



INSTITUTIONS AND JUDICIAL SYSTEMS IN EUROPE

Contributions :

AUSTRIA	Jörg STEINSCHNACK (joerg.steinschnack@puttinger-vogl.at)
BELGIUM	Axel NAEYAERT (axel.naeyaert@pandora.be)
DENMARK	Rasmus LUND (RL@hslaw.dk)
FINLAND	Petri ESKOLA (petri.eskola@backstromco.fi)
FRANCE	Franck BARBIER (fbarbier@dml-avocats.com)
GERMANY	Thilo GRUTSCHNIG (TGrutschnig@cbka.com)
ITALY	Andrea NETTI (a.netti@interconsultingsrl.com)
NETHERLANDS	Martijn HÖVING (m.hoving@deruijterdewildt.nl)
NORWAY	Anne-Lise HELLEBOSTAD (alh@raeder.no)
PORTUGAL	Sara MARQUES (sacmarques@sms-advogados.com)
SPAIN	Marina BUGALLAL (mbugallal@mariscal-abogados.com)
SWEDEN	Maria RYDNER (maria.rydner@linsewirgin.se)
SWITZERLAND	Martin LENZ (martin.lenz@lcb-law.ch)
UNITED KINGDOM	James LENCH (JamesLench@rixandkay.co.uk)

AUSTRIA

Austrian Institutions and judicial systems *

1. The Austrian Constitution

The constitution contains the basic rules governing politics and society. Parts of the constitution date back to the 1860s.

A number of basic principles, the so-called "building laws", have been extracted from the Federal Constitutional Law (B-VG): the principle of democracy, the principle of republicanism, the principle of federalism and the principle of the rule of law. Any total revision of the Federal Constitutional Law is subject to a vote by the entire population.

(a) The core message of the principle of democracy is that the people are the source of any generally binding norm. The decision-making process is essentially an indirect one, i.e. elected representative bodies act on behalf of the population at large. However, Austrian Constitutional Law also provides instruments of direct democracy.

(b) From its inception the principle of republicanism was conceived

as a refutation of the monarchical form of government. The head of state is to be an elected federal president. Permanent neutrality had a strong bearing on the state treaty negotiations. On 1 January 1995, subsequent to a referendum, Austria acceded to the European Union and became part of a supranational organisation.

(c) The principle of federalism means that government functions are divided between the Bund (federal state) and the Länder as partial states.

(d) The principle of the rule of law is laid down in Article 18, paragraphs 1 and 2 of the Federal Constitutional Law. "All public administration must be based entirely on law."

Fundamental rights and civil rights and liberties had and still have high status in the Austrian constitution. Most of the fundamental rights are granted not only to nationals but also to aliens and stateless persons, and are, therefore, human rights. They include the inviolability of property, personal liberty, the right to a lawful judge, the rights of the householder, privacy of the post, freedom of expression, freedom of the press, freedom of conscience and of worship as well as freedom of knowledge and its teaching. The European Convention for the Protection of Human Rights and Fundamental Freedoms has had legal force in Austria since 1958. In the context of fundamental rights, major political importance is attached to the protection of minorities.

2. System of Government

All the political institutions set up pursuant to the constitution derive directly or indirectly from three elections. These determine the Nationalrat (National Council – the lower house in Austria's bi-cameral parliament system) and the Bundespräsident (the head of state) and the nine Landtage (the parliaments of the Länder). All Austrian nationals on reaching the age of nineteen are entitled to take part in these elections on the basis of equal, direct, secret and personal suffrage.

(a) The Federal administrations
The Nationalrat is elected every four years or at shorter intervals if it so decides. The electoral procedure is based on proportional representation. At any time, the Nationalrat can pass a vote of no confidence against all or individual members of the government.

The members of the Bundesrat (the upper house of parliament) are elected by the Landtage.

The Bundespräsident is elected directly by the people. The term of office of the Bundespräsident is six years. In day-to-day political life, the Bundespräsident is only peripherally involved in dealing with government business. He can act only on the recommendation of the cabinet and all his official acts require the countersignature of the members of the cabinet. The appointment of civil servants and the representation of Austria abroad are important tasks within his formal competence. The Bundespräsident can be deposed; the procedure, however, is very complex, would be extremely difficult to carry out in practice and has never yet been undertaken. He appoints (and can at any time dismiss) the Bundeskanzler (Federal Chancellor) and, on the latter's recommendation, the other members of the cabinet (ministers). According to law the Bundeskanzler is only primus inter pares; he has no legal right to issue instructions to the ministers. In practice, however, he is in a strong position. He is entitled by the constitution to recommend the other ministers for appointment and dismissal by the Bundespräsident.

(b) The Länder administrations

Administration in the Länder is subordinate to the Landesregierungen (Länder governments). The Landesregierung is headed by the Landeshauptmann (governor of a Land). On important matters pertaining to the Land, the Landesregierung decides as a collegiate body. In matters pertaining to the indirect federal administration, the Landeshauptmann acts as an administrative authority and is, on the one hand, bound by instructions from the ministers and, on the other hand, entitled to issue instructions to the members of the Landesregierung.

3. Administration of Justice and Control

For approximately 150 years, jurisdiction in Austria has been uncontested as a public power in its own right and has been generally respected as such. Under the Constitution, the courts are independent and the judges are not bound by any instructions in the exercise of their office and are largely protected against removal from office. Like administrative authorities, courts are bound by law. Apart from civil courts and criminal courts, including the Supreme Court as the final court of appeal, there are public law courts: the Administrative Court and the Constitutional Court. The Constitutional Court examines the legality of the rulings made by administrative authorities. Beyond special competences (such as challenges to elections or the legal accountability of especially important public authorities) the Constitutional Court primarily examines laws for their constitutionality and ordinances as well as rulings for their legality. It is a characteristic feature of Austrian jurisdiction that in certain areas private persons are temporarily involved in the administration of justice. Both in commercial jurisdiction and in labour and social jurisdiction, it is common for lay judges to act in the senates. Involvement of the people in criminal jurisdiction has also proved successful. The opportunity to participate in the administration of justice offered by the system of Schöffengerichte and by the system of Geschworenengerichte. In recent years, a number of independent administrative tribunals have been set up and endowed with the power to decide on specific administrative matters. In this context, mention should be made in particular of the independent administrative tribunals in the Länder, the Independent Federal Asylum Board, the Environmental Senate, the Commission for Data Protection and the Broadcasting Commission.

*(excerpt of The political system in Austria, published by the Federal Press Service)

BELGIUM

1 MAIN PRINCIPLES OF THE BELGIAN LEGAL SYSTEM

1.1.1 The birth of Belgium and its evolution towards federalism

After having been a part of France until 1815 and of the Netherlands (1815-1830), the National Congress proclaimed the independence of the Belgian people on 18th of November 1830 and Belgium was internationally recognised by the London Conference on the 26th of December 1830.

The National Congress drew up a very liberal constitution in 1831 which confirmed the fundamental freedoms (freedom of thought, religion, education, the press, assembly, association, and languages), the principle of the separation of powers (legislative power, executive power and judicial power), the representative institutions and the constitutional State.

For the State of Belgium, the National Congress adopted a constitutional monarchy and introduced a unitary parliamentary State with a decentralisation of power towards the provinces and communes. Parliament consisted of two assemblies: the Senate and the House of Representatives.

Belgium would remain a unitary State for 140 years with three levels of power: the central state, the provinces and the communes.

The existence of two large communities within the Belgian State, each aspiring towards greater independence, mainly for cultural reasons in Flanders and mainly for economic reasons in Wallonia, and the widening language requirements would convert the unitary Belgian State into the federal State that we currently have today.

The constitutional revisions of 1970, 1980, 1988 and 1993 ended up in the creation of a federal State "which consists of Communities and Regions" as article 1 of the Constitution reads.

The existence of two large cultural communities (the Dutch Community and the French Community) and three regions (Flanders, Wallonia and Brussels) was recognised by the first revision of 1970. In 1980 the German speaking Community was created.

The 1980 reform granted legislative power (the Councils) to the Communities and Regions (except Brussels) and their own governments. The Councils however consisted of members of the national Parliament who thus had a "dual mandate". In Flanders, a Flemish Council (Vlaams Parlement) was created to combine the regional and community Councils. The Conciliation Court also came into being to settle conflicts of jurisdiction between the various powers.

In 1988 the powers of the Communities and Regions were widened and the new "Brussels-Capital Region" was given its own powers, with its own parliament and government.

Finally the constitutional revision of 1993 ended up in the direct election of the Councils, a thorough reform of the bicameral system, a reduction of the province of Brabant into the provinces of Flemish Brabant and Walloon Brabant.

The Constitution is the fundamental law.

The Constitution defines the organisation of the State, determines the competences of the representatives of authority, and the way in which they exercise them. Given that the Constitution specifies the fundamental rules for the organisation of the State, the constitutional framework is positioned above federal laws, community decrees and regional decrees or ordinances in the hierarchy of legal standards. The Belgian Constitution is a written constitution containing a total of 198 articles.

What does the Belgian Constitution stipulate?

The Constitution states, sometimes explicitly, sometimes implicitly, a certain number of basic principles on which the organisation of the State is founded: For example: Explicitly : "All powers emanate from the Nation" (art. 33) Implicitly: the separation of powers

On the basis of these principles, Belgium can be considered as:

- A constitutional State
- A democratic State
- A parliamentary monarchy
- A federal State
- A welfare State
- A social State

The Constitution states that "Belgium is a federal State made up of Communities and Regions"(art. 1)

The *fundamental rights and freedoms* of the citizen:

- The equality of all Belgians before the law (art. 10)
- The right of individual freedom (art. 12, 13)
- The inviolability of the home (art. 15)
- The right to property (art. 16)
- The freedom of religion (art. 19, 20, 21)
- The respect of private and family life (art. 22)
- The right to conduct a life in compliance with human dignity which implies the right to work, social security, decent accommodation, protection of a clean environment and cultural and social development (art. 23)
- The freedom and right of education (art. 24)
- The freedom of the press (art. 25)
- The freedom of assembly (art. 26) and association (art. 27)
- The freedom to submit signed petitions (art. 28)
- Inviolability of the confidentiality of mail (art. 29)
- Freedom regarding language usage (art. 30)
- The right to consult administrative documents (art. 32)

Belgium has four linguistic regions (art. 4) : the Dutch-speaking region, called Flanders, is situated in the north of the country and has 5.952.552 inhabitants the French-speaking region, called Wallonia, is situated in the south of the country and counts 3.275.421 inhabitants, the bilingual region of Brussels Capital (964.405 inhabitants) and the German-speaking region in the east of the country (71.036 inhabitants).

Federal Belgium is characterised by six levels of authority:

Each level has its own competences. As a result their competences, each level can conduct a policy on the basis of rules imposed on a population in a given territory. The federal, community and regional levels are parallel, and the

provincial and communal levels are subordinate to the preceding ones. This division, which might appear complicated on first sight, has two objectives:

- The search for greater effectiveness by enlarging the structures. The competences of the national State have been moved towards the supranational level.
- To bring policy closer to the public by allocating competences to the Communities and Regions.

A legislative and executive body have been created at each level:

Bearing in mind the relative separation of powers, there is a *legislative and executive body* at each level. Given that Belgium is a democratic state consisting of representative institutions, all persons who sit within a legislative body, irrespective of the level, are appointed by *elections* which are regularly organised. At each level the executive power is accountable to the elected legislative body for its actions.

The European Union
 The federal State
 The Communities
 The Regions
 The provinces
 The communes

Division of competences in Belgium

The dividing up of competences between the federal State, the Communities and Regions is set by the Constitution and the laws passed by a special majority. Only the federal Parliament may change this dividing up of competences. In order to do this special majorities are required, including within each language group.

The Communities and Regions only have allocated competences. These are powers in competences expressly granted to them. What is not expressly allocated (= residual competences) is provisionally governed by the federal authority. In the future these competences will also come under the Communities and Regions. These competences are exclusive. This means that a single legislator has authority for a given issue. However, some matters have been divided up into different aspects and distributed between the Federal State, the Communities, and the Regions.

What are the competences of the REGIONS?

The Regions have authority for all "territory-linked" matters such as

- Regional development
- Housing policy
- Rural development and nature conservation
- The environment
- Agriculture and fishing
- Water policy
- The economy
- Employment
- Energy policy
- The communes, provinces, and intercommunal societies
- Public works and traffic
- International matters and scientific policy

With regard to their economic policy, the Regions must however stay within the general framework of the federal economic and monetary union.

The federal level remains competent for finance and monetary policy, competition law, commercial law, company law, social security, etc.

What are the competences of the COMMUNITIES?

- Culture,
- Education
- Person-linked matters
- Use of languages
- International matters and scientific policy

1.1.2 The civil law

Belgian civil law belongs to the French law family, since our civil code is based on the so called Code Napoleon (1804).

1.1.3 The judicial system

Each court only has jurisdiction for a given part of the territory (principle of territoriality). Belgian territory is divided up on a judicial level as follows:

- 225 cantons (Justice of the Peace, Magistrates' Courts)
- 26 judiciary districts (Courts of first Instance, Commercial Courts and Labour Courts)
- 10 Assize Courts organised on a provincial basis
- 5 jurisdictions for the Courts of Appeal (article 156 of the Constitution):
- with jurisdiction over the entire country (article 147 of the Constitution) : the Supreme Court, the Court of Arbitration and the Council of State.

The *Vrederechters / Juges de Paix / Justices of the Peace* deal with civil and commercial litigation to the level of a certain amount (up to approx. 2.000 euro). For certain matters such as leases, expropriations, some aspects of family law, ... the Justice of the Peace always has competence, irrespective of the amount at stake.

1.1.4 The *Rechtbank van Eerste Aanleg / Tribunal de Première Instance / Court of First Instance* settles civil litigation that exceeds the competence of the Justice of the Peace. It also deals with appeals against the decisions of Justices of the Peace in civil actions. This is the competent court for all civil cases not judged by specialised courts.

1.1.5 The *Rechtbanken van Koophandel / Tribunaux de Commerce / The Commercial Courts* deal with commercial litigation exceeding the competence of the Justice of the Peace. They also deal with appeals against the decisions of the Justice of the Peace in commercial disputes.

With regard to criminal courts, jurisdiction is defined in relation to the nature of the crime:

The *Politierechtbank / Tribunal de Police / Magistrates' Court* deals with misdemeanours (minor offences). This is

the jurisdiction where the civil and criminal cases concerning all aspects of traffic are judged.

The *Correctionele Rechtbanken / Tribunaux Correctionnels / Correctional Courts* deal with crimes (intermediate category of crime)

The *Assisenhof / Cour d'Assises / Assize Court* deals with felonies (the most serious crimes) as well as political crimes and crimes of the press. The Assize Court judges in the "first and last instance". In other words you cannot appeal against the decisions of this court.

The *Jeugdrechtbank / Tribunal de Jeunesse / Juvenile Court* is a section of the Court of First Instance and has jurisdiction over the majority of civil and criminal cases concerning young people.

The *Arbeidsrechtbank / Tribunal de Travail / Labour Tribunal* is competent for all cases concerning employment contracts and disputes with social security bodies (health and retirement institutions, ...). You can appeal the decisions of the Labour Tribunal by the *Arbeidshof / Cour de Travail / Labour Court*.

The *Hof van Beroep / Cour d'Appel / Court of Appeal* deals with appeals against decisions of the beforementioned courts.

The *Hof van Cassatie / Cour de Cassation / Supreme Court* only judges "in law" and does not examine "the facts". In other words it only checks that the law has been correctly interpreted and applied and that no procedural error has been committed. The Supreme Court of Appeal never judges on the case in itself. It is consequently not an instance of appeal as the case is not totally re-examined.

1.2 The administration section of the *Raad van State / Conseil d'Etat / Council of State* is the highest administrative jurisdiction in the country. Any citizen or legal personality (companies, charities, non-profit-making organisations, etc) may request the cancellation of legal acts or regulations issued by an administrative authority. Royal decrees, community and regional government decrees, administrative acts of the provincial councils, communal councils, the councils of mayors and deputy mayors, mayors, examination committees, appointments, etc are all concerned.

1.3 *Arbitragehof / Cour d'Arbitrage / Court of Arbitration*

First role: the Court acts as an independent arbitrator between the Federal State, the Communities and the Regions. The role of the Court mainly consists of settling conflicts of competence between the federal State, the Communities and the Regions. If one of these authorities

passes laws or decrees in which it exceeds its authority the Court of Arbitration cancels the laws, decrees or ordinances in question.

Second role: the Court guarantees the observance of certain fundamental rights of the citizen.

The Court of Arbitration ensures observance of certain articles of the Constitution: art. 8-32, 170, 172 and 191 or the rules governing the dividing up of competences. The Court of Arbitration can cancel the laws, decrees and ordinances that breach these constitutional provisions. The federal legislator may, in addition, by a law passed with a special majority, extend the supervisory competence of the Court to other articles of the Constitution, which was done by the special law of 9th march 2003. The Court is not authorised to judge the constitutionality of the acts of the executive, nor of the decrees and regulations of the provinces and communes. An administrative court (the Council of State) is competent in this respect.

Third role: the Court rules on preliminary questions. The judges of other courts may (or must) put questions to the Court of Arbitration if a law, decree or ordinance that they have to apply with regard to a concrete dispute is contrary to the Constitution (art. 8-32, 170, 172 and 191 or the rules governing the dividing up of competences). In this case it is a "preliminary question". The judges await the reply of the Court of Arbitration before giving their own judgements. If the Court of Arbitration judges that the law, decree or ordinance in question is in fact contrary to the Constitution, it is not applied and a new period of six months to cancel it, is started by the Court of Arbitration.

DENMARK

The Danish legal system

Introduction

In 1683, a few years after the introduction of absolute monarchy in Denmark, King Christian V of Denmark issued a general code of law "Danske Lov" replacing the regional legal regimes of the Middle Ages by legal unity in Denmark.

In 1849 a formal constitution was enacted in Denmark replacing absolute monarchy by democracy. Of importance to the judiciary and the administration of Justice in Denmark the Constitution as amended in 1866, 1915, 1920 and 1953 enshrines the separation of the powers of the legislature, the executive and the judiciary in three different organs based on the theories of Montesquieu: The Parliament, the Government and the Courts.

Another important chapter of the Constitution is the Protection of Human Rights containing a catalogue of fundamental civil and political rights, including right to personal freedom, freedom of expression, religious freedom and the right to form and join associations and protection of private property.

The Constitution contains one remarkable rule dating back to 1783 which guarantees judicial review of deprivation of liberty in the administration of criminal justice within 24 hours.

Over the years most areas of society have been subject to statutory regulation, in contrast with the Anglo-Saxon common law, but some parts of Danish law is developed by the courts.

The judges

Judges are appointed by the Queen on recommendation from the Minister of Justice. The Danish Constitution guarantees judges absolute independence from the Government and the Parliament. The Constitution provides that judges in the execution of their duties are to be governed by the law only (functional independence). Further, judges cannot be removed against their will and may be dismissed only by order of the Special Court of Indictment and Revision (personal independence).

The Danish Court System

General

In Denmark all types of cases, both civil, criminal and administrative, are processed by one court system.

This means that a case concerning the constitutionality of an act of Parliament is decided not by a special constitutional court but by the ordinary courts, in the last instance by the Supreme Court.

Further, there are no special courts set up to deal with public administrative law. In practice, however, a number of administrative tribunals are set up to adopt the final administrative decision in disputes between the state and private individuals. Often a decision from these tribunals must be obtained before the dispute is brought before the courts.

In Denmark court proceedings are oral and open to the public. Exceptions to these principles are only made under special circumstances.

The Danish Courts

The Danish Courts comprise 82 County Courts, the Maritime and Commercial Court of Copenhagen, two High Courts and the Supreme Court.

In addition the Special Court of Indictment and Revision hears cases concerning disciplinary sanctions against judges and re-opening of criminal cases after a final decision, whereas the Court of Impeachment hears cases in which Ministers are charged with violating their duties as Ministers.

Appeals

County Court decisions may be appealed to the High Court. Decisions of the Maritime and Commercial Court may be appealed to the Supreme Court. High Court decisions in first instance cases may be appealed to the Supreme Court.

As a general rule a case can be appealed only once and indeed very small cases cannot be appealed at all. If the decision concerns questions of general public interest the Board of Appeal may dispense from these rules and grant leave of appeal.

The County Courts

In civil cases the County Court is presided over by a single judge, both at the preparatory stages of the case and at the trial. That is also the case in respect of preparatory stages in criminal cases and in criminal cases where the defendant pleads guilty to the charge against him or where the prosecution does not ask for a sentence in excess of a fine. In all other criminal cases the County Court judge sits with two lay judges.

In maritime cases, i.e. cases which call for special knowledge of maritime matters, civil as well as criminal, the County Courts call in two maritime experts as lay judges. Also when the County Court acts as a rent tribunal two lay judges sit with the County Court judge.

A County Court judge also acts as bailiff and notary public. Further, a County Court judge is responsible for the administration of bankruptcy and winding-up proceedings as well as probate matters and the administration of the land registry. These functions may be assigned to a deputy judge acting under the supervision of a judge.

The Maritime and Commercial Court of Copenhagen

In the Greater Copenhagen area maritime and commercial cases are referred to a special court, the Maritime and Commercial Court of Copenhagen, which was established in 1861. The Maritime and Commercial Court of Copenhagen also has a special division which has jurisdiction in bankruptcy and winding-up proceedings in the Greater Copenhagen area.

The High Courts

There are two High Courts, covering two different geographical parts of the country.

The High Courts generally sit in chambers of three judges. In most criminal appeal cases the judges sit with three lay judges. A judgment may be adopted by simple majority.

In jury trials (only applicable in cases involving serious crimes) three High Court judges sit with 12 jurors.

The Supreme Court

The Supreme Court - founded in 1661 - is the highest Court of the Kingdom of Denmark and consists of a President and 18 other judges. A case must be heard by at least five Supreme Court Judges. If the case so merits, seven or more judges participate.

Civil procedure

Processing of civil cases before the County Courts

Save for cases concerning the final administrative decision in disputes between private individuals and the state, all civil cases fall within the jurisdiction of the County Courts. However, at the request of a party, the county court judge may refer a case to a High Court if the case concerns a question of general public interest. Cases involving a claim in excess of DKK 1M may be brought directly before a High Court.

Proceedings are normally brought before the County Court in the jurisdiction of the defendant's habitual residence, by the plaintiff lodging a writ of summons at the Court Registry containing brief particulars of the claim as well as submissions and evidence relied upon. The court fee computed as a percentage of the amount claimed is levied on the plaintiff at the time of lodging of the writ of summons.

In most jurisdictions the County Court will invite the defendant to lodge a statement of defence together with the documents upon which he relies. Further pleadings (reply and rejoinder) will normally be exchanged with leave of the court. If no statement is lodged within the fixed time-limit, a default judgment will normally be passed.

The County Court may in any case invite the parties to attend a preparatory hearing with a view to clarify the issues and possibly mediate a settlement. Unless a settlement is reached the case is listed for trial where the parties and witnesses will have the opportunity to give evidence. If, after the hearing, the parties do not agree to settle the case, judgment is given within six weeks.

Processing of civil first instance cases before the High Court
The High Courts hear cases involving claims in excess of DKK 1M, cases referred from a County Court and cases concerning the validity of decisions adopted by a ministry or a government agency authorised to adopt the final administrative decision in disputes between the state and private individuals.

Processing of civil appeal cases in the High Courts
Most judgments passed by a County Court may be appealed to a High Court. However, in cases where the value of the claim does not exceed DKK 10,000 (approx. EUR. 1,350) leave to appeal to a High Court needs to be obtained from the Board of Appeal. Leave may be granted under very special circumstances or if the case concerns questions of general public interest.

Notice of appeal must be lodged with a High Court within four weeks of the date of the judgment.

Proceedings before the Supreme Court

Judgments of the Maritime and Commercial Court and of the High Courts in first instance cases may be appealed to the Supreme Court. Judgments and rulings of a High Court in appeal cases cannot be appealed to the Supreme Court without leave of appeal from the Board of Appeal. Leave may be granted if the case concerns questions of general public interest.

Criminal procedure

General

Danish criminal procedure is based on the accusatorial principle.

Basic principles in order to facilitate a fair trial are the presumption of innocence, the right for the defendant to remain silent and equality of arms between prosecution and defence.

If the defendant pleads or is expected to plead not guilty a formal indictment is drawn up and lodged with the Court

Registry at the County Court in the jurisdiction where the crime is alleged to have been committed. In cases where the prosecution does not ask for a sanction more severe than a fine the case will be tried by a single County Court judge. In other cases two lay judges together with the County Court judge decide the question of guilt and the sentence.

Processing of criminal appeal cases before the High Courts
The prosecution and the defence may appeal a County Court decision in criminal cases within two weeks of the date of the judgment or within two weeks of reception of notice of the other party's appeal.

Processing of first instance criminal cases before the High Courts (Jury cases)

In criminal cases where the prosecution asks for a sentence in excess of 4 years of imprisonment an indictment prepared by the District Attorney is lodged with the Court Registry at the High Court covering the jurisdiction where the crime is alleged to have been committed.

Processing of criminal appeal cases before the Supreme Court

High Court decisions in jury trials may be appealed to the Supreme Court on points of law and sentence.

High Court decisions in appeal cases may only be appealed to the Supreme Court with leave from the Board of Appeal. Leave may be granted under special circumstances or if the case concerns questions of general public interest.

FINLAND

FINNISH INSTITUTIONS

1 The Finnish Constitution

The Finnish Constitutional System comprises the President of the Republic, Parliament and the Government.

2 The President

The President of the Republic of Finland is elected directly and through a proportional system by the Finnish people. A person eligible to be the President of the Republic must be a native Finnish citizen and the term of office can be at most two consecutive six-year periods. The President directs the foreign policy of Finland, appoints the highest ranking authorities and issues legislation. The President also appoints the Prime Minister in line with the proposal of Parliament and appoints the other ministers upon the suggestion of the newly elected Prime Minister.

3 The Parliament

According to the Constitution Act of Finland all power in Finland is vested in the people, who are represented by Parliament assembled in session. The same article goes on to state that the power to issue legislation belongs jointly to the President of the Republic of Finland and to Parliament. The Finnish Parliament is unicameral and the members of Parliament are elected by direct and proportional elections. Parliamentary elections are held every fourth year. The number of parliamentary seats won by each political party depends on the proportion of the votes which it gains in each electoral district. In addition to its legislative power, Parliament elects the Prime Minister, it has fiscal and budgetary powers and supervisory authority.

4 The Government

According to the Finnish Constitution, the Government must enjoy the confidence of Parliament. The confidence of Parliament is usually tested by debating an interpellation: at least twenty Members of Parliament sign an interpellation and the Government has fifteen days to answer it. If the results of the vote is no confidence the Government has to resign and the President of the Republic appoints a new candidate to form a new government.

5 The Prime Minister

The Prime Minister is elected by Parliament and appointed by the President. The Prime Minister chairs the Government plenary sessions and he is the actual leader of the work of the Government. He represents the President of the Republic if he is unable to carry out his duties.

6 The law-making process

The hierarchy of legally-binding norms in Finland is as follows:

1. The Constitution and the Acts of a constitutional character such as EU regulations and international treaties

2. Parliamentary Acts
3. Other decrees and orders imposed by the Government or ministries
4. Municipal ordinances

If the Parliamentary Act contradicts the Constitution then the courts must give preference to the Constitution.

The legislative initiative is used in two forms, either as the Government's proposals or proposals made by the Members of Parliament. The normal legislative bill is approved by simple majority in Parliament, the most common method of approval. A constitutional bill or a bill of constitutional character must be approved by qualified majority.

7 The Province of Åland

The Province of Åland enjoys an autonomous status within the Republic of Finland and its status is regulated by the Self-Government Act. The statutory body in the Åland Isles is the Åland Parliament and the province also has one representative in the Parliament on the mainland. The Åland Parliament has the power to issue Provincial Administration Acts which are local Acts and do not concern the Finnish mainland. Before the Acts become part of provincial legislation they must be referred to the President of the Republic of Finland.

The Court System

According to the Constitution, the judiciary power in Finland belongs to independent courts, with the Supreme Court and the Supreme Administrative Court exercising supreme jurisdiction at the top of the system.

The courts of law in Finland can be divided into two categories: firstly, there are courts with jurisdiction in private civil and criminal matters and secondly, there are administrative courts. The administrative courts mainly deal with disputes of public interest between a public authority and private individuals. There are also special courts, the Land Court, three Water Courts, the Market Court, the Labour Court, the Insurance Court and the High Court of Impeachment. The jurisdiction of each court is defined by the forum rules.

The Courts of Appeal

All the District Court judgements are subject to appeal in a Court of Appeal. An appeal must be lodged within 30 days of the judgement.

There are six Courts of Appeal in Finland. In each Court of Appeal there is a president and a certain number of learned judges.

The Supreme Court

The highest instance in the three-tier hierarchy of the general courts is the Supreme Court, which is situated in the capital of Finland, Helsinki. Besides the decisions of the Courts of Appeal, the decisions of some of the special courts can be appealed against in the Supreme Court.

An appeal to the Supreme Court is however subject to leave, which is granted only under certain special conditions and therefore, as a general rule, the decisions of the Courts of Appeal remain final.

FRANCE

FRENCH INSTITUTIONS

Constitution of the Fifth Republic :

The Constitution of 4 October 1958 provides the institutional basis for the Fifth Republic. It has been amended several times to institute election of the President of the Republic by direct universal suffrage (1962), incorporate a new title defining the criminal liability of members of the Government (1993), establish a single parliamentary session, enlarge the area of application of the referendum (1995), transitional provisions relating to New Caledonia (1998), establishment of European Economic and Monetary Union, equal access of men and women to elective office and positions and recognition of the jurisdiction of the International Criminal Court (1999).

Constitutional Council :

The Constitutional Council, composed of nine members, is responsible in particular for overseeing the proper functioning of elections and for ruling on the constitutionality of organic laws and legislation submitted to it.

President of the Republic :

The Head of State is elected for a five-year term by direct universal suffrage. The President of the Republic appoints the Prime Minister and, on the latter's recommendation, appoints the other members of the Government. He presides over the Council of Ministers, promulgates Acts of Parliament and is Commander-in-Chief of the Armed Forces. He may dissolve the National Assembly and in an emergency exercise special powers.

Prime Minister and government :

Under the direction of the Prime Minister, the government sets national policy and carries it out. It is answerable to Parliament. The Prime Minister directs the operation of the government and ensures the implementation of legislation.

Parliament :

Parliament is formed of two assemblies:

- the Senate elected for a nine-year term by indirect universal suffrage, with one third renewed every three years.
- the National Assembly whose members (deputies) are elected by direct universal suffrage for a five-year term.

In addition to providing a check on the Government, the two assemblies draw up and pass legislation. In the case of disagreement on a law the National Assembly makes the final decision.

Judicial system :

The French legal system is organized on the basis of a fundamental distinction between :

- civil courts, with jurisdiction in disputes between private individuals or bodies.
- criminal courts, with jurisdiction in offences
- and administrative courts, with jurisdiction in all cases involving some form of dispute between a private individual or body and a public body.

The highest judicial body is the Cour de Cassation which decides appeals on points of law and procedure and can set aside or quash judgements and remit cases for rehearing to one of the 35 courts of appeal for retrial. The Conseil d'Etat is the supreme administrative court and court of final appeal on the legality of administrative acts. It advises the government on draft legislation.

Local Government Structure :

In France there are three main tiers of local administration: the *communes* (approximately 37000), departments (100) and regions (26). These are both districts in which administrative decisions made at national level are carried out and local authorities with powers of their own. Legally speaking, a local authority is a public-law corporation with its own name, territory, budget, employees and specific powers and a certain degree of autonomy vis-à-vis central government. In addition, there are France's overseas territories and regional bodies (*collectivités territoriales*) with special status (Paris, Marseille, Lyon, Corsica, Mayotte and Saint-Pierre-et-Miquelon).

MAJOR PRINCIPLES OF THE FRENCH JUDICIAL SYSTEM

Written law :

Inherited from the Revolution in 1789, our judicial system is based on a written law derived mainly from laws passed in Parliament by the deputies and senators. The Civil Code, the Penal Code and the other Codes as well as European and International laws are the essential tools of those involved in the judicial system.

Respect of individual rights :

The judicial system is a public service, it is performed in the name of the French people. Guardian of individual freedoms and the rule of law, it ensures that the Law is applied and guarantees that the rights of each individual are respected. It alone has the right to settle disputes between people in complete neutrality and to punish prohibited behaviour (offences). In order to ensure that it has the impartiality required to perform its role, the Constitution asserts its independence from the executive power (Government) and legislative power (Parliament).

Right to contest a legal decision :

A decision has been made by the first court. In theory, those concerned can express their disagreement and ask for a re-examination of their case by lodging an "appeal". The case is then transferred to the Court of Appeal which passes a new judgment on the facts and legal issues of the case. For verdicts of the Assize Court (crimes), the case is re-examined on appeal by another Assize Court.

Monitoring application of the law :

A decision has been given "in the last instance" by a Court or Court of Appeal, there is one final appeal : an appeal on a point of law. This takes place before the Court of Cassation for civil and criminal cases and before the Conseil d'Etat for administrative matters. However, these are not new proceedings. The Court of Cassation or the Conseil d'Etat do not judge the case afresh. Their role is to say whether the judgment delivered complies properly with the rules of law. If so, it is confirmed; otherwise it is "quashed".

Helping provide access to the Law :

To enable people with no income or on low incomes to bring proceedings or defend themselves in court, the law has created a financial support : legal aid. It enables the legal costs to be paid, in particular the fees of representatives of the law (barristers, bailiffs...). When a decision is made by the legal aid bureau, the legal costs may be paid in full or partially by the State, depending on the income of the person concerned. The upper limit of resources for obtaining legal aid is reassessed each year.

Distinction between civil courts, criminal courts and administrative courts :

The French legal system is organized on the basis of a fundamental distinction between :

- civil courts, with jurisdiction in disputes between private individuals or bodies.
- criminal courts which distinguish three types of offence: *contraventions* (petty offences), *délits* (misdemeanours), and *crimes* (serious indictable offences).
- and administrative courts, with jurisdiction in all cases involving some form of dispute between a private individual or body (company, association, etc.) and a public body.

Civil and criminal courts :

Court (nb)	Cases judged	Appeal possible ?
Tribunal de Grande Instance (81)	Civil cases which are not judged by specialised courts	Yes
Tribunal d'Instance (473)	Matters involving proximity disputes, rent and civil case up to € 7600	Before the Cour d'Appel for cases involving amounts greater than € 3800 (€ 3720 for cases judged by Conseil de prud'hommes)
Tribunal de Commerce (191)	Cases between merchants or concerning transactions governed by commercial law.	
Conseil de Prud'hommes (277)	Cases originating from employment contracts	For cases involving amounts smaller than € 3800 (€ 3720 for cases judged by Conseil de Prud'hommes), the only possible appeal is to the Cour de Cassation
Tribunal Paritaire des Baux Ruraux (431)	Cases concerning agricultural tenancy	
Tribunal des Affaires de Sécurité Sociale (116)	Disputes with social security organisations (health and retirement coverage...)	Yes, before the Cour d'Appel
Tribunal de Police (473)	Minor offences (contraventions) subject to fines	Yes, before the Cour d'Appel, except to sentences limited to modest fines
Tribunal Correctionnel (81)	More serious offences (délits) punishes by fines or imprisonment up to 10 years	Yes, before the Cour d'Appel
Cour d'Assises (100)	Most serious offences (crimes) punishes by imprisonment up to life imprisonment	Yes, before another Cour d'Assises
Cour d'Appel (35)	Re-examination of a case previously judged	Yes, before the Cour de Cassation
Cour de Cassation (1)	Re-examination of a case previously judged : the Cour de Cassation does not examine the facts but only verifies that the law was correctly applied.	No

Proceeding before the « Tribunal de Grande Instance » :

To bring a matter before the « Tribunal de Grande Instance », it is necessary to choose a barrister (« avocat »), whose intervention is compulsory, and to serve by a bailiff (« huissier ») a summons (« assignation »), which warns your opponent that a lawsuit is engaged against him.

The summons should contain notably the name of the Tribunal, the demand, the statement of the reasons which justify the demand, the list of the documents on which the demand is grounded. The summons should be handed to your opponent and to the Clerk's Office (« Greffe ») of the Tribunal.

The arguments are exposed in written reports called « conclusions » which are handed to the opponent then to

the Tribunal. Any document in support of the arguments should be communicated to the opponent then to the Tribunal during the audience.

The case is judged in an audience when the brief is complete and when the opponents communicated themselves their arguments and their proofs. Generally, the Tribunal does not take its decision the same day of the audience but at a later date after a period of deliberation.

The judgment can be disputed for the period of one month after its notification by a bailiff, by means of an appeal formed before the Court of Appeal (« Cour d'Appel ») through an « avoué ».

If no appeal was formed, the judgment can be executed through a bailiff.

Administrative courts :

Court (nb)	Cases judged	Appeal possible ?
Tribunal Administratif (36)	Disputes involving public authorities (administrative bodies, territorial authorities...)	Yes, before the Cour Administrative d'Appel
Cour Administrative d'Appel (7)	Re-examination of case previously judged by a Tribunal Administratif	Yes, before the Conseil d'Etat
Conseil d'Etat (1)	Re-examination of case previously judged by a Cour Administrative d'Appel and ruling directly on the legality of the government actions	No

Proceeding before the « Tribunal Administratif » :

To bring a matter before the « Tribunal Administratif », it is necessary to send a written request to the President of the « Tribunal Administratif » by a registered letter with acknowledgement of receipt.

The request should contain notably the demand and the statement of the reasons which justify the demand. It is necessary to join to the request a copy of the administrative decision which is controversial and the documents on which the demand is grounded. The request and the joined documents should be sent to the Tribunal in three copies at least.

The intervention of a barrister is not compulsory when you ask only for the cancellation of an administrative decision. On the other hand, the intervention of a barrister is compulsory when you ask for the compensation of a damage.

The arguments are exposed in written reports called « mémoires » which are handed in several copies to the Tribunal. Then, the Tribunal sends to every concerned person a copy of the report.

The case is judged in an audience when the brief is complete. During the audience, a Government Commissioner (« Commissaire du Gouvernement ») gives his opinion onto the case under the shape of oral report. The Tribunal does not take its decision the same day of the audience but at a later date after a period of deliberation.

The judgment can be disputed for the period of two months after its notification by a registered letter with acknowledgement of receipt, by means of an appeal formed before the Administrative Court of Appeal (« Cour Administrative d'Appel »).

The appeal is formed by means of a written request sent to the President of the Administrative Court of Appeal, by a registered letter with acknowledgement of receipt.

GERMANY

The Constitution

The framers of the Federal Republic of Germany's 1949 constitution sought to create safeguards against the emergence of either an overly fragmented, multiparty democracy, similar to the Weimar Republic (1918-33), or authoritarian institutions characteristic of the Nazi dictatorship of the Third Reich (1933-45). Thus, negative historical experience played a major role in shaping the constitution.⁽¹⁾

Articles 1 through 19 delineate basic rights, including equality before the law; freedom of speech, assembly, the news media, and worship; freedom from discrimination based on race, gender, religion, or political beliefs; and the right to conscientious objection to compulsory military service. In reaction to the experience of the Third Reich, the framers of the Basic Law did, however, place limits on extremist political activities that might threaten to subvert the democratic political order.

Article 20 states that "the Federal Republic of Germany is a democratic and social federal state." The word "social" has been commonly interpreted to mean that the state has the responsibility to provide for the basic social welfare of its citizens. The Basic Law, however, does not enumerate specific social duties of the state. Further, according to Article 20, "All state authority emanates from the people. It shall be exercised by the people by means of elections and voting and by specific legislative, executive, and judicial organs."

Most of the Basic Law's 146 articles describe the composition and functions of various organs of government, as well as the intricate system of checks and balances governing their interaction. Other major issues addressed in the Basic Law include the distribution of power between the federal government and the state (Land ; pl., Länder) governments, the administration of federal laws, government finance, and government administration under emergency conditions. The Basic Law is virtually silent on economic matters; only Article 14 guarantees "property and the right of inheritance" and states that "expropriation shall be permitted only in the public weal."

Any amendment to the Basic Law must receive the support of at least two-thirds of the members in both federal legislative chambers--the Bundestag (Federal Diet or lower house) and the Bundesrat (Federal Council or upper house). Certain provisions of the Basic Law cannot be amended: those relating to the essential structures of federalism; the division of powers; the principles of democracy, social welfare, and fundamental rights; and the principle of state power based on law.

Federalism

Germany has a strong tradition of regional government dating back to the founding of the German Empire in 1871. Since unification in 1990, the Federal Republic has consisted of sixteen Länder : the ten Länder of the former West Germany, the five new Länder of the former East Germany, and Berlin. The Land governments are based on a parliamentary system. Most Länder have unicameral legislatures, whose members are elected directly by popular vote. The party or coalition of parties in control of the legislature chooses a minister president to lead the Land government. The minister president selects a cabinet to run Land agencies and carry out the executive functions of the Land government. Minister presidents are highly visible national figures and often progress to federal office, either the chancellorship or a position in the federal cabinet.

The Basic Law divides authority between the federal government and the Länder , with the general principle governing relations articulated in Article 30: "The exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Länder insofar as this Basic Law does not otherwise prescribe or permit." Thus, the federal government can exercise authority only in those areas specified in the Basic Law. The federal government is assigned a greater legislative role and the Land governments a greater administrative role..

The Basic Law divides the federal government's legislative responsibilities into exclusive powers (Articles 71 and 73), concurrent powers (Articles 72, 74, and 74a), and framework powers (Article 75). The exclusive legislative jurisdiction of the federal government extends to defense, foreign affairs, immigration, transportation, communications, and currency standards. The federal and Land governments share concurrent powers in several areas, including civil law, refugee and expellee matters, public welfare, land management, consumer protection, public health, and the collection of vital statistics (data on births, deaths, and marriages). In the areas of mass media, nature conservation, regional planning, and public service regulations, framework legislation limits the federal government's role to offering general policy guidelines, which the Länder then act upon by means of detailed legislation. The areas of shared responsibility for the Länder and the federal government were enlarged by an amendment to the Basic Law in 1969 (Articles 91a and 91b), which calls for joint action in areas of broad social concern such as higher education, regional economic development, and agricultural reform.

All policy areas not assigned to federal jurisdiction are within the legislative purview of the Länder . These areas include education, law enforcement, regulation of radio and television, church affairs, and cultural activities.

The Land governments also exercise power at the national level through the Bundesrat, which is made up of representatives appointed by the Land governments. In this way, the Länder affect the federal legislative process (see The Legislature, this ch.). Half of the members of the Federal Convention, which elects a federal president, are Land officials, and the Land governments also take part in the selection of judges for the federal courts.

The President

The Basic Law creates a dual executive but grants most executive authority to the federal chancellor, as head of government, rather than to the president, who acts as head of state (see fig. 13). The presidency is primarily a ceremonial post, and its occupant represents the Federal Republic in international relations. In that sphere, the president's duties include signing treaties, representing Germany abroad, and receiving foreign dignitaries. In the domestic sphere, the president has largely ceremonial

⁽¹⁾ This article is based esp. on the following articles in the internet: <http://countrystudies.us/germany/>

functions. Although this official signs legislation into law, grants pardons, and appoints federal judges, federal civil servants, and military officers, each of these actions requires the countersignature of the chancellor or the relevant cabinet minister. The president formally proposes to the Bundestag a chancellor candidate and formally appoints the chancellor's cabinet members, but the president follows the choice of the Bundestag in the first case and of the chancellor in the second. If the government loses a simple no-confidence vote, the president dissolves the Bundestag, but here, too, the Basic Law limits the president's ability to act independently. In the event of a national crisis, the emergency law reforms of 1968 designate the president as a mediator who can declare a state of emergency.

The president is selected by secret ballot at a Federal Convention that includes all Bundestag members and an equal number of delegates chosen by the Land legislatures. This assemblage, which totals more than 1,000 people, is convened every five years. It may select a president for a second, but not a third, five-year term. The authors of the Basic Law preferred this indirect form of presidential election because they believed it would produce a head of state who was widely acceptable and insulated from popular pressure. Candidates for the presidency must be at least forty years old.

The Basic Law did not create an office of vice president. If the president is outside the country or if the position is vacant, the president of the Bundesrat fills in as the temporary head of state. If the president dies in office, a successor is elected within thirty days.

The Chancellor and the Cabinet

The federal government consists of the chancellor and his or her cabinet ministers. As explained above, the Basic Law invests the chancellor with central executive authority. For that reason, some observers refer to the German political system as a "chancellor democracy." The chancellor's authority emanates from the provisions of the Basic Law and from his or her status as leader of the party or coalition of parties holding a majority of seats in the Bundestag. Every four years, after national elections and the seating of the newly elected Bundestag members, the federal president nominates a chancellor candidate to that parliamentary body; the chancellor is elected by majority vote in the Bundestag.

The Basic Law limits parliament's control over the chancellor and the cabinet. Unlike most parliamentary legislatures, the Bundestag cannot remove the chancellor simply with a vote of no-confidence. In the Weimar Republic, this procedure was abused by parties of both political extremes in order to oppose chancellors and undermine the democratic process. As a consequence, the Basic Law allows only for a "constructive vote of no-confidence." That is, the Bundestag can remove a chancellor only when it simultaneously agrees on a successor. This legislative mechanism ensures both an orderly transfer of power and an initial parliamentary majority in support of the new chancellor. The constructive no-confidence vote makes it harder to remove a chancellor because opponents of the chancellor not only must disagree with his or her governing but also must agree on a replacement.

The chancellor also may make use of a second type of no-confidence vote to garner legislative support in the Bundestag. The chancellor can append a simple no-confidence provision to any government legislative proposal. If the Bundestag rejects the proposal, the chancellor may request that the president dissolve parliament and call new elections. Although not commonly used, this procedure enables the chancellor to gauge support in the Bundestag for the government and to increase pressure on the Bundestag to vote in favor of legislation that the government

considers as critical. Furthermore, governments have employed this simple no-confidence motion as a means of bringing about early Bundestag elections.

Article 65 of the Basic Law sets forth three principles that define how the executive branch functions. First, the "chancellor principle" makes the chancellor responsible for all government policies. Any formal policy guidelines issued by the chancellor are legally binding directives that cabinet ministers must implement. Cabinet ministers are expected to introduce specific policies at the ministerial level that reflect the chancellor's broader guidelines. Second, the "principle of ministerial autonomy" entrusts each minister with the freedom to supervise departmental operations and prepare legislative proposals without cabinet interference so long as the minister's policies are consistent with the chancellor's larger guidelines. Third, the "cabinet principle" calls for disagreements between federal ministers over jurisdictional or budgetary matters to be settled by the cabinet.

The chancellor determines the composition of the cabinet. The federal president formally appoints and dismisses cabinet ministers, at the recommendation of the chancellor; no Bundestag approval is needed. According to the Basic Law, the chancellor may set the number of cabinet ministers and dictate their specific duties.

The staff of a cabinet minister is managed by at least two state secretaries, both of whom are career civil servants responsible for the ministry's administration, and a parliamentary state secretary, who is generally a member of the Bundestag and represents the ministry there and in other political forums. Typically, state secretaries remain in the ministry beyond the tenure of any one government, in contrast to the parliamentary state secretary, who is a political appointee and is viewed as a junior member of the government whose term ends with the minister's. Under these top officials, the ministries are organized functionally in accordance with each one's specific responsibilities. Career civil servants constitute virtually the entire staff of the ministries.

The Legislature

The heart of any parliamentary system of government is the legislature. Germany has a bicameral parliament. The two chambers are the Bundestag (Federal Diet or lower house) and the Bundesrat (Federal Council or upper house). Both chambers can initiate legislation, and most bills must be approved by both chambers, as well as the executive branch, before becoming law. Legislation on issues within the exclusive jurisdiction of the federal government, such as international treaties, does not require Bundesrat approval.

The federal government introduces most legislation; when it does so, the Bundesrat reviews the bill and then passes it on to the Bundestag. If a bill originates in the Bundesrat, it is submitted to the Bundestag through the executive branch. If the Bundestag introduces a bill, it is sent first to the Bundesrat and, if approved there, forwarded to the executive. The Joint Conference Committee resolves any differences over legislation between the two legislative chambers. Once the compromise bill that emerges from the conference committee has been approved by a majority in both chambers and by the cabinet, it is signed into law by the federal president and countersigned by the relevant cabinet minister.

Bundestag

The Bundestag is the principal legislative chamber. The Bundestag has grown gradually since its creation, most dramatically with unification and the addition of 144 new representatives from eastern Germany, for a total of 656

deputies in 1990. A further expansion in 1994 increased the number to 672. Elections are held every four years (or earlier if a government falls from power). Bundestag members are the only federal officials directly elected by the public. All candidates must be at least twenty-one years old; there are no term limits. The most important organizational structures within the Bundestag are parliamentary groups (Fraktionen ; sing., Fraktion), which are formed by each political party represented in the chamber. The size of a party's Fraktion determines the extent of its representation on legislative committees, the number of committee chairs it can hold, and its representation in executive bodies of the Bundestag. The head of the largest Fraktion is named president of the Bundestag. The Fraktionen , not the members, receive the bulk of government funding for legislative and administrative activities.

The leadership of each Fraktion consists of a parliamentary party leader, several deputy leaders, and an executive committee. The leadership's major responsibilities are to represent the Fraktion , enforce party discipline, and orchestrate the party's parliamentary activities. The members of each Fraktion are distributed among working groups focused on specific policy-related topics such as social policy, economics, and foreign policy. The Fraktion meets once a week to consider legislation before the Bundestag and formulate the party's position on it.

The Bundestag's executive bodies include the Council of Elders and the Presidium. The council consists of the Bundestag leadership, together with the most senior representatives of each Fraktion , with the number of these representatives tied to the strength of the party in the chamber. The council is the coordination hub, determining the daily legislative agenda and assigning committee chairpersons based on party representation. The council also serves as an important forum for interparty negotiations on specific legislation and procedural issues. The Presidium is responsible for the routine administration of the Bundestag, including its clerical and research activities. It consists of the chamber's president and vice presidents (one from each Fraktion).

Although most legislation is initiated by the executive branch, the Bundestag considers the legislative function its most important responsibility. The Bundestag concentrates much of its energy on assessing and amending the government's legislative program. The committees play a prominent role in this process. Plenary sessions provide a forum for members to engage in public debate on legislative issues before them, but they tend to be well attended only when significant legislation is being considered. The Bundestag allots each Fraktion a certain amount of time, based on its size, to express its views.

Bundesrat

The second legislative chamber, the Bundesrat, is the federal body in which the sixteen Land governments are directly represented. It exemplifies Germany's federalist system of government. Members of the Bundesrat are not popularly elected but are appointed by their respective Land governments. Members tend to be Land government ministers. The Bundesrat has sixty-nine members. The Länder with more than 7 million inhabitants have six seats (Baden-Württemberg, Bavaria, Lower Saxony, and North Rhine-Westphalia). The Länder with populations of between 2 million and 7 million have four seats (Berlin, Brandenburg, Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia). The least populous Länder , with fewer than 2 million inhabitants, receive three seats each (Bremen, Hamburg, and the Saarland). This system of representation, although designed to reflect Land populations accurately, in fact affords greater representation per inhabitant to the smaller Länder . The presidency of the Bundesrat rotates

annually among the Länder . By law, each Land delegation is required to vote as a bloc in accordance with the instructions of the Land government.

Because the Bundesrat is so much smaller than the Bundestag, it does not require the extensive organizational structure of the lower house. The Bundesrat typically schedules plenary sessions once a month for the purpose of voting on legislation prepared in committee. In comparison, the Bundestag conducts about fifty plenary sessions a year. Bundesrat representatives rarely attend committee sessions; instead, they delegate that responsibility to civil servants from their ministries, as allowed for in the Basic Law. The members tend to spend most of their time in their Land capitals, rather than in the federal capital.

The legislative authority of the Bundesrat is subordinate to that of the Bundestag, but the upper house nonetheless plays a vital legislative role. The federal government must present all legislative initiatives first to the Bundesrat; only thereafter can a proposal be passed to the Bundestag. Further, the Bundesrat must approve all legislation affecting policy areas for which the Basic Law grants the Länder concurrent powers and for which the Länder must administer federal regulations. The Bundesrat has increased its legislative responsibilities over time by successfully arguing for a broad, rather than a narrow, interpretation of what constitutes the range of legislation affecting Land interests. The Basic Law also provides the Bundesrat with an absolute veto of such legislation.

The political power of the absolute veto is particularly evident when the opposition party or parties in the Bundestag have a majority in the Bundesrat. When this is the case, the opposition can threaten the government's legislative program. Such a division of authority can complicate the process of governing when the major parties disagree, and, unlike the Bundestag, the Bundesrat cannot be dissolved under any circumstances.

The Judiciary

The judiciary's independence and extensive responsibilities reflect the importance of the rule of law in the German system of government. A core concept is that of the Rechtsstaat , a government based on law, in which citizens are guaranteed equality and in which government decisions can be amended. Federal law delineates the structure of the judiciary, but the administration of most courts is regulated by Land law. The Länder are responsible for the lower levels of the court system; the highest appellate courts alone operate at the federal level. This federal-Land division of labor allows the federation to ensure that laws are enforced equally throughout the country, whereas the central role of the Länder in administering the courts safeguards the independence of the judicial system from the federal government.

Principles of Roman law form the basis of the German judicial system and define a system of justice that differs fundamentally from the Anglo-Saxon system. In the United States, courts rely on precedents from prior cases; in Germany, courts look to a comprehensive system of legal codes. The codes delineate somewhat abstract legal principles, and judges must decide specific cases on the basis of those standards. Given the importance of complex legal codes, judges must be particularly well trained. Indeed, judges are not chosen from the field of practicing lawyers. Rather, they follow a distinct career path. At the end of their legal education at university, law students must pass a state examination before they can continue on to an apprenticeship that provides them with broad training in the legal profession over several years. They then must pass a second state examination that qualifies them to practice law. At that point, the individual can choose either to be a lawyer or to enter the judiciary. Judicial candidates must train for several more years before actually earning the title of judge.

The judicial system comprises three types of courts. Ordinary courts, dealing with criminal and most civil cases, are the most numerous by far. Specialized courts hear cases related to administrative, labor, social, fiscal, and patent law. Constitutional courts focus on judicial review and constitutional interpretation. The Federal Constitutional Court (Bundesverfassungsgericht) is the highest court and has played a vital role through its interpretative rulings on the Basic Law.

The ordinary courts are organized in four tiers, each of increasing importance. At the lowest level are several hundred local courts (Amtsgerichte ; sing., Amtsgericht), which hear cases involving minor criminal offenses or small civil suits (matters of a value of up to € 5.000,-). These courts also carry out routine legal functions, such as probate. Some local courts are staffed by two or more professional judges, but most have only one judge, who is assisted by lay judges in criminal cases. Above the local courts are more than 100 regional courts (Landgerichte ; sing., Landgericht), which are divided into two sections, one for major civil cases and the other for criminal cases. The two sections consist of panels of judges who specialize in particular types of cases. Regional courts function as courts of appeals for decisions from the local courts and hold original jurisdiction in most major civil and criminal matters. At the next level, Land appellate courts (Oberlandesgerichte ; sing., Oberlandesgericht) primarily review points of law raised in appeals from the lower courts. (For cases originating in local courts, this is the level of final appeal.) Appellate courts also hold original jurisdiction in cases of treason and anticonstitutional activity. Similar to the regional courts, appellate courts are divided into panels of judges, arranged according to legal specialization. Crowning the system of ordinary courts is the Federal Court of Justice (Bundesgerichtshof) in Karlsruhe. It represents the final court of appeals for all cases originating in the regional and appellate courts and holds no original jurisdiction.

Specialized courts deal with five distinct subject areas: administrative, labor, social, fiscal, and patent law. Like the ordinary courts, they are organized hierarchically with the Land court systems under a federal appeals court. Administrative courts consist of local administrative courts, higher administrative courts, and the Federal Administrative Court. In these courts, individuals can seek compensation from the government for any harm caused by incorrect administrative actions by officials. For instance, many lawsuits have been brought in administrative courts by citizens against the government concerning the location and safety standards of nuclear power plants. Labor courts also function on three levels and address disputes over collective bargaining agreements and working conditions. Social courts, organized at three levels, adjudicate cases relating to the system of social insurance, which includes unemployment compensation, workers' compensation, and social security payments. Finance, or fiscal, courts hear only tax-related cases and exist on two levels. Finally, a single Federal Patents Court in Munich adjudicates disputes relating to industrial property rights.

Except for Schleswig-Holstein, each Land has a state constitutional court. These courts are administratively independent and financially autonomous from any other government body. For instance, a Land constitutional court can write its own budget and hire or fire employees, powers that represent a degree of independence unique in the government structure.

Sixteen judges make up the Federal Constitutional Court, Germany's highest and most important judicial body. They are selected to serve twelve-year, nonrenewable terms and can only be removed from office for abuse of their position and then only by a motion of the court itself. The Bundestag and the Bundesrat each choose half of the court's members. Thus, partisan politics do play a role. However, compromise

is built into the system because any court decision requires a two-thirds majority among the participating judges. The court is divided into two senates, each consisting of a panel of eight judges with its own chief justice. The first senate hears cases concerning the basic rights guaranteed in Articles 1 through 19 of the Basic Law and concerning judicial review of legislation. The second senate is responsible for deciding constitutional disputes among government agencies and how the political process should be regulated.

The Federal Constitutional Court does not hear final appeals—that function belongs to the Federal Court of Justice. The Basic Law explicitly confines the jurisdiction of the Federal Constitutional Court to constitutional issues.

ITALY

THE ITALIAN LEGAL SYSTEM

1. The story of the Constitution

The first Italian Constitution was the "Statuto Albertino" (from 1861 to II World War). It established a constitutional liberal monarchy, with a Parliament divided in two chambers: The "Camera dei Deputati" (elective) and the "Senato" (nominated by the king).

After the II world war, all Italian citizens, with the referendum of 1946, chose the Republic and they elected an "Assemblea Costituente", to prepare a new Constitution. The new Constitution was approved on December 1947 and became effective from 1 January 1948.

This is a rigid Constitution: this means that it's almost impossible changing it.

2. The separation of powers

This principle was theorized for the first time from Montesquieu (in 1748) as a way to guarantee the liberty of single people. The separation of powers allows an equilibrium among:

- legislative power (that creates law)
- executive power (that does the activity of the government)
- jurisdictional power (that applies the law to single cases).

3. The Parliament

The Italian Constitution establishes a perfect bicameralism. The Parliament is composed of two organs with juridical equality:

1. the "Senato" of the Republic (315 members);
2. the "Camera dei Deputati" (630 members).

The election of their members is every 5 years. They have same powers. The typical function of the Parliament is the legislative one. This power is pursued from two chambers together.

In the Parliament activities there are formal and material legislative acts.

4. The Government

It is an organ:

- constitutional: it represents a power of the State;
- complex: there are more organs inside it;
- partisan: because it is the expression of a political majority.

Its functions are political, legislative, executive. It can also control the administrative organs.

4.a. Prime Minister

He's nominated by the President of the Republic. He directs other Ministers, establishes the program of the Government and fixes goals.

4.b. Ministers

They are nominated by President of the Republic with the proposal of the Prime Minister. They can be chosen even among citizens who aren't part of the Parliament. They are same importance into the Government, regardless the importance of their ministries.

5. The President of the Republic

He's "super partes", with impartial functions; he represents the State and guarantees the neutrality and the Constitutional system. The President must have:

- Italian citizenship
- civil and political rights

He cannot be younger than 50 years; moreover, he mustn't be a member of Savoia family.

He's elected from the Parliament (both chambers). The duration of his power is 7 years.

Articles 87 and 88 of the Constitution are the list of powers of the President:

- powers of control
- powers of guarantee

- powers of prerogatives
- powers of political intermediation
- powers of covering constitutional organs

6. The Constitutional Court

It has the function to rectify the action of the ordinary legislator, to verify the conformity to the Constitution. It has 15 judges:

- 3 nominated by the "Cassazione" (supreme civil and penal court)
- 1 by "Consiglio di Stato" (supreme administrative court)
- 1 by "Corte dei Conti"
- 5 nominated by Parliament
- 5 by President of the Republic.

They are in charge for 9 years.

7. The jurisdictional power

The Italian jurisdictional system is divided in:

- civil ambit: the first degree is the tribunal, the second is the Court of Appeal and then we have the "Cassazione". The last degree (the Cassazione) is only for law questions, not for the merit.

- penal ambit: it has three different degrees, as in civil ambit

- administrative ambit: there are TAR (regional courts) for the first degree of judgment and the "Consiglio di Stato" for the second.

THE NETHERLANDS

The judicial system in the Netherlands: a short description

Introduction

The Netherlands are a constitutional monarchy. In the constitution the division of power between the three 'powers' (legislative, executive and judicial) is formalized. Hereafter only the organization of the judicial system in the continental part of our Kingdom will be elaborated on.

The courts of Justice and the Judiciary system

Currently the court system in the Netherlands consists of three levels. the district courts (Rechtbanken), the courts of appeal (Gerechtshoven) and the Supreme Court of the Netherlands (Hoge Raad der Nederlanden) and a number of special tribunals.

The system was introduced in the Netherlands during the reign of Napoleon Bonaparte and therefore shows a lot of similarities with the French system.

The legal procedures in the Netherlands allow judgement to be passed in two, possibly three instances. In most procedures there are two lower instances and the possibility of appeal with the Supreme court. In certain procedures there is only one factual instance and the possibility of appeal with the Supreme Court.

Jurisdiction in the Netherlands comprises of civil and criminal proceedings on the one hand and administrative proceedings on the other hand.

Common jurisdiction

"Common jurisdiction", or non-administrative jurisdiction, covers the jurisdiction in the common courts: the Supreme Court of the Netherlands (Hoge Raad), the five courts of appeal (Gerechtshoven) and the 19 district courts. Common jurisdiction comprises both criminal and civil proceedings. In criminal proceedings individuals suspected of criminal offences are prosecuted by the Public Prosecutor and heard by the judge; criminal cases may also concern the enforcement of sentences pronounced by the judge and other decisions.

Jurisdiction in civil cases comprises the adjudication of disputes between citizens (natural persons or legal entities)

Civil cases also include the so-called extra-judicial matters, in which the judge (carries out deeds) which the law specifies as his or her duty. Examples of such deeds may be cases involving legal restraint, trusteeship to protect the interests of adults, and the emancipation, adoption, guardianship and supervision of minors. In civil cases the proceedings mainly consist of the exchange of written pleadings (conclusions) between parties. On the basis of these documents - and oral arguments and pleadings (if necessary) - the judge will render an award.

County Courts

Until recently there used to be four levels of courts. The County Courts have now been formally integrated with the District Courts. However, they still exist as a separate entity within the District Courts. They will hereinafter (still) be referred to as County Courts.

County Courts hear criminal cases involving minor offences except where the law demands hearing by a higher court (a common offence tried in the cantonal court is the traffic

offence which cannot be settled by legal administrative routine).

Civil cases here concern disputes over labour law matters, leasing of property, and all claims under civil law not exceeding the maximum amount of € 5.000,-. These courts are charged with the hearing of a number of extra-judicial matters.

County judges preside alone.

Parties can lodge claims and defend themselves without the assistance of an barrister (advocaat en procureur) in civil procedures only at this level. In the District Courts and at higher levels, one is obliged to seek the services of a barrister. Certain exceptions to this rule exist, but it can be upheld in 90% of all cases.

In criminal procedures no compulsory assistance of a barrister is prescribed.

District Courts

The district courts - in first instance - hear serious criminal offences, all economic offences and minor offences not within the competence of the County Courts. In addition, they deal with appeals against decisions of the County Courts and civil cases outside the competence of the County Courts.

Each court consists of one president, a number of vice-presidents and various judges; every district covers a number of counties (between 2 and 5).

In general, the administration of justice takes place in full court, comprising, as a rule, one (vice)president and two judges. A lot of cases are however referred to a single judge on this level.

A special, fast procedure for cases of an urgent nature are the preliminary relief proceedings, heard by the (vice) President of the court. Depending on the urgency of the case and the formalities to be executed, an award can be obtained in within a few months up till one day. Naturally, these awards can not constitute of constitutive judgements, but can only bring about certain preliminary measures, such as injunctions and court orders.

The District Courts can also be accessed in order to get permission for seizures. A unique legal possibility in the Netherlands in Civil procedures is the possibility to apply for a court order to take the seized assets in protective custody. One can obtain permission for seizure and custody within a single day and have assets taken into custody by a bailiff the same day.

Court of Appeal

The courts of appeal are composed of one president, a number of vice-presidents and various judges. Each jurisdiction covers a number of districts.

The courts of appeal hear criminal, civil and extra-judicial cases.

In addition, the courts of appeal have been charged with the administrative legal hearing of fiscal cases. For this purpose one or more full courts and single chambers have been installed in each court of appeal. The courts in Amsterdam. The Hague and Arnhem have additional "chambers" for appeals in particular cases and specialist disputes. Amsterdam for certain corporate proceedings and customs cases, The Hague for certain intellectual property cases and Arnhem for certain cases regarding military and rural law. Those chambers are presided over by three members of the particular court supplemented by two experts in the field in question not belonging to the judiciary.

The Supreme Court

The Supreme Court of the Netherlands is the highest judicial authority in the Netherlands. It also consists of one president, a number of vice-presidents and additional justices. Hearing always takes place in full court, with 5 to 7 judges, depending on the nature of the case.

This court serves primarily to protect and enhance the proper application of all written law. It can only be addressed on grounds of improper application of the law or lacking motivation of the award.

The Public Prosecutor's Office (Openbaar Ministerie)

Contrary to the judges (who are an independent power), the public prosecutor is an official under the Dutch Ministry of Justice, who is charged with the enforcement of laws, the investigation and prosecution of criminal offences and the execution of rulings in criminal cases (the prosecutor may be involved in civil cases, but this is extremely rare).

To make it possible to carry out the duties described, each district court has an office of the public prosecutor. This consists of one senior prosecutor, district prosecutors "first class" and other prosecutors (including deputy and substituting prosecutors and so called traffic offences prosecutors). In view of the close contacts with the police and the organization of the police department, one acting senior prosecutor is appointed in judicial districts covering two police districts.

The prosecuting officer has the authority to dismiss a case. In a number of cases a settlement may be offered, payment of which will avert criminal prosecution.

However, if the decision is taken to prosecute, a summons is issued at the court authorized for the hearing.

Although his or her main task is the prosecution of individuals, the public prosecutor is involved in all activities and procedures from the investigation stage to the pronouncement of the judgement. For instance, he or she may order a suspect held by the police or kept under custody to be brought before him or her, or that goods under seizure be deposited at the clerk's office. Thus there is regular contact between senior prosecutor, heads of police and the local mayor(s) in so-called tripartite consultation.

Each court of appeal has a regional office of the public prosecutor – headed by the Prosecutor-General (P.G.), assisted by a number of Attorney-Generals. The P.G. initiates cases in appeal from public prosecutors against judgements of lower courts by summoning the suspect(s). In addition, the P.G., who is also acting Director of Police is responsible for (the supervision of the investigation and prosecution policy in his or her jurisdiction.

The prosecutor's office at the Supreme Court is organized in a similar way. However, the P.G. at the head of this office has also duties to perform in civil and fiscal cases. In addition he may also act "independently" in bringing questions of law to the notice of the Supreme Court.

Administrative jurisdiction

Administrative jurisdiction concerns the hearing of appeals brought by citizens against decisions of public authorities or institutions charged with the execution of regulations.

Administrative jurisdiction encompasses fiscal, social insurance and socio-economical jurisdiction, civil servants' arbitration, claims against government decrees etc.

Whereas the organization of the common jurisdiction (civil and criminal procedures) is to a large extent homogenous in the Netherlands, the organization of the administrative law

system is (still) complicated, even after various reorganizations.

In general one can say that the first level of procedures is handled by the government institutions that have made the decision themselves. The appeals are handled by another department of the same institution. If the first level appeal has been rejected one can – normally – appeal from this decision with the District Courts. After that there are several highest level tribunals, who act as supreme courts for certain administrative matters.

Citizens can lodge appeals themselves, without the compulsory assistance of an attorney.

Other 'players'The Bar (Balie)

In the Netherlands there are currently approx. 12.000 barristers (advocaten). The title is protected; one has to be registered with local district court and one has to be a member of the Dutch Bar Association (Nederlandse Orde van Advocaten, NOvA).

The NOvA is a semi-government institution; it is by law appointed to organize the Bar and to make rules to safeguard the proper function of its members. Extensive use is made of its authority. The NOvA has o.a. issued rulings regarding permanent education, bookkeeping, prevention of money laundering, tiers accounts, etc.

It has already been mentioned that for a lot of cases, the assistance of a barrister is mandatory.

Public notary's

Another group of legal practitioners with an explicit function laid down in several laws, are the public notaries (notarissen). They are organized in the Koninklijke Notariële Broederschap; an organization similar to the NOvA.

Public notary's have an important role in the Dutch legal system. Certain assets – for example: houses and certain shares – can only be validly transferred by a deed drafted and executed by a public notary. They make wills, matrimonial deeds and other official documents.

Bailiffs

The last important 'player' to be discussed here is the bailiff ("gerechtsdeurwaarder"). The most important tasks of a bailiff are:

- Serving summons and writs to (legal or natural) persons in order to introduce certain legal proceedings. For a number of cases (notably the civil law cases being brought to the attention of the District Courts and higher instances) are to be introduced by a writ being served by a bailiff. A lot of other procedures can be introduced in more informal ways (i.e. county court cases, administrative procedures and cases to be introduced by means of a request instead of a writ).
- Execution and enforcement of awards and other court decisions. Bailiffs are the only legally competent people to execute the seizure of assets, to remove tenants from their houses after the lease agreement has been rescinded, etc.

NORWAY

NORWEGIAN INSTITUTIONS

The following is taken from the website www.stortinget.no

THE CONSTITUTION OF 17 MAY 1814

The main principles of the Constitution were founded, for the most part, on the same ideals expressed in the constitutions of the United States of America (1776) and of the French Republic (1791, 1793, 1795):

- ▄ Sovereignty of the people
- ▄ Separation of powers

Human rights (inspired by the Declaration of the Rights of Man and of the Citizen, from the French Revolution in 1789)

The Principle of the Sovereignty of the People: The people of a nation are entitled to govern themselves. The will of the people should determine the actions of the governing power, and the governing power governs on behalf of the people. The people elect representatives to a national assembly which is entrusted, among other things, with enacting the laws held to be in force in that society.

The Principle of Separation of Powers: The power of the State is divided between several branches of government which are independent of each other and act as checks and balances on each other. The aim of this principle is to prevent the concentration and abuse of power. In 1814, legislative, executive and judicial powers were divided between the Storting, the King and the courts.

The Principle of Human Rights: It is essential to safeguard the fundamental and inalienable rights of the people. The Constitution establishes the rights of freedom of speech, freedom of worship, freedom of assembly and the rule of law, but the implementation of these civil rights came about only gradually. For instance, prohibitions against lay preachers and religious minorities existed for many years.

THE STORTING

The following is taken from the website www.stortinget.no

THE MOST IMPORTANT POWERS OF THE STORTING

To pass new laws and amend or repeal the existing ones

To adopt the Fiscal Budget, i.e. to fix the annual revenues (taxes, charges, etc.) and expenditures of the State

To authorize plans and guidelines for the activities of the State through discussions of political issues of more general character (such as foreign policy), to take a stand on plans for reform, to approve major projects and so forth

The Legislative Procedure

In the process of passing legislation, the Storting is divided into two chambers, the Odelsting and the Lagting. When a Storting first convenes following an election, it elects one quarter of the representatives (41) to serve as members of the Lagting. The remaining three quarters (124) become members of the Odelsting.

A bill is introduced by the Government (see [Links](#)) in the form of a proposition to the Odelsting. This proposition is the product of an exhaustive preparatory procedure. When a major item of legislation or an extensive revision of existing

law is on the agenda, the Government generally appoints an expert committee or commission to study the matter and submit a report to the ministry in charge of the bill. The ministry makes a draft bill and consults the organizations, other government bodies and institutions. This is referred to as hearings. When statements from the official consultations have been collected, the ministry prepares a proposition to the Odelsting. The proposition is first submitted to the King in Council and after approval there the royal proposition is submitted to the Odelsting, which normally refers to the appropriate committee. (See [Standing Committees](#))

The committee considers the bill and returns it to the Odelsting in the form of a recommendation. The recommendation is discussed (debated) in the Odelsting. If the Odelsting accepts or amends the recommendation, it goes to the Lagting in the form of an Odelsting resolution. The Odelsting resolution is deliberated in the Lagting and if approved there, it is sent to the King in Council. When the King has sanctioned or signed the bill, it becomes valid law. The role performed by the King has become symbolic.

This is the normal legislative procedure. However, if the Lagting does not approve an Odelsting recommendation, it returns to the Odelsting with comments. If an Odelsting accepts the comments, the bill is passed. It then goes back to the Lagting where it is merely reported and sent directly to the King for his approval. If the Odelsting rejects or modifies the amendments the measure must go back to the Lagting for consideration.

If the Lagting still does not approve, the measure is sent back to the Odelsting, which submits it to the plenary Storting. To pass the plenary session a two-thirds majority is required. There shall be an interval of at least three days between such deliberations in the Odelsting and the Lagting.

In reality, most matters business are decided when the committee had made its recommendation even though the final vote still remains. Proportional party representation is approximately the same in both the Odelsting and the Lagting so votes in the Lagting seldom go against Odelsting resolutions. The primary function of the Lagting is to act as a check. Sometimes the Lagting votes to reject or drop a bill and bills which finally pass both the Odelsting and the Lagting may differ substantially from the original proposition submitted by the Government.

MAJOR PRINCIPLES OF THE NORWEGIAN JUDICIAL SYSTEM

The Norwegian judicial system is based on written laws passed by the Storting. In addition to these laws, the system is based on regulations, practice and EU-regulations.

Courts of Norway

The following is taken from the website www.domstol.no:

The function of the Courts of Justice is to settle civil disputes brought to court and to be responsible for a society's right to respond to and punish whoever breaks Norwegian Law.

The main courts of justice in Norway are: The Supreme Court, The Interlocutory Appeals Committee of the Supreme Court, The Jury Courts, and the District Courts. All of the latter can rule on both civil and criminal cases. In addition there are certain courts of law restricted to limited areas of competence. Examples of so called special courts are: Severance Courts (Land Disputes) and the Industrial Tribunal in Oslo.

The Courts of Justice have a vital role in maintaining law and order in a state based on democratic principles. The

principle of the sovereignty of the people: the idea that the power resides with the people, is the basis of our constitution, with the National Assembly (the Storting) as the state's highest elected body.

The Independence of the Courts of Justice

The independence of the Courts of Justice protects all citizens against arbitrary decisions and abuses committed by other branches of state power. This independence is a consequence of Norway being a constitutional democracy. The Constitution sets clear limits on the power of the Stortinget and on the government even when decisions are carried by a majority vote.

The Courts of Justice exert a control function regarding new laws and changes to existing laws that are proposed by the National Assembly. If a law is against the Constitution by, for example, violating the constitutional rights of one or more citizens, a court may set aside the law in any trial where such rights are deemed to have been violated. In a case brought before the Supreme Court where two or more judges deem that a specific law breaks the constitution the case is settled in a plenary meeting of the Supreme Court. This may result in the Supreme Court setting aside the law in question in the settlement of the case. This implies that the Supreme Court through its rulings can control or limit the legislative power of the National Assembly. This control or limitation by the Supreme Court has only occurred on very rare occasions.

In concrete cases the Courts of Justice also have the authority to check on decisions made by the government or other subordinate administrative bodies. In such cases the Courts of Justice will decide whether the administration has remained within the framework of the law, whether the resolution is based on accepted facts and correct procedure, and that the administration's judgement is not improper or seriously unreasonable. If such errors have occurred, an administrative pronouncement can be ruled invalid by the Courts of Justice. However, it should be noted that such a ruling can only occur in response to an actual dispute brought before a court.

How is independence guaranteed?
According to our Constitution judges' decisions in each and every case are to be independent of external influence. Judges' verdicts cannot be instructed or influenced. The decisions of the Supreme Court cannot be rejected or altered by other authorities.

The influence of international courts of justice has grown, especially regarding the international conventions on human rights. Amongst others, the Court of Human Rights in Strasbourg plays an important role in the development of law and jurisdiction. When, in future, the Court of Human Rights should interpret the convention differently from the Supreme Court the Norwegian Supreme Court must act in accordance with the guidelines and rulings made in Strasbourg.

A verdict can only be altered by a superior court of justice after an appeal procedure. In criminal cases the usual deadline for appeal is 14 days after the verdict is handed down. In civil cases the deadline is one month. A superior court on its own initiative cannot instruct a subordinate court on its proceedings in any one specific case. However, if one party decides to pursue the case, the court of justice processing the appeal may rule that the subordinate court must process the case again. The subordinate court must then abide by the interpretation of the law which constitutes the basis for the superior court's ruling.

The National Assembly (Stortinget) passes laws which the Courts of Justice apply in all cases heard in court. But the Courts of Justice, headed by the Supreme Court, have a great influence on how the letter of each law is interpreted and applied in each individual case. Furthermore, there exists large areas of the law where court rulings and interpretations have developed or evolved contemporary law and jurisdiction.

The Courts of Justice and all judges must be protected from external influence over rulings and verdicts. For a state to be democratic and legal the judges must be both independent and impartial with regards disputing parties and all interests represented by such parties. The parties in a case may request a judge to step down if the judge in question has any connection with the case or the individual parties which might raise doubts over the impartiality or independence of the process. Judges have a personal responsibility to ensure that they do not give grounds for disqualification in any individual case.

Although the independence of the courts is guaranteed by the Constitution, all courts are not insulated from democratic developments in society. The National Assembly passes regulations relating to the organisation of the courts, for example: how many courts shall be provided throughout the nation, where they shall be situated, the number of presiding judges for each court and the procedure for appointing judges. All of the latter are practical matters reflecting the ever-changing developments in society.

Cannot be dismissed

Judges appointed according to the constitutional regulations have, like other civil servants, an especially protected employment status according to §22 of the Constitution. They hold permanent positions and cannot be dismissed or moved against their will. They can only be dismissed following a court hearing and a verdict of guilty. Permanently appointed judges can be suspended, but such a decision can only be carried out by the King in cabinet. Like other civil servants permanent judges can be punished for breaking the law while carrying out their duties or for offences committed outside their workplace. However, the decision about whether to prosecute for offences relating to a judge's duties may only be taken by the King in cabinet. Permanently appointed judges cannot be indicted for public order offences according to the regulations for all civil servants. Supreme Court judges enjoy even stronger protection and can only be removed through an impeachment process ("Riksretten" is a court ruling in cases against members of the government, Stortinget or the Supreme Court where punishable acts have occurred). There are also other special regulations that apply for Supreme Court judges.

Judges are guaranteed protection of office to enable them to make rulings and give verdicts that may be unpopular, judges have to be free of the fear of dismissal because their decisions are not supported by the authorities or by other judges. Thus all parties appearing in court are ensured an independent and impartial ruling from the Courts of Justice.

Must have the people's confidence

The decisions of judges often have great significance for many individual citizens. It is a vital requirement in a state governed by law that all the citizens of that state respect a court's ruling as well as the laws on which such rulings are based. To ensure this, the courts need the trust of the people. The credibility of the courts must not be weakened by the perception that courts can be influenced by any external pressure.

In order for the courts to be able perform in a free and independent manner it is necessary that they have sufficient professional and economic resources to be able to fulfil their tasks.

Both the costs and the duration of court proceedings can have a negative effect on whether an ordinary citizen will take their case to court. An efficient rather than a long drawn out processing of cases is itself a guarantee of legal protection. "Justice delayed is justice denied". The issue of reducing the duration of case processing has received a great deal of attention in recent years in Norway.

The role of the Courts of Justice in the settlement of disputes

The courts are society's most important instrument in the settlement of disputes. In a civil case the parties in dispute should be able to accept that a final legally binding solution has been attained when a verdict or ruling is handed down by the court.

In criminal cases, society at large, as well as the offended party and the accused should feel assured that while society's demand for sanctions are met, all parties receive full legal protection. Ideally, any punishment inflicted should be perceived as just by the offender as well as by the population at large. Therefore a court must take into account when apportioning punishment ethical concepts of right and wrong as well as the more basic requirement of deterrence in sentencing.

In civil cases compromise is often the aim, especially in conciliation boards (Forlikrådene) The initiative to compromise can also be seen in specific cases heard by judges and in reconciliation procedures started in a number of courts.

Conciliation Procedures

In recent times the use of conciliation proceedings has been demonstrated to be a most effective method for the settlement of civil cases in court. A limited number of courts have since 1997 participated in a pilot project on conciliation proceedings. The proceedings are an alternative method to the settlement of disputes. It involves the active participation of the disputing parties. The mediator is usually a judge.

Conciliation proceedings imply that the judge helps the parties to reach a solution to the dispute acceptable to both sides. The case is therefore not resolved via reaching a verdict. Conciliation in court is especially useful where the parties in dispute will remain in contact after the hearing. Examples of the latter would be business partnerships, divorced parents, work disputes and tenancy/landlord conflicts. The parties meet in court with their respective lawyers just as in common civil court hearings, but during the conciliation process the lawyers assume a more passive role. The lawyers are present above all as legal advisers. Judges also have a very different role from a normal court hearing. As mediators, judges do not have the authority to decide the case and for this reason the hearing in of evidence is largely excluded. The judge is already familiar with the relevant documents for the specific case. The judge is therefore able to look forwards in order to find solutions. In the event of an unsuccessful attempt at reconciliation the case is passed to another judge. The mediators are obliged to keep the details of the failed conciliation process confidential so that the second judge does not learn details of the previous conciliation proceedings. It is up to the plaintiff to request a summons at a District Court and then the plaintiff and the defendant shall simultaneously receive notice of the offer of mediation in court.

Overview of Legal Instances

The structure of the Courts of Justice in Norway is pyramidic and hierarchic with the Supreme Court at the apex. The conciliation boards only hear certain types of civil cases. The District Courts are deemed to be the first instance of the Courts of Justice. Jury (High) Courts are the second instance and the Supreme Courts are the third instance.

Supreme Court

The Supreme Court is the nation's highest court of justice and the instance of appeal for verdicts handed down by courts of a lower level. There is only the one Supreme Court which is situated in Oslo. The decisions made here are final and cannot be appealed or complained against. The one special exception is for cases that can be brought before the Court for Human Rights in Strasbourg. Three of the Supreme Court judges form the Interlocutory Appeals Committee. This is viewed as a court of justice has to agree that a case is to be brought before the Supreme Court. The Committee can make final decisions in a number of cases. Supreme Court judges serve in succession on this committee.

Courts of Appeal (Jury Courts)

There are six Courts of Appeal:

- The Borgarting Court of Appeal in Oslo
- The Eidsivating Court of Appeal in Hamar
- The Agder Court of Appeal in Skien
- The Gulating Court of Appeal in Bergen
- The Frostating Court of Appeal in Trondheim
- The Hålogaland Court of Appeal in Tromsø.

Therefore the country is divided into six appellate districts. Each Court of Appeal is headed by a senior judge president and each Court of Appeal has several appellate judges.

District Courts

The District Courts are the first instance of the Courts of Justice. Each District Court covers an area called a "domssokn". There are 89 District courts distributed over the 85 rural and urban districts. In certain court districts the duties are divided between several courts.

Conciliation Boards

A Conciliation Board is allocated to each commune. With the approval of the Regional Commissioner a town or local council may subdivide a commune into sub-regions with a Conciliation Board in each sub-region. Each Conciliation Board consists of three laymen (common citizens) and an equal number of deputies elected or appointed by the commune council for terms of four years.

Conciliation Boards are to mediate between disputing parties and are widely authorised to pronounce a verdict. Between 100,000 and 120,000 cases are processed each year by Conciliation Boards. The majority of civil disputes are resolved by the Conciliation Boards. Conciliation Boards do not hear criminal cases.

Special Courts of Justice

There are special courts that hear or process issues not covered by the District Courts. Two of the most important special courts are The Industrial Disputes Tribunal and The Land Consolidation Courts. Special Courts typically rely on a high proportion of lay judges.

The Industrial Disputes Tribunal deals with cases pertaining to labour legislation, for example wage disputes.

The Tribunal was established by the law relating to labour disputes. The Tribunal deals with disputes for the whole nation. The Tribunal is headed by a lawyer.

The Land Consolidation Courts. Their main task is to find acceptable solutions for ownership disputes and issues concerning correct land usage. The Land Consolidation Courts and the Land Consolidation High Courts cover the whole nation but each single court is allocated authority over a limited area. The Land Consolidation Courts are administered centrally by The Department of Agriculture. Judges for The Land Consolidation Courts are drawn from Norway's Agricultural College.

PORTUGAL

MAJOR PRINCIPLES OF THE PORTUGUESE JUDICIAL SYSTEM

Written law :

The Portuguese judicial system is based on a written law. The deputies pass the majority of laws in Parliament. But the Government has also got power to legislate in matters not reserved to the Parliament, or under authorization of the parliament.

The only law we apply is written law. It can be in Codes, or not, but there is no law that is not positive.

The Constitution of the Portuguese Republic, the Civil Code, the Penal Code, the Administrative Code, the Procedures Code, and others, are the essential tools of those involved in the judicial system.

Respect of individual rights:

The judicial system is a public service, and it is a right of the Portuguese citizens. Guardian of individual freedoms and the rule of law, it ensures that the Law is applied and guarantees that the rights of each individual are respected. In order to ensure that it has the impartiality required to perform its role, the Constitution asserts its independence from the executive power (Government) and legislative power (Parliament). We call the Judicial system the 3is: independent, impartial and irresponsible.

Right to contest a legal decision :

When the first court (1ª Instancia) has made a decision. Those concerned can express their disagreement and ask for a re-examination of their case by lodging an "appeal". There is an appreciation only of the legal issues of the case. The facts cannot be judged again on the Appeal Court. The Appeal Court only judges legal issues. If the AC has any doubts concerning the facts it sends back to the first court and either the FC repeats the entire trial, or only judges what has been determined by the Appeal Court. There is a second degree of appeal to the Supreme Court of Justice for civil and criminal cases, when the matters have a value over a certain amount/ for a certain type of crimes. For administrative matters the appeal is for the Administrative Supreme Court. The SCJ only judges legal issues: application of the law or disrespect of the law.

Monitoring application of the law :

A decision has been given "in the last instance" by the Supreme Court of Justice, there is one final appeal, which is not ordinary, but extra-ordinary: an appeal on a point of law. This takes place before the Constitutional Court and the question can only be arose when there have been two

decisions from the SCJ/ASC contradictory or a decision in violation to the constitutional rights.

Helping provide access to the Law :

To enable people with no income or on low incomes to bring proceedings or defend themselves in court, the law has created a financial support: legal aid. It enables the legal costs to be paid, the court fees and the fees of representatives of the law. When a decision is made by the legal aid bureau, the legal costs may be paid in full or partially by the State, depending on the income of the person concerned. The upper limit of resources for obtaining legal aid is reassessed each year.

Distinction between civil courts, criminal courts and administrative courts :

The Portuguese legal system is organized on the basis of a fundamental distinction between :

- civil courts, with jurisdiction in disputes between private individuals or bodies.
- criminal courts with jurisdiction for crimes.
- Administrative courts, with jurisdiction in all cases involving some form of dispute where one part is a public body.

Civil and criminal courts :

Court	Cases judged	Appeal possible ?
Tribunal de 1ª instancia.	Civil cases which are not judged by specialised courts	Yes
Tribunal de Comarca : Juízos Cíveis	Matters involving all civil case up to 14963,94 Some specific matters.	Before the Appeal Court (Tribunal da Relação) for cases involving amounts greater than 14963,94 Or some acts of the judges, which admit appeal to s higher court.
Vara de competencia Cível	Matters involving all civil case from 14963,94 on.	
Tribunal de Trabalho	Cases originating from employment contracts	
Tribunal de familia	Cases originating from family matters.	
Tribunal de comarca: Juízos Criminais	Crimes those by law are suitable to be judged by a single judge.	Yes, before Appeal Court Tribunal da Relação)
Vara de competencia Criminal	Crimes those by law are not suitable to be judged by a single judge, and must be judged by collective judge or juri.	Yes, before Appeal Court Tribunal da Relação)
Tribunal da Relação (5)	Re-examination of a case previously judged: legal issues	Yes, before the Supreme Court of Justice, depending on the value o the cause, and the decision that is being appealed.
Supremo Tribunal de Justiça (1)	Re-examination of a case previously judged : the STJ only verifies that the law was correctly applied.	No

In Portugal there is no distinction between lawyers to perform before the courts. Every citizen has the right to be represented by a lawyer before court.

A lawyer can represent a citizen in every jurisdictional circle and before every court.

The summons should contain notably the name of the Tribunal, the parts, the demand, the statement of the reasons that justify the demand, the facts and the right applied to the facts submitted, the list of the documents on which the demand is grounded, the value of the demand,

the identification of the lawyer, the amount paid to access the court. The summons should be handed to your opponent and to the Clerk's Office (« secretaria ») of the Tribunal.

The arguments are exposed in written in articulate text, which are handed to the Tribunal and then to the opponent. Any document in support of the arguments should be communicated to the Tribunal then to the opponent during the audience.

The case is judged in an audience when the brief is complete and when the opponents communicated themselves their arguments and their proofs. Generally, the Tribunal does not take its decision the same day of the audience but at a later date after a period of deliberation.

The judgment can be disputed for the period of 30 after its notification by means of an appeal formed before the Tribunal da Relação through a lawyer

If no appeal was formed, the judgment can be executed through a lawyer.

Administrative courts :

Court	Cases judged	Appeal possible ?
Tribunal Administrativo	Disputes involving public authorities (administrative bodies, territorial authorities...)	Yes, before the TCA or STA directly depending on the issue.
Tribunal Central Administrativo (1)	Re-examination of case previously judged by a Tribunal Administrativo. Also 1 st instance court for some matters: depends on the issue or the person it involves.	Yes, before STA
Supremo tribunal Administrativo (1)	Re-examination of case previously judged by a Tribunal Administrativo or by Tribunal central Administrativo.	No

In Portugal there is no distinction between lawyers to perform before the courts.

Every citizen has the right to be represented by a lawyer before court.

A lawyer can represent a citizen in every jurisdictional circle and before every court.

To bring a matter before the « Tribunal Administrativo », it is necessary to send a written request to court.

The request should contain notably the demand and the statement of the reasons which justify the demand. It is necessary to join to the request a copy of the administrative decision which is controversial and the documents on which the demand is grounded. The request and the joined documents should be sent to the Tribunal in three copies at least.

The intervention of a lawyer is compulsory.

The arguments are exposed in written reports in articulate text, which are handed in several copies to the Tribunal. Then, the Tribunal sends to every concerned person a copy of the report.

The case is judged in an audience when the brief is complete. The Tribunal does not take its decision the same day of the audience but at a later date after a period of deliberation.

The judgment can be disputed for the period of 30 days after its notification by a registered letter with

acknowledgement of receipt, by means of an appeal formed before the supreme tribunal administrativo

PORTUGUESE INSTITUTIONS

Constitution of the Republic :

The Constitution of 1976 provides the institutional basis for the Portuguese Republic. It has been amended 4 times to adapt to a less revolutionary spirit and democratise the institutions. There is an ordinary procedure of amendments and an extra ordinary one.

President of the Republic :

The Head of State is elected for a five-year term by direct universal suffrage. The President of the Republic appoints the Prime Minister and, on the latter's recommendation, appoints the other members of the Government. He presides over the Council of State, promulgates Acts of Parliament and is Commander-in-Chief of the Armed Forces. He may dissolve the National Assembly and in an emergency exercise special powers.

Prime Minister and government :

Under the direction of the Prime Minister, the government sets national policy and carries it out. It is answerable to Parliament. The Prime Minister directs the operation of the government and ensures the implementation of legislation.

Parliament :

Parliament is formed of one assembly:
- whose members (deputies) are elected by direct universal suffrage for a five-year term.

Judicial system :

The legal system is organized on the basis of a fundamental distinction between :

- civil courts, with jurisdiction in disputes between private individuals or bodies.

- criminal courts, with jurisdiction in crimes

- and administrative courts, with jurisdiction in all cases involving some form of dispute between with a public body.

The highest judicial body is the Supremo tribunal de Justiça which decides appeals on points of law and procedure and can set aside or quash judgements and remit cases for rehearing to a courts of appeal for retrial. The Supremo tribunal administrativo is the supreme administrative court and court of final appeal on the legality of administrative acts.

The Tribunal Constitucional is an extra ordinary court for contradiction decisions, disrespect of constitutional principles and fiscalisation of new laws. It advises the government on draft legislation under the request of the president.

SPAIN

8 SPANISH INSTITUTIONS

1.) **Introduction**

The Kingdom of Spain is the biggest country on the Iberian Peninsula shared with Portugal and the British dependent territory Gibraltar. Its territory also includes the Balearic Islands, Canary Islands and the cities of Ceuta and Melilla (North Africa). Since 1986, Spain has been a member of the European Union.

2.) **Political System**

The basic and rules of Spain's political and legal framework are contained in the Constitution of 1978 which is the supreme rule of the Spanish legal system.

Spain is defined by Constitution as a social and democratic State of law whose sovereignty belongs to the Spanish people.

The politic form of the Spanish State is the Parliamentary Monarchy. The King is the Head of State but with no real decision-making capacity.

Spain is defined by the Constitution as a single State. Despite the unified nature of the nation, several regions called Autonomous Communities have their own autonomous political organs and they make their own decisions regarding their education system, health and infrastructure.

The country is divided in 17 Autonomous Communities, each with its own Parliament and Government.

In this way, Spain has three different levels of government

- Central Government
- Autonomous Communities Government
- Municipal Government

a) Central Government

The central Government's political power is divided among the Parliament, the Government and the Juridical System.

- **The Parliament:**

Spanish Parliament is the institution that represents the Spanish people. The Parliament elects the President of the Government who appoints the Ministers.

Its mainly functions can be described as:

- Legislative: producing the main rules of the system
- Budgetary: authorizing the expenses of the State
- Control of the Government
- Authorize the international obligations of the State
- Proposes candidates for other constitutional organs

The Parliament is divided into two assemblies: the Congress of Deputies (*Congreso de los Diputados*), which is the chamber of popular representation, and the Senate (*Senado*), which is the chamber of territorial representation.

- **Government:**
The government runs the domestic and foreign policies, the public administration and commissariat and the defence of the national territory. Exercise executive functions and power of making regulations.

The Government is composed by the President, Vice-Presidents (one or various), the Ministers and other members the law may establish.

- **Judicial Power:**
Justice is administered only by judges and magistrates and the exercise of judicial authority in any kind of action is vested exclusively in the courts and tribunals laid down by the law.

The judicial power is extended to all people, all matters and entire territory, including the Public Administration with the exception of the King.

Judges are independent and not subjected to any orders or instructions by any other power of the State.

The Judicial System is controlled by the General Council of the Judiciary.

Despite Spain is divided into Autonomous Communities the Judicial Power is unitary.

The legal system is organized according to the subject of the matter in four jurisdictions:

- Civil Courts; with jurisdiction in civil and commercial matters
- Criminal Courts; with jurisdiction in criminal matters
- Labour Courts; with jurisdiction in social security and labour law
- Administrative Courts; with jurisdiction in claims based on acts performed by public administration

b) Autonomous Communities Government

Regarding the recognition of autonomy at Spanish Constitution, Autonomous Communities can organize their own institutions, their territory and their financial activity. Autonomous Communities issue their own legal provisions which are only applicable in their territory. The Autonomous Communities can only regulate determinate matters. Its main rule is the Statute of Autonomy (*Estatuto de Autonomia*) which regulates the name of the Autonomous Community, its territorial boundaries, name and the organization and seat of its institutions powers assumed.

SPANISH JUDICIAL SYSTEM

The Spanish judicial system was conceived according to the Spanish constitution as an independent power of the State, controlled by the General Council of Judicial Power.

The Spanish courts are organized according to the subject of the matter they deal with. Regarding this issue, there are four different court's categories: Civil Courts, Criminal Courts, Administrative Courts and Labour Courts.

Spanish territory is divided for jurisdictional purposes in Municipalities (*municipios*), Judicial Districts (*partidos judiciales*), Provinces (*provincias*) and Autonomous Communities (*Comunidades Autonomas*).

Each territorial unit has a specific type of court:

- 1.) Municipalities in which there is no First Instance and Examining Court have **Courts of Peace**. They have limited jurisdiction within civil and criminal matter.

2.) District Courts:

The courts of first instance deals with civil and commercial, administrative and labour matters.

They are presided by an individual judge. For civil, commercial and administrative matters the proceedings are mainly in writing, while labour proceedings are mostly oral.

Civil courts of first instance have very broad jurisdiction, dealing with civil and commercial matters, family law issues, disputes between neighbours, wills and probate.

Regarding criminal cases, they are investigated by an individual judge who is assisted by State Attorneys. Afterwards the case is heard by a court presiding by three judges, depending upon the seriousness of the offence.

3.) Courts of Appeal

Above the first-instance courts there are three different Courts of Appeal which are distributed on a regional basis:

- a. Provincial Courts: are located in each of the seventeen provinces.
- b. The Supreme Court of the Autonomous Region which is establishes in each of the regions.
- c. The National Court, which is located in Madrid and have special jurisdiction in whole the territory over certain criminal, labour and administrative matters involving several District Courts.

The Courts of Appeal are organized into different Chambers presided by three judges which have competence over one jurisdiction. Provincial Courts have Civil Law chambers and Criminal Law Chambers.

Civil and commercial claims are generally heard by a first instance court and its decision is subject to appeal before the Provincial Court. After this, whether the appellant is not agree with the decision it can be challenged before the Supreme Court, but only according to determinate the correctness of the lower court's application of the law.

4.) The Supreme Court

The Supreme Court is located in Madrid and has jurisdiction in the whole territory and over all judicial matters in Spain, except cases which deals with constitutional matters.

The Supreme Court is the highest judicial body and can review judgment issued by lower courts.

The supreme court is divided into five Chambers: the civil and commercial Chamber, criminal Chamber, labour Chamber, administrative Chamber and military Chamber.

5.) The Constitutional Court

The Constitutional Court is not considered part of the juridical system, nevertheless it is a separate and independent national institution dealing with constitutional rules and rights.

The Constitutional Court has jurisdiction in disputes between the State and Autonomous Communities, the violations of constitutional rights, the disputes between the State and the Autonomous Communities and the constitutionally of laws.

6.) Arbitration

Spanish legal system provide for commercial matters a mechanism in order to resolve disputes by arbitrators. The conflict arise parties may only resolve by arbitration when they agree to submit their conflicts to arbitration.

SWEDEN

The Swedish legal system

Introduction

The Swedish Constitution guarantees the courts an independent position. A permanent judge is appointed by the Government and, in principle, cannot be dismissed.

Sweden has no constitutional court. However, in each particular case the courts have a certain right to ascertain whether a statute meets the standards set out by the super-ordinate provisions, so-called statutory examination.

The courts can be divided into general courts and special courts. There are two general court organisations; the general courts and the general administrative courts. These organizations are in all material respects parallel and are structured as a triple instance system. The general courts consist of district courts, courts of appeal and the Supreme Court, while the general administrative courts consist of county administrative courts, administrative courts of appeal and the Supreme Administrative Court. A number of courts of special jurisdiction exist beside these courts.

The general courts handle criminal cases and civil disputes between individuals, i.e. civil law disputes. A considerable proportion of the civil disputes are so-called family law cases and relate to divorce proceedings, custody of children and maintenance for children and spouse.

The general administrative courts primarily deal with cases relating to matters between the public authorities and a private individual. Examples of such cases are tax cases, cases relating to the treatment of the mentally ill and cases relating to the taking of minors, drug addicts and alcoholic into care together with social insurance cases. In many instances, appeal has been lodged against the rulings of the general administrative courts by an administrative authority or some other body within the public administration.

The special courts normally deal with a given type of civil suit organically separated from the jurisdiction of the general courts. One circumstance which has motivated the establishment of special courts is the need for specialist knowledge in order to dispense justice within a given area.

The general courts

Among the general courts, the district courts are the courts of first instance in practically every case tried. The composition of the court varies depending upon the type of case being tried. At the main hearing when criminal cases and cases relating to family law are tried, the bench is made up of one legally trained judge and three lay judges. In other civil disputes, primarily so-called property cases, the court is made up of three legally trained judges in the main hearing. This is the

main rule but on many occasions, cases may be ruled on by a single legally trained judge.

As the court of intermediate instance for the general courts, there are six courts of appeal in Sweden. In general, it is the right of any party to appeal against a ruling of the district court to the court of appeal. However, in some types of cases, e.g. simplified civil cases, special permission is required for a complete re-examination before the court of appeal, so-called leave to appeal. The court of appeal is to take up the case for consideration as soon as it finds, in a preliminary examination, that there may be grounds for amending the ruling of the district court.

The Supreme Court is the highest court of instance for the general courts. It consists of at least 16 judges, all entitled Justices of the Supreme Court. The possibilities of having a case completely examined by the Supreme Court is limited. Before a case is taken up for examination, leave to appeal is normally required. A condition for the grant of leave is either that it is of importance for the judicial process that the case is being examined or that a grave procedural error occurred in the course of the proceedings of the court of first instance. Leave to appeal may be restricted to a certain issue or part of the case. In some cases, no leave to appeal is required. For example, this relates to cases brought by the Prosecutor-General. A case accepted for review is normally tried by a panel of five Justices of the Supreme Court. The Supreme Court is empowered to take both matters of law and matters of fact to consideration. If a division of the Supreme Court finds that there are grounds for departing from a ruling previously pronounced by the Supreme Court, this issue is almost without exception referred for an ultimate ruling by a plenary session of the whole of the Supreme Court or by nine members.

The general administrative courts

The task of the general administrative courts may be described as one of maintaining due observance of the law within the public administration. A number of cases are instigated directly in a general administrative court, but most cases are referred there as a result of an appeal against the decision of some administrative authority. Those decisions of authorities that are open for appeal to general administrative courts far from embrace all parts of the domain of public administration.

The county administrative court is the court of first instance. Most cases before the county administrative court are adjudicated by a legally trained judge with three lay judges.

The administrative courts of appeal are the courts of intermediate instance among the general administrative courts. The major duty of these courts can be described as that of examining appeals lodged against the rulings of the county administrative courts. However in many kinds of cases, leave to appeal is required to enable the administrative court of appeal to consider the appeal. Furthermore the administrative court of appeal in some cases consider appeals as a court of first instance. Appeals against the decision of authority to refuse to disclose an official document may, for example, usually be appealed against to the administrative court of appeal. Cases before these courts are generally adjudicated by three legally trained judges. Lay judges can be included in the court in certain cases.

The Supreme Administrative Court is the highest instance among the general administrative courts. At present it consists of 17 members entitled Justices of the Supreme Administrative Courts. The rules on leave to appeal and ruling in plenary session are substantially the same as those applicable to the Supreme Court. However, leave to appeal is not required in all types of cases. It is a court of precedent. Thus the rulings of this court are published so that they may serve as guidance for the courts of first instance.

Special courts

The special courts may be said to be of two types – on the one hand they are courts which are wholly detached from the general courts, on the other hand they are courts which more or less constitute an integral part of the general courts. Organically detached special courts include the Labour Court, the Market Court and the Court of Patent Appeals.

Judicial procedure

Proceedings in civil cases

One characteristic feature of Swedish procedure in civil cases is the distinction between preparatory proceedings and the main hearing. The preparatory proceedings are led by a judge. They may be in writing or be oral, or both. The purpose of the preparatory proceedings is to bring the case to such a state of readiness that it can be decided upon in an unbroken sequence at the oral main hearing.

A case begins with the party submitting a written summons application. The summons contains the claim and the grounds he wishes to invoke in support of his claim and the evidence he intends to produce. Normally, the defendant is ordered to respond in writing. The answer must contain a statement of the views of the defendant vis-à-vis the claims of the plaintiff and the grounds on which the views are based. The response is forwarded to the plaintiff for a further statement of views, following which a time for a meeting is appointed.

At the oral preparatory hearing the parties are entitled to supplement and elaborate upon their positions. They are also entitled to request clarifications from the other party. The task of the judge at this stage is, by questioning the parties, to attempt to remedy any instances of obscurity or incompleteness that occur in the submissions of the parties. Generally, the judge should also attempt to bring about a conciliation between the parties.

After the oral preparatory hearing it is not unusual that the preparatory proceedings then revert to being held in writing. Thereafter, the main hearing takes place and the parties submit their applications and claims and the evidence is heard. In some cases judgement is given without a main hearing, for example if a main hearing is not needed having regard to the investigation in the case nor requested by any of the parties.

Proceedings in criminal cases

Normally, a preliminary investigation must be initiated as soon as there are grounds for suspecting that a crime has been committed. The purpose of the preliminary investigation is to ascertain who may reasonably be suspected for the crime and whether there are sufficient grounds to institute prosecution. In the case of a serious crime, the preliminary investigation is conducted by a public prosecutor, otherwise by the police.

If the public prosecutor refrains from instituting proceedings, the aggrieved party is entitled to prosecute a private case. The aggrieved party is also entitled to appeal against a judgment if the public prosecutor fails to do so.

The preparatory proceedings in criminal cases are normally significantly simpler than in civil cases. For example, there is no oral preparatory hearing apart from in major and complicated cases. The public prosecutor appends a record of the preliminary proceedings when submitting the written summons application. The supplementary work the court needs to carry out relates to the personal particulars of the accused.

At the main hearing the statement of facts, the evidence and the pleas are presented. In simpler cases, the judgement of the court will be pronounced immediately. If the accused is remained in custody, judgement must be pronounced latest within one week of the date of completion of the hearing.

SWITZERLAND

As set forth in the Constitution, totally renewed in 1999 and came into force January 1, 2000 the system of the institutions are based on the separation of powers. There are three powers at the federal level:

A) Executive Power

The Executive power is represented by 7 Federal Councils. Each has a department as for example foreign affairs, finances etc. One of them is always for one year president of the Federal Council, but is only "primus inter pares".

B) Legislative

In Switzerland there are two chambers of the parliament. One of them is representing the population. In this chamber, called "Nationalrat", there are 200 members. In each canton a number of members are elected in the ratio of population in this canton to the population in Switzerland.

The other chamber, called "Ständerat" is representing the 26 canton in Switzerland. Each of the complete 20 cantons has to send two members, each of the six half-cantons has to send one member.

Both chambers are mandated to create the laws and decrees.

C) Courts

The highest court in Switzerland is the Swiss Federal Court called "Schweizerisches Bundesgericht". At the moment there are 5 chambers. 4 of them are located in Lausanne, one in Luzern.

At the level of the cantons there are almost similar structures, but each canton has the authorisation to organise it by itself. Therefore, there are in each canton smaller or bigger differences.

JUDICIAL SYSTEM

The highest court in Switzerland is the Swiss Federal Court called "Schweizerisches Bundesgericht". There are 5 chambers treating the following matters:

- 1st Chamber: Public law (Lausanne)
- 2nd Chamber: Administrative law (Lausanne)
- 3rd Chamber: Civil law (Lausanne)
- 4th Chamber: Criminal law(Lausanne)
- 5th Chamber: Law governing social securities matters (Luzern)

Each canton has its own structure and its own procedure law. Mostly there are two instances before you can go to the Federal Court. In the canton Basel-City for example, there is in civil law affairs first the Civil Court ("Zivilgericht") and then the Court of Appeal ("Appellationsgericht").

Concerning the Civil law and Basel-City the sequence of courts is as follows (each canton has its own sequence):

Mediation (optional)

1st instance: Civil Court

- a) One judge for cases up to CHF 5'000.--
- b) 3 judges for cases from CHF 5'000.-- to CHF 8'000.--
- c) 5 judges for cases of more than CHF 8'000.--

- d) Several special courts for labour law etc.
2nd instance: Court of Appeal (only for cases of more than CHF 8'000.--)

3rd instance: Swiss Federal Court, 3rd chamber (only if there is a violation of Federal Law; for violation of constitutional rights you have to go to the 1st chamber: Public law; written procedure and you have to file your appeal within 30 days from receiving the written sentence)

UNITED KINGDOM

The UK's constitution

The way the United Kingdom is governed is changing fast. Not only have formal rights been introduced but new elected national and regional bodies are coming into being.

Unlike most other countries, the UK has never - till now - had any kind of written constitution outlining the rights and duties of its citizens and those who govern them. In fact, people in the UK are not, strictly speaking, "citizens" at all. The head of state is a monarch - the Queen - and her people are her subjects.

Instead, an unwritten constitution evolved over the centuries. It's a combination of laws passed by Parliament, decisions made in higher judicial courts, and precedent (the way things have traditionally been done). This constitution is not something fixed. Any parliament can change laws previously passed and the courts continue to make decisions which affect the constitution, thus, the constitution can adapt to changing conditions.

The United Kingdom is a parliamentary democracy with a constitutional monarch who is head of state. There are three organs of central government: the **legislature** (the part which makes and passes legislation), the **executive** (the part which actively runs the country) and the **judiciary** (ie, the courts, which are considered part of central government because they make decisions about how laws should be applied in practice).

The distinction between the executive and legislature is not watertight, as the head of the executive (the Prime Minister) is also the leader of the majority party in the legislature and has powers to instruct MPs to vote as he or she wishes. The legislature is not independent of the executive. The Prime Minister's powers are therefore less formally restricted than those of a president of a country such as the US where the two are very separate.

These distinctions apply at the national level as well as at the UK-wide level.

The Human Rights Act

On 2 October 2000, the Human Rights Act 1998 (HRA) came into full effect. That means UK citizens now have a general code of rights. The European Convention of Human Rights (ECHR) became fully incorporated into UK law.

As a result, UK citizens can now claim their rights through UK courts, in front of UK judges, instead of taking their cases to the European Court of Human Rights in Strasbourg - a lengthy and costly process. Access to the European Court of Human Rights remains open as a last resort but is now much less likely to be needed.

The ECHR was drawn up in 1950, with the help of the UK, and ratified by the UK Government in 1951. Since then 41 states have ratified the ECHR. It was laid down by the Council of Europe - a separate institution from the European Union - which the UK joined when it was founded after the Second World War.

The ECHR came into force in 1953 but the UK held back from incorporating it into domestic law. UK citizens had to travel to Strasbourg for a ruling on their rights.

Although the HRA came into force for the whole of the UK on 2 October 2000, the devolution legislation for Scotland, Wales and Northern Ireland had already made sure that the devolved institutions could not contravene the ECHR.

THE UK LEGAL SYSTEM

Law in the UK may be found in legislation (both domestic and European) or in the judicial decisions which form Common Law.

The legal systems in England, Wales, Scotland and Northern Ireland

There are three legal jurisdictions within the UK. Scotland and Northern Ireland both have their own legal systems and courts which are separate from those of England and Wales.

Legislation

The UK parliament in London (<http://www.parliament.uk>) can make laws to cover one, some or all of the jurisdictions although sole jurisdiction to pass legislation for Scotland in certain matters was devolved to the Scottish Parliament set up in 1999 and recently something similar has happened in Northern Ireland.

The new Northern Ireland Assembly was established as part of the so called "Good Friday Agreement" reached on Friday 10 April 1998 and some legislative powers were devolved to it on 2 December 1999. See <http://www.ni-assembly.gov.uk>

The titles of Acts of Parliament which cover only Scotland or Northern Ireland contain the words "Scotland" or "Northern Ireland" in brackets. See <http://www.scottish.parliament.uk>

Wales does not have its own legal system. Since 1999 it has had its own Assembly which has the power to develop and implement policy in a range of areas but does not have legislative powers. See <http://www.wales.gov.uk>

Legislation takes the shape of Acts of Parliament, also known as statutes, or by Statutory Instruments issued by government departments acting under authority delegated to them by Acts of Parliament. Statutory Instruments are generally titled "regulations" or "orders".

The European Union

The UK has been part of the European Union (formerly called the European Community) since 1972. European Union legislation includes Resolutions which apply in the Member States automatically and Directives which require Member States to enact them into national laws by domestic legislation. This web page gives links to many useful sites relating to the EU: <http://www.detr.gov.uk/euindex.htm>

European Convention on Human Rights

On 2 October 2000 the Human Rights Act 1998 came into effect in the whole of the UK and incorporated the rights contained in European Convention on Human Rights into the UK legal system. Before that date cases involving the Convention had to be referred to the European Court of Human Rights in Strasbourg. The Act is making the UK government look carefully at the way a lot of things are done. You can find the Convention at <http://www.coe.fr/eng/legaltxt/5e.htm> and the Human Rights Act at <http://www.hmsq.gov.uk/acts/acts1998/19980042.htm>

Common Law

In addition to legislation passed by parliaments, legal principles and rules within the United Kingdom are based on the decisions of judges. The collected judicial decisions form the "Common Law". Each of the three UK jurisdictions has developed its own common law or "case law".

Although in recent times laws have mostly stemmed from legislation passed by UK, Scottish or European parliaments the development of case law still remains an extremely important source of law. A statement of law made by a judge

in a court case can become a precedent which is binding on judges deciding later cases.

Precedents

Whether a previous decision forms a precedent which a judge has to follow depends on the doctrine of *stare decisis* which contains two main factors.

Firstly, the decision has to have been made in a court with sufficient seniority. Lower courts are bound to follow the decisions of higher courts. The decisions of judges in the lowest courts do not form binding precedents and are seldom reported. However, where a decision has been reported, a judge sitting in a court of equal standing should consider the earlier decision but does not have to follow it.

Secondly, the court must determine whether a prior decision is relevant to the case in hand. The legal point on which a decision depends is known as the *ratio decidendi* ("the reason for deciding") and this is what the court considers when determining whether cases are "in point" or "on all fours". The important factor is that the similarity between the cases must be in the **legal reasoning** rather than in the facts.

If a judge in a later court deems that a previously reported decision is not relevant to the case he or she is hearing it will be ignored or, if not directly "in point" the case may be "distinguished" on the grounds that the two cases are significantly different.

Often a judge hearing a case will make an observation on a legal question which has arisen but which does not require to be decided when the case is disposed of. The observations will be considered to be *obiter dictum* and will not be binding as a precedent but may be treated as "persuasive authority" which judges in later courts may want to consider, especially if the judge making the observation is highly regarded.

Common law develops as cases are decided and this gives the law flexibility to deal with new situations or to reflect changing public standards. However, finding out what the up to date position is with a legal point can be difficult and may require researching many cases and checking with that a ruling hasn't been commented on or overturned by a later court. Many countries prefer a codified system where laws are found in legislation. Their courts find it useful to look at reports of cases in which the code has been applied but previous decisions are not binding.

Civil courts in England and Wales

Most cases dealing with claims for less than about £25,000 start in the local County Court of which there are 250. Cases are heard by a legally qualified judge. An appeal can be taken from the District Judge to the Circuit Judge. County Court decisions are not binding in other County Court cases but are generally followed unless there is good reason not to.

Cases involving larger sums of money or more important legal points are raised in the High Court. The High Court sits in London and in a few regional centres. It is split into Divisions. For example, the Family Division deals with divorce and child welfare matters and also the administration of wills; the Chancery Division considers complex matters such as disputes about wills, settlements and trusts, bankruptcy, land law, intellectual property and corporate laws; and the Queen's Bench Division deals with the remaining business including disputes about contracts, torts or land. The Queen's Bench Division has some specialist sub-Divisions, including a Commercial Court which deals with large and complex business disputes.

You can appeal a County Court or High Court decision to the Civil Division of the Court of Appeal on law only. From the Court of Appeal, there can be an appeal to the House of Lords on fact or law but usually if it involves matters of legal importance. It is also possible to bring an appeal from the High Court to the House of Lords but this is rare.

Up to Court of Appeal level, a judge must follow the decisions of all the higher courts above it but need not follow the views of other judges in the same court or a lower court. The Court of Appeal is normally bound by its own previous decisions and those of the House of Lords but can depart from its own decisions in civil cases in some special circumstances.

The House of Lords is not bound by its own previous decisions but will depart from them only rarely.

For more information on the court system in England and Wales see <http://www.courtservice.gov.uk>

The European Court of Justice

The European Court of Justice sits in Luxembourg and consists of judges appointed by all of the Member States. It has jurisdiction to give preliminary rulings concerning the interpretation of the Treaty of Rome (which established the European Union) if asked to do so by any UK court. Also, where there is no further appeal from a national court (such as from the House of Lords) the case can be referred to the court in Luxembourg if points of European Union law are in dispute.

See <http://europa.eu.int/cj/en/index.htm>

The Court of Justice can overrule all UK courts on matters of EU law.

Civil Courts in Scotland

Most civil cases start in the local Sheriff Court which is roughly equivalent to the English County Court. Scotland is split administratively into six sheriffdoms and within each sheriffdom there are several sheriff courts. The judge is known as a Sheriff and is legally qualified. There can be an appeal to the Sheriff Principal of the sheriffdom. The Sheriff Court cannot deal with some types of cases and tends not to deal with those which involve very large claims or complex legal questions. The decisions of Sheriffs or Sheriffs Principal are not binding but are generally followed.

Larger or more complex cases are raised in the Court of Session which sits in Edinburgh. The Court of Session is split into Inner and Outer Houses. The Outer House hears cases at first instance. Decisions of the Outer House are binding in the Sheriff Court.

The Inner House hears appeals from the Sheriff Court and from Outer House of the Court of Session. In a small number of cases it sits as a court of first instance. It is split into two Divisions of equal importance, each presided over by a senior judge who sits with two or more other judges. Decisions of each Division are normally treated as binding on that Division and on the other Division and are binding on all lower courts. If one of the Divisions is required to consider whether to over-rule a previous Inner House decision it can do so by increasing the number of judges hearing the case so, for example, if the earlier decision was delivered by a court of three judges a court of five judges can over-rule it.

The supreme court for Scottish civil cases is, as it is for the rest of the UK, the House of Lords. House of Lords decisions in Scottish cases are binding on all the lower Scottish courts. Decisions on non-Scottish cases are not binding but are highly persuasive, and especially so if they deal with laws that apply to the whole of the UK.

The Scottish Courts site which contains details of the workings of the courts and reports decisions can be found at <http://www.scotcourts.gov.uk> For anyone wanting to know more about Scots Law the University of Glasgow has a useful guide at http://www.law.gla.ac.uk/scot_guide/guide.html

Courts in England and Wales are not bound by decisions made elsewhere. (Similarly, Scottish courts are not bound by English decisions and so on.) They will, however, consider Scottish or Northern Ireland cases, especially if they concern UK statutes, cases decided in the courts of other Member States concerning European Union legislation and generally any other foreign court decisions which might be helpful.

The relationship between legislation and case-law

Parliament is regarded as the supreme law-making authority. Common law can be changed by legislation and the common law cannot overrule or change statutes. A statute can only be amended by a later statute. However, the validity of a statute can be challenged if it infringes European Union legislation or the European Convention on Human Rights.

NOTE

The above mainly deals with the civil legal system. There are very few differences with criminal law - the courts have different names but the principles are the same. There are also a number of specialised courts which which again slightly differ from the above.

There are supporters for the idea of codifying laws within the UK and, to an extent, this has happened with Company Law and Tax Law. It is, however, likely that any government which attempted to do so would be regarded with great suspicion and the task of distilling legislation from vast amounts of common law would be enormously difficult and controversial.