

JUDICIAL INDICATORS AS ELECTRONIC TOOLS FOR MEASURING THE EFFICIENCY OF JUSTICE IN ENGLAND AND WALES, AND GERMANY

Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which government employees are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that manage economic and social interactions among them.

The European Union and the Council of Europe are concerned with efficiency and cost management of all areas of EU countries' government. Such a concern has spread from the EU institutions to all the Member States. In this context, the Council for Europe has established the European Commission for the Efficiency of Justice (CEPEJ), whose aim is to develop, among other things, new indicators to measure efficiency of the judges' work.

The judicial indicators are electronic tools used to assess and – where possible – improve the efficiency and quality of judicial procedures. How to strike the balance between efficiency and quality has often been the subject of frequent discussions.

England and Wales largely use judicial indicators meant to measure proper levels of manpower and expenditure, and improvement towards scheduled outcomes to which the courts and other related institutions are committed. Those programmed outcomes stem from general goals set up by the Ministry of Justice. The subject matter of this study, the judiciary, is not frequently encountered in comparative legal research. Studies on specialised legal institutions and personnel most of the times yield to theoretical or constitutional matters. Therefore some data for these comparative purposes is missing or difficult to access.

After the thorough work prepared by the World Bank on judicial indicators¹, it has been an indisputable principle in their implementation that the better understanding of all aspects of work performed by judges and their staff, including both quantitative and qualitative aspects, coupled with an objective measurement of such a performance done with objective tools often increases the confidence of citizenry in courts and the Rule of Law. Furthermore quantity indicators should be used as parameters for determination of the number of judges needed in a judicial system rather than only reliance on indicators assessing performance of the judiciary.

¹ Buscaglia, E. and Maria Dakolias, *Comparative International Study of Court Performance Indicators*, World Bank Legal and Judicial Reform Series, 1999.

The scope of the present chapter is to offer an overview on rules, sources and praxis regarding those indicators in Germany, England and Wales. It will focus on the following issues:

- What are the performance indicators used in the judicial systems under study to measure the number of concluded cases and lead times?
- How are concepts of “staff”, “concluded cases” and “performance” defined?
- To what extent and in what way are resources used in order to gather data?
- What main goals do the indicators stem from?

1. METHODOLOGY

The methodological key in this study is “functionality” or the principle of functional equivalence. A comparative analysis compels to ask “Which rule, or concept, or institution in a given system B performs an equivalent function to the one under survey in system A?”. Functional equivalence is aimed to ensure a justified comparison, in other words “comparing like with like”.

It must be pointed out that while both England and Wales, and Germany have a rather similar judicial system, at least from a general point of view, differences do exist, both in the way courts’ systems are structured and the in consequential matrix created for their evaluation. This is especially true in particular when it comes to filtering mechanisms, as explained below. The relatively extreme positions of England and Wales, and Germany regarding entry barriers for prospective litigants and a simpler or more complex court structure heavily impact any comparative study on judges’ performance.

Another fundamental difference to be considered in a comparative analysis of judiciaries and the indicators measuring their performance is the legal system to which each country belongs. In the present study England and Wales, particularly its judiciary, represents the common law tradition, and Germany represents the Germanic branch of the civil law tradition.

In the common law tradition, which originated in England, the judiciary system has created a nationwide legal framework, building upon precedents. The role of judges as the primary lawmakers is reflected in the style of court decisions. In view of their huge responsibilities, only highly experienced barristers (QCs) will qualify for appointment to the Bench. As a consequence, the number of professional judges in England and Wales tends to be relatively small. By contrast, in the continental European tradition, to which Germany belongs, the legislator is the primary lawmaker. The framework of the civil law legal tradition is laid down in the major codes. Thus, the role of individual judges in the continent is

downplayed while magnifying the legal framework. Many judges have started their career shortly after graduation from law school, taking the special vocational training for intending judges.

Other important differences stemming from their antithetic ways of thinking come out when analysing both countries' judicial system. Historically, a more liberal legal culture in common law countries pushes common law judges to be sort of passive umpires, leaving much initiative (for example, cross-examination of witnesses) to the parties. By contrast, due to a more paternalistic and protectionist culture in continental European countries, the civil law tradition judges tend to be more interventionist, the result being two parties each of them having a dialogue with the judge. It must be said though, despite the fact that the civil law-common law distinction still determines whether procedural laws are codified or not, the judge in some common law systems has ceased to be a passive adjudicator and has increasingly assumed an interventionist role, similar to that of his/her civil law peers; this assertion is confirmed by the 1999 enactment of the English Civil Procedure Rules.

All legal systems belonging to the civil law family use more or less similar divisions of the law into (statutorily) well-defined main areas – an important aspect in view of judicial statistics. Legal systems belonging to common law, however, are not familiar with these main divisions.

Yet, in another aspect, membership to a legal family is not necessarily decisive. The presence of a system for review of constitutionality, for instance, seems to coincide primarily with a federal structure such as Germany, but from this general rule England is excluded. Only Germany constitutes a federal state, with a genuinely federalised judiciary system. The United Kingdom does not really constitute a federal state, but it is composed of fairly autonomous judiciary systems (i.e. England and Wales, Scotland and Northern Ireland), with only the House of Lords assuming jurisdiction over all three judiciary systems.

England and Wales has a single regular court system, with many specialised branches within the superior courts in particular (Queen's Bench Commercial, Queen's Bench Admiralty, Family, etc.), while a network of specialised Tribunals (from which appeal lies to the regular courts) co-exists with the official courts system. Germany arguably represents the highest degree of specialisation among courts, although the number of specialised semi-public institutions is lower. It could be argued, therefore, that specialisation has been formalised to a higher extent in Germany than elsewhere.

Both countries under study have – in general terms – a rather similar judicial administration with differences at the level of details in which relative extreme positions in several aspects are spotted. Germany has almost no entry barriers for prospective litigants seeking to use the judiciary, what allows many light cases to slip into the system. This may lead to high performance figures. However, performance may be mitigated by the German complex court structure. England and Wales, by contrast, have a high threshold for entering the judiciary system, as a result of

which only complex cases will ultimately be addressed by the judiciary. As a consequence, performance figures tend to be rather low.

Numbers of concluded cases per capita vary strongly across countries indicating serious differences in the filter mechanisms determining whether or not cases are submitted to court. Strong filter mechanisms lead to cases in court with large caseload on average. The filter mechanism is an important determinant of performance differences: a stronger filter mechanism often coincides with lower performance. It is also an important determinant of differences in the costs of the judiciary system: a stronger filter mechanism often coincides with lower total costs of the judiciary system.

From the above example it has become clear that low performance figures, as applied to any country, are by no means indicative of the efficiency of a judiciary system. It may well be argued that a judiciary system that succeeds in filtering out the less complex cases, as the British system does, is highly efficient exactly for that reason.

Caseload figures may also be tainted by differences in national practices of selecting, counting, merging or subdividing cases. Similar problems crop up in the figures relating to expenditures. Expenses, and costs, and efficiency in the use of resources entail additional problems of comparability as a consequence of different budgeting strategies and cost perceptions.

Performance measures (i.e. cases concluded per Euro spent or per employee) reveal no clear picture, either. Germany, for instance, has the lowest number of concluded cases per employee for criminal law, whereas it has a middle ranking in terms of civil law.

Little data is available regarding the rather fundamental issue of cost of litigation in both countries under study. Some surveys suggest that litigation is relatively expensive in England and Wales (due to the necessity of engaging two professionals, the fees charged by London city firms and court delays), and relatively inexpensive in Germany (due to the fixed-fee system, as well as the remarkably high percentage of citizens benefiting from a legal expense insurance).

Apart from differences between both countries impacting the use of judicial indicators, there are differences within each country between distinct areas of law. Moreover, major reform projects have changed or are likely to change the landscape considerably. As already mentioned, the most striking change arguably occurred in the English law of civil procedure following implementation of the 1999 Woolf reforms, which transformed the role of judges from passive arbitrators into rather active case managers.

The Woolf reforms also ended the old multi-stage procedural system, now compelling counsel to concentrate and substantiate their claims at an early stage. The Woolf reforms have been paralleled to some extent in France by the Coulon reforms, where the underlying motivation was

the same, namely enhance efficiency, but the departure there from past practices was much less drastic. Germany preceded France and England with its *Vereinfachungsnovelle*.

In summary, the problems of comparability that the present study faces are manifold, not the least, the German disperse reports (mostly done by Lander and regions applying different systems of evaluation) on indicators and goals issued by the German Federal and regional governments. In addition, documentation in this country is presented essentially for local consumption rather than easily available for international comparative analysis. It will be impossible to address all these problems in detail within the parameters laid down for this project. Much more extensive, in-depth research will be needed to analyse problems and lacunae or inconsistencies in national data compilation and reporting that may be addressed by other relevant European judicial committees or task forces.

2. OFFICIAL STATISTICS INFORMATION

England and Wales

- The Court Service Annual Report (The Court Service)
- Magistrates' Courts Business Report, Annual Report (Department for Constitutional Affairs)
- Judicial Statistics (The Lord Chancellor's Department)
- Criminal Statistics (Home Office)

Germany

- "Figures about Justice" (Federal Ministry of Justice)
- "Statistical Yearbook" (Federal Statistical Office)
- "Justice Statistics" (Federal Statistical Office)

England and Wales, The Netherlands and the German state of North Rhine-Westphalia are considered the European leaders in the endeavors to enhance efficiency of respective judiciaries. England specially offers a detailed data of services and the way they are assessed.

3. JUDICIARY OF ENGLAND AND WALES

Judicial indicators measuring efficiency, costs and quality: goals, sources and praxis

England and Wales have developed one of the most complete systems of judicial indicators, among them in criminal justice there are indicators to measure performance, quality and efficiency in criminal cases from charge to disposal keeping records of performance all throughout stages

of trial within the target timescale. The assessment of those indicators is clearly linked to goals and objectives as decided by the Minister of Justice in the annual Corporate Plan. Evaluation is presented in the Annual Performance Report of the MoJ.

a) Judiciary and budget

Considering the weight the judiciary system has in the country economy as a whole, the following indicators are used by the Minister of Justice to assess the importance given by society to the work of judges, and the good or flawed use by the judicial system of the resources allocated to it:

- judiciary system expenditures as a percentage of GDP;
- judiciary system expenditures as a percentage of tax revenues;
- number of judges per capita;
- number of cases concluded per capita.

The numbers or percentage obtained as indicators in the first three cases represent to a certain extent the relevance of the judiciary system given by the society upon professional, government-regulated jurisdiction. The figures may also reflect the inefficiency or ineffectiveness of the official judicial administration.

The indicator “numbers of concluded cases per capita” is a comprehensive measure, which offers a description of the judiciary system in terms of qualitative descriptors. Special attention in the evaluation is paid to features of the legal and judicial system influencing the flow of cases into the courts.

Indicators such as “number of concluded cases per capita” reveal great differences across countries and types of law in terms of the number of cases concluded per 1,000 inhabitants. Germany has less than 15 concluded criminal cases per 1,000 inhabitants indicating strong filter mechanisms in criminal law. England and Wales has only weak filter mechanisms for criminal law: over 40 criminal cases per 1,000 inhabitants are concluded.

b) Measurement of the performance of judiciary systems

The legal accountability of the bench depends on judicial review, the appellate system, due process procedures and the hierarchy of norms. Managerial accountability depends, on the other hand, on standards of efficiency, whereas societal accountability reflects controls exerted by private citizens and civil society organisations.

In order to evaluate the work of judges from a strict point of view of their professionalism, the British government has developed indicators for assessing performance. They are an e-tool to evaluate the relation between resources and services delivered by the magistrates and other personnel in the court system. To this purpose the concept of productivity has been introduced. The term productivity often has a negative

connotation, in the sense that it refers to bad management and/or employees with a low motivation or bad work ethics. However, productivity generally refers to organisational structures and social preferences.

The judiciary system, consisting of courts of law and other judicial institutions, converts resources (judges, clerks, buildings) into services (concluded cases). The performance of the judiciary system can be defined in many ways. A natural measurement of performance is the productivity ratio.

In a single-resource single-service sector, productivity is measured as the ratio of service provided to resource consumed.

$$\text{productivity} = \frac{\text{services}}{\text{resources}}$$

However, most public sector entities provide multiple services and use multiple resources. In such a case, services and resources must be aggregated into quantity indexes. Ideally, the service and resource quantity indexes would include service and resource prices to act as weights, but these are often missing in the public sector.

$$\text{productivity} = \frac{p_1 \text{ service}_1 + \dots + p_m \text{ service}_m}{w_1 \text{ resource}_1 + \dots + w_n \text{ resource}_n}$$

Here a very important issue arises. On the one hand, how many, and which, resources and services should be included in devising judicial indicators and how should they be weighted in the aggregation process? Indeed, the selection of relevant or useful resources and services is of great importance. However because of data limitations measured productivity may be flawed, one of the reasons being the deficiency of incorporating the right variables and constraints.

Both countries under study include the number of cases concluded as a measurement of services of the judicial system. Services provided by the judiciary are very heterogeneous: differences in types of cases among civil, criminal or administrative domestic courts may cause distorted measurement of productivity. Unfortunately, researchers are sometimes forced to use partial measures of productivity, such as the quantity of a single service provided per employee, or the number of concluded cases per employee. Although these are easy to compute and to understand, they yield a two-dimensional characterisation of an inherently multi-dimensional problem. Such problem is not resolved even by applying partial productivity measures, such as the number of concluded cases per employee and total factor productivity. Even worse, they can send conflicting signals concerning relative performance, and so they must be interpreted with extreme caution.

Because productivity depends on many factors, such as structure of the service, extensive or restrictive use of state of the art or old technol-

ogy, the efficiency with which the technology is implemented, and the characteristics of the operating environment in which service provision occurs, Germany, and England and Wales as well have devised judicial indicators taking those factors into account.

British scholars convincingly argue that increasing the scale of production may well deteriorate the quality (defined in terms of revisions and citations of court decisions) of service provided by the judiciary.

Low productivity may have its origin in poor use of technology or inadequate management. Often a flawed or deficient management prevents optimal values of services and resources from being accomplished. This is evaluated through inefficiency indicators, which can be defined as the ratio of observed to maximum feasible service provision obtained from given resources, or vice versa. Expensive purchases, wrong mix of resources, high absenteeism and low occupancy rates as a result of inadequate planning inevitably ends up in low efficiency.

In designing judicial indicators to define the type of performance, efficiency index, other factors have to be included in the equation:

- number of concluded cases per employee, including judges;
- number of concluded cases per judge;
- number of concluded cases per Euro spent.

c) Descriptors evaluating Cases Concluded and Processing Time (C, T)

The number of criminal law cases concluded by judges ranges from fewer than 200 cases a year in Germany to 900 cases a year in England and Wales.

The number of indicators that assess the number of concluded cases per employee or per Euro spent of the judiciary system reflect differences in judiciary systems' legal requirements and quality. Some more commonly used quality indicators are:

- number of appeals as a percentage of concluded cases;
- number of judges as a percentage of total employees;
- average personnel costs per employee;
- average duration of concluded cases.

The number of appeals as a percentage of concluded cases represents an indicator of the quality of justice, as well as a measure of appeal barriers (e.g. cost) and cultural preferences (e.g. honour, equity). There are two reasons why the rate of appeals serves as a key indicator for 'explaining' differences. First, appeals to the Higher Court generally require more means of production. Second, a low rate of appeals may reflect high quality justice, which may correspond to high costs for the initial cases.

In England and Wales, the percentage of appeal cases out of concluded cases is less than 2%, while in Germany it is less than 7%.

The indicators of labour productivity (LP), judges' productivity, (JP) and concluded cases per Euro spent (CCE) are widely used. These are defined as follows:

$$LP = \frac{\text{cases concluded}}{\text{utilisation of personnel}}$$

where utilisation of personnel is measured in full-time equivalents.

$$JP = \frac{\text{cases concluded}}{\text{utilisation of judges}}$$

The number of judges working on cases is measured in full-time equivalents.

$$CCE = \frac{\text{cases concluded}}{\text{total cost}}$$

These equations are applied to three different sectors of the judiciary system, i.e.:

- criminal law;
- civil law;
- administrative law.

d) Examples of indicators

The so-called indicator **“Improve the delivery of justice by increasing the number of crimes for which an offender is brought to justice”** is evaluated against Joint CJS target.

An offence is considered to have been brought to justice when a recorded crime results in an offender being convicted, cautioned, issued with a penalty notice for disorder, given a cannabis warning, or having an offence taken into consideration.

Indicators measuring completion are aimed to measure improvement toward achieving earlier and more proportionate resolution of legal problems and disputes by:

- (1) Increasing advice and assistance to help people resolve their disputes earlier and more effectively;
 - The English and Welsh Civil and Social Justice Survey conducted by BMRB, with the results processed by the Legal Services Research Centre is a household survey of people's experience of civil justice systems, the strategies employed to deal with them, barriers to advice, services and financial support for advice and representation, the impact of problems and the impact of advice. The survey, since January 2006, has been carried out on a continuous basis.

- (2) Increasing the opportunities for people involved in court cases to settle their disputes out of court; and
- (3) Reducing delays in resolving those disputes that need to be decided by the courts.

Regarding items (2) and (3): these targets are measured by monitoring cases that are resolved in the county courts, excluding civil family matters, by collecting data from HMCS Caseman Computer System.

Indicator measuring percentage cases completion within X time. After presenting tables and diagrams, a government analysis is issued yearly by the Ministry of Justice of England and Wales, as the example below shows:

"Performance of 2010: the magistrates' courts (family proceedings courts) achieve 56% cases completed within 40 weeks. The proportion is below target levels. Target will be achieved if ... by March...

... but when comparing to the same period last year, has remained stable...

Since April 2008 there has been a reduction in the number of outstanding cases in the magistrates' courts which is thought to be the result of local authorities adhering to the new procedures, working more closely with families pre-proceedings and looking at safe and appropriate alternatives to court."

"The proportion of cases completed within 40 weeks in the care centres achieve 48%. It is below target level and has been declining over the last 12 months. Current trajectories suggest that meeting this target by March 2010 will prove challenging. A key risk to delivery of this target is the large volume of outstanding cases which are already over 40 weeks old and outside the target time (43.5%)."

Source: Ministry of Justice Autumn Performance Report 2008, p. 40.

e) Objectives and goals

As stated by the English and Welsh Ministry of Justice – in what is called "The Corporate Plan", issued yearly – the goal of judicial indicators is to contribute to the creation of a safe, just and democratic society. The affirmed objectives and priorities are allocated to four Departmental Strategic Objectives (DSOs). The main outcomes are also proposed in the Minister of Justice Corporate plan, drawing clear lines of accountability to and ownership of the citizens.

The strategic objectives are stated as follows:

- 1) Strengthening democracy, rights and responsibilities

Outcome:

- Constitutional modernisation, to strengthen democracy and create the conditions for increased citizen engagement;

2) Delivering fair and simple routes to civil and family justice

Outcomes:

- increased efficiency and effectiveness of the civil, administrative and family justice systems;
- provision of early advice and support to enable disputes to be resolved out of court or tribunal wherever possible;
- accessible justice system that provides support where it is needed;
- creating a safe, just & democratic society.

3) Protecting the public and reducing reoffending

Outcomes:

- protecting the public;
- reducing reoffending;
- increasing the efficiency and effectiveness of service delivery;
- work to counter the risks posed by violent extremist offenders.

4) A more effective, transparent and responsive criminal justice system for victims and the public.

Outcomes:

- increasing the efficiency and effectiveness of the criminal justice system;
- increasing the transparency of the criminal justice system so that it inspires confidence in local communities;
- a more responsive criminal justice system that has in mind the needs of victims and witnesses at its heart.

f) Source of data for indicators

Most common sources used for obtaining data to get indicators are:

- calculation of production information;
- calculation of personnel information;
- calculation of information on judges;
- calculation of information on other personnel;
- calculation of expenditures;
- calculation of personnel costs;
- calculation of non-personnel costs.

In the United Kingdom, England and Wales, Scotland and Northern Ireland each have their own legal system. These legal systems differ so dramatically that this work only analyses data for England & Wales. The organisational structure of the English and Welsh judiciary system comprises three parts:

- Court Service;
- Magistrates' Courts;
- House of Lords.

The data for these separate parts have to be obtained from different sources. Data on The Court Service come from three sources:

- the Court Service Annual Report;
- the Court Service Business Plan;
- the Lord Chancellor's Department's Judicial Statistics.

The first two reports refer to the financial year running.

Data on the Magistrates' Courts are also obtained from two sources:

- Magistrates' Courts Business Report, Annual Reports (Department for Constitutional Affairs);
- Criminal Statistics.

Production

Data on cases concluded are given for each type of court and, for higher courts, per division. Courts may be differentiated according to criminal, civil and administrative cases.

Expenditures

Magistrates' Courts expenditures and other costs are taken from the annual report of the Magistrates' Courts instead of from the national budget, as 20 per cent of the general grants are awarded by local authorities.

The personnel expenditures of the Magistrates' Courts include the "staff related costs" and expenditures for magistrates, which primarily concern their training.

Court Service expenditures are justified per division. As divisions were allocated in their entirety to one of the sectors, criminal, civil or administrative, the same was done for expenditures. Expenditures in the accounts include:

- national staff costs;
- depreciations;
- interest payable.

Staff costs include pension and benefit payments. The annual accounts list the notional employers' contributions to social security separately.

g) Other judicial indicators outsourced from electronic case management systems

SAMPLE I

Extract from "Judicial and Court Statistics 2009"

Annex A: "Annex A: Data sources and data quality".

This annex gives brief details of data sources for the figures given in this report, along with a brief discussion on data quality. All data in this

edition of Judicial and Court Statistics relates to the calendar year 2009, unless otherwise noted.

Chapter 1: County courts (non-family)

This information has principally been produced using the Management Information System (MIS), a data warehousing facility drawing data directly from court-based administrative systems. Most data shown in the tables have been sourced from the county court administrative system "CaseMan", used by court staff for case management purposes. This contains good quality information about the incidence and dates of major events in a case's progress through the court system. Statistical quality assurance procedures include the identification and removal of duplicate entries for the same event in a case, and checks that data have been collated for all courts to ensure completeness.

The numbers of insolvency petitions, applications for administration orders and administration orders made are sourced from manual counts made by court staff. Since April 2009 these have been recorded in the One Performance Truth (OPT) database, a web-based data monitoring system allowing direct input of performance data by court staff. Prior to April 2009 they were inputted into the Business Management System, designed for the purpose of monitoring and assessing court workloads. Quality assurance measures are in place to ensure that data are of sufficient quality, including querying with courts where their counts look unusually high or low and obtaining corrected figures if errors are identified.

Table 1.9 shows statistics on unspecified "money" claims, broken into several value ranges. The figures split by amount are counted based on the claim issue fee paid, this indicating the value range of the claim. The issue fee was either not present or did not correspond to any of the claim value ranges (sometimes due to exemption or remission) in around four per cent of claims in each year.

The numbers of small claims hearings and trials are sourced from "CaseMan". Their accuracy is dependent on court staff entering correct hearing outcome codes onto the system, which is not essential information for case administration purposes. As a result, these statistics are considered to be of lower quality than the other main case event volumes derived from "CaseMan".

SAMPLE II

Extracts from "Provisional Quarterly Criminal Justice System Information – March 2010"²

Appendix C: Victim and witness satisfaction with the Criminal Justice System broken down by ethnicity and gender

The latest available data for victim and witness satisfaction with the Criminal Justice System broken down by ethnicity and gender are provided for cases closed 12 months to December 2009.

² <http://www.justice.gov.uk/publications/docs/cjs-stats-bulletin-march2010.pdf>

Table 1. shows the proportion of victims and witnesses who were satisfied or dissatisfied with their contact with the Criminal Justice System (CJS) broken down by ethnicity.

Although the majority of victims and witnesses were satisfied, significantly fewer people in the black and mixed ethnic groups (80% and 78% respectively) reported being satisfied than in the white group (84%).

Significantly more people in the black and mixed ethnic groups (both 18%) reported being dissatisfied than in the white group (13%). The difference in the proportion of black and Asian groups reporting being dissatisfied (18% and 13% respectively) was also significant. These differences are statistically significant at the 5% level.

Table 1. Satisfaction of victims and witnesses with their overall contact with the CJS by ethnicity, cases closed in the 12 months to December 2009
(Table A3.1 in the original report)

Percentages and base sizes						
	White	Asian	Black	Mixed	Chinese or other	Total
Satisfied	84	84	80	78	86	84
Neither satisfied or dissatisfied	2	2	1	3	2	2
Dissatisfied	13	13	18	18	11	13
Base	33,153	1,543	967	467	139	36,269

(1) – denotes where base sizes are too small to provide reliable estimates.

(2) Figures may not sum to 100 due to rounding.

(3) Respondents who did not state their ethnicity are excluded.

Source: Witness and Victim Experience Survey, Ministry of Justice.

Table 1.14³ shows the average time between case issue, allocation to track (for fast and multi-track cases) and the start of a small claims hearing or trial, plus statistics on the duration of small claims hearings and trials. The statistics on average times between the major case milestones are sourced from “CaseMan”. The statistics on hearing/trial durations are sourced from, respectively, the small claims sampler and the trial sampler. The small claims sampler is a manual form which 29 county courts (from a total of around 216 across England and Wales) are required to complete for three months during the year. The trial sampler is a manual form which all county courts are required to complete for two months during the year. As such, these statistics represent the results for minority

³ As numbered in the original text.

subsets, and are not based on all such hearings/trials occurring across England and Wales during the year.

Figures in Table 1.21 showing the numbers of repossessions of property by county court bailiffs have been revised from those previously published. This is due to a revised methodology which takes account of the outcomes of warrants which are recorded onto the county court case management systems (“CaseMan” and “Possession Claim Online”) by courts to which warrants were transferred following issue. Although the courts which issued the warrants are supposed to record the outcomes of them, this has not always happened in practice.

4. JUDICIARY OF GERMANY

Judicial indicators measuring efficiency costs and quality: sources and praxis

By far the most important source on German judiciary can be found in the general statistics publication by the government: the *Statistisches Bundesamt* (Federal Statistical Office; <http://www.destatis.de>), which collects data on the individual federal states and presents them in national total figures. Most figures, including the number of judges, production and costs can be found in the Statistical Yearbook (*Statistisches Jahrbuch*). More detailed figures on numbers of personnel can be found in the *Statistisches Bundesamt's Rechtspflegestatistik*. The publication “Zahlen aus der Justiz” (Figures about Justice) from the Ministry of Justice is based on figures from the Federal Statistical Office. This publication offers some additional details on personnel and also includes case processing time information; it presents the numerical data and correlative diagrams. The breakdown of figures according to the different sectors of the judiciary system, particularly criminal and civil, requires additional information that is only available at the level of the individual federal states or even the individual courts. All publications are in German only, and data available discriminated by Lander in a non-homogeneous way of presentation, making a comparative analysis on the country as a whole difficult.

Judicial indicators: sources and praxis

Details on the number of cases concluded (*Erledigungen*) are obtained from the Federal Statistical Office. The statistics are differentiated between “Straf”, “Zivil”, “Familie”, “Verwaltung”, “Arbeit”, “Sozial”, and “Finanz”. Incidentally, the distinction between criminal and civil is not the same in Germany as it is in England.

1. Statistics on judicial personnel and administrative expenditures

– Judges

Details on personnel are obtained from the *Rechtspflegestatistik* (Justice Statistics) of the Federal Statistical Office. These are year-end figures. Several other judicial statistics are published in even years, which means that the figures for 2001 are averages of the year-end figures for 2000 and 2002.

A complication arises from the fact that the numbers of judges are only known according to type of court. Using the allocation plans (*Geschäftsverteilungspläne*), a distinction could be made between criminal court judges and civil court judges for the ordinary Courts (district courts (*Amtsgerichte*, *Landgerichte*), courts of appeal (*Oberlandesgerichte*), and the Federal Court *Bundesgerichtshof*). The Federal Court's allocation plan is presented in numbers of persons and in terms of full-time jobs. For persons serving in more than one section (e.g. both criminal section and civil section), the prioritised section is presented. In the allocation plans of the ordinary courts (*ordentliche Gerichthöfe*) in Hamburg, persons working for both the criminal and the civil sections are allocated to each sector for 50 per cent. Moreover, the judicial statistics of the Federal Statistical Office do not distinguish between personnel in the Federal Court (*Bundesgerichtshof*) and in the Federal Patent Court (*Bundespatentgerichtshof*). This is important regarding the breakdown of the numbers of judges according to criminal and civil based on the Federal Court's case allocation plans as published in "Zahlen aus der Justiz".

Lay judges (*Schöffenrichter* in criminal cases at the *Amtsgerichtshöfe*, *Handelsrichter* in commercial cases in the *Landgerichte* and the *Oberlandesgerichte*, and various *Ehrenamtliche Beisitzer* in the *Sozialgericht*, the *Arbeitsgericht*, the *Finanzgericht* and specific civil sections) never pronounce judgments independently but only attend court sessions. In terms of numbers, these lay judges far exceed the professional judges: there are 60,000 *Schöffenrichter* alone, as opposed to over 20,000 professional judges. Converted into full-time jobs, however, their role is limited. *Schöffenrichter*, for instance, are expected to assess six criminal cases a year.

– Staff

Full-timers and part-timers' information is given according to the authorities' level (Bund and Länder) and according to task areas. *Rechtsschutz* comprises the judiciary, the Public Prosecution Service and the prison system. The figures are presented by *Statistisches Jahrbuch*. Subsequently, the total personnel exclusive of the prison system was divided into judiciary and Public Prosecution Service. "Other personnel" in the judiciary is often calculated by deducting the number of judges from the comprehensive number of all members of the system.

In the *Freiwillige Gerichtbarkeit*, registration cases are not handled by judges, and personnel responsible for *Freiwillige Gerichtbarkeit* is arguably included in the judiciary system. According to a strategic personnel allo-

cation plan of the court of Hamburg Mitte, which co-ordinates personnel policy for the entire urban state of Hamburg, approximately a quarter of all personnel in the ordinary courts of the urban state of Hamburg is responsible for the *Freiwillige Gerichtsbarkeit*.

– Expenditures

Details on the expenditures incurred for administration of justice are estimated on the basis of the data of Statistical Yearbook.

Ways to obtain proportion of administration expenditures:

- Based on the proportion of judges in the ordinary courts and the number of public prosecutors, dividing expenditures for ordinary courts and prosecutors' offices into judiciary and public prosecution service.
- Based on the extremely detailed cost itemisation, these costs can all be separated, except for the Disciplinary Court (*Disziplinargericht*). Military justice expenditures are assumed to be negligible.

This produces the "direct expenditures" (exclusive of pensions and benefits) for X year for regular judicature (criminal + civil) and for specific judicature (administration, social, tax, labor). To estimate the direct expenditures for X year, the growth rate of these expenditures may be assumed to be equal to the growth rate of the total expenditures.

– Personnel expenditures

Personnel costs include expenditure incurred for personnel and what are known as *Versorgungsbezüge*. Personnel-related expenditures are inclusive of expenditures for lay judges (*Ehrenamtlich Tätige*). The *Versorgungsbezüge* are pensions (Ruhegehalt, Hinterbliebenenversorgung) and indemnification of nursing costs and disability pension in the event of occupational accidents (Unfallfürsorge).

The state is not required to pay employers' premiums on wages. Moreover, civil servants do not pay taxes and social premiums on their wages, i.e. their gross wages equal their net wages.

2. Statistics on prosecution, sentencing and execution of sentence

Table 2. The statistics collection in all stages of the criminal procedure

Stage of procedure	Reporting authority	Where data are held
Investigation		
Suspicion of a criminal act	Police	Police crime statistics
Passed on to Public Prosecution Office	Public Prosecution Office	Register of proceedings

Table 2. The statistics collection in all stages of the criminal procedure (Continuation)

Stage of procedure	Reporting authority	Where data are held
Pending cases Final decision	Public Prosecution Office	Public Prosecution
Intermediate proceedings		
	Court	Court Business Statistics
Main proceedings		
Judgments	Court	Court Business Statistics
Sentences	Public Prosecution Office	Conviction Statistics
Execution of sentence	Public Prosecution Office	Conviction Statistics
Prison sentences	Public Prosecution Office	Central Federal Register
Suspended sentence – subject to supervision by probation officer	Court	Central Federal Register Probation statistics
Sentence not suspended	Public Prosecution Office	Central Federal Register
When sentence is served	Prison Service	Prison Statistics
Sentencing of repeat offenders	Public Prosecution Office or Court	Central Federal Register (basis for the reconviction statistics)