim is not so much to maintain and widen professional knowledge and expertise as to enable participants to acquire the standard skills necessary for working as a judge. In North-Rhine/Westphalia, e.g., several sets of seminars are offered for junior judges, comprising three seminars of three days. According to the syllabus of these seminars, the following subjects are covered:

- Organization of the courts, co-operation within the courts and their panels, dealing with litigants, work techniques, planning of trials, understanding of the role and the office of a judge;
- psychological aspects of communicating with litigants and lawyers, ascertaining the facts, examining witnesses, weighing the evidence; and
- discovering and handling conflicts, handling of a trial, time management, management of work flow, techniques of speech

Currently, individual performance in these seminars is not being evaluated. The decision on lifetime appointment is made on the basis of professional evaluations taken throughout the period of three to five years after initial appointment with a view of whether the junior judge is, in the eyes of those responsible, sufficiently qualified for permanent appointment.

²² In theory, this would mean that a person who is not taking part may not be appointed for life but would be dismissed; in practice, to the knowledge of the author of this study, no such case has occurred.

Court System in Germany



The appeal system in criminal, civil and family cases is complicated:

Criminal cases: Appeals from local courts to regional courts, further appeal to higher regional courts
 Appeals from regional courts (trials, first instance) only to federal court of justice

Civil cases: Appeals from local courts to regional courts, no further appeal

Appeals from regional courts (first instance) to higher regional courts, further appeal to federal court of justice

Family cases: Appeals from local courts to higher regional courts, further appeal to federal court of justice
 (Appeals to federal court of justice are subject to further conditions)

**Judges in "ordinary" courts (civil, criminal, family courts) of the Länder
and prosecutors of the Länder in 2010**

Land	Judges	Female Judges	Female Judges %	Male Judges	Male Judges %	Prosecutors	Female Prosecutors	Female Prosecutors %	Male Prosecutors	Male Prosecutors %
Baden-Württemberg	1656	673	40.64	983	59.36	507	184	36.29	323	63.71
Bayern	2143	850	39.66	1293	60.34	694	320	46.11	374	53.89
Berlin	1056	545	51.61	511	48.39	366	182	49.73	184	50.27
Brandenburg	504	258	51.19	246	48.81	252	106	42.06	146	57.94
Bremen	152	66	43.42	86	56.58	47	24	51.06	23	48.94
Hamburg	571	262	45.88	309	54.12	180	88	48.89	92	51.11
Hessen	1267	535	42.23	732	57.77	395	105	26.58	290	73.42
Mecklenburg-Vorpommern	339	139	41.00	200	59.00	156	65	41.67	91	58.33
Niedersachsen	1455	591	40.62	864	59.38	534	246	46.07	288	53.93
Nordrhein-Westfalen	3777	1605	42.49	2172	57.51	1056	425	40.25	631	59.75
Rheinland-Pfalz	753	299	39.71	454	60.29	269	117	43.49	152	56.51
Saarland	201	79	39.30	122	60.70	64	31	48.44	33	51.56
Sachsen	744	299	40.19	445	59.81	341	147	43.11	194	56.89
Sachsen-Anhalt	411	196	47.69	215	52.31	170	74	43.53	96	56.47
Schleswig-Holstein	566	248	43.82	318	56.18	183	72	39.34	111	60.66
Thüringen	415	182	43.86	233	56.14	179	84	46.93	95	53.07
Germany	16010	6827	42.64	9183	57.36	5393	2270	42.09	3123	57.91

These numbers include judges and prosecutors working part-time (overall actual working force: about 15000)

To be added for: Administrative Courts Tax Courts Social Sec. Courts Labour Courts

