

## The Role of the Judiciary in Germany

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### A. Introduction

In 1971, upon the conclusion of my university studies and my first state examination, and before sitting for my second (final) state examination, I commenced my practical training as a so-called *Referendar* at the *Amtsgericht* (local district court) in Gettorf, near Kiel. It was a very small court, employing only one judge who was responsible in this position for all legal cases. In addition, a total of approximately 20 other employees were working there. The court had no electric typewriter, and no copying machine. When a copy had to be made, the document was literally transcribed in the true sense of the word. Later, after my second and final state examination, I started my services as a judge at the *Landgericht* (regional court) in Bremen, a court with approximately 60 judges and a total of approximately 200 employees. It was not a matter of course that each judge had a telephone of his/her own. Moreover, connections to the outside world were frequently only possible through the general telephone exchange. One office had to be shared by several judges. Dictating machines were available, but not taken for granted. On the contrary, as a rule it was the usual practice for a clerk to take the minutes—even in cases for which the Code of Procedure did not specifically require this.

Today, the *Landgericht* in Lübeck, of which I am now the president, not only provides a dictating machine and a telephone to each judge who has their own office, but each office is also equipped with IT technology. Each judge's PC is linked up to their secretary's office, facilitating access to legal databases and the Internet in general. This allows communication with the outside world by e-mail and, for example, the ability to easily send this paper to Tokyo or Toronto.

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These are developments of which we are often not consciously aware, and yet they show how external factors have affected the working conditions of the judiciary. Through the questions posed by this symposium we become conscious of further changes, some of which I will refer to in this paper. In doing so, I shall basically follow the structure laid down by the organizers, although not in each case.

### **B. German Judiciary: Structure, History and Demographics**

With regard to the organization of the judiciary in Germany the Basic Law states laconically:

“Judicial power is vested in the judges. It is exercised by the Federal Constitutional Court, the federal courts provided for in the Basic Law, and the courts of the *Länder* (regional administrations).”<sup>1</sup>

As federal judges (and federal prosecutors) are generally only employed in the supreme federal courts, the portion of judges (and prosecutors) in the federal services is small, amounting to just below 5%. The other public prosecutors and judges of the ordinary jurisdiction (civil and criminal justice, voluntary jurisdiction), the jurisdiction of labour courts, social courts, administrative courts, and tax courts are servants of the *Länder* forming the Federal Republic of Germany.

If I speak of judges, I am referring only to professional judges. The honorary judges play an important role in all jurisdictions, be it as layperson (particularly in criminal cases) or be it as official assessors who are conversant with the subject (e.g. in the labour courts and social courts, as well as in the panels for commercial matters at the regional courts). They are, however, beyond the scope of this discussion.<sup>2</sup>

Between 1971 to 2001, the number of these professional judges has increased from just below 13,000 to just below 21,000.<sup>3</sup> The number of public prosecutors has increased from approximately 2,700 to almost precisely 5,000. This increase took place predominantly during the seventies and (although at an attenuated pace) in the eighties. During the nineties we find a standstill, if not a decline, in the number of judges and prosecutors; and this, in spite of a continually rising workload. This is the other side of

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<sup>1</sup> Grundgesetz (Basic Law), Art. 92 GG.

<sup>2</sup> See *supra* note 1, at 129 for a report on a presentation made by Stefan Machura on the subject of Honorary Judges.

<sup>3</sup> I have used the figures of 1999, as subsequent figures were not available in 2001. Figures are almost unchanged until now (except the still slowly but steadily increasing percentage of female judges). The figures for lawyers continue to increase.

modernization and rationalization endeavors in all branches of the public services—and consequently also in the judiciary. Incidentally, the number of lawyers increased from 18,000 to 100,000 over the same time period.

The change in the percentage of males and females is also significant. In 1971 females accounted for just over 5% of prosecutors and 12% of judges. Today those numbers are between 25 and 30% (females account for 28.6% of prosecutors and 26.4% of judges). These are figures that express an enormous change; but in no way do they match the conditions existing, for example, in France. The tendency towards an adjustment with reference to the numbers of males and females in the judiciary becomes evident if you view the figures in respect of female judges in the probationary period. Here, in 1971 the portion of female judges was 19% and today they account for more than 46%. During the past ten years, all *Länder* of the Federal Republic of Germany have recruited men and women in (at least) roughly an equal number.

The following must be considered in this connection: For female judges there was no real tradition when the system was established in 1945/1949. It was only in 1922, during the first German republic (the Weimar Republic 1919 to 1933) that women were legally allowed to have access to the profession of a judge. Incidentally, this occurred under the administration of Prof. Gustav Radbruch, Minister of Justice of the Reich and a great reformer. Nonetheless, before 1933, the beginning of the national socialist dictatorship, no significant number of female judges had come into office. After 1933, legislation and practice took care that even this narrow window of opportunity was closed. Therefore, it was necessary from 1945 to 1949 to start from nothing and build up the socially self-conscious state in a pure male world, apart from a few female remigrants, and against obvious resistance.

Regarding the population of judges, a German peculiarity must be taken into account. It is rather astonishing that the present number of judges and public prosecutors is equal to the number in service in the former West Germany prior to reunification even though those judges and public prosecutors are now competent for the territory of the whole (reunified) Federal Republic of Germany. This means that the same number of judges and public prosecutors are now responsible for a total population of approximately 82 million people, twenty million more than the approximately 63 million residents in the “old” Bonn Federal Republic. Moreover, one should understand that in 1990, a number of male and female judges and (to a smaller extent) male and female prosecutors of the former East Germany (German Democratic Republic) have been integrated into the judiciary of the Federal Republic of Germany. From the (numerically small) judiciary of the GDR, which I cannot discuss in further detail here, approximately 40% of the 800 male and female judges and approximately 1,000 male and female prosecutors have been integrated into the judiciary of the Federal Republic of Germany. A judiciary with the same structures as in the “old” federal *Länder* has been

established in the new *Länder* of the former East Germany. However, thus far it has been established with a strong participation of judges and prosecutors from the former West Germany, particularly in senior functions.

One other point is worth mentioning. It is probable that it applies equally to all *Länder* and also to the Federal Republic of Germany. It is almost banal, but I feel it is important: The judiciary of the year 2001 is not identical to that of the year 1971. The judges in Germany retire (at the latest) when they are 65 years old (this is different for the justices of the Federal Constitutional Court who hold their office until they are 68). In 1971 the oldest judges were born in 1906 while the youngest, with a few exceptions, were born between 1936 and 1941. In 2001, the judiciary is consequently formed from the age group born between 1936 and 1971. This means that solely the age groups including those born between 1936 to 1941, plus a small number of judges born 1942 - 1944, were and are employed as judges and public prosecutors both in 1971 and today. Taking into account the possibility of early retirement and premature retirement due to illness, etc., it can be fairly said at this stage that the German judiciary has totally renewed itself with regard to personnel. This is all the more significant as the Basic Law, at Article 92, states: "Judicial power shall be vested in the judges."<sup>4</sup> This means *individuals* and not judicial institutions. And here we are now dealing almost completely with a new generation of individuals. This is, apart from a study done in the early Eighties,<sup>5</sup> an area with absolutely no detailed investigation giving consideration to the consequential changes in the patterns of judging exhibited by the new generations of judges in the professional and non-professional field, and the effects of these generational shifts on the judiciary as a whole. Permit me to suggest, however, that there must be a difference in judicial personality between those who, be it in their childhood, youth or in their early professional life, experienced their decisive molding and socialization under national socialism in Germany, and those judges who have grown up in Germany's post-war stable democracy.

### C. German Judiciary: Education and Recruitment

The education of judges and prosecutors in Germany is still ensured by a uniform educational system. At the same time, the education of all legal professionals is still strictly orientated to service as a judge. It is not a matter of pure chance that the requirements for the qualification of each legal profession are defined in the German Law on the Judiciary. Anyone who has qualified for the position of a judge is auto-

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> ANDREAS HELDRICH & GERHARD SCHMIDCHEN, *GERECHTIGKEIT ALS BERUF, JUSTICE AS A PROFESSION*, (1982).

matically qualified for any other legal profession. The education consists of a course of study at a university taking at least three and a half to four years and concluding with the First State Examination. The subsequent practical training includes several compulsory stages, which must be completed at civil and criminal courts (or the department of public prosecutions), at administrative authorities and at the offices of free-lance lawyers. Further stages are optional. The Second State Examination grants the qualification to hold the judicial office.

Although members of all judicial professional groups and all legal policymakers agree that this traditional education is no longer in line with the requirements of present day practice and does not comply with the social reality (most graduates choose to enter the profession of a free-lance lawyer or related professions and not the public service as a judge or public prosecutor), all endeavors to reform the system have failed to date. During the seventies, many *Länder* of the Federal Republic of Germany undertook promising pilot schemes, by the mid eighties, however, the political consensus for a reform had weakened. Ultimately, the reform attempts came to nothing.

At the beginning and end of the Nineties, new initiatives were started, in particular by a group of university teachers and high-ranking judges (for example Justice Prof. Böckenförde and Justice Dr. Kühling of the Federal Constitutional Court) and at the turn of the Millennium, a formal proposal for reforms was submitted by the Conference of Ministers of Justice. However, up to now, all proposals to change the system have failed, due more to financial reasons than to a lack of substance. It is not difficult to predict that sooner or later the system of state examinations will be abandoned. University studies will be completed with academic examinations. Further, a specialization of the professional fields will occur during the time of university study and in particular during the practical training phases. However, this is a dream of the future.

The recruitment of judges and prosecutors is carried out in the *Länder* of the Federal Republic of Germany in line with the demand for additional staff and according to the age structure.

The overriding factor for employment is essentially seen in the examination results. In addition - differing in the various *Länder* - candidates are interviewed in order to access their social competence. As a rule, newcomers to the profession are employed, but strong endeavors are made to recruit men and women with professional experience from other legal professions. The newly employed judges or public prosecutors have a special status as probationers. During this time, which generally lasts at least three years, they normally enjoy full judicial independence in the cases they are assigned, but they have not yet been granted the guarantee of tenure which, for judges, is a significant problem with respect to constitutionality. For newcomers to the profession with experience in other fields the minimum probation period may be reduced to one

year.

In some *Länder* of the Federal Republic of Germany the appointment to a particular permanent position is granted automatically on expiration of the minimum probation period. The judge is appointed to the position that he or she is holding at that particular time. In other *Länder* such an appointment is granted on the basis of a special application. Some judges are elected by parliamentary election committees for judges (consisting of members of parliament and representatives of the judiciary) and then appointed by the Department of Justice. In other *Länder* the appointment is made by the Department of Justice directly and exclusively. A similar procedure is followed if and when judges are subsequently appointed into a new office. However, it must be added in this connection that the office of judge in the Federal Republic of Germany is basically not understood as a career in terms of "promotion." A special payment system for judges takes this into account. This system ensures that a judge entering the profession receives a salary in the course of his or her professional career corresponding to that of a high-ranking civil servant who has been promoted several times.

The federal judges (judges at the supreme courts of the Federation) are all elected.<sup>6</sup> The *Länder* have a right under Article 36 of the Basic Law to provide a certain number of federal judges in accordance with a quota keyed to each state's population.

On-the-job training for the judges on probation is ensured in the first instance as they fulfill varying judicial assignments in the ordinary jurisdiction and at various courts (Local and Regional Courts). As a rule, these persons are also offered special practice-related courses (e.g., interrogation methods, evaluation of evidence). All judges are offered postgraduate training courses by their respective court and specifically by the *Oberlandesgerichte* (Higher Regional Courts) and the Ministries of Justice in the *Länder*. A post-graduate training institution for the general use of all *Länder* and the Federation is the *Deutsche Richterakademie* (German Judges' Academy) in Trier, which now has a branch in Wustrau, near Berlin. This institute, teaching specific or general subjects throughout the year, offers courses to judges of all jurisdictions as well as to public prosecutors, and now increasingly also offers courses in European law or subjects of comparative law.

Judges and public prosecutors of the divisions concerned with economic criminal cases have an opportunity to attend tax-related courses as well as courses oriented towards commerce at the Federal Fiscal Academy (an educational institution of the Fiscal Administration).

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<sup>6</sup> Grundgesetz, Art. 92.5 GG.

The judges are trained as generalists. They are specialists only insofar as they are working in specific jurisdictions: the ordinary jurisdiction; the labor court jurisdiction; the (general) administrative court jurisdiction; or the tax court jurisdiction. However, each of these jurisdictions includes such a large number of legal sub-fields that they will have to remain generalists to some degree. As far as possible, however, the allocation of assignments within the various courts takes special qualifications (and wishes) into account. Therefore, an increasing specialization will inevitably be attained in the course of a judicial career. This is not only true for the (still quite general) specialization as a judge of civil or criminal cases. Specializations, which can also be perceived by laypeople have occurred, for example, at the Local Courts in the fields of family law, guardianship law, landlord-and-tenant law, and insolvency law. The public has become aware of this, as members of these groups of judges have created their own forums for communication (e.g. "family court convention," and "guardianship court convention"), and new journals specific to special field.

This also shows a greater self-confidence of the members of such "specialized divisions" of the courts, which, so to speak, had previously been classified as less significant on the in-court scale of values.

I feel that these are important indicators for a change of awareness within the judiciary, which calls for closer investigation.

It should be mentioned at this stage, however, that in parallel and contrast to the above, certain patterns in behavior within the judiciary have been carried down, which are more oriented to pre-constitutional and hierarchically coined standards. It is, for example, still a largely un-reflected and accepted practice with most judges that only those judges who have previously undertaken a nine month period of special probation at a Higher Regional Court and successfully completed a certain number of professional years after appointment to a post for life can successfully apply for judicial office in a position other than their initial post.

#### **D. German Judiciary: Democratic Legitimacy**

The range of problems concerning conformity and orientation to traditional values and a certain image of a judge is thus addressed on the one hand and plurality is addressed on the other hand.

It is a well known fact that in probably all countries with a certain attainment of civilization, justice is administered "in the name of the people." If this is so, and if, according to Article 92 of the Basic Law, the judicial power is vested in the judges, the judiciary stands and falls with the question of whether a plurality of society is reflected in the judiciary. The increased proportion of women in the judiciary is an indication of a

development in the right direction in this respect, although there is still no parity.

The tendency towards a growing plurality within the judiciary is also indicated by the fact that there was and still is permanently a large number of varying currents within the large traditional professional organization (German Association of Judges, *Deutscher Richterbund - DRiB*); also that two further (general) professional organizations of judges and prosecutors have been in existence since 1968 and/or 1987 with political bearings on the centre/left: on the one hand judges and prosecutors in the General Union of Public Services (*Gewerkschaft Öffentliche Dienste, Transport und Verkehr, ötv*; now: *Vereinte Dienstleistungsgewerkschaft, ver.di*), on the other hand the New Association of Judges (*Neue Richtervereinigung - NRV*).

The pluralization factor, in addition to the special communication forums described above, is emphasized by special professional associations such as those of judges in the labour courts, administrative courts and social courts.

All these organizations make active contributions to the processes of legal policy in the Federal Republic of Germany. Each individual judge is basically authorized, under Section 39 of the German Judiciary Act, to make full use of his or her civil rights, including membership in a political party or a union and active participation in the political activities of their community or associations/organizations, including the self-administration of the churches. This image of the "judge as a citizen" is very important for the continual integrative process of democracy and at the same time for the internal democratization of the judiciary.

#### **E. German Judiciary: Docket Management and Style of Judging**

Concerning the workload of the German judiciary, reference is often made to the so-called "Pensen" (from the Latin "pensum"). With the use of statistics on the judiciary, politicians concerned with justice and finance can quite safely conclude from the figures describing the lodging of new cases, case completions, and length of proceedings what approximate number of judges will be necessary in the future to cover the demand. The calculation is based on bench marks ("Pensen") developed by a working group of the Conference of Ministers of Justice from the Federation and *Länder* and continually updated. In the past, these statistics were deemed to be a secret of the administration of justice, but today they are public. According to the calculations for civil law cases, each year a judge at a Local Court, for example, has to process approximately 600 cases; a judge at a Regional Court has to process approximately 140 cases; and a judge at the Higher Regional Court has to process approximately 70 cases. Judges for family law cases in the Local Court have to process approximately 300 cases each year. In fact, the "Pensen" are generally (20%) higher, which shows the dubious

character of these idealized target figures.<sup>7</sup>

Although it is permanently emphasized that the "Pensen" are meant to be only standard figures for the financial requirements of the judiciary on the macro level, their very existence leads in practice to a situation whereby, right down to the level of the individual court, the figures are used as the basis for the distribution of cases to the individual judges or divisions, albeit flexibly. This is naturally more problematic the smaller the unit is, as the statistical equalization effect between different cases for the court of a *Land* may occur in total; but for an individual small court or in particular an individual judge it may happen that one single case which counts statistically for a fraction of the hundredth range, will tie up the working capacity of a judge for weeks or months.

The historically "newer" special jurisdictions (i.e. labor jurisdiction, social jurisdiction, general administrative jurisdiction, fiscal jurisdiction) have no comparable numerical studies. If at all, they have made an attempt to find qualitative weightings according to subject matter. In general, it can be said that the judges (and this is quite frankly also true for the ordinary jurisdiction) complete the work that is required of them, without regard to the "Pensen." This statement may be seen as positive because of the evidently high work ethos, but may be seen as negative because of the opportunism that it possibly demonstrates.

The problem with the "Pensen" is that, for want of other quantitative assessment elements such as fixed working hours, which do not exist for judges because of their protected judicial independence, the individual workload and the professional "ranking" of a qualitatively high-ranking profession is based on a quantitative assessment feature which refers to other professions, and now indeed, in a peculiar way resembles the piece-rate work for hired labor.

A relatively new subject in the judiciary is a debate on quality. In the past, the standards were individually understood without further reflection. The confirmation or non-confirmation of another ("higher") instance was taken as a criterion. On the other hand, during the past approximately 30 years, the first signs have become apparent that the broad judiciary was reflecting upon a "bottom up" change regarding new quality standards.

As for criminal proceedings, it is felt, especially by outside observers (media, general

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<sup>7</sup>As there are so great disproportions of the "Pensen" inside one court as well as between the courts, recently a commission of the ministries of justice of the "Länder" was installed in order to find out better criteria. The results of the commission have not yet led to a consensus transferable into the practice of the courts in all "Länder."

public, guests from abroad, and specialized colleagues in particular) that hearings are marked by a non-authoritative style, which allows the defendant, his or her defense counsel and, in the first place, the victim as well as the victim's legal advisor, a great deal of time and space. The sentences, in their oral and particularly in their written grounds, discuss in great detail the personality of the offender. Consideration of the degree or scope of the penalty is careful and suitable as basis for individual treatment plans during the period of imprisonment. The price for this open and democratic style, which has its constitutional basis in Article 103 Basic Law<sup>8</sup> is that occasionally criminal proceedings may take several weeks before the judge at the district court or before the extended criminal court (in addition to the presiding judge two honorary lay judges) or several months or even years before the criminal division of the regional court. Incidentally, this new "culture of criminal proceedings" is essentially the result of the revival of a "culture of criminal defense" that began in the seventies.

The counterpart in the return to quality in civil proceedings is found in the "revitalization" of the oral hearing. Up to the Seventies, court hearings in civil cases in the first instance had degenerated (there is no other way to express this) to a state in which motions were filed by the lawyers purely as a matter of form, without further discussion of the case. The proceedings were dragged from one court hearing to another, and a really persuasive discussion of the issues of the case did not take place. The preparatory work of the judges was futile in many cases, as the lawyers kept filing new motions, again and again. Some university professors and practitioners from the regions of Tübingen and Stuttgart (in particular Prof. Fritz Baur and the presiding judge at the regional court, Mr. Bender) "invented" the "Stuttgart Model," which was entirely in keeping with the Code of Civil Procedure (ZPO). Pursuant to the "Stuttgart Model" the preparatory motions of lawyers were compressed by remarks and directions from the judge making it possible to finalize a civil suit in a well-prepared court hearing in which the case was thoroughly discussed, reaching a compromise (settlement) or a final judicial decision. The structures of this model have become the basis for the reformed Code of Civil Procedure and are practiced everywhere. It is important to note that it is generally recognized that without this renewed consciousness regarding quality, the quantitative problems of the civil judges could not be solved today.

#### **F. German Judiciary: ADR (Alternative Dispute Regulations)**

The quest for another means to settle a dispute other than by judicial ruling is traditionally embodied in the German Code of Civil Procedure and has recently been reinforced by the parliament. In civil proceedings, the judges of each instance are obliged to work towards an amicable settlement. This also applies to the other procedural

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<sup>8</sup> Grundgesetz, Art. 103 GG, "In court everybody is entitled to a hearing in accordance with the law."

codes. In labor court proceedings, in particular, it is usual practice in the most important types of proceedings, i.e. the proceedings under the Protection Against Termination of Employment Act, to have an early first court hearing as a compulsory intermediary hearing to attempt to reach an amicable settlement between the parties, a so-called conciliation hearing.

But even the criminal procedure has elements of settlement; the Code of Criminal Procedure (*Strafprozessordnung - StPO*) provides, in Sections 153 and following, that a criminal case may be discontinued in the event of negligible guilt, on the occasion that certain conditions are imposed on the defendant (e.g. to make good a loss or damage, to apologize to the victim, to pay a sum to a charitable organization). The substantive criminal law (Criminal Code - *Strafgesetzbuch, StGB*) provides for the so-called offender-victim-compensation pursuant to which the case against the defendant will be dropped if some kind of mediation procedure leads to a settlement.

A quite different and, in practice, even more widespread form of "settlement" in the criminal procedure is the so-called "deal" (also known as "deal" in the German language). Where major criminal proceedings are concerned, the court, prosecutor and defense counsel come to an understanding that excludes some parts of an otherwise complex set of sentencing options. Frequently, the contours of the possible sentencing range are recognizable from the beginning, which encourages the "willingness" of the defendant to make a confession and allows proceedings to be finalized swiftly (within a few weeks in cases that otherwise would have taken many months or even several years).

It must also be mentioned that for both the civil and the criminal legislation various *Länder* of the Federal Republic of Germany have used and still use arbitrators for any disputes within a more restricted social range. These arbitrators summon the parties in dispute to an informal procedure and record the proceedings formally.

This is the point where new Federal and *Land* legislation becomes effective. A recent reform of the Code of Civil Procedure gives the *Länder* the possibility to provide a prior arbitration procedure which is compulsory for minor offences in the civil law range (value in dispute less than DM 1,500—now: since 2002, € 600—and disputes between neighbors), as was the usual practice in criminal law in the past. The arbitrators are regarded as mediators.

In general, the idea of mediation is gaining ground. Judges, lawyers, social workers, psychologists and members of other social professions have all undergone postgraduate training. Except for criminal procedures, mediation as described above in the form of offender-victim-compensation is strongly encouraged, e.g. in family cases (in particular in settlement of parental care and custody).

### G. German Judiciary: Constitutional Jurisdiction

A large part of the changes in the outward arrangement of the course of proceedings and the contents of judicial decisions certainly derive from the work of the Federal Constitutional Court (*BVerfG*), which was established in 1951. Any citizen may, on exhaustion of his/her legal process through the ordinary courts of law, have recourse to the Federal Constitutional Court, the first court of the republic that, following its mandate, ensures that "The following basic rights shall bind the legislature, the executive and the judiciary as directly enforceable law."<sup>9</sup> The courts of law are obliged by its rulings as well, which is made clear by Section 31.1 of the *Bundesverfassungsgerichtsgesetz* (Federal Constitutional Court Act – *BVerfGG*): "The rulings of the Federal Constitutional Court have a binding effect on the constitutional bodies of the Federation and the *Länder* as well as all courts and authorities."

It could be said that the self-evident acceptance of the ideas of the Federal Constitutional Court emerging from the Basic Law and its interpretation did not take place at the general courts of all instance and all jurisdictions until the Seventies. Their nearly unchallenged incorporation by the ordinary courts today implicates my previous deliberations concerning the generational "renewal" of the population of judges and the impact such a phenomenon might have on substantive law deliberations.

### H. German Judiciary: Facilities

The material provision for the German judiciary - this must be mentioned in spite of the ironic description in my introduction - was not bad compared to other countries, even at the beginning of the Seventies. Today, particularly with regard to IT technology and work operations, it definitely matches the standards of modern industrial enterprises as they were in the late Eighties/early Nineties, and is practically equal to the present-day standard of industrial life. It is an irony of history that the courts with the most modern provisions are those in the former East Germany. Immediately after the re-unification in 1990 they profited from a modernization thrust that was only gradually achieved by the western *Länder* of the "old" Federal Republic in the course of the Nineties. The present-day organizational standards of the courts is the result of a joint deliberation of the Ministers of Justice of the Federation and *Länder* – which led to the involvement of a group of legal sociologists and a group of management consultants (Kienbaum)<sup>10</sup> at the end of the Eighties/early Nineties. This question is still being strongly discussed today under managerial aspects. The qualitative component formulated by the judges themselves in this respect is only now gradually becoming perceptible.

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<sup>9</sup> Grundgesetz, Art. 1.3 GG.

<sup>10</sup> See, A.C. Koetz/L.Fruehauf, *Organisation der Amtsgerichte* (Organization of the Local Courts), (1991).

### I. Germany Judiciary: Judicial Sociology

The study of court procedures as described above was part of a research program financed by the Federal Ministry of Justice which originated from the legal and in particular the judicial sociological *elan* of the Seventies and early Eighties and was essentially shaped and "held together" by one person: the *Ministerialrat* and honorary Professor Stempel. From among the numerous university teachers involved in the project, the names Blankenburg, Röhl and Rottleuthner<sup>11</sup> are particularly worthy of note. In the meantime, the discussion is more determined by managerial aspects, as previously mentioned. Sociological research on the judiciary as carried out by the universities is in the decline. Not all legal faculties have legal-sociology chairs. Where they do exist, they are frequently combined with assignments in the classical legal field. University teachers who worked on the judiciary during the Seventies or earlier and in particular on sociology of the judiciary have taken up entirely different fields of research (e.g. Lautmann)<sup>12</sup> or have transferred to fields of (classical) criminology (e.g. Feest).<sup>13</sup> Moreover, the boundaries to contemporary history have become more fluid as can be seen from Rottleuthner's works on the GDR judiciary.<sup>14</sup>

What I would wish for, would be a revived research project in judicial sociology as seen in the "Stuttgart model," arranged jointly by university teachers and practitioners, to combine the empiric research in detail with the exploration of the judiciary in a democratic society.

I feel that the Federal Republic of Germany can learn from other countries where we frequently find practice-related and judicial-sociological research and documentation centers located at the college for judges or even at the institution of the Supreme Council of Judges (a self-administrative body of the judiciary), e.g., the *Institut de Hautes Etudes Judiciaires* in France.

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<sup>11</sup> As an example of the series "*Rechtstatsachenforschung*" (Empirical Sociology of Law), edited by the Federal Ministry of Justice see: Erhard Blankenburg, *ALTERNATIVEN IN DER ZIVILJUSTIZ* (Alternatives in Civil Justice, Walter Gottwald & Dieter Stempel eds.), with essays by Klaus F. Roehl et al.

<sup>12</sup> As an example of his studies on the inner life of the judiciary see RÜDIGER LAUTMANN, *JUSTIZ - DIE STILLE GEWALT* (JUSTICE - THE SILENT POWER) (1972).

<sup>13</sup> See generally, Johannes Feest, *Die Bundesrichter* (The Federal Judges), in *BEITRÄGE ZUR ANALYSE DER DEUTSCHEN OBERSCHICHT* (CONTRIBUTIONS TO THE ANALYSIS OF THE GERMAN UPPER CLASS) 127 (Werner Zapf ed., 1964). These are among the earlier works on the German Judiciary of the Sixties.

<sup>14</sup> As an example of the "early" Rottleuthner see: HUBERT ROTTLEUTHNER, *RECHTSWISSENSCHAFT ALS SOZIALWISSENSCHAFT* (JURISPRUDENCE AS SOCIAL SCIENCE) (1973); and now *STEUERUNG DER JUSTIZ IN DER DDR* (A JUDICIARY CONTROLLED BY THE GOVERNEMENT IN THE G.D.R.), (Hubert Rottleuthner ed., 1994).

## J. Conclusion

I hope I have demonstrated that the German judiciary has experienced many changes during the past 30 years. But the question remains whether changes have really taken place? Is this only applicable to the outward forms, or is it also true of the spirit? Does the judiciary of the Federal Republic develop slowly but steadily towards plurality and towards an internally and externally stable institution? Or is it, with all the burdens originating from its history, and in spite of its proper and even shiny appearance, a colossus with feet of clay? My feelings tend towards the former. This is also my hope. However, with a due amount of self-prescribed realism I am sometimes not too sure. One thing is certain, as expressed by Ulrich Vultejus, a wise former district court judge who is now over 70 years old: "The structures of the judiciary can become a question of life or death for democracy and a constitutional state<sup>15</sup>."

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<sup>15</sup> Ulrich Vultejus, *Die Linke im Rechtsstaat (The Left Under The Rule of Law)*, in HERMANN GREMLIZA & HEINRICH HANNOVER, *DIE LINKE (THE LEFT)* 220 (1980).