Germany

General questions:

1. **What developments have recently taken place in your country with respect to the matter of independence of the judiciary? What have been the developments in the area of fundamental freedoms and rights?**

a. In Germany judicial independence belongs to the basic principles of the Constitution. The reality in Germany corresponds only partly with this constitutional principle. The administration of justice in Germany is part of the executive power. Each state has its own ministry of justice. The ministries of justice have tried, to a certain degree, to exert influence on the style of the judicial work. There are differences between the federal states (Bundesländer) regarding this issue. The administration of justice in the various federal states tries to exert influence in particular with the intention that judges spend as little time as possible on every single case. The administrations of justice, being politically dependent, in that case accept that the quality of the judicial activity clearly partially deteriorates. In order to save time, the right to due process of law has been violated, and points of law could only partly and insufficiently be examined . Economic criminals often get preferential treatment - this was uncommon in the traditional German legal system – through so-called “deals”, which often take the place of difficult and time-consuming normal criminal proceedings. Attempts to influence happen mainly indirectly. For that reason, qualitatively poor, but time-saving work styles during the decision-making process are favoured in evaluations of judges and at promotions. In Germany, evaluations and also promotions lie exclusively in the hands of the executive authorities. The court presidents are bound by directives of the ministers of justice. Some court presidents, moreover, try in face-to-face conversations with judges to influence and change their work styles, which means to spend less time on the treatment of single cases. In some cases, ministers of justice in various federal states at least tolerated that judges, who are said to have worked too slowly, were persecuted with objectively arbitrary preliminary investigations (2002/2003 in Baden-Württemberg the case Hans-Georg Stratmann; 2006/2007 in Nordrhein-Westfalen the case Helmut Kittel). The attempt of the executive power to influence the style of the judicial activity is connected with another constitutional problem. According to Article 19 (4) Basic Law (Grundgesetz), the executive power has to make available to the courts the necessary resources, especially in that the ministers of justice, as well as the governments of the states, introduce the necessary budget motions in the parliaments of the federal states. The Federal Constitutional Court and the Federal High Court of Justice have stressed this obligation of the executive power again and again in their decisions. However, to a large amount the governments do not execute their duties. A statistics system, ("Pebbsy"), which is objective only at first sight, is used as the basis for the calculation of the staff budget and the staff policy of the ministerss and is used to distract from the obligation in Article 19 (4) Basic Law (Grundgesetz). Because the governments do not want to consider the work style of the individual judge as a factor in the staff budget, the justice administrations instead influence the work style of the judges to a certain degree. Politicians would like –

regardless of the quality of the judicial activity - to speed up the proceedings. Politicians would like to avoid unacceptable duration of proceedings and too many legal proceedings left unfinished, because the concerned parties and the media immediately would assume that the executive authorities are responsible for this. Whereas in the public perception in Germany the judges are wrongly thought to be exclusively responsible for lack of quality of the judicial work.

The restrictions of judicial independence are fundamentally caused by the lack of self-administration of the judges and public prosecutors in Germany (see question 8 also below). Only within the last few years have there been considerable efforts, primarily from the judiciary, for an adjustment of the organization of the German justice to European standards. This concerns primarily the introduction of justice administrative boards or jurisdiction councils. Both judges', associations, the Neue Richtervereinigung and Deutsche Richterbund - with a certain delay – have strengthened their pleas for such changes.

b. Over the last few years, the civil liberties of the people in Germany have become increasingly restricted by security laws and state surveillance measures. The fundamental right report, which is released to the public every year by several civil rights organizations, among them The Neue Richtervereinigung, gives a very good summary of the developments in Germany. The current fundamental right report appeared in June 2008. In a letter of 11-15-2006 to the Commissioner for Human Rights of the Council of Europe (cf. the attachment) the Neue Richtervereinigung had already pointed out certain select problems regarding human rights in Germany.

2. **What are the texts which the independence of the judiciary are founded on and what is their value (constitutional value, legislative, practice, case law…)?**

The independence of judges is guaranteed by the Constitution and special legislation concerning the independence of judges. Judges are subject only to the law (Basic Law Art. 97 and § 25 Deutsches Richtergesetz – " Act on the situation of judges ruling their duties and rights"). Judges cannot be removed and they only can be dismissed by a final judgement on grounds of misbehaviour, incapacity to work, or committing a crime (§§ 25- 37 Deutsches Richtergesetz). A judge shall be subject to supervision only in so far as there is no detraction from his independence -- a provision by the German Judiciary Act that has been put into concrete terms by a wealth of court decisions (§ 26 Deutsches Richtergesetz). Judges enjoy fully

personal independence in respect to their decisions and are, in principle, not liable for incorrect decisions.

3**. Are the magistrates enjoying unhindered freedom of association and/or syndication? What is the proportion of magistrates belonging to a trade union or an association? Are there multiple trade unions or associations of magistrates?**

Judges and public prosecutors are free to organize themselves and to join an association and/or syndication. There is the Neue Richtervereinigung, the Deutsche Richterbund, the syndication Verdi, and - only in certain jurisdictions- the Amtsrichterbund (district court judge association) and the Verwaltungsrichterbund (Association of administration law judges). Both judges and prosecutors are organized in the same associations, because separate organisations do not exist. Approximately half of the German judges belong to one of these association and/or syndications.

4. **Does the general public feel (if it can be established on the basis of surveys or public opinion polls) that magistrates are independent?**

The question is difficult to answer because judicial independence does not play an essential role within the public's view. Few media tend to question the judicial independence as such at (possible) faults of the justice. There are no known available polls or sociological studies concerning the image of the justice in public opinion.

5. **Has justice been seriously criticized in the last ten years? If yes, on what occasion?**

The image the public has of crime, its investigation and its prosecution is influenced above all by spectacular individual cases of violent crime. These are the offences the mass media report. Certainly one can hear more or less reasoned arguments for suggesting that particular decisions have been mistaken. An unwritten convention that members of the legislature and the executive should avoid direct criticism of judicial decisions also exists. But in general, the principle that any judge must be and is free to reach a decision in each case without outside influence or pressure, particulary from politicians, is well established, and nobody wants to change this.

6. **What is the share of the budget of the judiciary in the overall state budget? Has there been any major increase or decrease of that share?**

The question is difficult to answer as there are no precise statistical data for this. However, there are statistical data of the budget for the functioning of the justice system (most courts in Germany are organized and financed by the individual federal

states). This statistical data has only limited significance, because the justice budgets of the federal states also contain the (very high) charges for the prisons. In addition, the justice budgets also regularly include the expenses of legal costs for legal aid and legal guardianship, although these are not real expenses of the courts but are a **welfare benefit measure**. Finally, it must be stressed that the German justice obtains considerable cash receipts in many areas (particularly in the civilian jurisdiction) which, by law, are not taken into account in the numbers of the justice budgets. Thus, the actual costs remain partly unclear to the justice. It can be noted, though, that there have not been any considerable increases in the expenditure for the justice in Germany within the last few years and that staff has been dismantled often primarily in the employee area. Based on her public explanations, the responsible state ministers of justice see their political task as achieving, above all, alleged political "economizing constraints" primarily in the area of the justice.

The rate of the justice budget in Germany is less than 1% of the complete budget. In addition, the justice has a very high “cost taux de couverture”. The federal ministry of justice, for example, almost finances itself. Cash receipts (law charges) of 322 m. € are confronted with expenditures of less than 339 m. €. Through this the justice budget achieves a coverage ratio of over 95%. The rates in the Federal Länder are similar. According to research by the Council of Europe from 2005, each year the Federal Republic of Germany spends (only) 53 Euro per inhabitant on the justice system.

Status

7.**Recruitment and education: a) What are the selection criteria? b) What is the content of the magistrates’ education c) What are the modalities of the first appointment of magistrates?**

a. Whoever concludes his legal studies at a university by taking the first state examination, as well as a subsequent period of preparatory training by taking the second state examination, is legally qualified to hold judicial office. Normally only candidates with good examination results may become judges.

b. The study of law at the university contains all branches of law. The students are educated rather from the theoretical point of view**.** The most important training for future work as a judge is the period of preparatory training (“Vorbereitungsdienst”) after legal studies at a university and taking the first state examination. Trainees have a special status under public law. Whoever concludes the preparatory training by taking the second state examination, is qualified to hold judicial office. This preparatory training, which offers certain possibilities of specialization, as well as the second state examination, are also the prerequisites to most other legal professions (for example, as counsel or civil servant). Most participants in the preparatory training

do not become judges; many do not even intend to. Nevertheless, the training and the second state examination are mainly oriented at the requirements of judicial office. Recent legislation, however, emphasizes the importance of training for work as counsel.

The period of preparatory training lasts for two years. Training is mainly given at the following compulsory agencies:

- at a court of ordinary jurisdiction in civil matters,
- at a court with jurisdiction in criminal matters or at a public prosecutor's office,
- at an administrative authority, and
- with counsel.

In addition, the trainee shall be trained at one or more optional agencies (for instance, at an Administrative or Labour Court or a higher court, at a trade union or a business enterprise). Training at a compulsory agency lasts at least three months; training with counsel, depending on state law, six or nine months. State law may provide further modifications also with respect to other agencies. The preparatory training covers all subjects of daily practice in court. During the trainee's service at a court, one judge is responsible for him (normally not for more than one or two trainees at the same time). This judge gives the necessary instructions with respect to the trainee's work. The most important part of the trainee's work consists of writing opinions on pending cases and drafts of courts decisions. In addition, trainees take part in weekly working groups outside of the regular work at court. These working groups are normally directed by a judge.

c. The selection of judges in Germany is made by the executive. In the states, or Bundesländer, the selections are made by the ministers of justice, with only small possibilities of codetermination by judges' bodies.
There are differences among the different states. Before the definite appointment as judge for life, the judge has to absolve a probationary period that usually lasts no longer than three years. But the ministers of justice have developed certain partial mechanisms in the individual states (Bundesländer) to postpone the appointment as judge for life.

In general, judges are appointed by the competent state minister. Several German states provide that judges shall be chosen jointly by the competent minister and a committee for the selection of judges. There are considerable differences between the respective state provisions. The committees typically are composed of members of Parliament, judges (in most cases elected by the judges) and a lawyer. In two states, the committee includes some members of government. The main feature of most state provisions is that the committee may decline the competent minister's suggestion for appointment of a candidate. In this case the candidate may not be appointed. There is a continuing discussion about such solutions. Some suggestions raise constitutional questions. The constitution requires democratic legitimation of the decisions by such committees. A majority of judges may not elect or appoint judges.

The judges of the Federal Constitutional Court are elected half by the Bundestag (Federal Parliament) and half by the Bundesrat (Representation of the Laender). The judges of the Supreme Federal Courts are chosen jointly by the competent Federal Minister and a committee for the selection of judges, which consists of the competent state ministers and an equal number of members elected by the Bundestag.

8. **Council of the Judiciary: Is there a council of the judiciary or magistracy? If yes, what are the modalities of its appointment and functioning? Its competences?**

The answer is no.

A Council of the Judiciary does not exist in Germany. The entire administration and organization of the justice are Departments of Justice in the hands of the ministries of justice and the court presidents, who are bound by instructions of the ministry of justice due to their belonging to the administration of justice. There are partial possibilities of codetermination for judge electoral committees, presidential councils, and councils of judges, which have only, however, very restricted competences.

9.Career: a) Is rank separated from the post? b) What are the rules governing, if applicable, promotion? c) Are there criteria for promotion on the basis of merit or other criteria apart from seniority? d) Are there rules in place setting limits to the duration of exercising a particular function and/or in a particular geographical location?

Decisions on promotions are largely in the hands of the Ministries of Justice (p. question 8). Promotions are generally connected to a larger income. The decisions are taken on the basis of the previous professional career of an applicant and on the basis of judgements. The predominant impression in the judiciary is that the decisions on promotions often don’t conform to rational criteria. The number of cases finished by a judge plays an increasingly bigger role in the question of whether a judge is considered for a promotion. The quality of the judicial activity plays only a secondary role for promotion decisions, contrary to the explanations of many ministers of justice and court presidents.

10. Appraisal: how are magistrates appraised?

Judges and public prosecutors are often appraised several times during the probationary period, at every application, and later after particular periods of time.The evaluation is in the hands of the court presidents, who belong to the administration of justice, which in Germany is part of the executive power. Some federal states have built written criteria (qualification profiles and certain notes with certain prerequisites) for the evaluation. Amongst the judges, however, there is the prevailing impression that evaluations, to a considerable extent, are rather arbitrary, or that the priority of the executive's own interests is taken into account (see above question 1a).

11.Secondment: what are the rules regarding secondment and return to the original corps (in particular after exercising political functions)?

The rules for secondment are laid down in § 37 DRiG (Deutsches Richtergesetz - "Act on the situation of judges ruling their duties and rights" -). Secondments are in principle only allowed if the judge gives his consent. In principle, secondment can be unlimited if the judge agrees. With the consent of the judge, a secondment is only possible in the case of substituting another judge. This secondment may not last over three months and is only possible in the same jurisdiction (But in 2008 the ministry of justice of Saxony has begun to entrust judges against their will with further judgeships in other jurisdictions where exists labour shortage. It is highly controversal discussed whether this act is in conform with the law). After the exercise of the different function, for example in the ministry of justice, the judge or prosecutor may return to his original post

12.Earnings: what are the earnings of magistrates at the beginning of their career?

At the beginning of their careers, judges currently are awarded a gross monthly salary of 3186,76 €.

Criminal Law

13. Is the Prosecutor's Office subject to the principle of legality of prosecution, or does it have the possibility of choice? In the case of the latter, are these choices subject to control?

Mandatory Prosecution

The prosecution lies under the principle of mandatory prosecution (§ 152 Abs. 2 StPO – Strafprozessordnung= Code of Criminal Procedure). Over time, copious exceptions have been introduced. The following includes the most relevant discretionary prosecution regulations:

§ 153 StPO: As far as a misdemeanour is concerned, the prosecution can disregard the offense if the fault of the offender is minor (in this case it is also not necessary to investigate if there is enough suspicion of an offense) and if there is no public interest for the prosecution.

Basically, the court must give its approval to dismiss. Whenever the facts constituting a criminal offence calls for a punishment for the act which is not increased over the minimum set through the law (5 daily allowance fine, respectively 1 month prison sentence. § 38 Abs. 2, 40 Abs. 1 StGB), and if the results caused by the act are small, the prosecution can also dismiss the case without the agreement of the court (§ 153 Abs. 1S. 2 StPO). Ne bis in idem (= Strafklageverbrauch) does not

occur in this case, which means that the prosecution can reopen the closed proceedings.

§153 a StPO: As long as it regards an offence that has a larger weight than cases of §153 – but not criminal cases – the prosecution can dismiss the case, after which the accused has fulfilled his conditions or instructions that were given to him by the prosecution. In this approach, a requirement is that the severity of the fault is not contrary to the procedure. This action always requires the agreement of both the accused and the court. Also valid here is the exception for very insignificant cases pursuant to § 153 Abs. 1S. 2 StPO (§153 a Abs. 1S. 7 StPO).
If the accused has fulfilled the conditions or instructions (fines, community service, indemnification, participation in restorative justice, etc.), the act can no longer be prosecuted as a criminal offence (§ 153 a Abs. 1S. 5 StPO); it applies for a limited ne bis in idem . If he does not fulfill the conditions or instructions, then the prosecution prefers charges.

§ 154 and § 154 a StPO: The prosecution can abstain from prosecuting an act or an in unity of crime commited fact of the case (for example, in the case burglary from the prosecution of property damage with a realized fact of the case), if the accused, because of the acts or because of a in unity of crime realized fact of the case, expects a penalty or regulation for betterment and provision of security which would, in comparison, make the sanction for the part of the case that is abstained rather insignificant. Ne bis in idem (Strafklageverbrauch) does not apply here.

Due to § 154 b Abs. StPO, the prosecution can abstain from pressing charges if the accused is a foreigner and has already been told by the government administration to leave Germany.

The possibilities to dismiss the case lies on one hand under a certain control through the fundamental agreement requirement of the court. On the other hand, the injured party can raise the time for appeal or a complaint against a public official within the heirarchy paths of the prosecution, which means first with the general prosecutor of the public prosecution against the decision of the department, then with the director of public prosecutions against the decision of the agency leader. A court review is not possible.

14. Is there a criminal policy defined in a centralized manner? What is the authority in charge of such policy? Is it politically accountable?

Crime Policy
In the Federal Republic of Germany, because of the federal system, there are no centralized criminal policies that are run by the public prosecutions or ministries of justice. Also, within the individual states or districts of the general prosecutions, no political goals for criminal laws are arranged. Certainly, regular meetings of the general prosecution divisions take place with the leaders of the agencies located within their areas of responsibility. The purpose of these meetings is not to determine

goals for criminal policies, but rather to ask primary questions about the administration of the agencies.

15. Are the prosecutors obliged to inform justice ministers, even about particular cases? Are there rules protecting confidentiality?

Reporting responsibility of the prosecution
The so-called OrgStA (Anordnung über Organisation und Dienstbetrieb der Staatsanwaltschaften), which is an administrative provision of the states, which is consistently being remitted by an agreement of the justice ministers in all federal states, provides in Nr. 10 par. 2 that the prosecutioners report to the minister of justice and the attorney general in important cases to involve them in situations in order to fulfill the ministers' duty regarding internal affairs. This reporting responsibility is more closely regulated through administrative provisions that can vary among the states. An overview of the regulations in each of the 16 states would exceed the scope of this questionnaire. However, the state of Baden-Württemberg provides one example:

The so-called BeStra (Anordnung über die Berichtspflichten der Staatsanwaltschaften in Strafsachen, published in "Die Justiz" 2005, 213 ff) requires that reporting to the ministry of justice be done quickly so that it may judge the circumstances and the legal position in a timely manner and the ministry of justice is able to supervise as required by law and to answer questions from and disclose information to third parties (Nr. I 1 BeStra).

The prosecution must, through Nr. I 2 BeStra, report to the ministry of justice in situations that

- Due to the personality or the position of the participant, because of the type or the scope of the accusation or for other reasons in other circles, especially parliamentary bodies or the media, which are currently engaged or potentially will become engaged with the issue,
- Could be reasons for the ministry of justice to take action/measure, or
- Are categorized as reportable in a special case or in total by the ministry of justice.

The confidentiality of the information within the hierarchy of the prosecution services (agency leader, general prosecutor, and state ministry of justice) is neither wanted nor provided for. We can see clearly in Baden-Württemberg an example of conflicts that could arise for the minister of justice. A minister was informed of the special importance of investigations about party donation fraud that were done on a high-level official in her own party. The minister informed the accused in advance and without the agreement of the investigating agencies. She had to resign and was meanwhile convicted of treason. The current minister of justice of Baden-Württemberg ordered that he not be informed personally if the information could lead to a conflict of interest with his political role. The duty of reporting to the ministry remains intact.

16. Is the judicial police dependent or independent from the public ministry? Is it obliged to report to the prosecutor all infractions (notitiae criminis) it is aware of?

Police and Prosecution
The police fall fully within the ministry of internal affairs, which has its own hierarchy. Because of that, all decisions regarding careers are made independently of the prosecution. Only if police officials are active as so-called investigators of the prosecution are they, in this capacity, required to follow the orders of the prosecution of their district and their superiors (§ 152 GVG (Gerichtsverfassungsgesetz- Act on constitution of the courts-) , § 161 par. 1 S. 2 StPO). The obligation of the police to report all of the criminal offenses about which they gain knowledge is viewed as a correlation to the principle of mandatory prosecution.

17. Are the citizens involved in criminal justice? (Jury, echevinage, non-professional judges?)

Lay Judges
The German criminal justice arranges different court formations that involve lay assessors. Members of the communities create lists suggesting potential lay assessors (cf. §§ 36 ff GVG). Every five years the court commission meets to select potential lay assessors from the lists, or they are selected by the presidents of the district and state courts (cf. §§ 40 ff., 77 GVG).

The so-called Schöffengericht (magistrates' court) is organized by the local courts. Magistrates' courts include one professional judge and two lay assessors (§ 29 par. 1 GVG; rare exception: two professional judges and two lay assessors, § 29 par. 2 GVG). The magistrates' courts are responsible for criminal proceedings in which the prosecution expects more than a two-year prison sentence to be imposed for the accused. They are also responsible for criminal proceedings if the prosecution does not expect a prison sentence of more than four years as indicated through the statutory definition of the offense (for the difference cf. § 12 par. 1 StGB) (§§ 24, 25, 74 par. 1 GVG).

Local courts build the large criminal divisions. These are comprised of three professional judges (including the presiding judge) and two lay assessors if the criminal division decides the proceedings should be conducted by a jury court (§ 74 par. 2 GVG: Intentional culpable homicide, other crimes that resulted in death). If it concerns other criminal proceedings out of the jurisdiction of the local court (an expected sentence of more than four years; the possibility of an arrangement in that the accused would be sent to a psychiatric hospital or preventive custody; or the preferment of a charge at the local court, e.g. if the prosecution pressed charges at the local court because of special requirements for protection of the injured, who is a possible witness, or because of the special size or the importance of the case) then the size or the difficulty of the case are the determining factors. If the size or the difficulty of the course is not very great, then the criminal division decides in a

session with two professional judges (including the presiding judge), and two lay assessors.

Incriminatory decisions require the absolute majority of the votes. If a tie occurs when the court contains two professional and two lay judges, then the vote of the presiding judge determines the decision.

18. Is there a system of legal assistance for poor persons in place? If so, how does it function?

Court-employed Counsel
The German system of court-employed counsel requires that every accused or charged, independent of whether the person is poor or rich, must have a lawyer in certain cases. If he doesn't employ a lawyer himself, then the court will employ one for him. Therefore he first must be asked in writing if he wishes to request a certain lawyer.

People with enough income or assets usually employ their own counsel. The counsel chosen by the defendant can then earn higher fees than the court-employed counsel, which is paid by the government. Due to that, the counsel chosen by the defendant is considered to be more eager to please (which is not always the case).

The statutory requirements for the assignment of the court-employed counsel are regulated in § 142 StPO. To summarize, counsel fundamentally is required if there are serious charges and/or if the accused already has been held in remand for three months.

The fees that the state pays to the court-employed counsel comes from the state treasury. Because of that, if a case goes to trial, then the accused must pay the fees. Usually the state treasury does not even request the money from a person who is sentenced if it is clear that person will not have income or assets for a long period of time. The convicted cannot claim that he has the right for the counsel to be paid by the state.

19. Are there specialized authorities in place for certain areas: combating corruption, terrorism and/or economic and financial crime, other?

Specialized Authorities
In §§ 74 a ff. GVG it states that special divisions for criminal proceedings must be created in the local courts. In addition to the usual rules (see above), which fall within the jurisdiction of the court, large divisions include state security or economic crime. There are also juvenile divisions (the criminal divisions, which handle criminal proceedings for adolescents and juveniles) that are also responsible for the juvenile protection divisions, and also for proceedings in which adults committed crimes against children and youth.

The state security and economic crime divisions can be responsible for several court districts simultaneously.

In § 120 GVG, it mandates that a supreme higher regional court (without lay assessors) is responsible for matters of definite emphasized state security (high treason, terrorist crimes).

At the local courts, specializations may be created with the help of a business plan of responsibilities.

The prosecutions usually have, on a volunteer basis, specialized departments for proceedings regarding narcotics, youth, capital crimes, economic crimes, etc.

The criminal police also have specialized investigation divisions.

20. What is the maximum penalty? Has the number of detainees evolved in the recent years?

Maximum Penalty – Number of Imprisoned

The StGB (Strafgesetzbuch- criminal code) includes determinate and life-long prison sentences. The greatest length of the determinate prison sentence is 15 years (§ 38 StGB). In the life-long prison sentence, the convicted must have the possibility to be released before his death. Therefore, after 15 years, the division that oversees the execution of sentences must decide about the suspension of the remaining sentence, if not, then the severity of the guilt of the convicted requires further execution of the sentence (§ 57 a par. 1 Nr. 2 StGB). The required facts must already be ascertained in the judgement.

If there is no special severity of the guilt, the convicted person may be released on probation after 15 years of imprisonment when no further crimes are expected from him.

If there is special severity of the guilt, then the convicted may, after his 15th year of imprisonment, apply for release on probation, which in practice is frequently, but not always, given within a few years.

Those who are given actual lifelong imprisonment sentences risk being sentenced to protective custody or, because of a violent crime, being placed in a psychiatric hospital. Fundamentally, people sentenced in these ways also can be released on probation. Therefore, those sentences just can be ordered when a particular dangerousness of the convicted person is certified by an expert. After a sentence has been executed for many years, it is difficult to change the negative prognosis.

According to Germany's department of statistics (Statistischen Bundesamt), the number of prisoners in the Federal Republic of Germany has been decreasing over the last few years:

31. March 2007: 75,719 detainees (pre-trial custody and imprisoned)
31. March 2006: 78,581 detainees (pre-trial custody and imprisoned)
31. March 2005: 80,410 detainees (pre-trial custody and imprisoned)
31. March 2004: 81,166 detainees (pre-trial custody and imprisoned)

These numbers are partly questioned; the reasons behind the questioning could not be investigated before the completion of the report.

Responsibility – Discipline

21 a) What is the disciplinary regime for magistrates (disciplinary proceedings, sanctions? b) What are the authorities that initiate the proceedings carry them out and enact the decision? c) Are there ways or means to appeal against decisions of disciplinary proceedings?

The competence for disciplinary proceedings against judges lies with the ministers of justice and court presidents. Disciplinary sanctions are prescribed in §§ 63, 64 DRiG (Deutsches Richtergesetz—"Act on the situation of judges ruling their duties and rights") and the "Bundesdisziplinarordnung" (federal disciplinary rules). The sanctions range from a reprimand (Verweis = a formalized written criticism that shall lead to a change of the future behaviour of the judge) about salary cuts, to dismissal from office. The accused judge and the ministry of justice can appeal against all decisions of disciplinary proceedings before special disciplinary tribunals.

22. Are the magistrates involved in defining deontological or ethical rules of the magistracy?

We don't have a Code of Ethics in Germany. Judges are not involved in the proceedings of defining ethical rules. There are no plans to launch a legislative initiative. But the ministers of justice and court presidents have often used the term "quality" of judicial activity. They try often to define capability characteristics and criteria of the "quality" for the judicial activity itself.