

NEXT →



page  
up



page  
down

## Welcome

This site provides information about the judicial system of Germany and the European Court of Human Rights.

It is not repeating the blueprint of the political description or statements - instead it is giving an insight into the system showing how it actually performs.

The information given can be verified in the separate the documentation provided.

The language and terms should be generally understandable.

The site is neither commercial nor political. It rests on facts.

Entering this web-site you will bear in mind:

English is not my native tongue. If terms are misused or passages not understood let me know.

These pages may be used non-commercially, however, since that may change the context, without any responsibility whatever from my side.

You understand, that public powers are what the phrase implies: public.

I understand this well and I quite agree





As readers have different backgrounds and interests, and as the material itself may seduce to a constricted view lost in details it is essential to understand the overall context.

A figure of speech:

»staring at trees you may not see the forest«.

So an introduction with some reflections regarding the subject should be at the beginning.

This page is about the German system of justice leading to the European Court of Human Rights (ECHR) and related EU bodies.

One of the superior tasks of judicial system is to enforce constitutional rights respective conditions - and this task rests with the highest court, the Federal Constitutional Court (Bundesverfassungsgericht).

The Constitution requires the judicial system to work according to the laws, a basic constitutional condition, which the Federal Court would have to supervise and secure.

Note:

the original part in German language will not be amended in German anymore. It is available in an own thread and will be integrated in the course of time in English -

to go there:





## Basics

According to the constitution the top of judicature is the Federal Court called *Bundesverfassungsgericht*.

As mentioned one of its superior tasks is to enforce constitutional rights respective conditions, especially within the judicial system.

The judicial system of Germany represents itself in the public generally as a fair and modern system. At a closer look this glamour reveals however profound cracks.

Searching for the reasons one comes to the courts, namely the Federal Court. Going further one finds, that judges are put into power upon questionable criteria - as well as questionable mechanisms, and the result is not always supporting the necessary ethics. Thus theory and self-description mismatch with the real conditions.

As mentioned these pages will not be dealing in wishful thinking. You will be given documented, down to earth examples about the functionality of the system.

This means, however, to keep a clear sight on the conditions prevailing. One among these conditions to consider are the peculiarities of public representation of information, including the mechanisms of media.

Public estimation will nourish from the usually only poor, respective restricted facts available, and the few facts given will be cocooned by the rules of the trade. As a result, anti-constitutional undercurrent may remain hidden.

If considering the functionality of a system not a failure in a *single* case is questionable. Matters of importance are the inside structural processes in respect of the task *to be performed* combined with the ability of *self-correction*.

One of the difficulties in this is not being able to look into the heads of the persons in question. However, since the yardstick is the set framework of constitution and laws consequence is then the approach vice versa to research the details of the results obtained.



## Basics continued

To understand the scope of the subject better it is necessary to comprehend, that the judicial system is nothing less than the backbone of the organisation of the state. Within the organisation of the society it is the only official (government) authority, by this declared »legal« in its deciding and enforcing, which means using »legal« power (the power installed by society) in turn against the members of the society.

In a so called democratic constitutional state people will elect a government, which makes the rules (laws) which are the framework (*and not only guidelines*) for interaction and sanctions within the society. As the power in a democratic constitutional state rests within the people (through parliament) this means, that the bodies of the state are *tied* by the laws given.

Such, the judicial system is nothing more then the *service* from the state to perform on the rules - and it is in **no way legislative** (making rules) itself.

Doing so would come to the point of cutting powers of parliament and usurp those powers. The result will be contradictory to democratic structures, in fact it can be called a **feudal** situation.

**Note:** the functionality of this democratic judicial system depends heavily only on assumptions, namely, that the rules installed **are followed and not twisted**.

A brief overview about the law-system governed by the constitution of Germany:

*Article 20 [Constitutional principles – Right of resistance]*

*(3) The legislature **shall be bound** by the constitutional order, **the executive and the judiciary** [shall be bound] **by law and justice**.*

This is the text as published by the German Bundestag. The original in German reads:

*(3) Die Gesetzgebung ist an die verfassungsmäßige Ordnung, die vollziehende Gewalt und die Rechtsprechung sind an Gesetz und Recht **gebunden**.*

I wonder if the word *shall* corresponds to the German text as *shall* may have various grades of its meaning. The constitution lays (in another article about judges) down, that this is an absolute condition, not one to be interpreted. My translation would be:

*The legislature is tied (bonded) to the constitutional order, executive enforcing and judicature [i.e. courts]are tied by law and justice.*

The point to make is: *there is no tolerance* regarding the law let alone constitution- which is self-explanatory from the structures, which a democratic society imposes.



## Basics still continued

Talking about democratic organisation in principle you are looking at a circle of power. People determine their government by political means - this government providing the rules people live by. The link between the elected government respective parliament and the people is the judicature, if it is malfunctioning than one of the most important parts of the democratic framework is failing. As a result government respective parliament is cut off from its roots, leaving behind a larva only looking democratic and deprived of its powers which are shifted where they do not belong.

On a first glance the constitutional framework looks striking, taking a closer look into the details, at the actual interweavement of all the regulations and standards, let alone practice, this first impression cannot be upheld.

It will be shown here that with consent of the Federal Court laws, partly since the 19th century until today are purposely misinterpreted and misused. What this may have meant under the Nazi-regime is left to the imagination, this time now it means - at the *least* - nonconformity with human rights on fair courts thus conflicting with democratic constitution of the state.

Why could this be so?

Apart from the general task regarding the organizational structure of a state one will have to reckon about the position of its individual members,

their individual acting and the resulting effect on the system.

The judicial system is originating and dependent from those being in power (thus calling themselves legal authorities), and it makes no difference in particular if this official power originates from feudal or democratic sources.

The positions available within the system will be given according to the expectations between those installing and those receiving. That means, especially in a democratic system with its interdependencies, that it is most likely that careers depend upon mutual expectations which are possibly conflicting with democratic necessities.

Taking into account the human nature and by this the more probably rarely spread "mea culpa" attitude those individuals installed into the system have to be expected not to be completely independent (respectively willing to obey the law as expected) as they may be obliged for their support. Especially in a democratic system this is one of the weak spots: as the influence on careers is *personalised* whereas the personal output will have *no personal feedback*.

**Note:** conditions like these without feedback regarding the responsibility of the person acting **are prone for corruption** - and that relations between officeholders lead to consequences which tend not to have in common the requirements of a democratic constitutional structure.



## Basics not finished yet

Aside from daydreaming this leads to the result, that a democratic structured judiciary needs a strong back-coupling within the system and from outside a strict control to ensure it is keeping within legal boundaries.

Nothing of this can be found.

Of course, people of the trade will be waving with a lot of fine law passages to prove that this statement is wrong. Once again however, if one lifts the look from the trees and looks at the forest:

in the relations of the laws and their interdependencies one will find a Potemkin village, *namely, trying to implement them against malpractice of judiciary.*

Not from the first glance at constitution or law will be found something to frown on- only intensive research reveals the smallprint and interdependencies that will look behind the Potemkin village facade and will show the privilege installed by judiciary to itself, making it a state within the state in respect of power, reminding feudal conditions.

At this point it as to be **clearly stated** that **only the individual** can be held responsible for its acting.

However, pictorial:

in a gang of bandits - could one stand up, call the rest criminal and declare himself out of the game?

The deeper the respect for those, who can withstand those pressures, the more, as the system is inviting and interdependencies are awarding the opposite behaviour.



## Basics, commercial type

Another subject, easily overlooked since so obvious has to be considered:

***Judiciary means making money, and one is not able to get around it.***

Worse: it's a monopole. Thinking about it that all seems matter of course, and reflections should start with the following:

Everybody - meaning courts and lawyers - are getting their money completely independent from their result of work. One of the **party** (or both) will have to pay the bill.

This leads to the conclusion: if a case is decided appropriate in the first place than there is no need for the (more expensive) higher instance - or lawyers. To use another picture:

who in a sane commercial mind would let a half-milked cow leave the premises unmolested?

These thoughts carry further ( I will not discuss this in detail here) - but lets ponder over this:

A judge of first instance does his work excellent. Consequence: nobody sees reason to spend time, nerves and money for the next instance, and what for in general?

Sooner or later the higher court gets into idling, fine until somebody cuts positions (=jobs). There is another clientel, not loosing jobs but income (right there, the lawyers). So - except the judge, maybe for his personal honor and some of the parties, who honor a sound attitude to fairness - the rest, especially those trying to get the better of somebody get hopping mad (=the nicer form of p. off).

Now do some guessing who is on top and how the system would work.

The conclusions however work vice versa: overloaded courts do not necessarily mean it is the fault of quarrelsome people - an overloaded top-court leads to the conclusion, that there may be something rotten in the core of the system.



## Basics, the end

If one is not persisting in details but includes a more extensive consideration one will come to conclusions, which have a grave, if not fatal meaning for every organisation of state.

Pictorial:

if one lifts the look from the trees to the forest the next question will be on what ground and landscape that forest stands.

A society, which fosters fair and comprehensible conditions within itself will in the whole come to a stable inner condition, and offer open space and security.

If the inner relations within the society however are shaped from personal interest up to deceit and if the legal system awards this as an advantageous type of inner-social acting being more profitable than opposing such behaviour this will have severe consequences. It is like throwing sand in a gearbox regarding relations of society, since not the productive inner content of the members of society bears fruit but trickery up to severe damage through deceit done to fellow citizens, defrauding them of their merits. Consequently the relationships within society are interspersed with suspicion and put to »legalised« exploitation.

In such surroundings the individual will make the experience that a fair behaviour is not honoured - in contrast to the successful deceit of the neighbour.

His life will be under the continuous threat of a pack of lies, and he himself will have to behave in that way to keep a minimum of success within the society.

This of course is not restricted to only a few areas of society, it will creep especially into the social relations. Since - in a general scale - also the swindler will be deceived (the fair one anyway) gradually non-descript displeasure will be rampant and summarize.

The deceived swindler can neither pinpoint nor attach this displeasure to something, since he is in conformity with the system, like all others. Latent displeasure however looks for a host, and human psyche welcomes any bogeyman along the way.

The migration of lemmings crosses the mind - however without their peacefulness, with all the consequences, that such dull conditions entail.

Altogether the impacts are indeed much subtler and far reaching. Conditions like this devour the roots of human society.

As this goes beyond the matter of this site these reflections are the last of the introduction

for a train of thought.



## Taking off

As seen on the navigation on the left side you may jump to different chapters, whatever seems interesting. There are a few more matters you should be aware of before sifting through details.

Judiciary is structured strictly hierarchical, and to understand the outcome it may be necessary to understand the input. One of the typical characteristic of judiciary is the onion-like sequence of layers, making it easy to alienate matters on their way through the system. You may happen to understand the outcome as well as the input - *although they completely mismatch*. This is one trick of the system.

Nevertheless, as the reactions speak for themselves this may not be really necessary. A sound mind combined with a normal comprehension of the context of language is in nearly all the cases sufficient.

It seems imperative:

if the power lies within the democratic society, *then how would this society be in power not understanding its own rules in the first place?*

You may also hear the tune, that judiciary has nothing to do with moral, let alone justice:

One should be aware, that with laws the society *directly* describes what it deems being fair and just.

Trying to get around these *set standards* means nothing more than trying to cheat on the consent of society. It need not be mentioned that this has to be seen as being highly immoral and unfair. In the end this statement is nothing more than a phantasmagoria for deceit.

Legal powers are public powers, meaning dealing in public. Using public powers there is (in general) no right to claim privacy, including the pleading of lawyers as well as correspondence. If people are forced against their will through »legal« powers in a democratic society, findings and result have to be open to public. (This has been tried, that is why it's mentioned.)

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As matters are still in progress you will find only issues in a status which has to be comprehended as being completed at this time. The following sign will indicate that respective the end:



The original German part will eventually be integrated here, it is available on the side.



## An overview of the system

To understand the structure of civil jurisdiction in Germany a *simplified* overview, there are:

first stage: *local courts*,  
second stage: *regional courts* resp.  
*regional appeal courts*,  
third stage: *federal courts*  
at the top: *federal constitutional court*.

Most of the cases will start at the local courts, the majority (there are some restrictions) will qualify for the appeal courts; which means in general there are two instances, the second may already be more or less restricted.

Here follows a severe break in the system, as a federal organization of the states (provinces) leaves all power with them. The Federal Courts as a third instance deal mainly in questions of the correct usage of law *only*. In order to get access there it is mostly necessary *to be allowed to do so (!)* by the regional courts.

In theory, everybody who deems to be violated in his constitutional rights could (in the end) claim so with the Federal Court, in fact this is a (constitutional) statement only.

Public prosecution is worse. Structured in a similar way they are not independent but bound by instructions of their political leaders, the top one being the Minister of Justice (for the federal states the respective ministers, for the Federal public prosecution the Minister of the Federal Government).

Note that the Federal public prosecution has completely different tasks and also note, that their careers are mostly interwoven with positions within the whole system (including judges) and also note that (after reading a lot of small print in the laws) in principle they are left powerless against judges resp. the system itself.

Remind, this is no introduction to the complete system but an overview to get an idea in which way to interpret information.

At this point you are left alone to navigate to your points of interest.