

§ 4 The German Judiciary

- see for more details the *special course material* from a course in Yogyakarta 2023

I. The important role of the courts in the German legal system

1) The judiciary in the German system of separation of powers

- the *judicial power* is the power to *clarify the legal situation in a dispute with final binding effect* within the framework of specially regulated procedures
- it is vested *exclusively in the judges* (art. 92.BL);
 - this excludes, for example, *intra-administrative tribunals* as in common law countries
- in addition to their judicial function, the local district courts have a non-contentious jurisdiction in some special fields (e.g. family law, inheritance law), and operate the public registers (land register, commercial register etc.)
- the judicial power is *equal to the legislative and executive power*; there is no legal or de facto hierarchy or control by the others

2) The mission to enforce the law in every individual case

- under the rule of law, the law is not a vague guideline but absolutely binding; it must be respected and, where necessary, enforced by the courts in every single case
- the law must be enforced independently from the will of the people; the *judge must resist any social pressure*
 - this excludes a common practice in some Asian countries to deal with the law as only one of several decisive factors, besides religion, tradition or harmony in the local community

3) The mission to provide *effective individual legal protection to the citizen*

- the main function of the judiciary, reflected in several *special fundamental rights*:
 - the right to effective legal protection in civil law matters
 - the right to effective legal protection against public authority (art. 19(4).BL)
 - the right to the lawful judge (art. 101.BL)
 - the right to be heard at the court (art. 103(1).BL)
- in particular: the *mission to enforce the fundamental rights*
 - the fundamental (constitutional) rights of the citizen bind legislature, executive and judiciary in every single case as *directly applicable law* (art. 1(3).BL)
 - this makes it the primary mission of every court of justice, to enforce them within its jurisdiction
 - thus, special human rights courts, commissions or commissioners are obsolete but no lawyer can be a good judge without decent knowledge in fundamental rights doctrine

4) The mission to cultivate the law

- the role to make the law operable and practicable, and to ensure legal certainty (predictability) in its application
- by continuous intellectual work, systematising, interpreting, defining, applying and, where necessary, further developing the law
- in this, the courts are critically accompanied and supported by the legal scholars

II. Relying on independent, incorruptible and highly qualified judges

- judges are highly qualified, even at the lower courts
- judges are well-paid and have a stable position; therefore almost no corruption
- the professional and personal *independence of the individual judge* is guaranteed (art. 97.BL, sect. 25 et seq. German Judiciary Act [= GJA])
 - in contrast, *public prosecutors* do not enjoy independence; they are civil servants and bound by instructions

- judges are not only *de iure* but also *de facto* independent
 - no influence of personal relations, political parties, religious groups etc.
 - no hesitation to enforce the law against the resistance of the government
 - administrative judges particularly known for intellectual independence and critical approach

III. The population's high level of trust in the judiciary

- a characteristic feature of the German society and legal system
 - more trust in the courts and judges than in any other institutions of the state
 - Federal Constitutional Court among the most trusted public institutions at all
- accompanied by a *high readiness of the citizens to bring legal disputes before the court*
 - another characteristic feature, not shared by other European societies
 - citizens determined to fight for the defense of their rights
 - citizens often more willing to accept dispute settlements in legal proceedings, based on law
 - sometimes both parties may prefer to bring difficult legal questions before the court, to achieve a sustainable, legally consistent solution
 - legal expenses insurances foster litigiousness by covering the financial risk

IV. Overview over the German court system

- an integrated system of *courts of the Länder and the Federation*, in which the *federal courts* perform the function of *supreme courts*

1) Ordinary jurisdiction

- regulated in the Courts Constitution Act
- district courts [Amtsgerichte]
- regional courts [Landgerichte]
- higher regional courts [Oberlandesgerichte]
- Federal Court of Justice [Bundesgerichtshof]

2) Labour jurisdiction

- labour courts [Arbeitsgerichte]
- higher (regional) labour courts [Landesarbeitsgerichte]
- Federal Labour Court [Bundesarbeitsgericht]

3) Administrative jurisdiction

- administrative courts [Verwaltungsgerichte]
- higher administrative courts [Oberverwaltungsgerichte/Verwaltungsgerichtshöfe]
- Federal Administrative Court [Bundesverwaltungsgericht]

4) Social jurisdiction

- social courts [Sozialgerichte]
- higher (regional) social courts [Landessozialgerichte]
- Federal Social Court [Bundessozialgericht]

5) Fiscal jurisdiction

- fiscal courts [Finanzgerichte]
- Federal Fiscal Court [Bundesfinanzhof]

6) Constitutional jurisdiction

- constitutional courts of the Länder
- Federal Constitutional Court [Bundesverfassungsgericht]