

**Answers of the German Judges Association**

*Note: Germany is a federal state. The disciplinary laws and laws on judges therefore differ slightly between the federal and the state level on the one hand, and between the different states on the other hand. In particular, the organisation of the courts basically falls within the competence of the states. The organisation of the courts also includes the personnel of the courts. The following answers may be different in some of the details in several parts of Germany.*

**1. APPOINTMENT TO JUDICIAL OFFICE**

**A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.**

*In Germany, the process for the appointment and promotion of judges differs significantly between the federal and the state (Land) level on the one hand, and slightly even between the different states (Länder).*

*Within the German **states**, judges are usually selected and appointed by the competent State Minister. In some of the states that competence is delegated to the Presidents of the Higher Regional Courts. In several states, an additional Committee for the Election of Judges (Richterwahlausschuss) – a committee usually composed of several members of the state's parliament, of government, judges and lawyers – is also involved in the appointment process; in a few states that Committee is exclusively competent for the selection of judges and the appointment by a minister is only a formality. In contrast to that, in some of the states, the Minister of Justice – or the respective minister competent for other judicial branches – decides on the recruitment and appointment of judges.*

*Legally, however, the initial appointment of judges is fundamentally based on the principle of merit. The initial selection and appointment of judges – within the states – is decisively based on the results of the so-called state examinations which are the same exams for all the law graduates of a state.*

*As a rule, professional judges are initially appointed as probationary judges. Those who have served in the judicial service for at least three years may be appointed judges for life. No later than five years after appointment, the probationary judge is to be appointed as a judge for life or as a public prosecutor with appointment to the civil service for life. The life judge relationship is the rule, also because the life judge has the best assured personal independence.*

*The appointment process of **federal** judges is different. The Federal Minister of Justice and a Committee for the Election of Judges consisting of the competent state ministers and an equal number of members elected by the German parliament (Bundestag) decide who is appointed and promoted as a federal judge. Only the competent Federal Minister and the members of the Judicial Selection Committee may propose candidates to the Committee for election as federal judges. Consequently, applications on one's own initiative are not possible. The positions to be filled are not advertised publicly. In practice, most proposals come from the state ministries.*

*The committee decides by secret ballot with a majority of the votes cast. The meetings of the committee are not open to the public. After the election, the competent federal minister must examine on his own responsibility whether the nominee fulfils the factual and personal requirements and then apply for the appointment to the Federal President. According to the jurisprudence of the Federal Constitutional Court, the requirement of the best selection pursuant to Article 33 (2) of the Basic Law also applies to the decision of the Judicial Selection Committee. The Federal President is responsible for the appointment.*

**B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.**

*Both procedures at the state and the federal level are sometimes criticised, but especially the election procedure of federal judges is subject to constant criticism in light of the principle of judicial independence. The criticism is, among others, based on the assumption that besides merit, the political orientation of candidates does play a certain role for nominations of judges to the federal courts. Critics also do not see judge selection committees as guarantors that the recruitment of judges remains free of political influence, as the members elected by the respective state parliaments would essentially distribute posts in the judiciary according to political proportionality. The current Federal Government of Germany has thus envisaged in its coalition contract to review and reform the rules for the election of federal judges in accordance with European standards.*

**C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.**

*The principle of the best selection applies to the appointment of judges, which is constitutionally prescribed by Article 33 (2) of the Basic Law, according to which every German has equal access to every public office according to his or her aptitude, ability and professional performance. Accordingly, the selection may be decided solely on the basis of these criteria. Every applicant is thus entitled to have the state make his selection decision taking into account the principle outlined above and basing it only on aspects which directly affect the aptitude, ability and professional performance of the applicant. According to this principle, appointments are to be made without regard to sex, descent, race or ethnic origin, disability, religion or belief, political opinions, origin, relationships or sexual identity. A candidate for public office may require that his or her application be rejected only on grounds covered by the merit principle. In this context, "ability" refers to skills that are generally beneficial to the job, such as aptitude, general knowledge, life experience and general education. "Professional performance" means professional knowledge, professional ability and proof in the subject. "Aptitude" in the narrower sense covers, in particular, personality and character traits that are relevant to a particular office. In practice, the examination grade is particularly decisive for the professional mance of applicants for a probationary judgeship, which regularly precedes the judgeship for life.*

*Neither gender nor ethnicity are relevant criteria.*

*However, in order to promote equal rights for women (Article 3 (2) sentence 2 of the Basic Law), it is permissible to give preference to women with the same aptitude, ability and professional*

performance. Accordingly, aspects of the promotion of women are not aimed at generally restricting the validity of the principle of merit according to Article 33 (2) of the Basic Law. The preferential consideration of women is expressly limited to cases of equal qualification and furthermore only applies if reasons relating to the person of a competitor do not prevail.

In order to promote the ethnic diversity of the judiciary, the texts of advertisements usually explicitly advertise for applicants with a migration background. However, there is no legal regulation according to which persons with a migration background are to be given preference if they have the same aptitude, qualifications and professional performance in comparison with other applicants for employment or promotion in the public service.

**D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.**

As shown under point 1.A, in Germany, the process for the appointment and promotion of judges differs significantly between the federal and the state level on the one hand, and slightly even between the different states. As already explained, there is no self-governing judiciary, which - like the executive and the legislature - administers itself in its organisational areas. The executive keeps the courts dependent in many ways; in many states the Minister of Justice alone decides on the recruitment and promotion of judges. The Minister of Finance allocates personnel and budgetary funds according to the budgetary situation.

## **2. PROMOTION WITHIN THE JUDICIARY**

**A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.**

There is scope for promotion within the judiciary in Germany. Judges have the opportunity to advance in their careers through promotion to higher judicial positions. The promotion process is based on merit, qualifications, and experience, and it allows individuals to take on greater responsibilities and handle more complex cases.

A promotion of a judge is understood to mean that the judge receives a new position in the status-law sense with a higher final basic salary. Examples of this can be the position of a presiding judge or posts associated with administrative management functions such as those of court presidents or directors.

As a rule, promotion posts must be advertised. With regard to the design of the promotion procedure, the same applies in principle as described in section 1. with regard to the selection procedure: In principle, the governments of the states have the sovereignty over personnel and the promotion procedures are structured differently in the states. Promotion decisions are made in very different ways within the German states. While in some of the German states so-called Presidency Councils (Präsidentenräte) - bodies composed by judges elected by their peers - have a strong position within the promotion process, in some of the states promotion decisions rely heavily on the Higher Regional Courts or even the government of the state, depending on the post that is to be filled.

The decisive factor for the selection of applicants is again the merit principle according to Article 33, paragraph 2 of the Basic Law, i.e. offices may only be awarded according to criteria that directly concern aptitude, ability and professional performance. These are aspects that indicate the extent to which the judge meets the requirements of his or her office and is likely to prove

*himself or herself in a higher office. The principle of merit applies unrestrictedly and unconditionally to promotions.*

*Evaluations of the performance of the judge play an important role in the assessment of performance. Once appointed, the competences and abilities of judges are evaluated regularly in a written way. The results in those regular evaluations are an essential basis for promotion within a state, but also relevant for applications of state judges to become a federal judge.*

*The promotion decisions are subject to judicial review for the individual unsuccessful applicant. Within such a review, the evaluations of the candidates in question will be checked in order to decide whether or not the principle of merit has been sufficiently followed by the promotion decision.*

*With regard to the promotion of federal judges, a selection procedure must also be carried out at the Federal Supreme Court, which is also bound by the principle of merit.*

## **B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.**

*The promotion within the judiciary is generally expected to be independent of political affiliation or partisanship. The principle of judicial independence is a fundamental aspect of the German legal system and serves to ensure that judges are impartial and free from external influences.*

*Promotion within the judiciary is primarily based on merit, qualifications, experience, and performance. The focus is on the professional competence, legal knowledge, and integrity of the individual judge rather than their political affiliations. Political considerations should not play a role in the promotion process to maintain the integrity and impartiality of the judiciary.*

## **C. Describe the transparency involved in the process of promotion within the judiciary.**

*The process of promotion within the judiciary in Germany emphasizes transparency to ensure fairness and maintain public confidence in the integrity of the judicial system. The key aspects of transparency involved in the promotion process are as follows:*

*- When higher-level judicial positions become available, the vacancies are published or announced publicly. This allows interested candidates to apply and compete for the promotion opportunity. Publicizing the vacancies ensures transparency by providing equal access to information about promotion opportunities.*

*- The criteria and guidelines (requirement profile – „Anforderungsprofil“) for promotion within the judiciary are typically established and made publicly available. Requirement profiles for judicial offices describe the knowledge, skills, characteristics and behaviour that judges should have in order to be able to exercise an office properly. They enable a systematic comparison between the personality profile and the job profile and form the basis for a differentiated, objective and transparent assessment system. They provide important orientation points for those who have to assess and make personnel decisions, as well as for those who are applying for a position or are seeking a specific professional development.*

- The promotion process involves objective evaluation and assessment of candidates' qualifications, competence, and performance. The criteria used for evaluation are predetermined and known to the candidates.

- The German Judiciary Act and the Judiciary Acts of the states prescribe the participation of the Presidential Council (Präsidentialrat) in the promotion of judges. The Presidential Council consists of the president of a court of the respective jurisdiction as presiding member and of other judges. The members of the Presidential Council shall be elected by the judges of the respective branch of the court by secret and direct ballot. The Presidential Council gives a written opinion on the personal and professional suitability of the judge.

- In addition, in some states a judges' selection committee is involved in the promotion decision-making process. Its task is to evaluate the applicants, assess their qualifications and make recommendations for promotion.

- The unsuccessful applicant must be informed of the outcome of the selection in sufficient time to obtain effective legal protection.

The current federal government has provided in its coalition agreement to review and reform the rules for the promotion of federal judges, *inter alia*, with regard to transparency.

### **3. WORKLOAD WITHIN THE JUDICIARY**

#### **A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload require.**

*The specific number of sitting days or workload measurements can differ based on factors such as the type of court, the complexity of cases, the volume of cases, and the available judicial resources. Different courts, such as district courts, regional courts, and higher courts, may have varying workload requirements.*

*Generally, judges are expected to devote a significant amount of time to their judicial duties, including hearing cases, conducting legal research, preparing judgments, and other related tasks. The workload requirements aim to ensure that judges have sufficient time and resources to handle their caseloads effectively and maintain the quality and efficiency of judicial proceedings.*

*It is important to note that the specific workload requirements and measurements can not be standardized across all courts and jurisdictions in Germany. They can vary between different states and may be subject to periodic adjustments based on factors such as caseload fluctuations, judicial resources, and legislative changes.*

#### **B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –**

##### **(i) that judge's workload is allocated to other judges.**

*If a judge is encountering difficulty in keeping up with their workload, there are mechanisms in place to allocate their workload to other judges. The allocation of workload aims to ensure that*

*cases are handled promptly and efficiently, maintaining the quality and effectiveness of judicial proceedings.*

*The specific regime for workload allocation can vary depending on the jurisdiction and the level of the judiciary.*

*The distribution of business, i.e. new appeals, complaints and other cases, among the judges is decided annually by the Presidium of the court in the business distribution plan (Geschäftsverteilungsplan - section 21 e of the Judiciary Act). The Presidium is a judicial self-governing body to be elected by all judges of the court and to which the President belongs by law. The business allocation plan is drawn up at the end of each year for the coming year and determines in advance which judges are responsible for which proceedings. The responsibility for the proceedings follows abstract rules that are precisely defined from the outset. Because of the importance of the business allocation plan for the constitutional principle of the statutory judge (Article 101 of the Basic Law), changes to the business allocation in the course of the business year are only possible on certain occasions. These include, in particular, the ascertained overloading of a judge or panel.*

*The Presidium has the authority and discretion to make decisions regarding workload allocation based on the particular needs and resources of their court. There may be cases reassigned from the overwhelmed judge to other judges within the same court. This redistribution aims to balance the workload among the available judicial resources. Before the change is made, the judges who are affected by the change in the distribution of cases shall be given the opportunity to make a statement. The reassignment of cases or workload is typically done in a manner that ensures a fair distribution of cases among judges, taking into consideration their expertise, availability, and workload capacity.*

**(ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.**

*When a judge is encountering trouble keeping up with their workload and needs to recover from workload arrears or any other disabling factor that led to overload, it is at the discretion of the Presidium to adjust the business distribution plan and relieve the overloaded judge by assigning cases to other judges. This redistribution can help alleviate the immediate burden on the overloaded judge and allow them to focus on clearing their backlog. If the overload has led to an incapacity to work due to illness, one should think of reintegration on basis of medical rehabilitation services, with the help of which judges can gradually be accustomed to the full workload again under medical supervision after a longer period of serious illness.*

**(iii) there are other mechanisms to address judicial delinquency.**

*In general, the judiciary offers a wide range of training, covering both professional expertise and aspects of work organisation. By improving their competence, the judge can handle cases more efficiently and effectively. In addition, preventive health protection is offered in a variety of ways to prevent the health risks of increased workload.*

*Working groups are regularly held within the courts for collegial exchange. Judges can engage in consultations and discussions to address legal or procedural issues that arise in their colleagues' cases. This collaboration allows for a collective exchange of knowledge and helps resolve any challenges or complexities efficiently.*

**C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner?**

*If the Presidium amends the business allocation plan, the judges of the court are obliged to comply with this amendment and, for example, to take on a higher number of cases.*

**4. REMOVAL FROM JUDICIAL OFFICE**

**A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-**

- (i) who decides that the judge is to be removed from office;**
- (ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;**
- (iii) what are the grounds for seeking the removal of a sitting judge;**
- (iv) what is the relationship between violation of the ethics code/principles and removal; and**
- (v) describe the transparency in the process.**

*The removal of a judge may be based on an indictment pursuant to Article 98 (2) of the Basic Law or in accordance with the provisions of disciplinary law.*

***Indictment***

*At the request of the Federal Parliament (Bundestag), the Federal Constitutional Court may order that a federal judge who has violated the principles of the Basic Law or the constitutional order of a state be transferred to another office or retired, or, in the case of intent, that he or she be dismissed (Article 98 (2) of the Basic Law).*

*The impeachment of judges is, in a sense, a counterpart to judicial independence (Article 97 of the Basic Law), the abuse of which it is intended to prevent. It does not restrict judicial independence, since the obligation to comply with the law is the immanent limit of the guaranteed independence. At the same time, the hurdles of the procedure are deliberately set high, so that it is really only applicable in cases of rejection of and opposition to the core content of the Basic Law.*

*The subject of the procedure is not the criminal or disciplinary liability of the accused judge. Rather, it is a sui generis form of sanction that can occur alongside the aforementioned sanctions and is independent of them.*

*By virtue of the provisions of the Basic Law, the impeachment of judges only applies to federal judges. First of all, a written application for action by the Federal Constitutional Court is required, whereby only the Federal Parliament is entitled to file an application. In order to initiate the proceedings, a plenary resolution of the Federal Parliament regarding the intended impeachment proceedings is required upon a motion admissible under parliamentary law. For this, the majority of the votes cast by the members of the Federal Parliament is necessary and sufficient. The indictment must be drawn up and personally signed by the President of the Federal Parliament. The corresponding application is only admissible if it is submitted to the Federal Constitutional Court no later than two years after the alleged violation. The petition must describe in detail the acts in respect of which the application is made for the execution of the procedure of impeachment by a judge. Furthermore, the standards of the Basic Law that are*

*considered to have been violated by the judge's conduct must be enumerated and the corresponding evidence must be named.*

*The Federal Constitutional Court decides on the basis of compulsory oral proceedings, to which the judge concerned must be summoned. The Federal Parliament can withdraw the application at any time until the judgement is pronounced.*

*The Federal Constitutional Court decides on the judge's impeachment by a two-thirds majority.*

*The impeachment of a judge is justified if a federal judge, in or out of office, violates "the principles of the constitution or the constitutional order of a state". The concept of a free democratic constitution encompasses only those central basic principles that are absolutely indispensable for a free constitutional state. These include the guarantee of human dignity, the principle of democracy, the legal obligation of public authority rooted in the principle of the rule of law, the control of this obligation by independent courts and the state's monopoly on the use of force.*

*A judge "violates" this order if he massively attacks it and shows an aggressive attitude. Thus, not every turn against the principles of the Basic Law already justifies the judge's impeachment. Even an unjustifiable or untenable judgement does not open the scope of application of Article 98 (2) of the Basic Law; the legal review of judicial decisions can and may in any case only be carried out by the appellate court.*

*If the Federal Constitutional Court considers the charge to be well-founded, it may, in compliance with the principle of proportionality, order the dismissal of the judge or his or her retirement or transfer to another office, even outside the judicial service. Dismissal of the judge requires an intentional violation of the constitutional order, transfer to another office or retirement is also possible in the case of a negligent violation; if the violation is minor, the Federal Constitutional Court may refrain from imposing one of these sanctions despite a violation. In the latter case and if the charge is unfounded, the Federal Constitutional Court rules on acquittal. This contains the legally binding statement that the accused judge is acquitted.*

*For state judges, the states can provide for a procedure of impeachment in their constitutions. This possibility has been used in all states except Bavaria and Saarland. With regard to the procedures, the explanations on the impeachment of federal judges apply accordingly.*

*The impeachment of judges is an independent constitutional procedure, which is in addition to the other possibilities under ordinary law, in particular disciplinary law and criminal law, which are available for the control of the judges' loyalty to the Constitution.*

*So far, there has been no case of a judge's indictment in German modern history.*

### ***Disciplinary proceedings***

*Disciplinary proceedings can be opened against a judge only in case of official misconduct. Judges commit an official misconduct if they culpably violate the duties incumbent upon them. Most of these duties regard the judge's behaviour at the workplace. However, also the behaviour of a judge in her or his private life can constitute an official misconduct if, according to the circumstances of the individual case, that behaviour is particularly likely to affect public confidence in a way that is significant for the judge's office.*

*An example for the latter is the commitment of crimes or criminal offences in a judge's private life, but also public expressions of judges in their private lives – such as on social media – may*



*be classified as official misconduct if they violate the judge's duty of loyalty, of good conduct, or the requirement of moderation.*

*As a rule, the content of a judicial decision cannot lead to disciplinary proceedings, or be charged criminally in Germany. The only exceptions to that rule are the crime of "Judicial perversion of justice" (Rechtsbeugung, section 339 of the German Criminal Code) and the criminal offence of "Prosecution of innocent persons" (Verfolgung Unschuldiger, section 344 of the German Criminal Code).*

*"Judicial perversion of justice" is the deliberate misapplication of the law by judges in conducting or deciding a case in favour of or to the detriment of a party. Wrongful application of the law alone does not constitute that criminal offence; that offence is only fulfilled if a judge deliberately misapplies the law in order to render a decision in favour of or to the detriment of the party. Such cases are extremely rare in Germany. The offence of "prosecution of innocent persons" is even rarer. Despite the term "prosecution", a judge can commit that offence if she or he deliberately works towards the criminal prosecution of a person if the legal requirements for prosecution are not fulfilled.*

*Disciplinary proceedings against a judge can be opened by the president of the court, but the power of court presidents for imposing disciplinary sanctions is limited to issuing a reprimand ("Verweis"). Any other disciplinary sanction can only be issued by an official court upon filing of an indictment against a judge. The body competent for filing such an indictment is the chief supervisory authority, i. e. the respective ministry, usually the Ministry of Justice, which sometimes delegates this competence to the Prosecutor General.*

*The models of participation of other bodies differ slightly from state to state. In Bavaria, for example, it is foreseen by statute law as follows: If a ministry intends to file an indictment against a judge, the concerned judge may ask to participate the Presidency Council (Präsidialrat) – a body consisting of the president of a court and a certain number of judges which are elected by their peers – in the process.*

*The composition of the first instance official court for judges in the states differs slightly from state to state. Usually, the panel is a chamber at a Regional Court and consists of three judges. In Bavaria, for example, the first instance panel is a chamber at a certain Regional Court that consists of a presiding judge of the Regional Court, a second judge from a different judicial branch as a permanent member, and a third judge from the judicial branch of the judge whose case is dealt with (ordinary, administrative, labour, social, finance or patent judiciary) as a non-permanent member. In some states, such as in Baden-Württemberg, however, one of the permanent members of that chamber is a lawyer. The second instance panel usually consists of five judges, usually from different judicial branches; in some states, one lawyer is part of that panel.*

*On the federal level, a special senate is constituted at the Federal Supreme Court (Bundesgerichtshof) in accordance with the German Judges Act. That senate (Federal Official Court, Dienstgericht des Bundes) is composed of five judges: one presiding judge, two permanent judges and two non-permanent judges. The presiding judge and the two permanent judges are appointed for five years by the Presidium of the Federal Supreme Court; the Presidium consists of the President of the Federal Supreme Court and ten judges of the Federal Supreme Court elected by their peers at the Supreme Court. The two non-permanent judges belong to the judicial branch of the judge whose case is dealt with (ordinary, administrative, labour, social, finance or patent judiciary). They are appointed in accordance with proposal lists set up by the Presidium of the Supreme Court of each judicial branch.*

*Possible disciplinary penalties in Germany are reprimand, fine, reduction of remuneration, downgrading and removal from office. These are the same penalties that can be imposed on any person in public service in Germany.*

*A judicial conviction for a crime or a criminal offence can lead to the judge's removal from office. If a judge is sentenced to imprisonment of one year or longer for having committed a crime or a criminal offence, the disciplinary laws foresee the judge's removal from office. The same applies if judges are sentenced to imprisonment of six months or longer for certain severe offences including corruption. In all other cases, the conviction for a crime or criminal offence may lead to the judge's removal of office, but lower penalties remain possible; the decision must then be made by the official court on the state or federal level.*

*Within the states, the decisions of the official courts of first instance can be appealed against, there is an official court of second instance in every state. In some of the German states, the decision of the second instance court can be subjected to revision (third instance) by the Federal Official Court. On the federal level, decisions of the Federal Official Court cannot be appealed against. In this case, only violations of constitutional laws could be complained about.*

*A judge can be temporarily suspended from office at the initiation or in the course of the disciplinary proceedings either if the judge's removal from office is likely, or if it would severely interfere with the operation of court service or the investigations themselves if the judge remained in office during the disciplinary proceedings, provided that the preliminary suspension of the judge is not disproportionate to the importance of the matter and the anticipated disciplinary measure.*

*The preliminary suspension during the course of the disciplinary proceedings does not automatically lead to a reduction of income during the time of suspension. However, under certain conditions the disciplinary authority can cut the remuneration already during the disciplinary proceedings.*

**B. If removed from office, describe the adverse consequences that may affect the removed judge including –**

- (a) financial (especially pension) consequences;**
- (b) future employment consequences following removal;**
- (c) societal consequences including loss of title or civic decorations; and**
- (d) disciplinary steps that may be taken against the removed judge.**

*Removal from office by law includes the loss of all sort of remuneration, including the pension of a judge. Since judges are generally exempt from insurance in the statutory pension insurance because they have an entitlement to a judge's pension, they are subsequently insured in the statutory pension insurance. Subsequent insurance means that judges are placed in the same position as if they had already been compulsorily insured in the statutory pension insurance while working as a judge.*

*The official title and the titles conferred in connection with the office may no longer be used. Most of the disciplinary laws of the states (for example in Rhineland-Palatinate) also provide that no other employment relationship shall be established with a judge dismissed in this way. The judge concerned will therefore not receive employment in the public service.*