



Lay and honorary judges in Germany

Report by Hasso Lieber, PariJus gGmbH

I. General information

In all jurisdictions in Germany, honorary judges take part in oral hearings. They are sometimes referred to as „lay judges“, the original meaning of which is „laikós“, meaning „from the people“. According to the requirements that honorary judges must fulfil for their office, a distinction must be made between those, who

- as representatives of the people do not have to fulfil any legal or professional qualifications (lay judges in criminal cases against adults, honorary judges at administrative courts) in addition to life experience, knowledge of human nature, logical thinking, and decision-making ability,
- must have special (non-legal) expertise and experience (commercial judges, lay judges in juvenile criminal proceedings, honorary judges in agricultural proceedings or in labour or social courts),
- as representatives of a particular profession participate in the proceedings of the professional courts (for lawyers and members of other free-lance professions such as notaries, architects, doctors and pharmacists, tax consultants, auditors, etc.) and the disciplinary courts (against professional judges, civil servants, soldiers).

Honorary judges participate in hearings to the same extent and with the same voting rights as professional judges unless the law provides otherwise in a few exceptional cases. The participation of lay judges takes account of the principle of the German constitution (Article 20 of the Basic Law) that all state authority emanates from the people; on the other hand, it is an expression of the fact that a correct and just judgement consists not only of the correct application of the legal method, but also of the realistic determination of the facts of the case to be judged, taking into account different social behaviours in everyday dealings and the consequences of the judgement for the parties involved.

The Federal Constitutional Court has ruled „*that only those persons may be appointed as honorary judges who, according to their personality and professional qualifications – including their attitude towards the fundamental decisions of our constitution – offer the guarantee that they will fulfil their constitutional and statutory ... judicial duties without restriction at all times*“ (decision of 6 May 2008, ref.: 2 BvR 337/08).

Honorary judges are elected for a term of five years and must be German nationals. It could be of interest for the discussion in the ENALJ to what extent EU-citizens could also fulfil the office. Of course, a certain time of staying in the respective host country and the corresponding language skills are necessary. In the labour courts there could be minor problems than in other jurisdictions, as the experience in the world of work is quite the same for a person coming from another European country.

Arbitrators (in Saxony: justices of the peace), who do not make contentious (i.e. „judicial“ in the narrow sense) decisions, but who play an important role in pre-trial dispute resolution precisely because of the increasing importance of mediation, should also be counted as honorary members of the judiciary in the broadest sense.

II. Honorary judges in the individual jurisdictions

1. Two honorary judges are always involved in **criminal proceedings** together with one, two or three professional judges, namely at the **local court** (1 or 2 professional judges) and at the **regional court** at first instance (2 or 3 professional judges, in capital crimes like murder always with 3 professional judges) as well as in appeal proceedings against judgements of the district court (1 or 2 professional judges). Lay judges participate in the courts of fact when it comes to establishing the facts of a criminal offence. Decisions on guilt and punishment are decided by a two-thirds majority, so that lay judges in the 1:2 configuration can overrule the professional judge, while in the other configurations they can prevent a conviction of the defendant. Lay judges do not take part in the purely legal instances in which the legal correctness of the previous judgement is examined.

Lay judges in **juvenile courts** should be educationally qualified and experienced in youth education. In practice, there is a strong professional relationship to educational professions. However, the requirements for educational qualifications and experience in youth education do not have to be acquired through a profession or training but can also be acquired on a voluntary basis.

A bill to raise the **maximum age limit** for lay judges in criminal courts has been under discussion in the German Bundestag since the beginning of 2024. The current age limit for the office of lay judge is 70. Anyone who has reached the age of 70 should not be appointed as a lay judge. The draft bill provides for a maximum age limit of 75 years for serving as a lay judge. After the age of 75, the lay judge is to retire from office, although ongoing proceedings can still be completed.

A proposal by the Federal Ministry of Justice is currently being discussed in Germany. According to this proposal, lay judges are to be **automatically dismissed** from office if they have been sentenced to prison or fine of more than 90 daily rates (equivalent to 3 months' income) for an intentional criminal offence. The current limit is a prison sentence of six months. Even today, a lay judge can be dismissed from office after a sentence of less than six months or a fine. But then only after an explicit judgement by a court. The intended change to the law would mean that a lay judge would automatically be removed from office for any custodial sentence. In the case of professional judges, the automatic loss of office (and therefore the profession) only occurs after a prison sentence of one year. In the case of lesser penalties, a disciplinary court for judges assesses on a case-by-case basis whether removal from office is necessary. For example, judges have been dismissed for possession of child pornography images because such an offence is incompatible with judicial office even if a sentence of less than one year was imposed. The discussion about this far-reaching difference in treatment between honorary and professional judges must be held in the coming months. ENALJ members PariJus gGmbH and the Association of Honorary Judges of Central Germany (VERM) have submitted statements to the Federal Ministry of Justice.

2. The **administrative courts** rule on disputes in particular between citizens and public authorities regarding the legality of the actions of the executive power. However, the extent to which honorary judges are involved in administrative court proceedings has been steadily reduced by legal policy over the past few decades. Legislation has created an increasing number of types of proceedings in which the participation of honorary judges is not provided for. They are now only involved in around a quarter of all first instance decisions. Whether honorary judges are also involved in proceedings at the higher administrative courts depends on the law of the respective federal state. Such participation is not provided for in the southern German federal states.

3. In the **labour courts**, honorary judges take part in hearings as *employees* and *employers* in all three instances of the labour courts, contributing their knowledge and experience in the field of working life and labour law to the determination of justice in labour law disputes. They are appointed by the authorized ministry from nomination lists submitted by an organisation or body entitled to make nominations (trade unions, employers' associations, public-law bodies). Honorary judges are represented in all instances of labour jurisdiction, always one employee and one employer representative. At the labour courts and the higher labour courts, only one of the three members is a professional judge. For this reason, the honorary judges have the majority in two instances. In the Federal Labour Court, there are three professional judges and two honorary judges.

4. Chambers for commercial matters at the regional courts decide on disputes between merchants arising from certain legal relationships. In these chambers, merchants act as honorary judges (together with a professional judge), who are known as „commercial judges“. They bring commercial thinking and experience to the proceedings. Like the professional judges, they wear black robes. Historically, this honorary judicial office can be traced back to the year 1517. They are appointed by the judicial administration on the recommendation of the Chamber of Industry and Commerce. The office was restricted a few years ago by the fact that the parties to a case can agree with the presiding judge to waive the involvement of commercial judges. The introduction of commercial courts with English as the court language is currently being discussed in the German Bundestag. The federal states decide on the participation of honorary judges when they set up a chamber for international commercial matters.

5. There are honorary judges in **agricultural proceedings** at the local courts, higher regional courts and the Federal Court of Justice. The President of the Higher Regional Court or the Federal Court of Justice appoints them based on a list of nominations from the agricultural organisations in the Central Committee of German Agriculture. The list is drawn up in accordance with the law of the federal states. Honorary judges must practise or have practised agriculture in the district of the court as their main or secondary occupation.

6. The honorary judges at the **social courts** must – depending on their assignment – be employers or insured persons, employees or self-employed persons, disabled persons, panel doctors or psychotherapists. Their qualification is based on their affiliation to a specific group of people for whose interests the social courts are responsible. Nominations for honorary judges in the courts for social and unemployment insurance matters are submitted by trade unions and employee associations with a social and professional policy purpose. Organisations of the health insurance funds draw up the lists of nominees for the honorary judges of the courts for contract doctors' law. Various lists of nominees are drawn up by the relevant organisations for matters relating to social compensation and disability law. The honorary judges are appointed by the responsible ministry, which is bound by the organisations' lists of nominees.

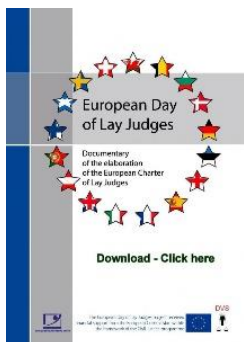
7. The **fiscal jurisdiction** has only two instances; the fiscal courts and the Federal Fiscal Court as an appeal instance. The honorary judges for the fiscal courts are elected by a committee from a list of nominees (with twice the number of candidates) drawn up by the President. Trade unions, chambers of industry and commerce, chambers of crafts, representatives of the free-lance professions, chambers of agriculture, etc. should be consulted before this list is drawn up.

III. Tendencies

The development of civil society participation in the German judiciary is essentially dominated by economic considerations. The permanent endeavour to reduce costs has led to the participation of honorary judges being restricted in Germany for decades. Today, honorary judges only take part in about 7% of all criminal proceedings at the local courts (up to a sentence of two years' imprisonment). The remaining proceedings are dealt with by a single judge. Participation is also steadily declining in the administrative courts. In asylum and immigration law proceedings, which are actually subject of fierce debate in Germany and in Europe, honorary judges are almost no longer involved. In this respect, it must be critically noted – at least for Germany – that although there is much discussion about the success of right-wing extremist and

populist endeavours, civil society is increasingly being pushed back from participation in state power. A European debate could be helpful.

For German honorary judges the European aspect always has been important. That's why I initiated together with the European Academy Berlin the idea of elaborating the **European Charter** and inaugurating the **European Day of Lay Judges**. Step by step we found interested organisations nearly all over Europe. These activities were financially supported by the European Commission as well as the German Federal Ministry of Justice. After two preparing conferences in Berlin (2010) and London (2011) the „European Day of Lay Judges“ was established on 11 May 2012 to consolidate the necessity of citizens' participation in jurisdiction. The participating associations expressed their conviction in a „European Charter of Lay Judges“. All of them have the common conviction that the participation of the people in jurisdiction is „a fundamental principle in any democratic society“. The associations defined minimum standards in the Charter, which jurisdiction in the European states must conform regarding the participation of lay judges. This includes not only the guarantee of equitable participation in the negotiations with the career judges but also the ban on discriminations in profession. The Charter describes participation of representatives from the people in the jurisdiction as an essential element of democracy. In accordance with Article 1 the challenge for the coming years will be to define the charter in more detail by developing common standards for the judicial honorary office in Europe as well as the principles of ethical behaviour for honorary judges.



European Day of Lay Judges. Documentary of the elaboration of the European Charter of Lay Judges.

Berlin: European Academy Berlin, 2012. 44 pp.

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