



The German legal system is a *civil law* based on a comprehensive compendium of statutes, as compared to the *common law* systems. Germany uses an *inquisitorial system* where the judges are actively involved in investigating the facts of the case, as compared to an *adversarial system* where the role of the judge is primarily that of an impartial referee between the prosecutor and the defendant.

The independence of the judiciary is historically older than democracy in Germany. The organisation of courts is traditionally strong, and almost all federal and state actions are subject to judicial review.

Law

Germany's source of law is the 1949 Basic Law of the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*) – its Constitution - which sets up the modern judiciary, but the law adjudicated in court comes from the German Codes; thus, German law is primarily *codal* in nature.



The court system adjudicates

1. public law (*öffentliches Recht*), that is, administrative law (civil-government litigation or litigation between two government bodies) and criminal law; and
2. private law (*Privatrecht*).

German law is mainly based on early Byzantine law, specifically Justinian's Code, and to a lesser extent the Napoleonic Code.

The Constitution directly invests supreme judicial power in the Constitutional Court as well as other federal courts and the courts of each Federal State (*Länder*). The court system is inquisitorial, thus judicial officers personally enter proof and testimony into evidence, with the plaintiffs and their counsel merely assisting, although in some courts evidence can only be tendered by plaintiffs.

Criminal and private laws are codified on the national level in the *Strafgesetzbuch* (StGB) and the *Bürgerliches Gesetzbuch* (BGB) respectively.

The German Penal Code and the Code of Criminal Procedure (StGB) are federal enactments that apply to all German states. Criminal Lawyers are licensed on a nationwide basis. But the courts, except the Federal Court of Appeals and the Federal Constitutional Court, and most prosecutorial offices and police services, are organised on a state-level Criminal Courts and Offense Classifications German law provides for three degrees of infractions:

- felonies (*Verbrechen*) are criminal offenses punishable with at least one year of imprisonment;
- misdemeanors (*Vergehen*) are all other criminal offenses, punishable with either a fine or with imprisonment;
- petty infractions (*Ordnungswidrigkeiten*) are not deemed to be criminal (in the sense of carrying moral blame or stigma) and can only be punished with a fine and the temporary loss of driving privileges. Many of these petty infractions are public order or "victimless" crimes (disorderly conduct, prostitution etc.).



The German penal system is aimed towards rehabilitation of the criminal and the protection of the general public. Except for petty crimes, which are tried before a single professional judge, and serious political crimes, all charges are tried before mixed tribunals on which lay judges (*Schöffen*) sit side by side with professional judges. Their experience and specialist knowledge in certain fields, such as labour and welfare matters, enable them to help the courts make realistic decisions. They are also a manifestation of the citizen's direct responsibility for the administration of justice.

Rights

Individual rights of citizens are guaranteed in the *Grundgesetz* and in the country's statutes. The law prevents police from subjecting suspects to physical abuse, torture, drugs, deceit, and hypnosis. The record of the police in conforming to these guidelines is good.

A suspect has to be brought before a judge no later than the day following arrest, and the judge is obliged to issue a warrant of arrest specifying reasons for detention or else release the suspect. A relative or another person selected by the detainee has to be notified immediately of any detention lasting beyond the day after arrest. Accused persons have the right of free access to legal counsel, although this right has been restricted in the cases of some terrorists who used contacts with lawyers to continue terrorist activity while in prison. *Bail bonds* exist but are seldom employed. Criminal trials are held in public; protection against *double jeopardy* and the usual guarantees of due process are observed.

The judiciary is free from political influence and intimidation.

Courts

The primary legislation concerning court organization is the Courts Constitution Act (*Gerichtsverfassungsgesetz - GVG*). The courts are characterised by being specialist, regional, and hierarchically integrated at the federal level.



The Federal Courts are largely specialised and fall into five categories:

- The '**ordinary courts**' are responsible for criminal matters, civil cases, and voluntary jurisdiction.

There are four levels: local court (*Amtsgericht*), regional court (*Landgericht*), higher regional court (*Oberlandesgericht*) and Federal Court of Justice (*Bundesgerichtshof*).

In criminal cases, depending on their nature, each of the first three courts can have jurisdiction, whereas in civil proceedings it will be either the local court or the regional court. One or two other courts may be appealed to on points of fact or law.

- The **labour courts** (local, state and federal)
- The **administrative courts** (local, state and federal)
- The **social courts** (local, state and federal)
- The **fiscal courts** (state and federal)



Separate from the five branches of jurisdiction is the **Federal Constitutional Court** (*Bundesverfassungsgericht*), which is the country's supreme court.

The *Völkerstrafgesetzbuch* regulates the consequences of crimes against humanity, genocide and war crimes, and gives German courts universal jurisdiction in some circumstances.

The main difference between the Federal Constitutional Court and the Federal Court is that the Federal Constitutional Court may only be called if a constitutional matter within a case is in question (e.g. a possible violation of human rights in a criminal trial), while the Federal Court of Justice may be called in any case.

Prosecution

The public prosecutor's offices (*Staatsanwaltschaft - StA*) are criminal justice bodies of independent responsibilities in relations to the courts and attached to the judiciary. The office of prosecutor is exercised by the Federal Prosecutor General (*Generalbundesanwalt*) in the case of the Federal Court of Justice, by a Prosecutor General in the case of a Higher Regional Court, by a Senior Prosecutor In Charge in the case of a regional court, together with their respective staff.

They are attached to the judiciary but separate from the courts.

Public Prosecutors are for the most part concerned with criminal proceedings i.e. reviewing police investigations and handling criminal prosecutions. It is their responsibility to establish the facts where a person is suspected of a crime. They have to decide whether to discontinue the proceedings or to indict the person concerned. In court proceedings they are the prosecuting counsels. Unlike judges, public prosecutors are civil servants, therefore under orders from their superiors - though within very narrow limits.