OVERVIEW OF COURT ADMINISTRATION IN FRANCE, GERMANY, THE NETHERLANDS, AND THE UNITED STATES
This Overview was developed as a part of the American Bar Association Rule of Law Initiative (ABA ROLI) program in Kazakhstan and the European Union Project "Support to Judicial and Legal Reform in the Republic of Kazakhstan".

The Overview presents existing court administration systems in France, Germany, the Netherlands and the United States, and a comparative overview of the systems of all four countries.

Chapters 2, 4, 5 (Germany, US and comparative overview) were written by Ebony Wade, ABA ROLI Research Fellow. Chapters 2 and 4 were prepared with input from experts: on Germany - Judge Johannes Riedel, President of the Regional Appellate Court (Oberlandesgericht) of Cologne, on US - Markus Zimmer, former District Court Executive/Clerk of Court of the US District Court of Utah (1987-2006). Chapters 1 and 3 (France and Netherlands) were prepared in co-authorship of Olga Ruda and the EU Project experts: on France - Judge Sylvie Ceccaldi-Guebel, on the Netherlands - Judge Bert Maan, former President of the District Court of Zwolle-Lelystad (1992-2006).

The Overview is prepared in English, edited by Olga Ruda, Deputy Director of Research & Assessments at ABA ROLI.

This Overview was made possible with the generous support of the American People through USAID and the EU Project "Support to Judicial and Legal Reform in the Republic of Kazakhstan".

All statements and opinions contained in this Overview reflect only the point of view of the authors.

The contents are the sole responsibility of the authors and do not necessarily reflect the views of USAID, the United States Government, ABA ROLI, European Union or the EU Delegation to Kazakhstan.
| CHAPTER 1. Court Administration in France | 4 |
| CHAPTER 2. Court Administration in Germany | 21 |
| CHAPTER 3. Court Administration in the Netherlands | 33 |
| CHAPTER 4. Court Administration in the US | 48 |
| CHAPTER 5. Comparative Overview of Court Administration in France, Germany, the Netherlands, and the United States | 69 |
OVERVIEW OF COURT ADMINISTRATION IN FRANCE

I. Country Background

A. Legal Context

France is a presidential republic, governed by the Constitution of the Fifth Republic. The current Constitution, approved in 1958, provides for the separation of powers among three branches of government: the executive, the legislature, and judiciary. In addition to incorporating basic principles of previous constitutions, it draws heavily on the Declaration of the Rights of Man and of the Citizen, one of the fundamental documents of the French Revolution. Since its adoption, it has been amended numerous times, most recently in 2008.

The executive branch is headed by the President of the Republic and the Prime Minister. The President is the head of state and is directly elected to a five-year term, with a two-term maximum. He/she is the head of the civil service, the armed forces, and the government agencies. He/she also appoints the Prime Minister, but may not dismiss the latter. The President and the Prime Minister generally work together to select ministers and form the government. The President holds the appointment power, but exercises it based on recommendations of the Prime Minister. The ministers comprise the Cabinet, charged with developing policy and proposing bills to the legislature, as well as applying policies through decrees.

The legislative power is exercised by a bicameral Parliament (Parlement). The National Assembly (Assemblée Nationale), which is viewed as the principal chamber, consists of 577 directly-elected deputies. They select a president from amongst themselves to serve as head of the chamber. The Senate (Sénat), or the High chamber, has 343 seats and is elected indirectly by an electoral college of local officials. The members of the Senate also elect a president, who would succeed the President of the Republic in the case of the latter’s death, impeachment, or resignation. The Constitution provides that both chambers have equal powers, and either may submit legislation for consideration. Each chamber may propose amendments to legislation, but the final version voted on must be the same in both chambers. If the two chambers cannot agree on a final version of a law, the government can choose to go with the decision of the National Assembly via a special procedure.

The President has the power to dissolve the National Assembly and call for new elections if he/she feels that the chamber is unable to come to agreements and move policies forward. The National Assembly also has the power to overthrow the government through a majority vote of no confidence, in which case the President must form a new government. Because the National Assembly can dissolve the government, the President typically selects a Prime Minister who has the support of the majority of the National Assembly.

The judiciary stands as an independent authority, although the Ministry of Justice is responsible for the damages caused by the judicial system. It consists of two entirely separate branches – judicial (or ordinary) courts (l’ordre judiciaire) and administrative courts (l’ordre administratif). Both judges (magistrats du siège) and public prosecutors (magistrats du parquet, or ministère public) are part of the judiciary and have the same status – that of magistrates. Magistrates are appointed by the President upon agreement of the High Council for the

---

1 Prepared with input from Judge Sylvie Ceccaldi-Guebel.
Judiciary (Conseil Supérieur de la Magistrature, or CSM) and following the completion of a mandatory course of study at the National School for Magistrates (École Nationale de la Magistrature, or ENM), an independent public institution under the administrative control of the Ministry of Justice. ENM trainees are recent law graduates recruited via a nationwide competitive examination, who undergo a 31-month training program, followed by an exit examination. The scores on this exam help determine candidates’ placement as judges or prosecutors: the highest performers are given priority in filling vacant posts. Once appointed, judges may not be dismissed except as a result of serious disciplinary violation, after decision of the CSM.

The French legal system is based on codified law, primarily the Napoleonic Civil Code of 1804, as well as criminal, commercial and public law, consisting of administrative and constitutional law. The legal system is characterized by a strict hierarchy of norms, with the Constitution at its apex. The Parliament passes statutes (les Lois), which are, in turn, classified into organic or institutional acts (loi organique), ordinary acts (loi ordinaire), and ordinances (ordonnances), which are adopted by the Government and expire after a certain time, unless ratified by the Parliament. The executive branch is authorized to enact regulations (règlements), called décrets, if issued by the President or the Prime Minister, and arrêtés, if issued by ministries and other executive branch agencies. Judges may not create new law, but rather are tasked with enforcing and interpreting existing laws. Lower courts are not bound by the decisions of higher courts, but may still be influenced by them. Additionally, duly ratified or approved international treaties and agreements become part of the legal system and prevail over any domestic laws.

**B. Structure of the Court System**

The French judiciary consists of two separate branches: judicial (ordinary) courts, which hear civil, commercial and criminal cases, and administrative courts, which hear cases between private individuals and state or local government authorities or agents. The judicial courts, in turn, are divided between civil, commercial, labor law and criminal courts. Each category of courts is then organized in a hierarchy of two tiers.

The courts of first instance are the lowest courts, and in both civil and criminal courts there is a further division of matters into several tiers. At the lowest first-instance tier is the **district court (tribunal d’instance)**, which handles small civil claims valued under EUR 3,800 (without appeal) and 10,000 (with appeal), including rent disputes, minor traffic accidents, and minor damages, as well as matters related to guardianship for adults. A **police court (tribunal de police)** located within the district court handles criminal misdemeanors punishable by a fine. Cases at this level are decided by a single judge, and civil litigants may appear without legal representation. For petty misdemeanors, as well as civil claims valued under EUR 4,000, disputes at this level may be decided by a lay judge (juge de proximité).

More serious cases are heard in the first instance by **regional courts (tribunaux de grande instance)**. For civil cases, this includes all claims in excess of EUR 10,000, as well as exclusive jurisdiction over specific areas, such as real estate ownership, divorce, paternity, adoption, inheritance, and trademark law, regardless of the amount in controversy. A division within this court, called the **criminal court (tribunal correctional)**, tries “intermediate” crimes, such as theft, fraud, and serious assaults, and may impose prison sentences ranging from six months to
ten years, as well as other punishments. Cases at this level are generally decided by three-judge panels, although family law cases and minor criminal offenses may be heard by a single judge.

Finally, the **Assize Court (cour d’assises)** in each department handles major crimes and attempted crimes (e.g., murder, rape, armed robbery). It is unique in that it is not a permanent court, but rather meets every three months for a two-week period; as well as in its use of a jury system, consisting of nine randomly chosen citizens on the electoral lists, who sit on the panel with three professional judges.

In addition to general ordinary courts of first instance, there are a number of **specialized first instance courts** with original jurisdiction in certain cases. The commercial court (**tribunal de commerce**) deals with commercial transactions, such as disputes between private individuals and traders, or between traders and commercial companies. The labor court (**conseil des prud’hommes**) handles employment cases, often individual contract disputes (it does not have jurisdiction over labor strikes or collective actions). There are also specialized social security courts (**tribunaux des affaires de sécurité sociale**) and agricultural and land tribunals (**tribunaux paritaire des baux ruraux**). All of these courts consist of non-professional judges, who are chosen to limited terms with respect to the principle of equal representation. Finally, there is a system of juvenile courts, consisting of children’s judges (**juge des enfants**), who are charged with taking protective measures concerning children; juvenile courts (**tribunaux pour enfants**) to review misdemeanors and crimes committed by minors under the age of 16; juvenile criminal courts (**tribunaux correctionnels pour mineurs**), which adjudicate crimes committed by minors under 16 punishable by at least three years of imprisonment; and juvenile Assize Courts (**Cour d'assises des mineurs**).

With a few exceptions, parties may ask for their cases to be reheard on appeal. The **Courts of Appeal (Cours d’appel)** function as the level of appeals, reviewing civil, criminal, commercial, and employment cases from the courts of first instance. These courts consists of specialized chambers, which are composed of only professional judges, who reexamine both the legal basis and the facts of the case and may either confirm or reverse the lower court judgment in whole or in part, in which case it hands down a new decision. There is also the Assize Court of Appeal (**cour d’assises d’appel**), which hears appeals from the Assize Courts in panels of three professional judges and 12 jurors.

Located in Paris, the **Court of Cassation (Cour de Cassation)** is the court of last resort for ordinary jurisdiction cases, but only under conditions provided by the law; it has nationwide jurisdiction. It may only review the legal basis of the case, not the facts, and either rejects the request, thus confirming the lower court decision, or “breaks” the decision of the lower court, which means that the case is remanded for reconsideration. The Court is made up of approximately 85 professional judges, who are assigned to one of six specialized divisions or chambers (three civil, as well as a commercial, a labor, and a criminal chamber). A separate Divisional Court (**chamber mixte**), comprised of the Chief Justice and three judges from at least three different divisions, adjudicates cases where the subject matter of an appeal falls within the purview of multiple divisions. There is also a Full Court (**Assemblée plénière**), which consists of the Chief Justice, as well as presiding and senior justices from each of the divisions.

The administrative court structure similarly consists of two levels of jurisdiction. At the first-instance level are the **administrative courts (tribunaux administratifs)**, which hear cases
against public authorities, including against national government branches and agencies, regional departments, municipalities, and administrative public services (e.g., a dispute over public works contracts). It also handles direct tax disputes, public service employment contracts, and cases involving deportation of foreigners and their rights of residence. Judgments of the administrative courts can be appealed to the Administrative Court of Appeal (Cour administrative d'appel). The highest administrative court is the Council of State (Conseil d'État), which functions as a court of cassation and hears certain appeals from the lower administrative courts. Much of its appellate work has been transferred to the appellate courts, however, and it now focuses mainly on disputes over local elections and assessments of legality. The Conseil d'État also has original jurisdiction in unique cases, such as petitions seeking to overturn executive decrees or the decisions of other government bodies. In addition to hearing cases, it advises the government and reviews and provides opinions on draft legislation.

Because of the difficulties that sometimes arise in determining whether a case should be heard by the judicial or the administrative courts, the Conflicts Tribunal (tribunal des conflits) has the authority to decide which court should have jurisdiction. An eight-judge panel, consisting of four judges from the Council of State and four from the Court of Cassation, is appointed to a three-year term. The tribunal is formally headed by the Minister of Justice, who casts the deciding vote if the judges are equally split on a decision.

Neither judicial nor administrative courts in France are authorized to conduct judicial review of legislation to determine its constitutionality. Instead, the independent Constitutional Council (Conseil Constitutionnel) is the highest constitutional authority in the country, charged primarily with reviewing whether draft laws that were passed by the Parliament comply with the Constitution. This review is conducted prior to the laws' being signed by the President of the Republic. In addition, individual citizens may now petition the Council, through the Court which is judging their case, directly with a request to determine whether the law that was applied in their case is constitutional. The Constitutional Council consists of nine members, with the President of the Republic and presidents of both houses of Parliament each appointing three members to non-renewable nine-year terms. Former Presidents of the Republic are ex officio members of the Council.

C. Relationship of Other Branches to the Judiciary

The Constitution explicitly charges the President of the Republic with safeguarding judicial independence. The CSM assists the President in fulfilling this duty. It functions independently of the government and oversees disciplinary matters involving judges and prosecutors. It also provides input on the judicial selection and appointment process. The CSM consists of members of the judiciary and other persons, some appointed by government Bodies and others elected by their judicial peers. It is divided into three bodies: one dedicated to common matters, the second to judges and the third to prosecutors. The bodies for judges and common matters are chaired by the First President of the Court of Cassation; the third one is chaired by the General Prosecutor of the Court of Cassation.

The Ministry of Justice, also known as the Chancellerie, has the overall responsibility for administering the French judicial system. In particular, it sets the major public policy guidelines in the field of justice and the related reforms, drafts legislation and regulations on matters that
concern the courts, and oversees their implementation. It also determines criminal policy, in order to ensure equal treatment for all citizens before the law throughout the French territory. Finally, the Ministry provides for and manages the resources necessary for the administration and operation of the courts, as well as plays a key role in the appointment of officers responsible for the administration of justice.

II. Overview of Court Administration Structure

A. National-Level Administration: Judicial Services Department of the Ministry of Justice

The Judicial Services Department of the Ministry of Justice is responsible for ensuring the organization and proper functioning of all courts of general jurisdiction (i.e., civil and criminal courts) in France. Among other responsibilities, it prepares draft legislation concerning the status of judges and judicial system officials, as well as other matters affecting the organization and functioning of the courts. It is also responsible for judicial human resources management, including matters such as recruitment, training, nomination, and management of the career of magistrates and court support officers, as well as investigating disciplinary matters and ethical violations. In performing this role, the Department works very closely with the CSM, the ENM, the General Inspectorate for Judiciary, and the National School for Judicial Clerks (École Nationale des Greffes, or ENG). Additionally, it is charged with ensuring the smooth running of the jurisdictions, by virtue of its responsibilities to prepare and follow-up on the judicial services budget and to exercise financial management of judicial personnel. Finally, it determines the strategic and operational objectives, defines the operating requirements and equipment, and allocates financial and other resources between different courts.

The Judicial Services Department consists of four sub-departments and is headed by a director, who is assisted by a manager-deputy director, charged with implementation of cross-cutting initiatives.

The sub-department for human resources matters for magistrates, which supports the recruitment and management of judges and prosecutors (subject to the powers of CSM and ENM, prepares and maintains their personal files, assesses their workloads and allocates judicial positions among courts. It is also responsible for developing and implementing policies concerning human resources management of magistrates, as well as for ethical control and disciplinary investigations. This sub-department includes offices for internal mobility, performance evaluation, and skills development; for the support and monitoring of external mobility and appointments; for judicial status and ethics; and for recruitment, training, and general affairs.

The sub-department for human resources matters for clerks of courts, which manages the employment and career progress of clerks of courts, supports their recruitment, administrative oversight, and retirement, and ensures the enhancement of their skills and professional development. This sub-department includes offices for career and occupational mobility; for human resources management and planning; for status of clerks and social relations; and for recruitment, training, and development of initial training and work experience.

---

2 The latter School falls under the Department’s direct jurisdiction.
The sub-department for the organization and operation of the courts, which drafts legislation relating to organization and functioning of the courts and issues opinions on legislative or regulatory initiatives that can affect their operation; prepares draft budgets for the courts, reviews and analyzes their operational and equipment needs, distributes resources to individual courts, and exercises financial oversight over court members; participates in procurement initiatives for the courts; identifies the judiciary’s real estate investment needs and monitors the needs of building maintenance; and defines and implements the main guidelines on the courts' security policy. This sub-department consists of four offices: for laws on the organization of the judiciary; for monitoring of territorial coverage of court jurisdictions and security of the courts; for budget, accounting, and means; and for costs of justice and optimization of expenses.

The sub-department for performance and work methods, which analyzes the activity of the courts and identifies and proposes new organizational schemes; collects statistical information and conducts studies related to the developments in court performance; and proposes a strategy for judicial services. It has offices for the organizational schemes, work methods, and studies; for performance management; and for monitoring of ICT applications in judicial services.

The Judicial Services Department also performs a number of overarching functions in the area of court administration. For example, it is responsible for the development and coordination of internal and external communications management, as well as for managing the network of communications magistrates designated for individual courts, in coordination with the chiefs of the courts of appeal.

B. Court-Level Administration: Court Clerk Services

Individual courts in France rely on a professional court administration model, known as the clerk service or the registry organization system (greffe). Clerk services exist in all court at all levels of jurisdiction, and are staffed by the chief clerk or registrar (greffier en chef), who performs administrative, managerial, coaching, and supervisory duties, and subordinate clerks or registrars (greffiers), who assist judges, authenticate judicial acts, and perform public reception and information duties.

The chief clerk of court is a Category A civil servant. His/her most important function is to serve as the director of the clerk service. Assisted by other clerks, he/she directs the services of a court. This person is responsible for the assignment of clerks to their positions, participates in the development of a court’s budget, as well as organizes and supervises the management of a court’s physical resources, facilities, and equipment. He/she also serves as the custodian of the court’s minutes and records.

Depending on the level of the court that the chief clerk is assigned to, he/she may also perform certain specific functions, notably in the areas of non-contentious jurisdiction. For example, the chief clerk of the district court (tribunal d’instance) has functions related to wage assignments, proxy voting, issuing certificates of French nationality, and providing consent to adoption. At the first instance court (tribunal de grande instance), the chief clerk also serves as the vice-president of the legal aid bureau and has authority over various declarations in the area of family law (e.g., parental authority, change of name). The chief clerk may also be appointed to serve as the Managing Director for Regional Judicial Administration of the Regional Administrative Service. In this capacity, he/she will bear responsibility for fiscal management,
human resources, training, and IT management for all courts within the jurisdiction of the court of appeal. Chief clerks can also teach at the ENG.

Chief clerks of courts are recruited and appointed through a national open competition. An external competition is open to candidates with a full university-level degree or equivalent, under the conditions set by a joint order of the Ministry of Justice and the Ministry of Civil Service. An internal competition is open to clerks of courts and other civil servants with at least four years of civil service experience. Selected candidates are then required to participate in an 18-months training program at the ENG, which covers various aspects of relevant legislative provisions, supervision, and management and consists of both theoretical studies and practical apprenticeship (stage) in courts. Chief clerks who were recruited through an external competition are also required to sign a commitment to remain in civil service for at least five years, in addition to the internship year.

Clerks of court are Category B civil servants who are regarded as the key players for the proper functioning of the judicial service. They perform their functions under the authority and supervision of the chief clerk of court. First and foremost, a clerk is a technical specialist who assists the magistrates in the performance of their procedural duties, such as pretrial record-keeping or authentication of judicial acts. This role is essential, since any act performed in the absence of the clerk could be void. A clerk may also be responsible for staffing a welcome desk at the court and providing litigants with information regarding their case. Persons occupying mid-level clerk positions may be appointed to serve as chiefs of various departments within a clerk service, or as deputy chief clerks or chief clerks for smaller units. A clerk may also perform administrative tasks related to budget and financial management, provision of personnel and equipment, or vocational education.

Similarly to chief clerks, subordinate clerks are recruited and appointed through a national open competition. An external competition is open to candidates with a general university studies diploma or equivalent, under the conditions set by a joint order of the Ministry of Justice and the Ministry of Civil Service, while an internal competition is open to individuals with at least four years of civil service experience. Successful candidates then undergo an 18-month training course at the ENG, which includes both theoretical and practical components and is aimed at preparing the future clerks to exercise different aspects of their functions. Clerks who were recruited through an external competition are also required to sign a commitment to remain in civil service for at least four years, in addition to the internship year.

To maintain their level of professional efficiency, clerks of courts are required to participate in at least 10 days of continuing training for every five years of their service. The ENG organizes a variety of training sessions for clerks. In addition, the ENM offers joint training sessions to court chiefs and chief clerks, to increase their familiarity with their necessary ways of collaboration and understanding.

Each court also has a team consisting of two chiefs: court president and chief prosecutor in first instance courts, and first president of the court and general prosecutor in the courts of appeal. The chiefs of the court have hierarchical authority over the chief clerk and can give general directives to the latter; however, they cannot supervise the clerks of the service, as they are subordinated to the chief clerk.
In addition to professional court administrators, the French system also ensures that all members of the courts are involved in making the administrative decisions related to their work. Thus, the Judicial Organization Code (Code de l'organisation judiciaire) requires that courts have several assemblies, including assembly of sitting judges (chaired by court president), assembly of prosecutors (chaired by chief prosecutor), assembly of magistrates (chaired by president of the court), assembly of clerks (chaired by chief clerk), and general assembly for all members of the court (chaired by president of the court). All of these assemblies must convene at least once per year, but additional meetings may be called upon request of the president of the court or the majority of the respective assembly’s members. All of these assemblies are competent to discuss various issues related to organization of the court, including the number and schedule of hearings, reallocation of clerk positions to meet the needs of judges and prosecutors, the working hours of the clerk services, the distribution of budget allocated to court, the work conditions for the clerks of the court, security measures, and all other matters related to the internal management of the court. The assembly meetings can only discuss issues that were previously placed on the agenda. The chief clerk of the court records decisions and recommendations approved by the assemblies in the special register, and minutes of the meetings are then sent to the chiefs of the court of appeal.

III. Functions of Court Administration

A. Providing the Courts with Appropriate Financial Resources

One of the most important functions of the court administration in France is to provide the courts with financial resources adequate for the level of their needs. The budget and all other supplies for the judiciary, like for all other branches of government, are fixed annually by the Parliament. Since 2001, however, there has been a major reform in the system of allowance of the budget for all government ministries. Under the Organic Law Relative to Finance Laws (Loi Organique Relative aux Lois de Finances, or LOLF), general budget categories are no longer defined by each ministry, but rather by missions, programs, and actions – all in an effort to introduce performance-based ideas and approaches to public management. Under this approach, each ministry is required to adopt an annual program of action based on concrete goals, and will be allocated budget in the proportion to its performance. Thus, the Ministry of Justice had adopted an annual preparation of the budget, based on a formalized dialogue between the courts and the Judicial Services Department of the Ministry of Justice. The goal is to provide the courts with the most appropriate budget for each year, while at the same time taking into account the nationwide policy of reducing public expenditures.

Input into the Ministry of Justice’s budget from individual courts level is provided through the courts of appeal, where their two chiefs – the first president who is responsible for sitting judges and the general prosecutor who is responsible for prosecutors of the court – make the relevant submissions. In this task, the chiefs of the court of appeal are assisted by an administrative body, called the Regional Administrative Services (Services Administratifs Régionaux, or SAR), which implements the court chiefs’ directives in the fields of budget and human resources, prepares the supporting documents, and oversees the implementation of the decisions. To feed their annual dialogue with the Ministry of Justice, SAR collects and provides to the chiefs of the courts of appeal the information from the chiefs of the courts of first instance located within their judicial district. The requested budget amount is based on the amount allocated for the previous year and cannot exceed it by more than 3%, unless new financial charges are demonstrated. Courts of appeal chiefs lead the discussion with the Ministry on behalf of both their court and
each court of first instance under their jurisdiction. They have to argue and justify the reasons for their funding requests.

B. Management of Human Resources for the Courts

Providing the courts with human resources sufficient to meet the level of their needs, as well as managing the performance and conduct of judicial staff, are the other crucial functions of court administration in France. At the central level, the Judicial Services Department of the Ministry of Justice is charged with conducting an annual evaluation of the judiciary’s staffing needs for judges and prosecutors. A circular is published each year, setting forth the location of the judicial and prosecutorial positions in each court of first instance and court of appeal. This is based on two criteria: the judicial activity of the courts and the number of persons (judges, prosecutors, and clerks) assigned to each court. Based on this information, the Ministry of Justice classifies all courts into two groups, so that each court is compared against other courts in the same group. A court can be moved to another group if justified by the change in economic and sociological conditions of its activity.

A number of circumstances may also arise during the year that make it necessary to temporarily reassign judges to other courts. For example, courts may find themselves facing a shortage of magistrates due to their promotion, absence on sick or maternity leave, participation in external trainings, etc. To help address these shortages, the Organic Law on the Status of the Magistracy (Ordonnance du 22 décembre 1958 Portant Loi Organique Relative au Statut de la Magistrature) has been modified in 2001 to allow the first president of the court of appeal to temporarily assign a judge to another court to fill a vacancy. In addition, a court can be confronted with a temporary difficulty in adjudicating all cases before it. In order to avoid undue delays for the litigants, courts of appeal can enter into targeted contracts with the Ministry of Justice, allowing them to receive temporary reinforcement (and often leading to reorganization). Thus, the Ministry provides the courts with the needed human resources, but it may also withdraw them if a court fails on its contractual commitments.

The Judicial Services Department is also charged with assessing the staffing needs for clerks in the courts. Since 1990, it has been preparing and regularly updating a so-called outil gref, a tool used to assess the proper staffing numbers for each court and each division of the clerk service. To determine this number, each court procedure (e.g., a divorce or a request for indemnity) has been divided into phases, and the time needed to implement each phase has been measured – thus allowing the Department to determine the average time needed to complete each procedure from start to finish. In addition, the Department takes into account the number of proceedings registered at the court for each year, as well as the legally established number of 1,607 annual working hours for civil servants in France. On this basis, it is then possible to determine the number of clerks necessary to manage the activity of each court. This tool is used by the chief clerk in all courts to distribute the human resources of the clerk service.

Most magistrates and court clerks in France are qualified after passing a national exam and completing a course of training in a specific school – the ENM and the ENG, respectively. Judges and clerks are not recruited by the courts directly, and court presidents and chief clerks are unable to choose the persons they will work with. Instead, all judicial personnel are
assigned to specific courts through a centralized nationwide process according to the posted vacancies. In the case of judges, the Ministry of Justice proposes appointment to the independent CSM, which makes the final decision. The Ministry also proposes to the CSM the appointment of prosecutors, but the CSM only delivers a recommendation that the Minister is not required to follow. The Ministry of Justice regularly asks judges and prosecutors to declare to the Judicial Services Department the posts they would like to obtain. It must be emphasized that, given the constitutional principle of judicial independence, no judge may be assigned to a particular position without his/her request and consent.

Once the right number of judges, prosecutors, and clerks has been determined and appropriate personnel has been assigned, each judge is then assigned to a civil or criminal division of the court and each prosecutor assigned to perform specified tasks in the prosecution service. These assignments are done by the first instance court president or appellate court first president for judges, and by chief or general prosecutors for prosecutors. Members of the clerk service are assigned to their posts by the chief clerk, and certain sitting judges (e.g., penal inquiry judges or juvenile judges) must, by virtue of their specialized functions, be consulted about the clerks who will be assigned to work with them. Magistrates and clerks can be reassigned internally among a court’s divisions, as designated in each court’s organization chart. Such modifications typically result from the developments in the number and nature of cases filed with the court.

Despite having the benefit of a special status, judges and prosecutors, as well as members of the clerk office of the court, are civil servants. As such, they are required to undergo regular performance evaluations through their hierarchical chain of command, which is aimed to guarantee the quality of their work and serves as the basis for their professional promotion.

Every two years, judges are evaluated by the president of the court and prosecutors are evaluated by the chief prosecutor. The evaluation form, which is identical for all magistrates in France, is provided by the Ministry of Justice, and detailed evaluation guidelines for all judicial staff in supervisory positions have been developed by the Judicial Services Department. A Ministry of Justice circular issued in December 2010 emphasized that one of the main goals of the evaluation has to do with the Ministry’s obligation to implement provisional management of the human resources.

In view of this, performance evaluations look into such aspects as the level of professionalism, involvement in professional activity, skills, and capacities. Evaluation criteria are divided into four main sections: (1) general professional skills (i.e., aptitude for taking decisions, for listening and communicating, and for adapting oneself to new situations); (2) legal and technical skills (i.e., aptitude for using legal knowledge, for directing the debates, for conducting meetings, and for case management); (3) organizing and leading actions (i.e., aptitude for leading a specific action, or human and financial needs and the ways to reach them); and (4) professional involvement (i.e., effectiveness and efficiency, keeping up-to-date and improving the knowledge, and relations with other institutions, such as police inquiry services, lawyers, administrators, and other counterparts of the court). An evaluation scale of exceptional, excellent, very good, satisfactory, insufficient is used.

Evaluation procedure is also set forth by the Organic Law on the Status of the Judiciary. It begins with a meeting between the court president and the judge being evaluated, during which training needs, working conditions, and career aspirations are discussed. The judge who is being evaluated is notified about the outcome of the evaluation and may file an appeal before a
special body called the advancement commission (*la commission d’avancement*) within the Ministry of Justice. The latter is empowered to give an opinion about evaluations, which will be included in the personal file of a judge or a prosecutor.

Given his/her overall managerial responsibility for all departments of the court, the performance evaluation of the chief clerk is conducted by both the president and the chief prosecutor of the court. Other members of the clerk service are evaluated by the chief clerk. Evaluation criteria include professional competence, personal aptitudes and work efficiency, relational aptitudes, and team leading aptitude. A six-tier evaluation scale is used, consisting of excellent, very good, good, average, insufficient, very insufficient qualifications; the meaning of each category has been clarified in a Ministry of Justice circular published in March 2013. For example, the qualification of “excellent” is reserved for those clerk employees who have a good command of their position, give total satisfaction in the performance of their job duties, are correctly integrated in the working team, have a high capacity level, and are able to assume more advanced functions. Moreover, the evaluation needs to provide specific details about the possibilities of a staff member’s development through three phases: in progress, stable, and needs improvement. As for judges and prosecutors, the evaluation process includes an interview with the staff member in question, who can express his/her wishes or complaints, training needs, and career prospects. After being notified of the evaluation outcome, the member of clerk service may file a petition for review before a special commission on the court, or appeal the evaluation to the administrative court.

In addition to serving as the basis for career advancement, evaluations can also be used to provide bonuses for judges and prosecutors. In principle, the remuneration of judicial staff does not fall under the authority of the courts, but is administered centrally by the Ministry of Justice. The salaries of all civil servants in France, including judges, prosecutors, and members of the clerk office, are fixed according to the same scale and depend on the level and nature of their functions, as well as on their seniority. However, court presidents and chief prosecutors have the discretion to provide a modulated bonus of approximately 10% of the salary to judges and prosecutors on their respective courts, relative to their performance and merits. The amounts of these bonuses are determined annually.

The persons in charge of the courts are also empowered to control the ethical conduct of magistrates and clerks. This function is performed by the president of the court, the chief prosecutor, and the chief clerk, with regards to sitting judges, prosecutors, and clerk office staff, respectively. However, these officials cannot impose disciplinary sanctions; instead, upon receiving any information about the breach of ethical duties, they are required to make a report to the respective official (i.e., first president, general prosecutor, or chief clerk) of the court of appeal. The latter will investigate and, if appropriate, submit a request for a disciplinary procedure to the Ministry of Justice. In addition, the chiefs of the courts of appeal are empowered to undertake annual controls of the courts under their jurisdiction, which includes checking the behavior of all the members of the judicial staff. Thus, any ethical violations will be pointed out in a report to the Minister of Justice. The CSM serves as the disciplinary court for judges and prosecutors; both the Minister of Justice and the chiefs of courts of appeal may petition the Council for a disciplinary sanction. Since 2008, any citizen, under special conditions, can do the same. With respect to members of the clerk service, the Ministry of Justice makes the disciplinary decision in consultation with the disciplinary council.

**C. Organizing the Work of a Court**

---

3 This rule does not apply to members of the clerk service.
An important function of court administration in France involves organizing and administering the day-to-day activities of individual courts. This includes duties such as case assignment, scheduling, and internal organization of the court.

As mentioned above, some courts in France may be organized into several divisions specializing in hearing certain types of cases (e.g., civil or criminal), while other courts may have several judges who specialize in hearing certain types of cases (e.g., criminal investigations, family cases). Each court will have its own organizational chart showing these various divisions. Judges are assigned to different divisions on their courts by trial court presidents or first presidents of courts of appeal, while prosecutors are assigned to their division by chief or general prosecutors of the respective courts. Cases that are brought before a court must be assigned to different divisions and/or distributed between the different judges on the court. The president of the trial court is responsible for assigning cases to the various divisions and judges, while the chief prosecutor organizes the work of the prosecution service. In assigning cases to judges, court presidents strive to ensure the equality of treatment amongst the judges in terms of substance and the amount of their workload (e.g., some cases may be more interesting or more complex and time-consuming). This approach to case assignment prevents the possibility of litigants choosing their judge.

With respect to scheduling, the Judicial Organization Code requires that a master schedule of all hearings for the court is established each year and made available to all stakeholders interested in the administration of the court (i.e., litigants, lawyers, members of the clerk service, judges, and prosecutors). The master schedule must take into account the fact that the court will have certain lighter working periods throughout the year (e.g., during summer holidays), as well as forecast the need for substitution of judges. For civil hearings, the schedule is set by the first president of the court in consultation with the annual assembly of sitting judges. For criminal cases, the schedule is determined jointly by the first president and the chief prosecutor of the court. This joint decision is necessary in order for the prosecution service to ensure that cases will be adjudicated in proportion to the pursuits, as well as that the judges’ workload will not be unbearable. The final master schedule is sent to the chiefs of the court of appeal and cannot be modified during the year, except in urgent cases.

**D. Caseflow Management and Control of Quality of Judicial Output**

In line with European standards, the public has to have trust in the country’s judicial system and to obtain judicial decisions corresponding to quality criteria. To ensure compliance with these requirements, the chiefs of the courts implement a number of control mechanisms over the quality of outputs by everyone involved in the administration of justice. In this context, it is necessary to keep in mind that the principle of judicial independence prohibits contesting their decisions by any means other than a formal appeal by the parties. Thus, a judge’s hierarchical superiors cannot assess the quality of his/her decisions through criteria other than the meaning of the decisions themselves – such as delays or lack of reasoning. This review will take place as part of a judge’s performance evaluation and fall under the categories of “legal knowledge” or “diligence.”

Moreover, to provide a foundation of the quality criteria for judicial decisions, national standards are published each year as part of preparation of the judiciary budget. As mentioned above, the Ministry of Justice’s budget that is approved by the Parliament takes is based on objectives and
performance indicators. Specifically, the draft budget of the Ministry of Justice is divided into five objectives:

- To deliver high-quality decisions in civil cases within proper time limits. The indicators associated with this objective include: average case disposition times; percentage of courts exceeding these average periods; age of caseload; average time to deliver judicial decisions to the parties; number of decisions in civil cases delivered by judges; percentage of civil judgments reversed by a higher court; number of cases processed by members of the clerk service.
- To deliver high-quality decisions in criminal cases. The indicators linked to this objective include: average case disposition times; number of offenses brought by each prosecutor; number of criminal files brought by each sitting judge; and percentage of decisions in criminal cases reversed by a higher court.
- To strengthen and diversify the criminal treatment of offenses, and to improve the execution of criminal sentences. The indicators tied to this objective include: percentage of penal answer given to investigated offenses; percentage of responses other than pursuits; percentage of executed decisions; average time to enforce the decisions.
- To control the growth of procedural expenses.
- To develop electronic communications.

The indicators are expressed by means of the national data averages collected over the course of several recent years, and target outcomes for efficiency improvements are set that must be achieved in the upcoming several years. These national numbers and objective are, of course, used as guidelines for individual courts, which must have specific tools to supervise their activity throughout the year. In order to do so, courts rely on standardized boards of activity and other information boards, reflecting their specific needs. These boards are created through by means of the same national software package, and therefore identical for all courts.

The president of the court keeps track of the activity of sitting judges, based on the regular information provided by the chief clerk. This focused and constant supervision allows the president to modify a judge’s activity, for example, by assigning additional staff, concluding targeted contracts with the Ministry of Justice, or simply bringing a judge’s attention to the areas of deficiency. If a division or a particular judge regularly demonstrates delays in clearing their cases, the court president is informed of this and must then meet with the judge or the division president to obtain their explanations and consider remedies.

For civil cases, a special procedure is in place to control the progress of cases. Under the Code of Civil Procedure, the court president appoints a judge is appointed in each division (e.g., general civil cases, family cases, other cases) to oversee the regular progress of cases. This judge must ensure that there are no unjustified delays, and may give instructions to parties and their lawyers to this end. At the beginning of each case, this judge develops a calendar (if...
possible, with the lawyers’ consent), which sets the dates for exchange of arguments, closing of the procedure, and the final hearing. This calendar cannot be modified except under an emergency, as accepted by the judge.

For criminal cases, the judge in charge of criminal inquiries (juge d'instruction) has very specific obligations as to his/her schedule, as this judge's functions involve dealing with individuals in pretrial detention, who are legally afforded a high level of protection that relies on a judge's efficiency. To ensure that the judge keeps an active investigation, every six months he/she must file a report about all detainees under his/her jurisdiction, with the indication of the actions undertaken during the reporting period (e.g., interrogations, research, verifications, confrontations). This report is sent to the president of the court and the first president of the court of appeal.

The chief prosecutor is in charge of leading the criminal policy of the court (within the guidelines set by the Minister of Justice) and of the implementation of the criminal pursuits by the police, as well as of overseeing the execution of criminal sentences. Unlike the president of the court, the chief prosecutor is hierarchically superior to the prosecutors of the court. Similarly to the president of the court, the chief prosecutor allocates the workload among the prosecutors. To ensure the subordinate prosecutors’ proper familiarity with the national criminal policy and any guidelines, the chief prosecutor develops and disseminates internal guidelines, as well as organizes frequent meetings with the prosecutors, in order to clear a real culture and institutional memory of the service. A record of these meetings is kept in the prosecution service. In addition, the oversight of the police inquiries involves regular meetings between the prosecutors and the police officers, which allows the prosecution service to check the efficiency of the police department’s work. It must be underscored that although the police officers fall under the jurisdiction of another Ministry, they are evaluated by the general prosecutors of the courts of appeal.

**E. Implementation of Modern Technology**

The Ministry of Justice has responsibility for supporting the courts’ IT systems. In particular, it leads a vigilant policy on two main subjects: the use of video-conferencing and the electronic communication between the courts and their stakeholders. It needs to be noted that, because of the high degree of formality and regulation that characterizes France's justice system, several laws and regulations had to be passed regulating and permitting the use of new IT tools by the judiciary and the public. Consequently, it was not until relatively recently that official electronic communications within the courts became effective.

The use of video-conferencing in judicial activity has been legally authorized since March 2004. Each court has received the technical equipment necessary to implement video-conferencing, and this means of communication is increasingly used by the members of the courts, both internally and in their relations with the Ministry of Justice, allowing them to avoid financial expenses and the loss of time. Additionally, video-conferencing is increasingly relied upon during police investigations and trials in the courts to interrogate the accused, witnesses, victims, experts, and other trial participants, since the law underscores an increased trial security as one of the primary benefits of hearing a person without moving him/her from their location (e.g., jail or police office). The use of video-conferencing during a trial must be authorized by the presiding judge. The right of a defense attorney to assist the client in such cases is respected by having the lawyer stand next to the client in the latter’s location, or having
the attorney present in the courtroom. The Ministry of Justice encourages the use of video-conferencing in the courts and keeps records of such use, and the numbers from both the first instance courts and the courts of appeal show constant progress.

In addition, two key actions have been implemented with respect to electronic communication between the courts and their counterparts. First, in order to facilitate the relations between the courts and the police investigation services, the Ministry of Justice has implemented a digitalization of all documents in criminal cases, such as police reports, witness testimonies, or inquiries about suspects. Second, in an effort to simplify the exchange of information between the courts and the lawyers about pending proceedings, since 2005, all notifications, scheduling matters, exchanges of documents, and deliveries of court decisions are carried out through electronic methods. For this purpose, a national agreement has been concluded between the Ministry of Justice and the national Council of Judicial Lawyers (Conseil National des Barreaux), as well as local agreements between the lawyers and the individual courts. Those conventions have been necessary to ensure the reliability and the confidentiality of the exchanges.

There have also been major efforts to provide judges and prosecutors with modern tools of work, notably demonstrated in the computerization of their daily work. The Ministry of Justice has shown a strong determination to provide each judge and prosecutor with at least one computer. As a result, almost all judges and prosecutors in France now use computers to write their decisions and other documents. Each member of the court has an email address, and the exchange of information via email is now the main mode of communication in the courts. A referent for computer technology has been appointed in each court, usually selected among the clerks with special qualifications in this area. He/she maintains technical equipment in the court, provides assistance to IT users, and ensures the security of the data, as well as can organize training sessions for any member of the staff.

Finally, judicial administration is charged with providing judges with complete access to judicial data and other professional knowledge. To this end, the Ministry of Justice subscribes to legal information websites, which allow judges and prosecutors to stay informed about the most recent legal rules and case law (e.g., decisions of the Court of Cassation and the courts of appeal). Each court is also connected to an Intranet, which provides access to all information from the Ministry of Justice, such as data on activities of all of the Ministry’s departments, the Minister’s agenda, recent texts in judicial matters, nomination of judges and prosecutors for the entire country, and training modules for judges and court clerks.

**F. Managing Court Facilities and Facilitating Court Users’ Access to Justice**

In designing the layout of courthouses, court administration must take into account the fact that the first contact of justice users with a court is often akin to entering a foreign place. Thus, efforts must be made to ensure proper reception and care of justice users – a matter that falls under the responsibility of the French Ministry of Justice. Thus, the internal layout of the court has to be clear and have proper signage. A prominently visible welcome desk exists in the main hall of each court, with convenient and extensive working hours. It is staffed by clerks who have received appropriate training and have prefect knowledge of the organization of the court, allowing them to provide visitors with pertinent information on court operations. Among others, this includes responding to inquiries about pending proceedings, providing users with legal forms that need to be completed, and guiding visitors to the appropriate services of the court. The chiefs of court, assisted by the SAR, ensure that certain court services, such as those
dealing with enforcement of judgments, victims assistance, legal financial assistance, and the lawyers free consultation desk, are easily accessible to the users. Welcome desks also verify the reasons for the visitors’ presence on the court premises, with the aim of protecting the courts against inappropriate circulation of the public. A filtering system has been implemented in courts to provide for a quiet working space for judges and staff.

Court presidents and chief prosecutors, assisted by one or several clerks, are responsible for ensuring safety and security of the buildings occupied by the courts, in the interest of both the judicial staff and the visiting public. In terms of physical safety of courthouses, which involves various dangers resulting from dilapidated buildings, fires, floods, electrical risks, and other similar issues, the legal policy is to prevent possible occupational accidents. Thus, the president of each court is legally required to develop and annually update a document describing the risks of accidents existing in the court. Additionally, a register is kept, in which any person working in the court can point out the dangers he/she has noticed. Courts also regularly organize fire evacuation exercises. Moreover, court employees have an obligation to undergo regular health checks, as well as enjoy regular free access to the court’s medical service, which also keep an eye on psychological issues in relation with the conditions of work.

Finally, court buildings have to be protected against intrusions, degradations, and the particularly high risk of introducing arms. To this end, the Ministry of Justice has equipped all courts with electronic metal detector frames that all visitors are required to pass through in order to gain access to the courthouse.

G. Public and Media Communications

At the national level, the Judicial Services Department of the Ministry of Justice is charged with the development and coordination of internal and external communications management on behalf of the judiciary. Locally, the Ministry’s Office of Information and Communication has instituted a special arrangement in each court of appeal, under which one of the magistrates of that court is designated to handle all communications and public/media relations matters. The judge may not comment on individual cases, but is rather tasked with keeping the media informed of court policies. He/she also handles media interest in sensitive or sensational cases; only the President of a hearing determines whether media may be present in a courtroom and decides on granting access to journalists. The Judicial Services Department is responsible for managing the network of communications magistrates, in coordination with the chiefs of the courts of appeal.

H. Accounting and Evidence-Keeping

A court regularly receives various sums of money, such as deposits from litigants or fines paid by convicted persons. In addition, it bears various expenses, such as experts’ remuneration or legal aid allowances to the parties. In the interest of the litigants and of the court itself, it is necessary to secure these transactions. Courts have specialized clerks to manage their cash flows. These employees are held personally accountable for the implementation of this function, and are also submitted to the rules of public accountability.

---

5 A 1982 decree has extended the application of private labor and occupational safety rules (Code du Travail) to public bodies.
Courts, particularly in criminal cases, also keep various items and securities connected to the trials, such as arms, money, drugs, and various other items of evidence. It is very important to protect these items from theft or destruction, and a special department exists in each court assigned to store and safeguard them. This service falls directly under the responsibility of the chief clerk. The chief clerk is also accountable for the seal department, which is concerned with the management of seal deposits. The chief clerk is charged with implementing legal rules regarding registration, storage, and destruction of items kept in this department.
OVERVIEW OF COURT ADMINISTRATION IN GERMANY

I. Country Background

A. Legal Context

The Federal Republic of Germany is a federal parliamentary republic composed of 16 states (Länder). The country’s constitution adopted in 1949 – the Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland) – provides for the separation of powers amongst three branches of government: the legislative, the executive, and the judiciary. The Grundgesetz establishes five constitutional bodies: two chambers of the legislative branch, the Federal President and Federal Government (the executive branch), and the Federal Constitutional Court and the Federal Supreme Courts (the judicial branch).

Federal legislative power is vested in two representative bodies: the Bundestag and the Bundesrat. The Bundestag, or the Federal Parliament, is composed of 600 representatives elected directly by the German people every four years, while members of the Bundesrat are appointed by the state governments of the 16 Länder. The Bundestag’s main responsibilities are to draft and pass federal legislation and to approve the national budget. It plays an important role in providing a check on the executive branch actions through passing legislation, holding public hearings and debates, and direct questioning of executive officials. The Bundestag is also responsible for electing the Federal Chancellor (Bundeskanzler). The Chancellor, in turn, may request that the President dissolve the Bundestag early, in a situation where the Chancellor loses a vote of confidence in the Bundestag and where a new Chancellor has not been elected.

The Bundesrat enables the governments of the 16 states to participate directly in federal decision-making (including legislation) and advocate for the interests of the Länder. State delegations are typically composed of the state’s leader (the state governor or, in case of the “city-states” of Berlin, Hamburg, and Bremen, the mayor), as well as other state cabinet minister, and the number of votes allocated to each state is based on its population size. By including these state representatives in the national legislative process, the Bundesrat provides a critical link between the state and the federal systems, ensuring that states have a voice in federal policy and that national policies and laws are properly applied to the states. Members of the Bundesrat may introduce bills into the Bundestag, and certain legislation adopted by the Bundestag must also be approved by the Bundesrat in order to become law. This is especially true if the legislation affects the interests of the states, which is generally the case where laws are not being administered by the federal government but by the Länder. The Bundesrat must also consent to any proposed amendments to the Federal Constitution.

The executive branch is composed of the Federal President and the Federal Government, consisting of the Federal Chancellor and the federal ministers. The President is the formal head of state and is elected to a five-year term (with a maximum of two terms) by the Federal Convention, a group of representatives from the Bundestag and the state parliaments. Though

---

6 Prepared with input from Judge Johannes Riedel, President of the Regional Appellate Court (Oberlandesgericht) of Cologne.
the President’s role is largely ceremonial, he/she does have the power to appoint or dismiss the Federal Chancellor under certain limited circumstances, and proposes a candidate for Chancellor after the general election. The President represents the country in international relations and may sign treaties on its behalf, but only on the basis of a respective vote of Parliament.

The Federal Chancellor is the head of the government and is elected by an absolute majority vote of the Bundestag. As the only government official directly elected by the Parliament, the Chancellor is accountable to it. The Bundestag may enter a vote of no confidence in the Chancellor by voting to elect his/her successor. As the head of the Government, the Chancellor chooses federal ministers, who are then formally appointed by the President, and is also responsible for general policy guidelines and managing the government. Although the federal ministers enjoy relative independence in running their respective departments, it is the Chancellor who sets their responsibilities and job parameters.

This structure is mirrored at the Länder level, with state constitutions, parliaments, state constitutional courts, and state governors and governments. Länder operate largely autonomously of the central federal government. Within the states are districts, towns, and municipalities, which are also guaranteed organizational and administrative autonomy by the Basic Law.

The judicial power is vested in judges and is exercised by the Federal Constitutional Court, other federal courts, and the Länder courts. The Constitution provides for the independence of judges and the judiciary. Judges are recruited by each Land according to the needs of the particular courts and hold tenure for life or until mandatory retirement at the age of 65 (68 for Federal Constitutional Court judges). In some Länder, judges are elected by parliamentary election committees and then formally appointed by the Ministry of Justice, whereas others are directly appointed by the Ministry. To join the judicial profession, individuals with a university law degree are required to participate in periods of apprenticeship with courts, administrative agencies, and private law practices, as well as pass two state examinations. Performance on the examination largely determines the choice of one’s legal career. The highest-performing students are eligible to go onto careers in the judiciary or in the civil service. In some of the Länder, judges start out as public prosecutors, as the prosecutor’s office is formally a part of the judiciary.

Germany follows the civil law tradition, basing its legal system on the Constitution and statutory law, which is the primary source of law comprised of laws and subordinate legislation (i.e., ordinances (Rechtsverordnungen), regulations, decrees, etc.). Court decisions do not have the force of precedent, and courts are bound first and foremost by statutory law. The law is divided into three major areas: private law, public law and criminal law. Federal law takes precedence over Land law. Additionally, general rules of international law are an integral part of the federal law and are directly applicable, taking precedence over any conflicting domestic legislation. Germany’s judiciary follows the inquisitorial approach, in which judges actively participate in fact-finding and investigating cases.
B. Structure of the Judiciary

The German judiciary is divided between the federal courts and the courts of the individual Ländere. The federal courts are generally organized according to subject matter (e.g., ordinary courts for civil and criminal matters, tax courts, or administrative courts).

The Federal Constitutional Court is the guardian of the Federal Basic Law. It is composed of 16 judges, with the Bundestag and the Bundesrat each selecting eight judges to a single 12-year term. The Court has exclusive jurisdiction over questions of constitutional law and the protection of fundamental rights as established in the Basic Law. Its judicial review proceedings involve the review of constitutional amendments, new legislation, and acts of any of the three branches of government or their agencies, any of which may be declared unconstitutional. It also hears disputes between the federal republic and the Länder. The Court is not part of the regular appellate hierarchy in the German judiciary, unless a case involves a conflict between state and federal law or a constitutional issue. Any citizen who feels his/her rights have been violated may bring a constitutional complaint to the Court, after exhausting all other legal remedies.

The Constitution also provides for several Federal Supreme Courts. For ordinary cases, i.e., criminal, civil, and family disputes, the Federal Court of Justice (Bundesgerichtshof) is the highest court. There are also four specialized Supreme Courts: the Federal Administrative Court (Bundesverwaltungsgericht), which is the highest court for administrative matters; the Federal Finance Court (Bundesfinanzhof), which is the highest court for tax matters; the Federal Labor Court (Bundesarbeitsgericht), which is the highest court for labor disputes; and the Federal Social Court (Bundessozialgericht), which is the highest court for social jurisdiction. Judges of these courts are chosen jointly by the relevant Federal Minister and a judicial selection committee composed of competent Länder ministers and 16 members elected by the Bundestag. The Supreme Courts can also sit in a Joint Chamber, in order to preserve the uniformity across their decisions.

The ordinary and specialized courts are organized hierarchically, with the Länder courts falling under the respective federal appellate court. For example, the ordinary courts have a four-tier hierarchy. The local courts (Amtsgerichte) hear minor criminal offenses punishable by imprisonment of up to four years, civil disputes worth less than EUR 5,000, and disputes involving rental agreements, marriage, child custody, and alimony. They also perform routine legal functions, such as probate proceedings and land or commercial registries. Judges on these courts usually hear cases individually. There are hundreds of these courts throughout the Länder, varying in size from only one or two judges to large courts like the local court in Cologne, with about 140 judges. Appeals from local courts are heard by one of the 116 regional courts (Landgerichte), which also have original jurisdiction over more serious criminal and civil cases. These courts are divided into two sections – criminal and civil – and typically hear cases in panels of three judges. The next level consists of 24 regional appellate courts (Oberlandesgerichte), which mainly review points of law raised in cases appealed from the lower courts, and are the final level of appeal for criminal cases initiating in Amtsgerichte. The Oberlandesgerichte also have original jurisdiction over certain types of cases, including treason and anti-constitutional activity, and are composed of panels of judges divided according to area of expertise. Finally, the Federal Court of Justice, which has no original jurisdiction, is the ultimate level of appeal for cases brought in the Landgerichte and Oberlandesgerichte.
Specialized courts, including administrative, tax, labor, and social courts, follow their own hierarchical structure, usually consisting of trial-level courts under the jurisdiction of a regional appellate court and, ultimately, the relevant Federal Supreme Court.

As with its government, Germany’s courts are divided between the federal courts and those of the 16 Länder. While the Federal Constitutional Court is the highest constitutional law court, each of the 16 Länder has its own state constitutional court, which is not part of the same hierarchy as the Federal Constitutional Court. Each of these courts has exclusive jurisdiction over that Land’s constitution and functions as a court of both first and last instance.

C. Relationship of Other Branches to the Judiciary

The legislative and the executive powers at both the federal and the Länder levels exercise a certain degree of institutional and administrative control over courts, in line with the constitutional system of checks and balances. Institutionally, the judiciary is regulated by the federal and state legislatures. In particular, issues related to civil law, criminal law, court organization and procedure, the legal profession, and the provision of legal advice fall within the domain of concurrent legislative power of the federation and the Länder. The same also applies to the statutory rights and duties of civil servants and of judges of the Länder, except for their career regulations, remunerations, and pensions; in the event of passage of federal legislation in this area by the Bundestag, the consent of the Bundesrat is also constitutionally required. The federation and the Länder are each responsible for approving their budgets and paying for public expenses for functions that fall under their jurisdiction. Additionally, the Federal President formally appoints and dismisses federal judges and other federal civil servants, but only on the basis of a vote of a parliamentary committee (in case of appointment of judges) or a court decision or with the consent of the judge involved (in case of dismissal).

On the administrative level, the federal Ministry of Justice has broad oversight authority over the courts, and the ministries of justice of the individual Länder are responsible for the local courts in their jurisdictions. They appoint judges, either as a formality after an election or directly. The only exceptions to this are the constitutional courts. The Federal Constitutional Court is not supervised by the Ministry of Justice, instead having its own administrative system and budget, which it manages itself. Similarly, state constitutional courts are also administratively and financially autonomous, applying for and administering their own budgets and, in some cases, hiring their non-judicial staff.

II. Overview of Court Administration Structure

A. State- and National-Level Administration: Ministries of Justice

Except for the Federal Supreme Courts, administration of the courts in Germany is primarily the responsibility of the Länder. Due to the independence of the Länder, the governing bodies and administrative authorities vary among them.

The Ministry of Justice of each Land is the top body in charge of judicial administration for the courts in that state. It and oversees and directs most aspects of court administration, including staffing and facilities management. The rationale behind this approach is that certain areas (such as, for example, ICT systems and proceedings like land registration) should be uniform
across the *Land*, and therefore must be coordinated centrally by the Ministry of Justice (e.g., the Ministry is responsible for centralized planning and structuring the IT systems in place throughout the courts of that state). In practice, however, much of the practical work is carried out by the personnel of the individual courts or by special planning units. In Bavaria, for example, a central unit at the *Oberlandesgericht* is responsible for managing the IT operations of the state courts, while the Ministry of Justice administers the overall planning and programming aspects.

The federal Ministry of Justice is primarily focused on drafting legislation in various fields of law, as well as reviewing proposed legislation from other executive agencies and advising on its constitutionality. However, it is also responsible for administration of the Federal Supreme Courts, namely establishing the budget and overseeing organizational and human resources management. It also plays a role in the selection of judges for the Supreme Courts, who are jointly selected by the Minister of Justice and a selection committee composed of the ministers of justice of the 16 *Länder* and 16 members elected by the *Bundestag*.

The federal Ministry of Justice is divided into six Directorates-General, each of which oversees a specific area, such as criminal law, commercial and economic law, and constitutional and administrative law. Two of these directorates are of particular relevance in the judicial administration context. Directorate-General Z (Administration) is responsible for the administration and infrastructure of the Ministry and the federal courts, including staffing, budget preparation and management, and organization. One of its main areas of focus has recently been to promote the increased use of technology to facilitate communications and improve the flow of information, both internally and to the general public. Secondly, Directorate-General R (Judicial System) oversees federal law and regulations concerning the structure and organization of the federal courts and public prosecutors offices. Among these documents are the law on *Rechtspfleger* and other provisions governing court support personnel. The Directorate is also involved in the training and continuing legal education of judges and public prosecutors at the German Judicial Academy (*Deutsche Richterakademie*).

**B. Court-Level Administration**

German courts are typically managed by a court president and some combination of administrative staff, including senior court officials, who have authority to make certain judicial decisions, and court managers, whose responsibility is for the administrative management of the court.

The head of a court is the court president, a judge with life tenure. All of the regional courts (the *Landgerichte* and above) have presidents, as do some of the *Amtsgerichte*, depending on their size and on the legislative requirements of each particular *Land*. As the head of the court, the court president is responsible for the administrative aspects of running a court. In some *Länder*, the president has the authority to hire lower judges, as well as all support staff. He/she also has the power to impose minor disciplinary sanctions, such as warnings or reprimands, against other judges and administrative personnel. However, only specialized administrative courts may dismiss judges and court staff, following a formal dismissal proceeding.

Court president does not assign cases to judges; this function is done yearly by an independent body of judges elected by their peers (*Praesidium*), in order to avoid arbitrary or unfair
assignments. Similarly, the president cannot choose the composition of judicial panels, but may submit proposals to the Praesidium. To respect the principles of judicial independence, the court president does not get involved in managing individual cases assigned to other judges or set case management priorities. As such, the court president is not viewed as the superior of other judges in any aspect other than court administration and management issues. Moreover, although they are tasked with additional administrative responsibilities, German law requires that court presidents still hear cases in their capacity as judges. To assist with administrative duties, the court president selects from among his/her fellow judges those who are best qualified to take on administrative functions in addition to their judicial roles.7

Some have questioned whether court presidents should have limited terms, or be replaced by councils, or be elected by their peers rather than appointed. Most judges prefer to continue the present system, because it results in having highly experienced, well-qualified judges as court presidents and promotes judicial independence and autonomous administration of courts. As an independent judge who cannot easily be dismissed from his/her position, the court president can become a decidedly influential judicial counterpart to executive branch officials. Furthermore, selecting court presidents who already have extensive administrative experience and allowing them to serve life tenures ensures that they are highly competent and committed to their profession, and less reliant on their support staff for administrative knowledge.

German courts also have two types of senior non-judicial civil servants – Rechtspfleger and Geschaeftsleiter – to provide support with the implementation of court administration and management responsibilities.

Rechtspfleger are senior court officers, competent for certain judicial decisions and jurisdiction, especially matters of non-contentious jurisdictions. The office of Rechtspfleger was established in the courts of the Länder in order to harmonize application of the law across the state, as well as to improve citizens' access to justice. These individuals initially began as court reporters assigned to administrative tasks, but the growing caseload in many courts and the need to simplify and expedite proceedings, coupled with the large number of non-judicial tasks adding to the judges' workload, led judicial reformers to turn to the Rechtspfleger for assistance. Thus, Rechtspfleger eventually took on quasi-judicial responsibilities that were once the provenance of judges. Their existence has greatly helped alleviate the problem of overburdened dockets and delays in hearings, and enabled judges to focus on their essential duties in contested cases and adversarial proceedings. It has also created a skilled group of professionals upon whom judges can rely to carry out the effective administration of the courts.

The law of Rechtspfleger codifies the broad range of tasks that Rechtspfleger may carry out. This helps ensure that the jurisdictions of judges and the Rechtspfleger are clearly delineated. This includes handling probate matters, registering vehicles, ships, and aircraft, commercial and land registry maintenance, enforcement of judgments, and ordering court payments, among other issues. The Rechtspfleger have authority to carry out their responsibilities independently and are protected by the principle of judicial independence, and therefore are seen as having independent jurisdiction like judges. As such, they are not viewed as subordinates to judges, but rather as “the second column of the third power (the judicial power).” Their decisions may only

---

7 As mentioned above, qualified judges have generally had extensive prior experience in court administration, whether in lower courts or at the Ministry of Justice. Additionally, seminars and specialized trainings, for example in budget management, personnel management, and media relations, are available to these judges to further their professional development.
be appealed to a higher court, not to an administrative body. Because the duties of the Rechtspfleger may only be carried out by those professionals, every court of first instance, as well as the federal supreme courts, must have a Rechtspfleger, and usually have several. The assignments of the Rechtspfleger in each court are set at the beginning of the year and may only be changed for important reasons. Approximately 20-25% of Rechtspfleger work in court administration or at the Länder Ministries of Justice.

Geschaeftsleiter are the German equivalent court managers and function as the head of non-judicial court staff. Responsible for administering non-judicial business of the courts, the Geschaeftsleiter are non-jurist civil servants, who have gone through the education and training of the Rechtspfleger, plus additional specialized training in particular areas, such as human resources and budget management. The scope of the Geschaeftsleiter’s work varies by the level of court in which they work. In the Amtsgerichte, he/she manage only the business of his/her own court, reporting directly to the president of the court (always a judge). In the Landgerichte, in addition to administering his/her own court, the Geschaeftsleiter is also responsible for managing the business of the other courts in that district. In the Oberlandesgerichte, the Geschaeftsleiter oversees non-judicial staff of that particular court.

Unlike the Rechtspfleger, who have judicial independence in their decision-making and do not report to the judges, the Geschaeftsleiter cannot act independently and are not involved in managing cases. The Geschaeftsleiter is always subordinate and reports directly to the court president, and is often seen as the latter’s administrative counterpart, making the position one of great importance. Because the court president selects the Geschaeftsleiter, he/she often already has confidence in that person’s abilities. The Geschaeftsleiter and the court president should, ideally, have a very strong and trusting relationship, as they must work closely together to successfully manage the court. Although other judges of the court are generally not involved in selecting the Geschaeftsleiter, they too should generally have a good working relationship. In practice, many judges will turn first to the Geschaeftsleiter to address day-to-day issues rather than go to the court president. Although the Geschaeftsleiter generally do not work directly with the Ministry of Justice, experienced Geschaeftsleiter are often offered positions at the Ministry.

III. Functions of Court Administration

A. Financial Management

Although the judiciary is an independent branch of the German government, it still relies heavily on the Ministries of Justice for many administrative issues, particularly for its budget. The Constitution separates the budgetary authority for all public matters between the federal and the Länder governments, requiring each to separately finance any expenditures resulting from the discharge of their constitutional duties, including the administrative expenditures incurred by their respective authorities. The Federal Court of Audit (Bundesrechnungshof) and its counterpart State Courts of Audit (Landesrechnungshoefe) oversee the budget and economic governance of, respectively, the federation and the Länder, providing advice and guidance on financial policy and closely monitoring the use of funds.

The federal courts’ budget is part of the federal Ministry’s overall budget, and must be approved annually by the Bundestag. Each year, the courts put forth their financial requests for the upcoming fiscal year. The Ministries of Justice and Finance then work together to develop cost
estimates and to draft the final budget. The courts themselves are not privy to the financial negotiations that occur between the two Ministries, nor do they have access to the Parliamentary Committee on Budgets. As such, there is no formal procedure for the judiciary to provide input on budget decisions. Budgets are generally determined using estimates from the previous year’s expenditures. Statistically, however, the court budget does not vary much from year to year. In fact, court budgets have been tightened recently, and any new requests must be justified in extensive detail.

The above principles are generally true of the budget process in the Länder. Although slight variations appear from state to state, the Länder finance ministries are typically involved in the drafting process, and sometimes also submit the final proposal to the Länder legislatures. Some also play a role in subsequent accounting processes. The ministries of justice are usually responsible for actually distributing the funds to individual courts.

While the relevant Ministry of Justice is ultimately in charge of the final budget proposal, the court president assists in preparing the budget applications and proposals that are submitted to the Ministry. He/she is subsequently in charge of administering the allocated budget according to the prescribed policies and procedures. Depending on the particular court, the Geschäftsleiter may assist in preparing the application for the court budget and later be responsible for managing that budget. It needs to be emphasized that, once the funds are allocated by the Ministry of Justice to the courts, the courts themselves have limited autonomy in deciding how to spend them. Only fixed amounts or percentages may be spent on various categories, such as material expenses (computer hardware, electronics) or personnel. In the case of staffing, only a certain number of judges and clerks may be hired. As such, despite having the responsibility for administering their own funds, courts have little flexibility in deciding their spending priorities.

B. Human Resources Management and Professional Development

Federal Supreme Courts judges are employed as federal civil servants, while all other judges are part of the civil service of their respective Land. The federal and Länder Ministries of Justice oversee the education and hiring of court personnel. Anyone wishing to join the legal profession, whether as a judge or a non-judicial civil servant, must complete a standardized course of study at university, as provided for by German Judiciary Act of 1972 (Deutsches Richtergesetz). Following the successful passage of several state examinations and participation in a period of apprenticeship overseen by the Länder ministries of justice, a candidate becomes qualified to practice law. Eligibility to become a judge or a civil servant is determined by one’s performance on the state exams.

The process of selecting court presidents differs from state to state, with the procedures spelled out in the constitutions and the Judiciary Acts of each Land. In most Länder, the candidate is appointed by the the state government, but in some Länder, the ministry of justice proposes candidates to a parliamentary committee. Court presidents generally hold office until reaching the mandatory retirement age of 65 or 67. Court presidents can only be disciplined following the same procedure and guidelines that apply for judicial disciplinary proceedings. However, in the formal hierarchy, which extends only to matters of court administration, the president of a Landgericht is accountable to the president of an Oberlandesgericht, who, in turn, is accountable to the Ministry of Justice. In practice, this primarily means that, in their capacity as administrators, court presidents are subject to administrative orders from above.
Although prior education or training in court management is not a requirement for the position, most judges selected as court presidents have significant experience in court administration, often from working with other court presidents in a court's administrative department. Many *Landsgerichte* judges who take on administrative duties in their courts are subsequently requested to take on similar duties in higher courts or at the Ministry of Justice, all of which further prepares them to serve as court presidents later in their careers. In addition, throughout the duration of their tenures, court presidents have opportunities to participate in seminars and specialized trainings on specific administrative issues, such as budgeting, media relations, and staff management.

Each *Land* only appoints as many candidates as needed for the *Rechtspfleger* positions. Their positions are regulated by the law of *Rechtspfleger*, and thus every court of first instance, as well as some of the federal courts, must have a *Rechtspfleger*, and most courts usually have several. The *Rechtspfleger* are chosen based on merit and suitability for the position, and a law degree is not required for appointment. However, candidates must complete a three-year course of legal studies with alternating stages of theory and practice in specialized state schools designed to prepare students to join the *Rechtspfleger* profession. The first two years are devoted to theoretical studies, and the final year is spent working as trainees in court practice and in judicial administration, gaining practical on-the-job training from more experienced *Rechtspfleger*. The course concludes with an exam, after which students obtain the degree of *Diplom-Rechtspfleger* and become qualified for appointment. Qualified candidates must then apply to their *Land* ministry of justice, and are initially appointed by the ministry or by presidents of *Oberlandesgerichte* as civil servants for a 30-month probationary period, after which they are confirmed for life. This means that *Rechtspfleger* cannot be dismissed, save for under certain circumstances (e.g., being elected to parliament, moving to another country, or serious disciplinary violations). Throughout the course of their careers, *Rechtspfleger* regularly participate in continuing education classes and training seminars.

The *Geschaeftsleiter* are generally selected by the court president from amongst the existing *Rechtspfleger* based on merit: the judges look at the most experienced and talented *Rechtspfleger* in choosing candidates to undergo further training. These civil servants are generally responsible for all aspects of running the business of their court, except for case assignments. As the head of non-judicial staff, they manage court personnel, ensuring that secretaries, clerks, and other staff members are operating properly and according to the needs of the court. They recruit and may fire all non-judicial personnel. To be able to properly fulfill these duties, the *Geschaeftsleiter* candidates must be versatile and adaptable, capable of managing a large staff, while successfully addressing any conflicts and working longer, more demanding hours. *Geschaeftsleiter* may hold their positions until retirement. This is particularly true for the larger courts where becoming a *Geschaeftsleiter* is a promotion above the ranks of the usual *Rechtspfleger*. It needs to be reminded that, unlike *Rechtspfleger*, *Geschaeftsleiter* are part of the administrative hierarchy and do not have judicial independence; rather, their actions are subject to the approval of their respective court presidents.

Because most of the key figures in court administration (court presidents, *Rechtspfleger*, and *Geschaeftsleiter*) are recruited from among existing staff and judges, the question of whether to turn to trained external managers has come up. This would create a situation similar to that in

---

8 In smaller courts, the *Geschaeftsleiter* often have many of the same duties as the *Rechtspfleger*, and may go back to that work full-time if they so choose.
universities or hospitals, where professors or doctors are separate from the administrators, who run the business of those entities. Bringing in new staff from outside the courts might create an infusion of new perspectives and innovative ideas. However, the current prevailing opinion favors keeping the existing system of recruiting from within courts. The general view is that hiring current court staff members, who have been working in the court and are familiar with the legal and administrative framework, will prove to be a greater benefit, because they already have the relevant experience and are more likely to be accepted by their colleagues than an outsider.

As non-judicial court personnel have become increasingly important in courts, greater attention has been paid to their continuing professional development, as well as to training judges on how to effectively manage their staff. While continuing judicial education has traditionally focused on substantive and procedural law, there is a growing focus on developing professional skills and expertise in new fields, such as information technology and court management. Both federal and Länder education programs now include seminars in areas such as media relations, organizing workflow, judges’ interaction with court staff, setting court goals, and staff development plans.

On the national level, the German Judges’ Academy (Deutsche Richterakademie) provides continuing education for judges and judicial staff. It is jointly operated and funded by the federal Ministry of Justice and the judicial administrations of the Länder. The decision on what programs to offer is made by a committee composed of representatives of the Länder, the Ministry of Justice, and the professional associations of judges and prosecutors. Actual responsibility for organizing the programs, including finding speakers and selecting participants from among the applicants, is divided amongst the state and federal ministries of justice, while the Academy itself is primarily responsible for administrative issues. Participation is determined by a quota system, with a certain number of slots available to each jurisdiction.

In addition to the programs offered by the national Academy, many of the Länder have created their own training courses for court staff, offered by the respective ministries of justice. The ability to organize local trainings is particularly beneficial because they are better able to address the specific needs of a court, and to do so in a more timely manner than it would take to go through the national Academy, which plans its programs far in advance and only accepts a limited number of participants. Following the national trend, these local courses are increasingly dedicated to topics such as workflow management, information technology, staff management, and court administration. Participation in such trainings may be helpful in advancing one’s career, and many Rechtspfleger are required to attend by order of their supervisors. For example, North Rhine-Westphalia has its own training academy, which has a full-time continuing legal education and training program, as well as hosts conferences and seminars.

The Rechtspfleger in Germany have also formed an association called the Union of German Rechtspfleger (Bund Deutscher Rechtspfleger), made up of the professional Rechtspfleger associations of each of the 16 Länder and the Association of Rechtspfleger of the Federal Justice. The association represents the professional interests and concerns of the country’s Rechtspfleger and promotes cooperation in developing and harmonizing the law. It also works with the European Union of Rechtspfleger in order to promote collaboration with the EU and the Council of Europe, and to bring together and promote the interests of judicial officials across Europe.
C. Technology and Information Management

Increasing the use of information technology and automated systems is a top priority for the federal Ministry of Justice, which is responsible for and seeks to improve communications and the flow of information in the federal judiciary. The Ministry’s Directorate-General Z oversees a variety of programs that promote the growth of IT use in the federal courts and foster cooperation between the federal republic and the Länder. It is also working to coordinate IT standards. The Directorate has also made it a priority to facilitate electronic access to legal information. It recently made available current and former versions of all federal laws and statutes via a subscription to an online legal resource database, and a public service provides a compilation of all current laws free of charge. There is also a push to implement e-filing systems. Before being possible, however, the use of all electronic systems (e.g., video-conferencing in interviewing witnesses or sending legal documents electronically) in civil and criminal proceedings must be permitted and regulated in applicable procedural codes.

Several Länder ministries of justice are also pushing for increased digitalization in their courts. For example, in 2008, the Ministry of Justice of Baden-Wurttemberg successfully advocated for the adoption of a plan for comprehensive reform of their land registry system, which relied heavily on introducing electronic access to the system. The passage of necessary legislation enabled certain applications to be submitted electronically, and the Ministry sought to expand the scope of documents that can be provided in digital form. Local courts were often burdened with having to find space for the land registers that needed to be stored; by digitalizing them, the original paper document could be properly stored by specialists in a central collection location and, when needed, sent electronically to the recipient. At least one such collection center has already opened in Stuttgart and, if it is successful in properly digitizing the region’s land registries, the program will be expanded.

Although broader planning and structural IT management is the responsibility of the relevant Oberlandesgericht’s administrative section or the ministry of justice, on a local level, Geschaeftsleiter are responsible for the day-to-day administration of the court’s ICT services. Many state judiciaries have outsourced their ICT systems, using outside private companies to provide these services. The judiciary in Baden-Wurttemberg, for example, has contracted out its ICT services to a company that provides both hardware and software, as well as user support via a help desk, network maintenance, and data storage. The service contract was signed by the Land Ministry of Justice. The annual judicial budgets include funding for the purchase of computer hardware and other electronics, as well as for purchase of IT support services.

Most courts have their own websites, where the public can obtain information about the court’s services, the judiciary, and other specific legal issues.

D. Facilities Management

The federal and state governments rely on a preset statistical formula to determine the need for court staff and facilities. A portion of the annual judicial budget is allocated to operating and maintaining existing court buildings, as well as to investing in new facilities. The needs of ordinary and administrative courts are sometimes addressed separately. Administrative courts often receive a separate budget for material expenditures (e.g., office supplies, furniture) and
miscellaneous needs (e.g., additional support staff, training), in the amounts determined by the size of the court.

The federal Ministry of Justice is charged with the physical infrastructure and organization of the Federal Supreme Courts, while the Länder ministries oversee the management of the courts of the Länder. Court president is usually responsible for managing the layout and space of the actual court, ensuring that it provides access to all, although in some Länder, this task may be taken up by the ministry of justice instead. As with their ICT systems, many Länder have outsourced their facility maintenance needs to private companies that provide cleaning, security, janitorial, and occupational healthcare services.

**E. Communications and Public/Media Relations**

All Länder have policies authorizing the creation of the position of a court media spokesperson. These positions currently exist in all larger courts. The media spokesperson is usually a judge who is appointed by and reports directly to the court president, but is also accountable to the press department of the relevant ministry of justice. Once selected the spokesperson typically goes through specialized training and receives professional advice on how to properly handle the role. Larger courts, such as the Federal Court of Justice, have full-fledged press offices. In smaller courts, media relations are generally handled directly by the court president.

Court media spokesperson positions were established in order to provide the media with accurate and reliable information about court cases, as well as to help educate the public about the law and the functions of the courts. While the scope of this officer’s duties varies from court to court, it generally involves maintaining regular communications with the media. For high-profile cases that tend to draw media scrutiny, a spokesperson may provide information about the facts of the case and the parties involved, although they are not authorized to comment on the case itself. Media spokespersons also hold more general meetings and press conferences, and are tasked with explaining procedural rules and judgments. Because the court president appoints the media spokesperson, he/she already has great trust in that person’s ability to succeed in the position. However, due to most judges’ reluctance to invite media scrutiny of their cases, the media spokesperson tends to have difficulties in obtaining much information from them.

**F. Research and Advisory Services**

Each court has a law library, whose size usually corresponds to the number of judges on that court. The Federal Court of Justice has the largest court library in Germany. The Court’s Documentation Office also enters all civil and criminal decisions into a database for wider access. The federal Ministry of Justice is working to promote the use of ICT to make such resources more widely and publicly available, and has recently developed a database of all past and current federal laws, accessible by subscription. In addition, it has a public website containing all current federal laws. A variety of federal and state law gazettes are also published and are available both in print and online. In addition to these government sources, a variety of commercial legal journals and commentaries help judges and Rechtspfleger keep up to date with the latest jurisprudence from the Federal Supreme Courts and the Oberlandesgerichte. This is particularly important, as lower courts seek to avoid having their decisions reversed on appeal and therefore try to keep their judgments in line with those of the higher courts.
OVERVIEW OF COURT ADMINISTRATION IN THE NETHERLANDS

I. Country Background

A. Legal Context

The Kingdom of the Netherlands is a constitutional monarchy and a parliamentary democracy, which means that all political powers are concentrated in the hands of the government controlled and supported by an elected parliament. The country’s Constitution (Grondwet) was promulgated in 1814 but has been subject to multiple revisions, the most recent full revision dating back to 1983. It contains provisions on fundamental human rights, as well as on the key rules governing the organization of the Dutch system of government.

While the Constitution does not explicitly mention the separation of powers, it embodies this principle de facto. Thus, the legislative power in the Netherlands is vested in a bicameral Parliament, called the States General (Staten Generaal). The lower house, known as the Second Chamber (Tweede Kamer), consists of 150 members chosen through a direct national election for four-year terms. The upper house (First Chamber, or Eerste Kamer) consists of 75 senators elected by provincial assemblies, also to a four-year term. The Second Chamber is the more important and powerful body. It has the authority to adopt laws and amendments to them, while the First Chamber can only accept or reject laws in their entirety after they were adopted by the Second Chamber. Both chambers also have the right to adopt national budget, to question ministers, and to initiate various parliamentary inquiries.

The executive power is exercised by the monarch (King or Queen) and the ministers. The monarch is the nominal head of state, but has no actual power and performs mostly representative functions. For example, he/she nominates the ministers and signs all the laws approved by Parliament. The ministers, who are responsible for the acts of government, form the Council of Ministers (Ministerraad), which is chaired by the Prime Minister. The government is typically formed by a coalition of various political parties, with the Prime Minister representing the party that won the most seats in the parliamentary election. The government operates under direct supervision of Parliament. Any of the latter’s chambers may pass a vote of no confidence in an individual minister or the government as a whole, forcing their resignation. In addition, there is the Council of the State (Raad van State), which serves as the highest advisory body to the government and must be consulted on every piece of draft legislation to ensure its compatibility with existing laws. It is officially chaired by the King and consists of respected former members of Parliament, ministers, and jurists.

The judiciary is considered a separate branch of government. The judiciary is responsible for the adjudication of disputes involving rights and debts under civil law, as well as for trial of all offenses. The only court mentioned in the Constitution is the Supreme Court (Hoge Raad), while other courts, as well as the organization, composition, and powers of the judiciary are to be regulated by Act of Parliament. Judges are appointed by royal decree and have tenure for life or until mandatory retirement at age 70. The Constitution does not explicitly reference the principle of judicial independence as such; however, relevant guarantees are set forth in the Judiciary

9 Prepared with input from Judge Bert Maan, former President of the District Court of Zwolle-Lelystad (1992-2006).
Organization Act (Wet op de Rechterlijke Organisatie) of 1827 and the Judicial Officers Legal Status Act (Wet Rechtspositie Rechterlijke Ambtenaren) of 1996.

At the **local level**, the government authority is exercised by 12 provincial assemblies, which are elected by the residents and chaired by the Royal Commissioner (Commissaris van de Koning). The provinces are divided into approximately 450 relatively autonomous municipalities, which are governed by municipal councils elected by local residents and chaired by a mayor. Royal Commissioners and mayors are appointed officially by royal decree, but de facto selected by the prical and municipal assemblies, mostly followed by the national government. There are also municipal executive boards (College van Burgemeester en Wethouders); the “wethouders” are elected by municipal councils.

The Netherlands’ civil law **legal system** is based on the French system. Laws, known as Acts of Parliament, are enacted jointly by the States General and the government, based upon submissions by the Second Chamber or the government. The Cabinet’s orders in council are promulgated by a royal decree, and ministries may also issue their own ministerial regulations. Importantly, unlike in many other European countries, there is no separate constitutional court, and the judiciary does not have the power to review constitutionality of Acts of Parliament or international treaties. The Dutch government is constitutionally committed to promoting the development of the international legal order. As such, international treaties that have been ratified by Act of Parliament are directly applicable and take precedence over any conflicting provisions of domestic legislation, which implies that the courts are able to challenge laws against these international treaties, including the human rights embodied in the European Convention on Human Rights. In addition, laws and government actions can be challenged before international bodies, such as the European Court of Human Rights, to test their compliance with applicable international treaties.

**B. Structure of the Court System**

The judicial organization in the Netherlands is based on Chapter VI of the Constitution and the 1827 Judiciary Organization Act, which was last subject to major amendments in 2001. The structure of the courts in the Netherlands has undergone major reorganization under the new Judicial Map Act (Wet Herziening Gerechtelijke Kaart), which entered into force on January 1, 2013.

**District courts (rechtbanken)** are general jurisdiction courts charged with hearing all cases in the first instance. As a result of recent judicial reorganization, the country’s 19 district courts that existed since 1934 were consolidated into 11 courts; however, each court has multiple hearing venues, for a total of 32 locations for the district courts and courts of appeal. Each district court consists of up to five sectors, which always include a criminal, a civil/family law,\(^\text{10}\) an administrative,\(^\text{11}\) and a sub-district sector (Sector Kanton). The latter has jurisdiction over rent and employment cases, all other civil cases under EUR 25,000, as well as minor criminal offenses (often traffic offenses or those where the accused refuses to accept the prosecution’s proposed settlement offer). These cases are heard by a single judge, who usually delivers an

\(^{10}\) Depending on the caseload, many courts have a separate section for family and juvenile cases.

\(^{11}\) This sector is also competent to hear tax and immigration cases.
oral judgment immediately after the session. Cases assigned to other sectors are also typically heard by a single judge; however, more complex civil or administrative cases, or more serious criminal cases where the prosecution demands an imprisonment sentence of more than one year, may be heard by a panel of three judges.

Following the recent reorganization of the court structure, the Netherlands now has four **Courts of Appeal (gerechtshoven)**, located in The Hague, Amsterdam, Arnhem-Leeuwarden, and ‘s-Hertogenbosch. Similarly to district courts, these courts have multiple hearing venues throughout the country. They review de novo almost all appeals from judgments in civil and criminal cases passed by the district courts. Very minor criminal offenses and small civil claims cases may not be appealed. In addition, Courts of Appeal hear appeals against tax assessments, acting in the capacity of a first instance administrative court.

The **Supreme Court of the Netherlands (Hoge Raad)**, which is located in The Hague, is the highest court for all civil, criminal, and tax cases; most judgments in administrative cases are not subject to cassation. It serves as a cassation instance, which means it examines the quality of judgments issued by the lower courts with regards to both the proper application of the substantive and procedural law and the legal reasoning behind it; however, it may not review the facts of the case as established by the lower courts. The aim of the cassation is to preserve legal uniformity, to steer the development of law, and to safeguard legal protection. In addition to hearing cassation appeals from the Courts of Appeal, the Supreme Court is also charged with cassation review of civil and criminal judgments made by the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius, and Saba.

The Supreme Court is organized into three chambers: civil (which also handles commercial and family law cases), criminal (which also handles extradition cases), and tax. Each chamber consists of two vice presidents and approximately 10 judges, and holds consultation on a weekly basis. Depending on their nature, cases are decided by panels of three or five judges. Proceedings before the Court generally take place almost exclusively in writing, and representation by an attorney is mandatory. The Supreme Court typically issues a final judgment only if there are no significant issues of fact remaining in the case; otherwise, it remands the case to a Court of Appeal for adjudication.

The Supreme Court also has a Procurator General’s office attached to it. The Procurator General, along with his/her colleagues known ad advocates general, are charged primarily with providing the Supreme Court with independent advisory opinions on how to rule in a particular case before the Court. These opinions generally review the facts of the case, the legal questions before the Court, the lower court decision that is being appealed, and the relevant scholarly opinion and case law, as well as recommend possible solutions. While advisory opinions are required in all civil and most criminal cases, the Supreme Court is not bound by their recommendations. They are published along with the Court’s judgments in legal journals and online.

---

12 Since 1877 and until the current reorganization, the Netherlands had a total of five courts of appeal.

13 In civil cases, only lawyers registered with the Hague bar have the monopoly on filing cassation appeals with the Supreme Court; in criminal cases, an appeal may be lodged by the prosecutor or by the defendant directly; however, a lawyer from any bar must submit the grounds for cassation in writing. Representation is not required in tax cases. Only lawyers are entitled to make oral pleadings in all cases.
In addition to the courts of general jurisdictions, the Netherlands has three specialized tribunals competent in specific areas of administrative law: the Central Appeals Tribunal (Centrale Raad van Beroep), the Trade and Industry Appeals Tribunal (College van Beroep voor Het Bedrijfsleven), and the Administrative Jurisdiction Division of the Council of State (Raad van State – Afdeling Bestuursrechtspraak). With a few exceptions, decisions issued by these courts are final and may not be appealed to another court.

Based in Utrecht, the Central Appeals Tribunal (also known as the Administrative High Court) is the highest judicial authority for cases involving social security issues, as well as the civil service law. It serves as an appellate instance for review of district court decisions in cases governed by the General Administrative Law Act (Algemene Wet Bestuursrecht), such as those related to sickness, maternity, disability, old-age, survivors, unemployment, and family benefits, death grants, social assistance, and public servants. It also serves as the first and last instance for enforcement of disputes involving benefits for victims of war and persecution.

The Trade and Industry Appeals Tribunal (also known as the Administrative High Court for Trade and Industry) is based in The Hague and has jurisdiction over disputes related to trade and economic administrative law, such as those related to competition, telecommunications, agriculture, transportation, financial supervision, and socio-economic health law. In addition, it is competent to review matters arising from the EU rules and regulations, and serves as the appellate court for decisions by the disciplinary body for external auditors (Accountantskammer). In most cases, the Tribunal serves as the court of the first and the final instance.

The Administrative Jurisdiction Division of the Council of State in The Hague is the highest administrative court with general jurisdiction in the Netherlands. It hears appeals by members of the public, associations, or commercial companies against decisions of municipal, provincial, or central government bodies, as well as disputes between public authorities. It has competence to rule both on individual cases (e.g., refusal to grant an environmental license) and on orders of general nature (e.g., urban zoning plan). In particular, it serves as the sole jurisdiction in cases concerning spatial planning, as well as certain cases involving education, healthcare, and environmental matters; and an appellate jurisdiction for review of district court decisions in cases related to immigration and refugee issues, environmental permitting, and public access to government information.

C. Relationship of Other Branches to the Judiciary

The Dutch system of checks and balances means that there is no rigorous or absolute separation of powers between the three branches of government. The judiciary is seen less as a power and more as a tool necessary to retain peace in society and to strike a balance between common goals and individual interest. Thus, while the judiciary is functionally independent from the legislature and the executive branch, it is organizationally and institutionally influenced by these two branches. On the institutional level, the judiciary is controlled by the legislature through the latter’s authority to set forth judicial organization and regulate the legal status of judges, to specify procedural legislation and substantive laws that serve as the basis for the administration of justice, and to approve the budget to support the operation of the courts. On the organizational level, the Minister of Security and Justice (Minister van Veiligheid en Justitie) has the political responsibility for the judiciary, although he/she has
no powers over the judiciary. The role of the Ministry, through its Directorate-General for the Administration of Justice and Law Enforcement, is therefore limited to safeguarding those aspects of the quality of the judiciary that it can influence (e.g., selection and appointment of judges, ensuring infrastructure, sufficient budgeting). In addition, the Ministry’s Strategy Development Department deals with long-term developments in the legal field, frequently affecting the work of courts in the long-run. In practice, though, the independence of the judiciary appears so much revered that issues related to management of the judicial system are rarely examined in political debates; for example, issues of judicial staffing and equipment only come up for discussion during the budget debate in Parliament. The public and the media closely scrutinize the relationships between the different branches, to ensure that the other two branches respect the impartial and independent nature of the judiciary.

II. Overview of Court Administration Structure

A. National-Level Administration: The Council for the Judiciary

Since 2002, the overall responsibility for the administrative, managerial, operational, and budgetary support of the courts in the Netherlands (with the exception of the Supreme Court and the Council of State) has been vested in the new Council for the Judiciary (Raad voor de Rechtspraak). The creation of the Council represents a fundamental change in the country’s judicial organization, as until that time, the administrative support of the judiciary was carried out by the Ministry of Justice. The transfer of these responsibilities to the Council for the Judiciary, which forms part of the judicial system, has helped to secure greater organizational autonomy of the courts and to create a more independent position of the judiciary as a whole.

The Council for the Judiciary consists of five members: three former judges (one of whom is appointed as the chairperson) and two non-judicial members knowledgeable in the fields of public organization and financial affairs. Members are appointed by royal decree upon nomination by the Minister of Security and Justice, initially to a six-year term that may be renewed for an additional three years. The Council is supported by a director and a secretariat staffed by about 100 people. There is also a Board of Representatives (College van Afgevaardigden) comprised of representatives of the courts and charged with advising the Council on the performance of its duties.

The Council for the Judiciary is part of the judicial system and does not fall under the responsibility of the Ministry of Security and Justice or any other government body. It does not administer justice and may not interfere with the judgments issued by the courts; instead, its functions are limited to facilitating and supporting the work of courts. It is responsible for a number of statutory duties in the areas of financial and economic policy; management in the areas of human resources, ICT, facilities, and infrastructure; promoting quality within the judiciary; integrity, and providing advice on legislation that has implications for the administration of justice. Among others, this includes duties such as preparing, allocating, and supervising the implementation of budgets by the courts; supporting and supervising court operations; and recruitment and training of court support staff. It also performs other functions, such as academic research, supporting judicial training through its affiliated Training and Study Center for the Judiciary (Stichting Studiecentrum Rechtspleging, or SSR), acting as a spokesperson for the judiciary on both national and international levels, and international cooperation.
As mentioned above, the Council of State and the Supreme Court and do not function under the responsibilities of the Council for the Judiciary. Both are autonomous bodies responsible for their own managerial and operational tasks, including their own budgets that are determined in cooperation with the Ministry of Security and Justice. Thus, at the Supreme Court, the Director of Operations and his/her staff are charged with facilitating the Court's work, including supervision of financial management, personnel policies, ICT, registries, administrative support, and facilities. The allocation of budget to the Court is discussed with the Ministry of Security and Justice on an annual basis. Moreover, each of the Court's chambers enjoys the support of 5-10 advocates general (who advise on judgments to be rendered by the Supreme Court), approximately 35 members of the legal research office, and administrative support. The Council of State has its own secretariat, headed by the Secretary and consisting of over 600 staff, including lawyers, legislative experts, and administrative support staff for each division; the Support Services Department, which includes the personnel and library and records units; and the Communication Unit and the support office for vice-president, who is de facto the president of the Council of State (the King being the formal president).

B. Court-Level Administration: Court Management Boards and Other Bodies

Until relatively recently, the responsibility for management of individual courts was entrusted to directors of judicial organization (directeuren gerechtelijke organisatie), who were placed within each jurisdiction and subordinated to the Ministry of Justice. This has changed in 1998, when these functions were transferred to presidents of individual courts supported by a management team elected by a general meeting of a court's judges.

Since 2002, each court has become a self-administering autonomous organization, but the administration is supervised by the Council for the Judiciary. Thus, each court now has a three-person court management board: two judges (one of whom is the court president) and a non-judicial member with experience in managing professional organizations, titled the director of court operations (directeur bedrijfsvoering). Members are nominated by the Council for the Judiciary in consultation with the court's management board, and are appointed by royal decree to a renewable six-year term. The appointment procedure is rather complicated in practice, highlighting the high level of internal and external responsibility of these officials. It includes an open application in response to vacancy announcements, a professional assessment (frequently conducted by an external company), an interview and internal consultation process within the relevant court, and a review of the top two or three candidates by a panel consisting of a member of the Council for the Judiciary, a relevant court's management board, and a colleague from another court's management board. The Minister of Security and Justice follows this proposal and formally presents a successful candidate to the King for appointment. The Ministry also may, at the Council's recommendation, suspend or dismiss a member of a management board, and if necessary appoint temporary replacements.

Court management boards have the overall responsibility for the daily management and operational control of their respective courts. This includes, among others, control over court's performance and output (in terms of both quality and quantity); preparation, adoption, and implementation of a court's budget; human resources matters (including appointment and discipline of non-judicial support officers for the court); accommodation, security, and other facilities; the quality of court's administrative and organizational procedure; external relations; and media representation. In addition, the boards are responsible for promoting legal quality
and uniformity in the application of the law, although in performing this, and all other, functions, they may not interfere in substantive or procedural aspects of particular cases. Each court management board adopts its own internal rules and regulations, which must be approved by the Council for the Judiciary; however, the Council may withhold its consent only if regulations are contrary to the law or prejudicial to the proper operation of the court. Court boards typically meet every three to four weeks, on the basis of the agenda prepared by court president with input from other members. Each board is supported by management assistants, a communication advisor, and financial staff.

In terms of division of responsibilities between the management board members, the court president, in his/her capacity as the board chairperson, serves as a court’s point of contact for the outside world, including in relations with the Council for the Judiciary and as a media spokesperson on organizational issues of the court. He/she is also responsible for human resources-related issues for judges (e.g., annual interviews, advice on promotions or retirement). The director of operations acts as the court manager, charged with the oversight of court facilities (e.g., premises, utilities, transportation, security, mail service) and of financial and budgetary affairs. A court’s human resources department that deals with support staff falls primarily under the director’s responsibility. Finally, the board’s third member is typically a senior judge, who is generally responsible for the oversight of performance a court’s sectors. In particular, he/she supervises the quality and quantity of the court’s output, facilitates continuing education for judges, and oversees the application of procedural guidelines. This person may also represent the court on the national level and plays a role in matters related to human resources for judges.

In addition to the management board, each court also has a works council and a general meeting of judges. The works council is elected by a court’s judges and staff and is tasked with providing an advisory opinion, or even consent, before the actions of the management board. The general meeting of judges consists of all judges, and non-judicial court employees may also be invited to participate. The general meeting of judges meets regularly with the management board to discuss common judicial and organizational matters. Most notably, it has the right to give advice on proposed nominations for appointment as new judges.

As mentioned above, each court in the Netherlands is divided into a number of specialized sectors or chambers. These sectors are headed by senior judges, who are selected and appointed on the basis of a published vacancy open to all judges in the country. The sector chairperson is assisted by judges who serve as team leaders for specific subsections within the sector, as well as by a head of the administration. Frequently, court sectors have significant flexibility with respect to budget and human resources issues that are delegated to them. There are regular meetings between the sector chair, team leaders, and head of administration, in addition to general meetings of a sector’s judges and judicial assistants to discuss guidelines, organizational issues, and other relevant matters.

III. Functions of Court Administration

A. Financial Management

The responsibility for the judiciary’s financial affairs is shared among the Council for the Judiciary and the court management boards, with the courts’ directors of operations having the
primary responsibility in this area. The Council for the Judiciary is responsible for the judiciary’s budget as a whole, including preparing the draft budgets, allocating the budget from the central government to the courts, and supervising the implementation of the budget by the courts. It prepares annual reports, as well as annual plans aimed to ensure that the judiciary receives sufficient financial resources to effectively perform its functions. In this context, it is necessary to emphasize that the central government, through the Ministry of Security and Justice, is the sole source of funding for the judiciary; regional and provincial authority do not have any role in this process whatsoever. In addition, no relationship exists between the income of the judicial system and its costs and expenses. Although courts collect fees from parties, these are not a source of income for the judiciary and are remitted in full to the Ministry of Security and Justice.

The financing of the judiciary in the Netherlands is based on a unique outputs-based financing system. This system was introduced in 2005 by a Court Sector (Funding) Decree, which signaled a changed from a cash commitment system to a cost-benefit system. It is a staggered system, under which the Ministry of Security and Justice funds the judiciary as a whole through a financial contribution to the Council for the Judiciary, and the latter then makes financial contributions to each individual court. No funds are actually transferred to a court’s account; rather, a court simply sets up a facility for payment. In other words, the court budget is organized in such a way that the court receives permission to spend the budget from a central account, with spending accounted for at the end of each year.

First, the Ministry of Justice provides to the Council approximately EUR 1000 million per year, of which 95% is designated to output funding, calculated as the quantity of cases expected to be completed during the year multiplied by the prices applicable to each case. In January of each year, the Council for the Judiciary submits a proposal to the Ministry for the number of cases forecast to be disposed of during the next year. This number is based on the proposed number of case disposals included in each court’s annual plan that results from administrative consultations with among the courts and the Council. These forecasts are generally set in annual plans adopted in September of the previous year by the court management boards, which in turn draw upon the data from court section chairs that takes into account the most recent developments and expectations of the future workload. In the following September, the Minister of Justice submits the budget to Parliament, indicating the number of cases that are proposed for funding. If this number is different from that proposed by the Council, the difference must be explained. The number of cases that have actually been disposed of as of the end of the year must be included in the annual report that is submitted by the Council for the Judiciary to the Ministry of Security and Justice and, in turn, presented to Parliament. The Council’s report is again based on annual financial statements from the courts. The excess or shortage of actual case dispositions is settled at a rate of 70% of the price applicable to each case.

The price per case is determined through a two-step process. The pricing of cases that serves as the basis for allocating resources to individual courts follows a rather complicated approach. There are a total of 53 categories of cases for district courts, 19 categories for courts of appeal, 14 That being said, since the creation of the Council for the Judiciary in 2002, the Ministry of Security and Justice no longer has direct role in this area and deals only through the Council. The judiciary’s budget is no longer part of the Ministry of Justice’s overall budget, and is instead provided for as a separate line item in the national budget – similarly to central ministries and other administrative agencies. 15 The remainder of the budget is allocated to cases that are dealt with by only a single court or for which rules are not yet fully clear (e.g., large criminal cases). Court costs in administrative and civil cases are fully reimbursed by the Ministry of Justice, while those in criminal cases are paid for by the Public Prosecution Service.
and 3 categories for the Central Appeals Tribunal. Prices are fixed annually by the Council for the Judiciary. Each court receives the same amount for a given case category and, as an incentive, those courts that manage to keep their costs low can retain a surplus.

From a practical standpoint, the amount of funding necessary for the court for any given year is determined in the basis of so-called Lamicie instrument, under which all judicial activities in a given court are presented on a single, standard A-4 sheet of paper. This document lists all types of cases and the amount of time, in minutes, required on average from a judge or court support staff to process and complete each case.\(^{16}\) This system is based on the following starting principles: each case or activity is counted only once; the measured time is realistic and accepted as such by court users; court users cannot influence the outcome; and it must be possible to apply through an automated system. The amount of time allocated to each type of cases is based on prior experience and the existing laws that govern the operation of the courts. Experience also shows that courts are able to predict their workload for the upcoming year fairly accurately, based on long-term developments corrected for incidental issues such as changes in the legislation or case law and in the economic situation. Additionally, the court system knows the exact average costs (middensom) of staff and judges per year in terms of salaries and social benefits, such as insurance or pensions.

As the next stage, at the system-wide level, the Ministry of Justice reduces this number of cases to a mere 10 categories of cases, with the classification based on various fields of law (e.g., civil, administrative, criminal, immigration, tax). The price per case currently varies from EUR 140 to EUR 3,615, depending on the amount of time needed to dispose of a case and whether the case is decided by a single judge or a panel of three judges. The prices are negotiated between the Ministry and the Council and are included in the central government's budget proposal. Unlike the number of case disposals, which is renegotiated annually, the prices per case are fixed for a three-year term and are not adjusted even if the actual costs end up being higher or lower.

If an individual court or the judiciary as a whole ends a budget year with an operational surplus, this amount is credited to a court’s or the judiciary’s own funds, which are capped at, respectively, 3% and 5% of the annual contribution. These funds are used to cover the operating deficit, and may also be used to make additional output and quality agreements with the courts.

It goes without saying that such a system requires regular verification, to ensure that the durations per case remain adequate. Doing so is based on a generally accepted system of measuring the workload and time, whereby a selected number of judges are requested to keep track of the precise amount of time they are spending on each case. A group of experts (which may include judges, senior court staff, or a specialized consulting agency) reviews the records and provides updated information. Based on these two sources, a provisional new Lamicie sheet is then compiled and tested. Before becoming permanent, the new document needs to be accepted by the Council for the Judiciary, the meeting of court presidents, and the Ministry of

\(^{16}\) These calculations are done on a full-time equivalents (FTE) basis, calculated as follows. One year consists of 52 weeks, with 36 official working hours per week (i.e., 1,872 hours total). From this duration, the following are then excluded: vacations and holidays (10 weeks or 360 hours), sick leave (5%, or 94 hours), education (30 hours), personal care (260 hours), and meetings and management (100 hours) - i.e., a total of 844 hours. Thus, the amount of “productive” work time is 1,028 hours, or 61,680 minute, per year. This approach helps avoid placing undue emphasis on the sheer number of case disposals.
Security and Justice as the body responsible for the budget before Parliament. Overall, this system has been scientifically reviewed and found reliable and well-designed, and as such, it is accepted as the basis of the budget for each court.

The contribution received by each court from the Council for the Judiciary is an integral budget, which means that the court management board is free to determine how to allocate its budget within the limits of this contribution and the court’s own funds. No amounts are earmarked for a particular court sector or equipment, for example. Clearly, in addition to human resources-related costs (that are based on the above Lamicie model), court budgets also need to include other funds that are necessary for the functioning of courts – namely, the overhead costs of maintenance of court facilities, courthouses, and equipment. Experience and research have shown that a stable relationship exists between the number of judicial and non-judicial staff and the costs of the supporting staff and court expenses, and that the ratio of the latter cost to the former is 27%. Thus, after having calculated the number of judges and court support staff required for the next year in FTEs, this percentage will be added to the Lamicie budget. Finally, the costs of rent are added in the form of an annual rent to be paid to the State Buildings Service (Rijksgebouwendienst) or a private proprietor. Because of the major differences between rent levels throughout the country, the Council for the Judiciary reimburses the courts for 100% of actual rent costs paid for courthouses.

The consequence of this system is that the court management board must be held accountable for its forecast and spending, both in the sense of accuracy of the forecast (i.e., the existence of a deficit or a surplus) and in the sense of fulfillment of proper requirements by the financial administration. To this end, each court is required to hire an external auditor to perform full financial control of the quality of financial administration and the proper application of standards and procedures for acquiring the budget. In other words, each court undergoes a check on the legality and proportionality of its budgetary spending. The court’s annual report is submitted to the Council for the Judiciary together with the auditors’ report.

The approach to court financing described here means that the court board always has to deal with three budget years: the past year, the present year, and the next year. Given the complexity of this financial work, courts have appointed internal controllers (chartered accounts), as well as teams of financial experts. Moreover, courts have staff to support the daily financial administration duties, such as processing of daily payments and approving declarations for fees and expense reports; the latter are typically signed, in the last instance, by the court president.

B. Human Resources Management

One of the most fundamental management issues in a court system concerns human resources management. In the Netherlands, the personnel management is exercised jointly the individual courts, whose boards have the primary responsibility within their own internal organization, and the Council for the Judiciary, which is charged with setting national policies and projects, providing specialized expertise to the courts as necessary, and promoting cooperation between the courts. Examples include the recruitment and selection system for judges and the national judicial training program.
Significantly, court boards, in consultation with general meetings of judges, provide feedback to the Council for the Judiciary with respect to proposed candidates for appointment as new judges. Court presidents would also, typically, be called upon to organize in-service training opportunities for judicial trainees, as well as lawyers and judicial support officers wishing to obtain a judicial position. Once appointed, judges are responsible for their own career advancement and transfers. That being said, however, a court president’s role typically includes facilitating a judge’s career by advising him/her whether or not to apply for a promotion or transfer to a different court sector, helping arrange for temporary assignment at another court, suggesting participation in further training, and providing references for applications to a position with another court. In this respect, one might say that a court president enhances the employability of a judge. In addition, court presidents have the authority to discipline judges by issuing a formal warning, although this occurs extremely rarely in practice.

In addition, court management boards are directly responsible for selection, recruitment, appointment, and discipline of all non-judicial court officials, in accordance with general rules applicable to civil servants. To this end, courts are generally staffed with a team of trained human resources managers, who are dedicated primarily to providing human resources support to non-judicial court staff – although occasionally they may provide professional advice to judges. They have an advisory, and therefore rather independent, role, and are in a position to give even unsolicited advice. Moreover, court human resources offices in the Netherlands often partner with external medical professional who conduct regular court inspections, as well as review and follow up on reports of employee illnesses. This can help identify patterns at both an individual employee and a department-wide levels, which then allows a management board and human resources advisors to determine possible causes and take remedial actions.

C. Technology and Information Management

The courts in the Netherlands are not responsible for their own ICT management. Instead, in order to promote standardization and efficiency, the Council for the Judiciary has decided that any maintenance of ICT systems should be arranged centrally by the Council itself. Courts, therefore, receive these services in-kind and are not responsible for any associated costs and budgets.

A specialized office under the Council for the Judiciary, called SPIR-IT, serves as the judiciary’s IT service provider and facilitates a national network providing access to Internet, Intranet, secured email, and central files. It also provides access to the electronic legal information sources and specialized law journals, which are generally available for all judges and court staff via courthouse computers. Librarians are often able to train judges and staff in working with these sources. SPIR-IT also offers a help desk, directly accessible to judges and court staff who are experiencing problems with functioning of the technology; help desk staff can access local computers remotely in order to help solve any problems.

SPIR-IT develops software, supports the use of hardware, determines the standards for equipment, and offers other customized solutions. Within these guidelines, however, courts must purchase their own computers, printers, faxes, scanners, and other equipment. These purchases must meticulously follow a set of detailed and complicated procurement procedures. In practice, almost everyone working in the courts has their own computer, and many judges and staff also have their own printers (or access to a shared printer nearby).
There is an automated court management software that covers all categories of cases (civil, criminal, and administrative), which is connected to the management information system and provides up to date case tracking information (e.g., incoming and completed cases by type), as well as relevant financial information (e.g., outlook or forecast until the end of the year). Sector leadership can view this information and manage the caseflow accordingly. This information can also be tracked on the Internet by the parties. In addition, e-filing and electronic exchange of date are available, and progress is being made to transition to paperless case files (more advanced in civil and administrative cases, and less successful in criminal cases). Judges can often use screens built into the courtroom desks to access case files and relevant documents. Video-conferencing systems are also available, and hearings in the newer courthouses can be followed and recorded through courtroom cameras. Finally, SPIR-IT has developed plans for a “wireless office,” which provides for flexible hours, teleworking, knowledge-sharing, collaboration, and delegation arrangements.

The management information systems on the court level allow for an overview of the caseload. However, it is the responsibility of the sections’ chairpersons to check on the caseload regularly, for which they can rely on an assistant manager or coordinator. The software systems that support the different processes and procedural arrangements which exist in the different field of law allow to check weekly on the progress of cases and to immediately identify old cases and sources of backlogs, as well as to take appropriate remedial measures. The progress of cases is also closely monitored by stakeholders, such as the prosecutor’s office, lawyers, and parties, as well as the court administrators. Courts have in place a system of regular meetings between sector chairs and external stakeholders, as well as other ways to exchange information with the parties, to ensure that everyone is up to date on the progress of cases and to open the possibility for stakeholders to ask questions about backlogs and delays.

The ICT has allowed to centralize the entire financial administration and much of the human resources administration for the courts. Thus, staff in different courthouses have access to the central system that executes purchase orders and keeps implementation data, providing courts with information on their expenses and budgets. Court staff are able to record their worked time and absences electronically, as well as submit travel expense reports (subject to approval by the court president).

Judges and judicial assistants have a plethora of resources available to them electronically on various substantive and procedural legal issues. A court also generally has a well-equipped library with books and hard copies of case law, staffed by a reference librarian who serves as a resource person on available literature and documentation.

On an organization-wide level, in order for court leadership (i.e., the management board) to be truly in charge of the court, they need to have access to sufficient management information to assess the court’s performance and, if necessary, to adjust the course of action. One such system used by the courts is a “cockpit” system, which helps visualize and color-code the actual performance of various court tasks. The other system is more business-like and informative in detail. Relevant information is made available on demand or, at the very least, on a monthly basis, when the court board receives updates on budget expenses and outputs, available human resources, as well as the forecast for the remainder of the budget year. During the board meetings, the director of operations, often together with the controller, will present this information and any additional data, including recommendations on remedial measures. Information on human resources matters, such as annual evaluations and progress interviews with employees, is also reported to verify implementation. Similarly, the sector chairs regularly (usually quarterly) report to the board. On the whole, this system makes any sudden increase or
decrease in the workload visible in a matter of a few weeks, and measures can be taken immediately to correct the situation.

To allow for internal sharing of the wide-ranging information with all judges and support staff, each court in the Netherlands also maintains an Intranet page. This page publishes news from the national and regional levels (e.g., developments originating from the Council for the Judiciary, the Court of Appeals, and neighboring district courts), as well as information on the work of a court’s internal governing bodies (e.g., agenda and meeting minutes of the management board, the works council, and sector meetings). In addition, some courts may publish hardcopy periodical newsletters with relevant news and interviews. Various information channels, such as internal conferences and teambuilding meetings, are also available within each section, allowing to support the employees’ motivation.

**D. Facilities Management**

The court’s management board is responsible for setting the layout of the courthouse and general building and space maintenance, although general design guidelines and policies are in place (having been developed first by the Ministry of Justice and then by the Council for the Judiciary), to ensure comparable organizational outlook and safety among the various court buildings throughout the country. One of the key features of this design is that the public functions are concentrated mainly near the entrance and on lower floors of the courthouse, while office areas are closed to the public. Additionally, judges and court staff should, ideally, be able to reach the courtroom without passing through the public area. Most of the newer courthouses in the Netherlands are designed according to this principle.

In terms of building security organization, the general public can usually access the courthouse through the main entrance and deliver documents at a centralized desk, without having to pass through security. For access to so-called semi-public areas, such as waiting rooms, courtrooms, information desks, and front offices of respective court registries, security check is required for both the public and the lawyers. Bigger courtrooms can often be reached from outside through a special entrance for the general public. Electronic screens are often available to provide visitors with information on the schedule of hearings.

Courts generally employ a staff of uniformed ushers or court assistants to help with maintenance of public order and guiding the public into and out of courtrooms. There is no special judicial police; however, to help in an emergency situation, a general police unit that specializes in courthouse assistance and guarding the detainees is stationed within each courthouse. Although these units fall under the responsibility of local police chief, they are required to follow instructions given by the court.

A court’s facilities department, which falls under the supervision of the director of operations assisted by a facilities manager, is charged with day-to-day maintenance of the courthouse. Based on information supplied by court sectors, this department assigns courtrooms for scheduled hearings. Court management board sets guidelines for priority distribution of courtrooms and resolves conflicts that may arise from overbooking. In addition, the facilities department deals with matters such as organization of security, utilities (e.g., heating, cooling, lighting), and opening and closing of the courthouse.
E. Quality Control

One of the key functions of the Council for the Judiciary is promoting the quality of the judiciary in the Netherlands. In the view of the principle of judicial independence, the Council does not have any binding authority when it comes to quality of judgments and legal proceedings, as those aspects of quality have traditionally been protected by the system of appeal. Quality control in this context involves other aspects of the workings of the legal system and of the organization, such as treatment of the parties by the courts or the duration of court proceedings.

Since 2002, the Dutch courts have been using quality control system Rechtspraak, which is designed to ensure that the judiciary systematically works on improving its quality. The system focuses on issues such as case processing times, treatment by the courts, and the organizational quality. In the coming years, key priorities will also include the development of expertise, promoting uniformity of law, and improving information on reasoning behind court judgments. The system will also focus on issues such as handling full-court cases, monitoring single-chamber cases, and devoting time to instruction and fact-finding.

A number of standards have been developed to ensure a greater focus on quality, which are directly relevant to effective adjudication of cases. One of these standards provides that all judges and court staff must devote 30 hours annually to participation in continuing education, including at least three hours on improving the knowledge of European law. The courts also employ a variety of methods, such as visitation assessments, employee satisfaction and client satisfaction surveys, to monitor quality development.

F. Communications and Public/Media Relations Management

Communication is one of the essential modern functions of a court system. In this light, the Council for the Judiciary has a large communications department, which is responsible for liaising with the media and for setting national policies on behalf of the judiciary. The department is also responsible for press communications and for providing information to the public. There is a series of press guidelines, which indicate what journalists, district courts, and courts of appeal can expect and how the courts should provide information to the media prior to, during, and after court cases. The media, for their part, are expected to comply with internal rules regarding court sessions. In response to increased public debates about legal issues and decisions, the Council recently created a “spokesperson’s pool,” which engages with the media in public debates on such topics (e.g., helping to explain the rationale behind sentencing guidelines).

At an individual court level, each court has a communications advisor with one or several assistants, who deal with both external and internal communications for their court, as well as supporting the media judge(s) and the court president in their contacts with the media. Communications advisors also maintain day-to-day contact with the media, including provision of regular information about court hearings, special cases, assisting with press statements, and further development of media guidelines. In high-profile cases that attract significant media attention, communications officer arranges practical aspects, such as designating the TV stations that can broadcast from the courtroom (a maximum of two, per media guidelines), ensuring sufficient courtroom space, and setting up a video facility in an adjoining courtroom, if
necessary. These functions are extremely time-consuming, but are very important for the image of the judiciary.

Communications departments also arrange for regular public visits to the courthouse, where by interested groups (e.g., school students) can observe a court’s work. They are usually assisted by one or more judges and judicial assistants, who volunteer to provide explanations and answer any questions after the hearing or during a coffee break. In addition, courts also regularly organize Open Days, when moot courts are held and judges, court staff, and other stakeholders (such as local legal aid officers, bar associations, prosecutor’s offices, probation organizations, and child and youth protection services) are available to provide information. These events are typically held on Saturdays, are widely advertised in the local media, and attract about 3,000-4,000 visitors.

G. Research and Advisory Services

One of the main duties of the Council for the Judiciary is providing advice on draft laws and policy proposals that affect the judiciary, both those that have a direct impact on the organization of the judiciary and those concerning the introduction or amendment of new legal proceedings (e.g., introduction of administrative fines or minimum sentences). The Council’s recommendations are issued in consultation with the courts and can be provided both upon request and unsolicited. Most of its recommendations relate to bills drafted by the government, as well as proposed EU regulations, directives, and policy proposals.

In addition, the Council for the Judiciary commissions and, to an extent, conducts its own research on issues of relevance to the judiciary. This is based on the Council’s need for a well-substantiated, factually accurate image of the legal practice based on sound empirical research. At present, the main purposes of research include: identification of trends and developments in the functioning of the legal system; supporting policy development through shedding light on the circumstances that give rise to policy interventions, as well as their impact; and providing expertise required to support vision and strategy development.

There are other mechanisms in place to ensure communication on organizational problems and recommendation on legislative changes, which play a decisive role in the Dutch judiciary. One example is the meeting of court presidents, which is an extremely influential body that discusses and decides on all kinds of issues concerning the organization and changes in the judiciary. In addition, sector chairs in district courts meet on a regular basis in order to try to reach agreement on common approaches to the substance of the law, and adopt guidelines that are then published. Specialized taskforces exist, such as working groups on alimonies and on bankruptcies, which have produced guidelines for lawyers and judges. The Association of Judges also frequently provides advice on pending legislation, and the President of the Supreme Court may also voice his/her opinion on urgent issues. Finally, working group to draft new or amended legislation are usually created, and court presidents are often invited to participate.
I. Country Background

A. Legal Context

The United States of America is a federal republic made up of 50 states and a federal capital district. The Constitution of the United States, which was adopted in 1787 and has since been supplemented with 27 amendments, is the "supreme law of the land." It establishes a system of federal government made up of separate and equal branches – legislative, executive, and judicial – which operate within a framework known as "checks and balances," in which each branch has certain constitutional oversight authority to over the actions of other branches. For example, the legislature has the power to adopt legislation, while the President may veto legislation and other executive branch agencies enforce the laws, and the judiciary determines whether that legislation is constitutional.

The legislative branch of the United States is known as Congress and comprises two chambers: the Senate and the House of Representatives. Each of the 50 states elects, by direct popular vote, two senators for six-year terms, while the House seats (currently, 435) are allocated to each state in proportion to their populations. Members of the House are elected to two-year terms. Unlike the systems of many countries, the President's political party need not hold a majority in Congress in order to stay in office. Congress's principal constitutional authority is to enact laws, which includes the authority to impose and collect taxes, regulate inter-state and foreign commerce, declare war, create federal courts, and pass legislation necessary to execute its authority. Proposed federal legislation may be introduced by members of Congress in either of the chambers, and must be passed by a majority vote in both chambers before being submitted to the President for signature. The President may choose to veto a bill, but Congress can vote to override a presidential veto with a two-thirds majority vote of each chamber.

The executive branch includes the President, the Vice President, the Cabinet, and the federal executive agencies. The President, who functions as both the head of state and the head of the government, is elected to a four-year term, with a maximum of two terms in office. He/she has the power to appoint Cabinet members, who must be confirmed by the Senate and who head the executive branch departments, such as the Departments of Justice, State, Defense, and the Treasury. These and other members of the administration have administrative and regulatory powers and implement federal laws. For example, the Department of Justice, headed by the Attorney General, is responsible for, among other things, federal law enforcement and all criminal and civil cases in which the US has an interest. It also administers federal law enforcement agencies, such as the Federal Bureau of Investigation and the Bureau of Prisons.

While Congress is responsible for creating the laws and the executive branch for enforcing them, it is the judiciary that interprets and applies the laws and determines their constitutionality. The Constitution only mandated the establishment of the US Supreme Court and left the creation of other federal courts, including intermediate appellate and trial courts, to Congress's discretion. Federal judges are appointed under the authority of either Article III or Article I of the Constitution. Article III judges are appointed by the President, subject to confirmation by the Senate. Their salaries may not be reduced, and they hold lifetime tenure.

Prepared with input from Markus Zimmer, former District Court Executive/Clerk of Court of the US District Court of Utah (1987-2006).
and may only be removed from office through the Congressional impeachment process. Article I federal judges, by contrast, do not require legislative branch appointment, and do not enjoy the constitutional protections of lifetime appointment or undiminished compensation. Common examples of Article I judges include US bankruptcy judges and magistrate judges, both of whom are employed within the federal judicial system; judges employed at one of the special courts that exist outside of the judicial system (e.g., trial and appellate Military Courts, US Tax Court, Court of Veterans Appeals); and administrative law judges, who are attached to one of the executive branch departments (e.g., immigration judges under the Department of Justice’s Executive Office for Immigration Review).

Under the country’s federal system of government, each state has its own executive, legislative, and judicial branches, independent of the federal systems, as do the District of Columbia and Puerto Rico. These parallel systems of government result in the sharing of powers among the states and the federal government. The latter’s powers are specifically defined in the Constitution, while those powers not expressly prescribed in the Constitution are left to the jurisdiction of the 50 sovereign states. Collectively, the state systems comprise a total of 52 separate government systems, including the judiciaries, in the United States, in addition to the federal system.

The US legal system is based on the principles of common law, which means that decisions of higher courts have the force of precedent and are a binding source of law for lower courts. The Constitution, as the “supreme law of the land,” has the highest legal force, and no laws may contradict any of its principles. Federal statutes that are passed by Congress are organized in the official subject compilation of all general and permanent laws known as the United States Code, divided into 50 subjects and published every six years (with cumulative annual supplements in the interim). Federal executive agencies have the authority to promulgate rules and regulations to interpret and administer the federal laws. These regulations have the force of law but are subordinate to legislation. They are codified in a Code of Federal Regulations, divided into 50 titles arranged by subject matter and revised on an annual basis. In addition, the President has broad powers to issue executive orders to direct the actions of agencies or to set policies for the executive branch to follow. Federal courts have the jurisdiction to interpret the Constitution, as well as to interpret and to evaluate the constitutionality of federal and state statutes and regulations. In addition, most federal agencies have a quasi-judicial power over questions arising from their regulations, and these decisions can be appealed to federal courts (typically, the Courts of Appeal). Finally, under the US federal system, conflicts between state and federal laws are governed by the Supremacy Clause of the Constitution, under which federal laws are legally superior over a state constitution or law, and federal agency rules and regulations take precedence over state laws and rules.

The US judiciary has also adopted the adversarial approach, in which two sides oppose one another in formal court proceedings, each collecting and preparing their own evidence and seeking to convince the judge or jury that its position is the most convincing. The judge or jury acts as an impartial and neutral fact-finder, weighing the facts and arguments presented by both parties, to resolve the dispute. American judges are not involved in the investigative process; rather, their role is to regulate the trial process by ensuring that the parties follow rules of procedure and the law, that evidence is properly admitted or excluded, and that both sides are treated fairly and treat each other fairly.

Although Congress may modify a judgment of the US Supreme Court, in practice, the Court is considered to have the “last word” in the US law.
B. Structure of the Judiciary

The judicial power at the federal level is exercised by the US Supreme Court, as well as intermediate appellate courts and district courts that were subsequently created by Congress per the Constitution’s mandate.

At the lowest tier of the system are the federal district courts, which serve as the first-instance or trial courts. These courts have jurisdiction to hear almost all civil and criminal federal cases. Congress has created 94 federal judicial districts, with at least one district in each state, the District of Columbia, and Puerto Rico. Each federal district court has a separate unit known as the US bankruptcy court, which has exclusive jurisdiction over bankruptcy cases; and some of the district court cases are handled by magistrate judges. Additionally, there are two special federal trial courts that have nationwide jurisdiction over certain types of cases: the Court of International Trade, which adjudicates disputes involving international trade and customs issues; and the US Court of Federal Claims, which has jurisdiction over most claims for money damages against the US (e.g., disputes over federal contracts).

Appeals from the district and other federal trial courts are brought in one of the federal Courts of Appeals. There are 12 regional circuits, each with intermediate appellate jurisdiction over decisions of lower district courts located within their respective geographic territories, as well as over decisions of federal administrative agencies. There is also a Court of Appeals for the Federal Circuit, which has nationwide appellate jurisdiction over specialized cases, such as patents and cases decided by the Court of International Trade or the Court of Federal Claims. These courts are bound by the principle of mandatory review and must hear all appeals of right from the lower courts.

Organized in 1790, the US Supreme Court is the highest court in the country, hearing “cases and controversies” relating to interpretation of the Constitution, matters involving the federal government, and disputes between states. It consists of the Chief Justice of the United States and eight associate justices. Although it is the highest appellate court, in general, there is no right of appeal to the Supreme Court. Instead, it operates under the principle of discretionary review, meaning that it has the authority to choose whether or not to hear a particular case. In practice, it hears only a limited number of cases it is asked to review, usually involving important questions about the Constitution or federal law. Most of these cases were previously reviewed by a federal court of appeals, but some come from the state supreme courts. The Supreme Court is the only federal court that has the power to issue legal decisions that are binding on state courts. Decisions of lower federal courts may be considered persuasive authority in state cases, but are not binding.

As stated above, each state has its own court system, as established by the constitution and laws of that state. These systems are generally organized in a manner similar to the federal judicial system, with a hierarchy of first-instance trial courts (sometimes referred to as circuit or district courts), intermediate courts of appeals (which exist only in some states), and a court of last resort (often known as a supreme court). The latter generally function as the highest level of authority in cases concerning state law, as the US Supreme Court does in cases of federal law. However, in cases involving federal law or constitutional interpretation, parties may appeal

---

19 Additionally, three US territories – the Virgin Islands, Guam, and the Northern Mariana Islands – have district courts that hear federal cases and simultaneously function as state court.
decisions of the state supreme court to the US Supreme Court. Many states also have courts to deal with specialized legal issues, such as small claims, domestic relations/family law, probate, and juvenile courts. Unlike federal judges, who are appointed by the President and hold life tenure, some state court judges are appointed by the state’s governor, while others are popularly elected or selected by judicial commissions. Also unlike federal Article III judges, all state- and district-level judges serve fixed terms of service that vary from state to state.

State courts have jurisdiction over all matters of state law and may hear cases involving federal law, so long as the federal courts are not granted exclusive jurisdiction. This means that most criminal, probate, contract, tort, and family law cases are heard by state courts. Federal courts have limited jurisdiction, and may only hear cases concerning interpretation of the Constitution and federal law, or in which the US is a party. Federal jurisdiction can also be established through federal-question jurisdiction (jurisdiction over the issue in question). For instance, because Congress has exclusive authority to adopt bankruptcy and copyright laws, only federal courts have jurisdiction over these cases. Similarly, because the federal government does not have authority over most family law matters, only state courts would have jurisdiction over divorce cases. Finally, federal courts have diversity jurisdiction, or personal jurisdiction over the parties. For example, if the parties to a case are citizens of different states and the claim exceeds a congressionally-specified dollar threshold (currently, $75,000), the case may be filed in federal court, even if it does not involve a federal issue. In such a situation, a case may begin in state court, but subsequently be removed to a federal court. Alternatively, a case improperly filed in a federal court may be sent down, or remanded, to the appropriate state court. The Full Faith and Credit Clause of the Constitution requires federal and state courts to respect and abide by the judgments of each other; however, in the event of a conflict between the two, federal law preempts state law.

C. Relationship of Other Branches to the Judiciary

Although the US Constitution establishes the separation of powers, the system of checks and balances means that the three branches of the US government interact in a number of important ways. The Constitution gives the President the authority to appoint Supreme Court justices and lower-level Article III judges in the federal district and circuit courts. The process begins with the President nominating prospective candidates for vacant or new judgeships in these courts. All nominees, however, must be confirmed by a majority vote of the Senate before their appointments are final. Thus, both the executive and the legislative branches play a major role in the appointment of federal judges.

In addition to the President’s involvement in judicial nominations, the executive branch agencies often appear in federal court proceedings as litigants in cases involving the US government. The Department of Justice is the most frequent litigator in the federal court system, stemming from its function of prosecuting federal crimes and representing the government in civil cases. Executive branch personnel also serve the federal courts in non-legal capacities. For example, the US Marshals Service, part of the Justice Department, is responsible for providing security for federal judges and courthouses and for transporting federal prisoners and detainees between their holding facilities and courthouses when they are scheduled to appear in court. Federal courthouses are constructed and maintained by the General Services Administration, another executive branch agency. Finally, the judiciary depends on the executive branch to enforce court decisions.
In addition to its role in the judicial confirmation process for federal judgeships, Article III of the Constitution, as previously noted, mandated the establishment of only the Supreme Court, leaving to Congress the discretion to create subordinate federal courts as required for the efficient administration of justice. As such, Congress holds substantial control over the lower federal courts, defining their subject-matter jurisdictions and determining the number of Article III judges that should sit in each geographic federal region, or circuit, and district. Congress is also empowered to impeach federal judges and remove them from office. Moreover, Congress approves funding appropriations that comprise the judiciary’s annual budgets. Expenditures must be reported to the Department of the Treasury via scheduled reports, and leaders of the judicial branch appear before designated congressional committees to explain and justify their annual budget requests. However, the responsibility for administering the courts and managing their business operations is largely left to the judiciary.

II. Overview of Court Administration Structure

A. National- and Regional-Level Administration in the Federal Courts

For more than a century after the creation of the federal court system, court administration was largely unstructured and, as a consequence, left largely to the discretion of individual chief judges and their chief clerks. Central oversight shifted among several departments of the executive branch. For a portion of that time, the district and appellate courts had nearly complete autonomy; many chief judges delegated administrative and operational authority to their chief clerks. Over time, this led to inconsistency in the manner and care with which administrative matters were handled. As the titular head of the federal courts, the Chief Justice of the United States retained the prerogative to exercise administrative control over the entire system. In practice, however, he rarely intervened in the business of the lower courts, leaving them to manage themselves, even when encouraged by Congress to assume a stronger and more proactive supervisory role.

Eventually, Congress tasked the Department of Justice with oversight responsibility for the management and supervision of federal trial and intermediate appellate courts. This resulted in an aggressive agenda of audits and reviews, and the establishment of national standards and reporting requirements in key administrative areas. Judges and clerks of court opposed the imposition of these outside controls by the Attorney General, arguing that they were intrusive and in violation of the principle of separation of powers. Outside oversight of the judicial system continued through the beginning of the 20th century, when reformers began to actively advocate for organizational change and self-governance for the judiciary.

1. Judicial Conference of the United States

One of the earliest results of the push for the judiciary to assume greater administrative oversight was the creation of the Conference of Senior Court Judges in 1922. In 1948, this body became the Judicial Conference of the United States. Chaired by the Chief Justice of the Supreme Court, the Conference is comprised of 26 judges drawn from across the federal court system, including chief judges of each of the 13 Courts of Appeals and the Court of International Trade and a district judge elected by each of the 12 regional judicial circuits. Meeting twice a year in Washington, DC, the Judicial Conference serves as the principal policy-setting body concerned with the administration of the US courts. At its creation, the Conference was intended to undertake a thorough assessment of the federal court system and devise methods...
to facilitate coordination of judicial assignments and improve communication among the courts. Among its other current responsibilities, the Judicial Conference approves the judiciary’s budget, oversees the business conditions in the courts, promotes uniformity of management procedures, proposes judicial rules of procedure, and temporarily reassigns judges to circuit and district courts other than those to which they are appointed. It can also make recommendations to individual courts in the interest of promoting uniformity of management procedures and the expeditious conduct of court business. Working through approximately 20 subject-matter based committees that address topics such as budget, case management, human resources, security, space, facilities, technology, automation, and codes of conduct, as well as federal rules of procedure, the Judicial Conference implements national policies and procedures for the judicial branch. It also engages in the drafting and support for legislation related to federal judicial administration.

With the creation of the Conference, the resulting reporting requirements added to the federal clerks’ responsibilities. Congress required detailed annual reports from the senior judges of each district court, including information about their cases and recommendations for effectively handling the next year’s business, and it fell to the clerks to assemble the vast quantity of information that went into these reports. This was a fitting delegation, as the clerks were tasked with maintaining the courts’ records and processing cases, and were therefore best suited to report on these administrative issues. Holding the responsibility for producing these annual reports also gave clerks a direct line of communication to the Conference, which some clerks used to make specific recommendations for improving judicial administration, as well as their own working conditions.

2. Administrative Office of the United States Courts

In another big step towards administrative and institutional independence of the judiciary, with the passage of the 1939 Administrative Office Act, Congress created the Administrative Office of the United States Courts (AOUSC). This document had effectively transferred all authority and management responsibility for administrative oversight and support of the federal trial and appellate courts from the Department of Justice to a new central administrative court support organization, an entity within the organizational framework of the judicial branch and dedicated to serving its needs. Creation of the AOUSC was a major milestone in establishing the statutory authority of the judicial branch to govern itself.

The AOUSC serves as the federal judiciary’s national agency for policy guidance and administrative support. It is supervised by the Judicial Conference and is charged with implementing and executing Conference policies, as well as relevant federal statutes and regulations. Its Director, appointed by the Chief Justice in consultation with the Judicial Conference, is the chief administrative officer of the federal court system and has a statutory duty to supervise all administrative matters in the courts. The Office functions as a central support unit for the federal courts, providing a broad range of administrative, financial, legal, management and information technology services. Its divisions are responsible for a variety of aspects involved in daily court administration, such as the judiciary’s payroll and human resources program, budget planning, equipment and supplies, managing court space and facilities, judicial automation programs, and libraries. It maintains an integrated management and financial planning system, with rigorous financial controls governing budget formulation and execution, conducts regular surveys of court operations and judicial workloads in order to assess operational effectiveness and economy, and prepares national standards and guidelines.
that are promulgated in an official administrative policy manual. The AOUSC also maintains close contact with Congress, conveying the judiciary’s official position on legislation that may affect the administration of federal courts. As such, its employees include not only attorneys, but also accountants, system engineers, architects, statisticians, and public administrators. The sheer array of services provided by the AOUSC makes it a unique organization among the US government entities, as neither the executive nor the legislative branch can claim a similar all-encompassing administrative agency.

Over the course of its existence, the AOUSC would prove to be critical for helping to expand the roles of federal clerks of court and for the overall development of court administration as a profession. In the mid-1950’s, for example, it lobbied for and obtained permission from Congress to hire additional personnel in the clerks’ offices, when staff found themselves overwhelmed by an increase in case filings. It also surveyed various courts, analyzing their systems and processes in order to identify potential areas for improvement, as well as best practices that could be shared with other offices. In doing so, the AOUSC served as a strong advocate for federal clerks of court, helping them come together as an independent profession with common goals and shared resources.

3. Circuit Judicial Councils and Other Circuit-Level Entities

In an effort to promote decentralization of judicial administration authority, in 1939 Congress established a Circuit Judicial Council for each of the geographic regions of the federal judiciary, to oversee the administration of the courts within their respective circuits. Each Council is chaired by the chief judge of that circuit and comprises an equal number of court of appeals and district judges. Although they must coordinate their activities with the AOUSC and the Judicial Conference, each Council has general authority to promote administrative standards, processes, and procedures within the confines of its circuit. Specific responsibilities include reviewing local court policies and rules of practice, monitoring the state of business in the courts within the circuit, addressing case backlogs, approving operating plans for district courts, reviewing complaints against judges, and otherwise ensuring the effective administration of the court system.

With the establishment of the Judicial Councils, the chief judges of circuit and district courts no longer had complete control over the administration of their courts. Instead, through the Councils, the federal courts were administered in a more democratic and consistent manner. Creation of these Councils also reflected an important step in decentralizing judicial oversight authority and responsibility. By shifting key functions from the centralized control of the Judicial Conference to the regional level, this has, in effect, resulted in greater representation on the regional level in the affairs that did not require Washington’s attention.

As mentioned, the chief judge of the circuit Court of Appeals chairs the respective Circuit Judicial Council and represents the circuit in the Judicial Conference. He/she generally supervises the administration of the court of appeals, assisted by the circuit executive and the clerk of court, as well as by a variety of committees, and serves as the court’s chief representative to other components of the federal judicial system and the community in general. With the assistance of circuit executive, he/she also oversees the performance of the Council’s responsibilities. Additionally, the chief circuit judge has the authority to call a conference of all federal judges in the circuit with the lawyers, which usually meets annually or biannually and considers a variety of issues, providing a bridge between judges and the legal profession. A chief circuit judge generally holds office for seven years and must step down upon reaching the
age of 70; the post then passes to the Court of Appeals judge who is next highest in seniority and is younger than 64.

Finally, each circuit Judicial Councils appoints a circuit executive, whose responsibilities are delegated by the council and who is supervised by the chief circuit judge. Duties of circuit executives typically include: administering all non-judicial, administrative activities of the Court of Appeals; administering the personnel system and the budget of the Court of Appeals; providing services to courts of the circuit (e.g., advice and assistance concerning courthouse construction or IT); conducting studies relating to the business and administration of the courts within the circuit and preparing reports and recommendations to the chief judge, the circuit Council, and the Judicial Conference; serving as the circuit's liaison to state courts, bar groups, the media, and the public; and preparing an annual report to the circuit and the AOUSC for the preceding year, including recommendations for improvements in handling the business of the courts.

B. Court-Level Administration in the Federal Courts

Every federal district court is responsible for the effective safekeeping of government resources allocated to it, as well as for all of their own personnel matters. To this end, each court must produce management plans for monitoring its various operations, such as a budget organization plan, budget spending plan, internal controls plan, employment dispute resolution plan, jury plan, court reporter management plan, Criminal Justice Act plan, and long-range facilities plan.

Unlike at the circuit level, there are no comparable judicial councils operating at the district court level. Nevertheless, federal district courts are responsible for a significant portion of their own administration, as the AOUSC has delegated many of its statutory responsibilities to the district level. From the perspective of court administration and management, there are two key positions in federal (and, as will be described below, state) systems at the court level: the chief judge and the court administrator or clerk of court.

Chief judges at all levels of courts are the officials primarily responsible for ensuring that their courts comply with all relevant state and federal laws and effectively pursue the administration of justice. As described above, chief judge at the court of appeals level, known as circuit chief judge, has general supervisory authority over their respective Court of Appeal, in addition to chairing the Circuit Judicial Council and exercising other circuit-wide responsibilities. His/her district-level counterpart, called chief judge of the district, has similar supervisory responsibility over the administration of the district court and is assisted in this role by the clerk of court and various district court committees. Most importantly, chief judges are responsible for enforcing the court’s rules for assigning cases to judges, as well as ensuring that the court operates effectively and that non-judicial court support personnel perform their duties properly. They also represent the district court in relationships with other components of the federal judiciary and the community at large. While serving in the administrative capacity, chief judges also continue exercising their judicial duties, although many courts assign a reduced workload to their chief

---

20 As stated above, each federal district court includes a separate unit to handle bankruptcy cases, known as the bankruptcy court. One of the bankruptcy judges (who are selected by the Court of Appeals judges for renewable 14-year terms) is designated as the chief judge of the bankruptcy court by the district court judges. Chief bankruptcy judges are congressionally charged with ensuring that the rules of the bankruptcy court and of the district court are observed, and that the business of the bankruptcy court is conducted in an effective and efficient manner. Unlike with other chief judges within lower federal courts, there are no term limits on the tenure of chief bankruptcy judges.
judges. Like a chief circuit judge, chief district judge generally holds office for seven years and must step down upon reaching the age of 70; the post then passes to the district judge who is next highest in seniority and is younger than 64.

Court administrators (also known as circuit executives at the Court of Appeals level and as clerks of court at the district court level) function as the chief administrative and ministerial officers of their respective courts. Reporting to their courts’ chief judges, they generally are responsible for overseeing all non-judicial functions associated with the operations and activities of the courts in which they are employed. The structure and functions of clerks’ offices vary depending on the type of court. For example, some clerks’ offices at district courts have divisions to handle certain functions. Circuit executives, as discussed above, also have a number of circuit-wide judicial administration responsibilities; however, clerks’ offices at these courts typically have no separate units, but all employees are instead generalists. Despite these differences, the clerk of court and his/her staff play a vital role in many courts, and are sometimes referred to as “the nerve center of the court.”

The position of clerk of court in the federal judiciary originated in the English court system, where judges frequently employed clerks to liaise with attorneys and litigants, maintain court records and orders, and issue judicial writs. Following the American Revolution, state court clerks held similar responsibilities. The Judiciary Act of 1789 authorized the appointment of a clerk for the Supreme Court and for each of the judges of the individual district courts to “enter and record all the orders, decrees, judgments and proceedings of the said court[s].” During the 18th-19th centuries, Congress passed various statutes expanding the role of these federal clerks and assigning additional functions that contributed to the development of the federal judiciary, such as circulating copies of new laws to court personnel, making court records publicly available, and supervising jury selection. As Congress expanded the jurisdiction of the federal courts, the workload of the federal clerks increased correspondingly.

As the profession developed and the role of clerk of court expanded, it led to a review of the level of decentralization that was ideal for the federal court system. Until the administrative reforms of the early 20th century, federal courts had a largely decentralized structure. Chief judges were primarily responsible for the administrative operations of their own courts, meaning that each court was run individually and little standardization existed. The reform process resulted in progressively greater centralization and standardization, with the AOUSC exercising increasing levels of authority over the federal courts. As is frequently the case in centrally controlled systems, court administrators began to experience bureaucratic delay and bottlenecks in administrative traffic, and a consensus emerged that the growing level of centralization was becoming counterproductive. The discretionary authority of court clerks and chief judges in numerous administrative matters was constrained by the need to first seek approval from bureaucrats at the AOUSC for purchases of equipment and supplies essential to court operations.

Growing acknowledgement of these inefficiencies triggered a series of critical delegations of administrative authority from the central to the regional and local levels, which increased individual courts’ authority over planning and decisions relating to budgets, finance, procurement, human resource administration, court automation, and day-to-day operations – all the while following a uniform set of guidelines. With stronger local management guided by a central authority, the federal court management and administration became more efficient. Decisions and action could be taken locally without having to first consult with and secure
approval from Washington, enabling courts to better serve the public. For its part, with less responsibility for individual courts, the AOUSC increased its capacity to address judicial priorities and maintain the high level of service it provided to the courts. The judiciary had grown so rapidly that it had outpaced its support organizations in terms of funding and staff. By delegating certain administrative functions to the courts and to court administrators, the AOUSC was able to eliminate time-consuming paperwork and bureaucratic processes that had once slowed the system.

As a result of these developments, court administration/management has emerged as a full-fledged profession, as increasingly empowered court clerks have taken on major organizational functions and the attendant responsibilities that include planning, operations, policy making, budgeting, personnel relations, automation of court processes and records, facilities construction and management, and court security. Clerks of court have become chief administrative officers managing the business of their respective courts. In particular, clerks’ offices in today’s courts perform a variety of functions, such as managing the flow of cases through the court; screening documents submitted to the court to ensure their compliance with legal requirements and court rules; recruiting, hiring, training, and terminating staff; managing the process to identify and summon potential jurors; developing and implementing a records management system; maintaining systems for collection, accounting, and disbursement of funds; preparing budget requests and spending plans; monitoring the construction and renovation of court space; and liaising with other divisions of the court and related government agencies. Clerks are also charged with public relations, including communicating with and releasing non-confidential information to the media and the public (including information about cases currently pending before the court), as well as public outreach and education.

Thus, the office of the clerk of court has become an essential component of the judicial system, converting from a fairly autonomous administrative role serving a chief judge in a clerical supervision function into a full-fledged executive management position with broad responsibility for implementing the court’s policy and overseeing its operations. Although modern clerks’ offices still handle traditional functions such as maintaining records and issuing jury summons, most do so in a highly automated environment managed by technical teams who report to the court administrator.

C. Court Administration in the State Courts

At the beginning of the 20th century, state courts were in a far more disorganized condition than their federal counterparts, mainly because they were created on more of a local than a statewide basis to address various local needs. Local jurisdictions set up their own court frameworks, resulting over time in multiple local systems of trial and appellate courts, each with its own jurisdiction, inevitably leading to cross-jurisdictional overlaps and even conflicts. They were frequently structured based on geography and/or specialized jurisdiction, again reflecting their intent to address specific local needs. This occasionally resulted in confusion and disorder. The state of Connecticut, for example, had 12 separate categories of trial courts in the 1950s, including town courts, city courts, traffic courts, and justice of the peace courts. Eventually, the emerging sophistication of state government led to the cultivation of skilled public administrators who, recognizing the challenges, undertook measures to consolidate most of the trial courts into what is now the Connecticut Superior Courts, the state trial courts of general jurisdiction.
Strict limitations on the jurisdictions of state courts to specific geographic areas or types of cases often led to inefficient case processing and use of resources when they could not easily be transferred between court types. In other situations, where jurisdictional statutes were not strictly defined, requests for transfer of case venue could easily be made and approved, leading to a practice known as “forum shopping,” in which litigants picked venues whose judges were likely to be sympathetic to their arguments. The lack of jurisdictional discipline also created confusing situations in which certain trial-level courts had appellate authority over others in lieu of a more formal hierarchy for the appeals process.

Further adding to the organizational challenges were independent-minded judges who operated as autonomous entities, running their courts independently, sometimes of their colleagues in the same court. The lack of uniformity within a courthouse exacerbated the challenge of implementing system-wide administrative procedures, especially in smaller courts with few judges in rural areas. The judges themselves were expected to function as court administrators and manage their own courtrooms; the concept of a state court system, with streamlined procedures, had not yet materialized. It was not until the rise of large urban courts with numerous judges that the need for a competent and carefully defined central administrative authority emerged.

As state political and judicial leaders began to acknowledge that courts needed to be better managed, three main approaches emerged for reforming their systems. First, the court organizational structure had to be simplified. Some states chose to create a single-tier system, in which all of the lower trial courts with limited jurisdiction were folded into a court of general jurisdiction. Others utilized a two-tier approach, with a network of general jurisdiction courts and a single limited jurisdiction court with statewide jurisdiction. For example, in New York divorce cases are heard by the general jurisdiction court, while all other domestic relations matters are sent to a specialized, limited-jurisdiction Family Court.

Secondly, states needed a more centralized approach to court administration. With each court being run independently by its chief judge, there was little in the way of statewide judicial system management accountability. States had no way of exerting control over court operations or case processing, and resources were not being efficiently distributed throughout the system. To address these issues, states empowered a central authority, such as the state supreme court, to establish standard administrative policies and procedural rules and to work through appointed local trial court administrators to disseminate and implement these policies throughout the system.

Finally, states began moving to a system of unitary budgeting for their courts. Traditionally, local trial courts had been the financial responsibility of the local government – a county court was funded by the government of the county in which it was located. This led to the uneven distribution of resources; certain courts received generous funding, while others suffered from inadequate support. Consequently, operating procedures and, ultimately, the quality of justice differed from court to court. With unitary budgeting, the state government assumed financial responsibility for, and control over distribution of, funding for all courts, ensuring a more even allocation of resources.

To oversee and manage the network of state courts, a new high-level administrative function was created – the position of state court administrator or equivalent. Today, each of the 50 states has established such a central office to coordinate and work with individual court
administrators and clerks. The primary role of a state court administrator is to work with the state supreme court, the chief judge, or a judicial council to ensure that the court system’s day-to-day administrative operations run as effectively and efficiently as possible. In addition, state courts also rely heavily on professional court administrators, who are present in all medium-sized and large courts and perform functions largely similar to those of federal district and appellate clerks of court. As in the federal system, court administrators in state courts bring professional managerial skills to address non-judicial administrative areas, such as financial management, budgeting, public education, information and records management, and human resource administration. With a capable court administrator taking on such duties, judges have more time to devote to case adjudication, legal research, and opinion drafting.

Although the position of court administrator has become more established in recent decades, the authority of administrators still differs from state to state. Court administrators in some states have been delegated broad authority by the chief judge to act on the court’s behalf and set the court’s administrative agenda and priorities; others have less influence. In some states, the state administrative office works very closely with the trial courts, whereas in others, trial courts have greater autonomy and court administration functions are implemented more on the local level. Large urban trial courts in particular often hire trial court administrators, who have administrative authority separate from that of the state court administrator and focus more on running the day-to-day operations of their courts. Additionally, many state court administrators operate in environments where their duties are prescribed not by law or by a clear job description, but rather by the changing needs of the court and the judges they serve. Although this may enable them to respond quickly to new challenges, such an informal system is more likely to lead to conflict when the roles of the chief judge and the court administrator become entangled.

III. Functions of Court Administration

A. Basic Functions of US Court Administrators

As discussed above, the United States has 53 separate court systems, each with its own court administration structure. The functions performed by court administrators vary depending on the jurisdiction, location, and size of the court; however, their primary role generally involves facilitating the court’s administrative functions, under the guidance of a court’s chief judge or group of judges. Overall, the National Association for Court Management (NACM) has summarized the basic managerial and other functions performed by court administrators as follows:21

- **Caseflow Management**: managing and coordinating the processes by which courts move cases from filing to disposition, including the monitoring of post-disposition activity, assessment of compliance with court orders, and continuous process evaluation.
- **Human Resource Management**: recruitment, selection, training, development, counseling, and mentoring of court employees; establishing ethical standards; administering salary and performance appraisal and reward systems; and facilitating personnel matters for judicial staff.

• **Fiscal Administration**: preparing court budgets; administering accounting, purchasing, payroll, and financial control functions; acquiring and overseeing grants; and guiding the budget through government review processes.

• **Technology Management**: evaluating technology-based opportunities for expanding the court system capacity; providing technologies to navigate information systems; providing electronic transmission of and access to data, images, and other files in automated records management and retrieval systems; assessing emerging technologies for video and telecommunications systems, multimedia tools for education, training, and information delivery; leveraging Internet use; utilizing courtroom technology and evidence presentation during court proceedings; and implementing other computer-assisted systems that can improve court performance.

• **Information Management**: developing the capacity to deliver information to decision-makers at critical events; monitoring system performance to milestones established by the court; informing court employees of events related to outside performance measures established by the court and triggering the appropriate means of intervention; and providing appropriate electronic access to court information for attorneys, litigants, governmental agencies, and the public.

• **Jury Management**: administering the jury system in the most efficient and cost effective way, and complying with legal requirements, policies, and procedures for summoning, qualifying, and securing the comfort and safety of jurors.

• **Facility Management**: overseeing the courtroom and other physical spaces to ensure access to all people, and providing adequate room for work and circulation, ultimately to promote public confidence in the system.

• **Space Planning**: managing, anticipating, planning, and preparing for facility and space needs by partnering with facility planners and architects, and assessing actions required for court renovation, remodeling, or construction.

• **Security Management**: maintaining a strong partnership with law enforcement or security personnel (both employees and contracted providers), and being well-versed on the practical standards for a secure court facility while able to work collaboratively with all affected parties.

• **Intergovernmental Liaison**: acting as a liaison to other governmental agencies to promote collaboration, integration of systems, and facilitation of change, while maintaining the integrity of the court as a separate but equal branch of government.

• **Community Relations and Public Information**: promoting productive media relations, acting as a point of contact for the release of information to the media and the public; collecting and publishing data on pending and completed judicial business and internal functions of the court system; and facilitating or developing appropriate outreach programs for the court’s jurisdiction.

• **Research and Advisory Services**: identifying organizational and management opportunities for improvement by recommending and implementing procedural and administrative changes, and conducting program and project management.

• **Emergency Preparedness and Business Continuity**: ensuring that leadership and governance, as well as processes and protocols, are in place to prevent or prepare for, respond to, and recover from any threat, emergency, or disaster, to guarantee critical court operations can occur; ensuring that the courts have continuity of operation, with plans in place, in the event of a pandemic, business interruption, or impact affecting court operations.

• **Succession Planning**: preparing and identifying skills and talent for future court leaders; facilitating staff acquisition of both academic and practical experience;
managing, planning, and mentoring staff to obtain the needed skill sets to be prepared to assume future court leadership and roles.

- **Record Keeping:** ensuring that court files and court actions on the proceedings and outcomes of cases are maintained, secured, and accessible, both through official court reporters and other recording actions.

- **Performance Management and Holding the Court Accountable:** compiling, using, and publishing appropriate measures on court system performance, including metrics, statistics, and trend data, while recognizing the duty to balance efficient and cost effective operations with service demands and the fair administration of justice.

- **“Green” (Ecologically Sensitive) Court Practices:** considering and employing practices that are environmentally responsible, to decrease the impact on resources and reduce energy utilization, while maintaining operational efficiencies in all aspects of court management; using technology to disseminate court information.

- **Project Leadership and Oversight:** providing leadership through project management for judicial committees or organizations.

### B. Financial Management

As previously described, the transfer of authority over budget preparation and administration to the judicial branch represented a critical advance in the judicial independence of US courts. Today, federal courts work alongside the AOUSC and the Budget Committee of the Judicial Conference to prepare the judiciary’s annual budget request for each fiscal year. They rely on a predetermined, mutually agreed upon formula that incorporates workload, staffing, and resources calculations. Based on this formula, and taking into account individual allocations for staff and administrative services for each court, as well as requests from the Judicial Conference for funding specific programs, a proposal is developed. It is first reviewed by the Budget Committee, then by the full Judicial Conference, followed by submission directly to Congress. The budget proposal submission also includes full justifications for all requests. Congress may then hold hearings on the budget proposal. The Director of the AOUSC, along with individual judges, testifies at these hearings to present and justify the proposal. The AOUSC also oversees comprehensive audits of judiciary’s funds, which are performed every two to four in all trial and appellate federal courts by independent certified public accounting firms.

Once it has received Congressional approval, the finalized budget goes to the Judicial Conference Executive Committee, which approves expenditure plans. Finally, the AOUSC allocates the funds directly to each court. From there, the individual courts have almost complete autonomy in establishing budget priorities and spending their funds consistent with general policies. Each court is required to have clearly defined procedures for making financial management decisions and producing timely financial reports. The clerk or court administrator is responsible for managing the budget and ensuring that it is spent properly. Typically, the majority of the budget goes to salaries for judges and non-judicial support staff, while the rest is divided up amongst expenses such as computers and other hardware and equipment, supplies, juror fees, security, and travel. Rent for court buildings and facilities accounts for approximately 20% of the total budget; this money goes to the executive branch, which provides and maintains federal court properties. A separate unit within the clerk’s office – the finance office – assists the clerk of court in exercising financial management functions, including responsibilities for the court’s accounts receivable, paying the court’s bills, reimbursing judges and court staff for travel and other allowable business expenses, and financial reporting. Additionally, federal district
courts may have the procurement unit, which also participates in the budget and accounting process related to funds that are allocated for furniture, equipment, office supplies, and services. This unit also assists in selecting, ordering, and inventorying the court’s equipment, furniture, and supplies, to ensure that purchases meet the federal government’s procurement guidelines.

On the state level, the primary source of funding for most courts is the state government itself, although some courts receive a combination of state and local government funds. In most states, the court system’s budget is prepared by the state court administrator’s office, and then reviewed by some combination of the state supreme court, the full court administrator’s office, or the judicial council. By way of illustration, some states, such as Arizona, California, Florida, Louisiana, and New Mexico, have judicial councils or working groups that report to the highest state court and provide input on budget proposals. In a handful of states, such as New York, individual courts prepare their own budgets. Accounting and auditing procedures are typically handled by the state court administrator’s office, although in a few states, these are done by individual courts or through a coordinated state-local effort. Regardless of the process, fiscal management in a majority of states is state-funded, and most states require the budget proposals of individual courts to be approved by the central administrative office. State court administrators are responsible for managing overall fiscal policy and expenses, including reviewing purchases and spending policies, while ensuring that all expenses can be properly justified. As with the federal system, actual expenditures and day-to-day operations are managed by staff of individual courts.

C. Human Resource Management and Professional Development

The authority to hire and manage judicial staff in the US federal judicial system is delegated to each court. In creating the AOUSC, Congress authorized chief judges to freely appoint their own clerks and administrative staff, unencumbered by the bureaucratic procedures characteristic of the executive branch personnel system. This means that non-judicial federal court personnel are not part of the federal classified civil service system, the merit-based framework for classifying federal jobs in the executive agencies. Although inclusion in this system would have ensured for court officers and staff a variety of employment protections under the law, including greater job security, it also would have entailed executive branch oversight and regulation. Instead, in a big step for judicial independence, personnel in the judicial branch were classified as “at-will” employees, hired under the auspices of the court and subject to dismissal for substandard performance or non-performance, with substantially fewer protections. Clerks of courts and their administrative staff are responsible only to the judges or the court that hired them; neither the AOUSC nor any other entity has supervisory authority. The unique relationship between clerks and the judges that hired them is based much more directly on performance and initiative than under the civil service system.

At the same time, the AOUSC itself recognized that applying a framework similar to the federal civil service to clerks and their deputies would make for a more efficient and stable personnel system. Thus, the AOUSC established minimum qualification guidelines for clerks and deputies, including professional experience and educational requirements. It also successfully petitioned the Judicial Conference for approval of periodic salary increase schedules and a tiered compensation framework based on the court size. Finally, it issued a detailed salary plan that includes employment grade levels, compensation categories, and comprehensive job descriptions for various court support positions.
Although each court may impose its own assortment of qualifications and requirements when hiring its court administrator, the general trend is towards candidates with degrees in business, public, or judicial administration, as well as demonstrated business management skills and strong familiarity with court operations. Courts generally look to the AOUSC’s minimum standards for clerks of court, which address professional management experience and educational standards, as well as “personal characteristics” that ideal candidates will possess, such as an understanding of the judicial process and familiarity with principles of organization and management.

Ideally, the hiring process for a court administrator should include all judges in a multi-judge court, as the administrator’s role is to work harmoniously and productively with all of them. Very large urban courts may find it more effective to form a hiring committee representative of the entire bench. Although courts often leave the final hiring decision to the chief judge, a court administrator ideally should be appointed by a majority of the judges. Having a unified decision is more likely to ensure continuity and harmony when a new chief judge is selected.

Most federal district and appellate courts have a human resources director or another equivalent officer, charged with managing all personnel matters for the court, including maintaining personnel files, processing hiring and dismissal paperwork, resolving conflicts, and answering questions about payroll and benefits. In some courts, this official may also be responsible for providing on-the-job training to court support staff.

The manner of hiring state court administrators varies from state to state. In some states, the position is specifically authorized by the state’s constitution or by statutes, while in others it is created by a combination of constitutional provisions and statutes. In all states, candidates are appointed (as opposed to being elected), most frequently by the state supreme court or the chief justice, or, occasionally, by a judicial council or equivalent state committee (sometimes in conjunction with the chief justice or the supreme court). In all states, the selection of the court administrator is always the decision of the judiciary alone, although in one state (Washington), the governor (i.e., chief executive) provides a list of five candidates to the Supreme Court for selection and appointment. Individual states also impose different requirements in hiring court administrators. Nearly half the states have no official educational requirement, whereas a few require a degree in business or public administration, or another graduate degree, and only 13 states require a law degree. Only one state (Massachusetts) requires that its court administrator be a judge. While other states may have judges as court administrators, they do not require this as a precondition to hiring.

In most states, administration of payroll, retirement, benefits, and human resource policies and procedures is implemented by the statewide central office. The primary source of funding for them also comes from the state. A handful of states use local or regional models, or some combination thereof, for human resource management.

The recognition of the position of court administrator as crucial to an effective and unified judicial system has spawned court administration as a professional career track, resulting in a new category of professional development opportunities. Institutions of higher education, such as Denver University and Michigan State University, responded by adding degree programs in court and judicial administration. The National Center for State Courts (NCSC), through its Institute for Court Management (ICM), offers a multi-year Fellows Program (formerly known as
the Court Executive Development Program), designed to hone and further develop the skills and competencies of mid-level court managers and administrators for higher-level positions. In addition, the ICM provides certification and training to court managers, helping to instill knowledge and fundamental skill sets.\textsuperscript{22} Established in 1970, it has trained many of the early court administrators, resulting in the creation of a supportive professional network for the field.

Several professional organizations also exist to ensure that court administrators are well-informed and well-trained. Created in 1985, the NACM is now the largest organization of court administrators, enabling members to network and share resources. It distributes publications and new information, as well as opportunities for continued education and training, to ensure that members stay abreast of changes in the profession. Members gather at an annual conference and regular meetings to participate in educational programs and exchange ideas and best practices for court management. State court administrators have also formed their own organization, the Conference of State Court Administrators (COSCA), which provides educational and training opportunities, networking, and a national forum to exchange ideas and information. It also works to study issues and, if necessary, develop policies and standards related to effective judicial administration.

Two additional organizations that provide critical support to the judiciary are the Federal Judicial Center (FJC) and the NCSC. The former functions as the research and education arm of the federal judiciary, conducting education and training programs for federal judges and other court personnel. It also conducts research and produces publications on a wide range of legal topics for the judiciary. The NCSC is the rough state counterpart of the FJC, offering similar services to state court personnel.

At the level of individual courts, many federal courts employ full- or part-time court training specialists (who sometimes may work as part of a court’s human resources unit), whose responsibility is to provide on-the-job orientation and continuing training to court managers and support staff. In particular, court training specialists plan, develop, implement, and administer a comprehensive training program, geared to the specific needs of each court. They also serve as a resource for the FJC and the AOUSC in identifying court staff training needs and implementing their programs.

Finally, on the international level, the International Association for Court Administration exists to promote competent and effective court management and administration in court systems throughout the world.

\textbf{D. Technology, Information, and Caseflow Management}

Managing information technology systems has become one particularly important part of court administration. Advancements in technology have greatly aided court clerks in addressing the high volume and complexity of cases filed in federal courts in recent decades. Computers had been introduced into federal clerks’ offices by the early 1970s, equipped with a court-management information system designed to ease caseflow and data processing. Although this initial system was highly centralized, the subsequent trend toward decentralization eventually allowed individual clerks to design and implement local systems serving local needs, in addition

\textsuperscript{22} ICM currently offers two certification programs – Certified Court Manager and Certified Court Executive – with each program designed to educate participants in core competencies of court administrators as identified by NACM.
to deploying and managing national applications. This provided them with supplemental tools to facilitate management of court operations. The introduction of electronic public access servers and online case-filing systems have made court records widely and remotely accessible to the public, and clerks’ offices expanded even more with the addition of specialized staff to manage these new systems. The growth and use of technological capabilities has become a major factor in improving court administration.

The AOUSC is responsible for the Long Range Plan for Information Technology in the Federal Judiciary. The AOUSC’s Committee on Information Technology conducts annual revisions and makes any necessary updates to the plan before it is recommended to the Judicial Conference, which approves it and then sends it to Congress. In revising the plan, the AOUSC holds focus groups and consults with court administration staff, IT personnel, and other stakeholders from a wide variety of courts and court programs. Its Committees on Case Administration and Case Management also provide input. National IT services include case management systems, human resource tracking programs (for payroll, personnel, etc.), statistics and data-gathering services, and general email and internet access. The judiciary also has developed public systems to enable the public to access online case information, as well as to manage their information related to jury duty. Furthermore, the AOUSC supports the technical infrastructure of the national system, including physical equipment, help desks, and training programs, and promulgates policies and standard procedures.

Though the judiciary as a whole shares many general practices, independent variables, such as the size of the court’s jurisdiction, local customs, and judicial preference, result in great variations in the particulars of their day-to-day operations. The AOUSC and the Judicial Conference recognize and respect the principle of judicial independence and the fact that courts all have unique needs and individual business practices. Thus, in order to support that individuality, most national systems allow for a great deal of customization and modification by individual courts. Moreover, in addition to the programs developed and maintained by the AOUSC, individual courts have created and utilize numerous applications to supplement the national ones. On a local level, court administrators often take the lead in ascertaining their courts' technology and information management needs and implementing their own systems to address their unique needs and requirements.

Although some of these programs are unique to the specific court that created them, many others could prove useful to other courts and provide solutions to common problems. Additionally, courts sometimes face difficulties in providing adequate technical support for their own systems, making them reluctant to expand what may be generally useful systems for lack of ability to support them. Recognizing this, the AOUSC has provided an important forum for clerks to experiment with and promote new methods and technologies designed to achieve greater efficiencies and improved performance in the work of their courts. Notably, the AOUSC and the Judicial Conference have prioritized the development and sharing of technological innovations, and promote collaboration between courts to build on them. By turning their local systems into national ones, courts are able to access the assistance of the AOUSC and its many resources, ensuring that the systems are sufficiently funded and supported.

There are several sections within the clerk’s office of many federal courts that are responsible for various functions related to technology, information, and case management. First, the clerk’s office intake desk, which is staffed by deputy clerks, accepts most filings (new cases and pleadings) and has a variety of customer service responsibilities. This includes providing basic
case information from docket sheets or case files; answering questions about local court rules, deadlines, and court operations; and making available official court forms. Deputy clerks are strictly prohibited from giving any kind of legal advice to the public.

Second, the court records section, which is usually located near the intake desk and is also staffed by deputy clerks, has the responsibility to maintain all case files for the court. Once a new case is filed with the court, it is assigned a number and entered into the court’s docket, or the list of all cases pending at the court, with entries on all pleadings and other papers filed in the case. All federal courts now have automated dockets, allowing for all pleadings, motions, and orders to be docketed promptly and kept in the clerk’s office; and there is also an automated case tracking system to monitor the progress of cases.

Finally, most federal courts have their own automation departments, which provide computer hardware and software support to the court. This includes installation, maintenance, and troubleshooting; conducting orientations for new court employees on the court’s computer system; and maintaining the automated docketing and case management systems.

On the state level, the court administrator is often well positioned to take the lead in developing and implementing IT services for the judicial system. Although the fine points of technology and programming are generally left to IT specialists, the court administrator should have a larger vision and be able to determine whether the systems meet the needs of that state’s courts. The state administrative offices in most states oversee the IT and case management systems and provide training and support to local courts. In doing so, court administrators must work closely with the clerks and staff in individual courts to ensure that statewide systems are appropriate for the needs of all state courts. In addition to developing their own systems, many states are increasingly using commercial products. Finally, COSCA has played a central role in promoting uniformity and consistency in state judicial automation systems, developing model case management systems and drafting standards on functionality.

E. Facilities Management

One of the primary goals of court facilities management is ensuring that court users, both staff and the public, are able to safely and easily access the courthouse facilities. In the US, federal courts operate out of government-owned or leased properties, as is the case with most federal agencies. The General Services Administration (GSA), an executive branch agency, serves as the landlord for the federal judiciary (and most government-owned buildings). It is responsible for obtaining and providing the necessary facilities, and maintaining them at a certain standard. The Judicial Conference has provided guidelines and design standards for the construction of federal courthouses to the GSA, and the GSA also works closely with the AOUSC to provide appropriate accommodations.

The US Marshals Service, part of the Department of Justice, is responsible for providing security for federal courthouses and judges, as well as for transportation of federal prisoners. It works closely with court staff and local law enforcement agencies to determine the specific

---

23 In some courts, the intake and records section are part of the same unit; under this arrangement, a court’s unified case management section is staffed by a team of several deputy clerks, each of which performs all intake, docketing, calendaring, case management, and courtroom deputy work for one or several judges. In other courts, case management duties are organized by function, so that one deputy clerk is responsible for intake, another for docketing, a third for filing, and so on (e.g., records, courtroom deputy, summons and notices, etc.).
needs of each court. The judiciary also funds the Marshals Service to enable it to hire private security firms and take other measures to provide the requisite level of security at each facility and in each courtroom.

Responsibility for state court facilities varies from state to state. In many states, the courthouse is funded by the locality in which it is situated, occasionally sharing space with other local government agencies. Local communities often feel a sense of ownership and pride toward their courthouse and are glad to have control over its maintenance. In other states, however, the community would prefer that the state assume partial or full financial responsibility for local court facilities. Court buildings in some states are rented or leased, while other states, like Connecticut, own nearly all their court facilities. Sometimes the funding source is dependent on the type of court: for instance, in Maine, courts of general jurisdiction are funded by the county, while limited jurisdiction courts are state-funded. Several state administrative offices provide assistance in the form of architects, design planners, and contractors, while in states such as California, Connecticut, Utah, and Kentucky, the administrative offices are responsible for trial court facilities.

In terms of courthouse security, some states hire law enforcement and security personnel directly through the judiciary, so that they are judicial branch employees. Others work with local law enforcement agencies within the purview of the state executive branch. Most courts have security committees to assess the needs and set security procedures for their individual facilities. Important security questions include determining who may carry firearms in the courthouse and what groups are permitted to bypass security screenings upon entering the court. Courthouse security personnel are also responsible for the transportation and security of detainees.

**F. Communications and Public/Media Relations Management**

Clerks of court are responsible for the court’s outreach programs and oversee the court’s interactions with both the general public and the media. Their offices are often the first point of contact with a court, and their duties include responding to press inquiries, providing accurate and reliable public information, and managing outreach and education initiatives.

On the state level, most state administrative offices have public information or communications offices to handle media inquiries, put out press releases, and provide public information, as well as work with individual judges and court administrators to address their specific needs (for example, offering guidance on dealing with high-profile trials). The administrative offices also offer community outreach programs that work with local schools, bar associations, libraries, and others seeking to learn more about the courts.

Individual courts usually have a designated Public Information Officer to deal with local media and communities. Communications staff in many courts produce information pamphlets and videos for public education, as well as conduct regular courthouse tours. They also develop know-your-rights brochures and other citizen guides. Judges often host public forums to meet with community members.

Most courts typically have their own policies for handling the media, as well as for general use of electronic devices in the courtroom. The rapid growth of social media and widespread use of new technology is forcing many courts to revise their policies. Additionally, the NACM, the
NCSC, the AOUSC, and others have issued guidelines and standards for various issues surrounding media relations and communications and provide a variety of related resources for federal and state courts.

**G. Research and Advisory Services**

Many courts have their own libraries, staffed by court librarians who work with the clerk’s office to provide judges and attorneys with research and information requests. In 1948, Congress authorized each federal Court of Appeals to appoint a librarian and any necessary support staff. As with clerks of court, the librarians are also direct hires of the court in which they work. The Court of Appeals librarians were later authorized by Congress to appoint library assistants to work in the district courts under their jurisdiction. Many large appellate courts have branch libraries located away from their headquarters. The Supreme Court also has its own library and court librarian. On a state level, state court administrative offices oversee library services in individual courts. Like their federal counterparts, state court libraries are also staffed by professional law librarians and provide access to legal research resources and court system information, both to court personnel and to the general public.
I. Introduction

This chapter reviews and compares the approaches to court administration in four different countries – France, Germany, the Netherlands, and the United States – and assesses the similarities and differences amongst them. The term “court administration” is very broad and encompasses a wide variety of tasks and responsibilities, from budget management and maintaining courthouses to implementing judicial policies and educating the public about the law. Court administration, in all its forms and incarnations, affects the essential goals of any justice system: to render fair and timely decisions, to promote independence and impartiality of the judiciary, to be organized and efficient, and to promote the rule of law. Succeeding in these areas fosters greater public trust in the court system, helping to ensure access to justice and advance the rule of law.

It should be noted from the outset that the process and pace of judicial reform has varied from country to country, depending on the political and social history of each. In the United States, for example, although the bulk of major judicial reforms took place in the mid-1900s, the development of court administration as an independent profession has been a gradual process, starting from the early colonial courts. For many years, the executive branch was responsible for providing administrative support to the courts, which were generally disorganized and lacked a centralized management system. Today, however, court administrators are respected professionals who have dramatically altered the way the US courts are managed. In the other three countries, developments in court reform have been even more recent. Changes in governance systems, revised national priorities, and accession to regional and international organizations have all contributed to modifications of the judicial system and the manner in which courts are administered. At the same time, these countries also experienced many of the same trends that spurred the development of court administration in the US, such as the rising caseloads that quickly outpaced judges’ abilities to render timely decisions, the expanding scope and growing complexity of litigation, and the heightened public scrutiny of judicial performance. These pressures created an administrative burden, prompting the courts to seek new methods of managing their operations more effectively.

Given their differing systems of government and judicial organization, each of the four countries takes a unique approach to court administration. However, in reviewing the individual approaches, certain themes and commonalities have emerged. As such, this chapter will focus on three general areas applicable to all countries: institutional arrangements for court administration; the status of professional court administrators; and the core functions performed by court administrators.

---

24 Compiled by Ebony Wade, ABA ROLI Research Fellow, and edited by Olga Ruda, Deputy Director of Research & Assessments at ABA ROLI.  
25 By way of background and comparison, of the countries analyzed in this document, one (the Netherlands) is a monarchy, two (France and the US) are presidential republics, and the three European countries have a form of parliamentary democracy. The three European countries are civil law systems, and only the US follows the common law tradition and has adopted the adversarial approach to justice. All four countries have three separate branches of power and emphasize judicial independence, but only two countries (the US and Germany) allow for any kind of constitutional review of legislation by the courts. These two countries also have federal systems, with federal and state courts. However, in the US, the two systems are almost completely separate, whereas in Germany, almost all federal and state courts fall within a single hierarchy. Courts are generally organized into three tiers, with a variety of specialized jurisdictions.
by court administrators, including managing judicial budgets, human resources, and various court support systems (such as information technologies, facilities, and communications). In doing so, this chapter will look at how each country operates in these areas and highlight similarities and differences in their methods.

II. Institutional Arrangements for Court Administration

This section will address the questions of which government official or agency is responsible for judicial administration, review the principal actors in the court administration system (both nationally and at the level of individual courts), and analyze the degree to which the executive or the legislative power controls the judiciary, and how much does the court system depend on that power for administrative support.

Numerous models of court administration exist today, and the various approaches are reflected in the four countries examined in this report. The spectrum ranges from systems in which a ministry of justice or another executive branch agency holds total policy and decision-making authority for the judiciary, to situations where the judiciary is almost completely self-sufficient and has the power to determine its own budget, manage its own staff, and set its own rules. Falling between these two extremes are the systems in which a ministry of justice works hand-in-hand with the courts’ staff, sometimes through a board or a judicial council, or in which primary responsibility for day-to-day operations is left to individual courts but the executive agency may intervene, if necessary, and sets broader policy goals. In general, however, a growing number of countries are willing to grant increased administrative and operational independence to courts, both through the passage of national legislation and via informal arrangements. Court governance systems are allowing courts an increased degree of administrative autonomy, realizing that the personnel of individual courts are often best-suited to make administrative and managerial decisions for their own courts – even though the degree of autonomy permitted differs from country to country.

Out of the four countries analyzed here, France and Germany represent the examples of the first arrangement, where the Ministry of Justice, an agency of the executive branch, has the primary responsibility for overseeing all aspects of administrative and organizational matters for the judiciary. The Judicial Services Department of the French Ministry of Justice manages all court operations, including human resources, preparing court budgets, and supporting information technology and communications systems, among other duties. Similarly, in Germany, the Directorate-General R of the federal Ministry of Justice oversees federal law and regulations concerning the structure and organization of the federal judicial system, while the Directorate-General Z is responsible for the administration and infrastructure of the Ministry and the federal courts. The Ministry of Justice of each German state is the top body in charge of judicial administration for that state’s courts. In both countries, however, the Ministries of Justice work hand in hand with the professional court managers assigned to each court in the country. Known as greffier en chef in France, and as Geschäftsleiter and Rechtspfleger in Germany, these clerks of court or registrars have the status of high-ranking civil servants and serve as the heads of administrative services for their respective courts and oversee non-judicial court staff.

---

26 Court administrators perform a wide variety of functions, from “typical” administrative duties, such as managing human resources, budgets, court facilities, media relations and casework, to more specialized aspects, such as jury management, information technology systems, quality control, and practicing ecologically sensitive court practices. However, only the most fundamental functions that are present in all four countries are compared here.
in addition to exercising certain procedural duties (e.g., in the areas of family law, commercial registries, or certification of nationality).

Until very recently, the judiciary in the Netherlands was also centrally regulated and controlled by the Ministry of Justice. Judges protected their independence by isolating themselves; a sense of judicial collaboration and professional unity did not yet exist. Courts had no control over how their resources were utilized as that fell within the Ministry’s control. However, changes such as the growing use of information and communication technologies, the heightened media scrutiny of court decisions, and the increasing complexity of cases before the courts, coupled with the judges’ concerns over being subject to the Ministry of Justice, prompted a reorganization of the judiciary. Judges in particular felt there should be an independent body that would be more representative of their professional interests and provide support for the courts.

To address these challenges, an independent Council for the Judiciary was created by law in 2002, and took over the responsibility for judicial administration from the Ministry of Justice. The Council consists of five members nominated by the Minister of Security and Justice. Three of them come from the judiciary (usually former judges) and the other two are former government officials knowledgeable in the fields of public organization and financial affairs. The Council is part of the judiciary rather than the executive branch, and is the central agency responsible for supervising the judiciary’s operational management. In addition to allocating the judiciary’s budget, it sets operational policies, administers court finances, human resources, IT systems, and court facilities. It also functions as a spokesperson for the judiciary, both nationally and internationally. Although the Ministry of Security and Justice retains formal political responsibility for the judiciary, in practice it does not wield much concrete power over its daily operations and routine affairs. Its role is primarily limited to proposing legislation, nominating members of the Council for the Judiciary, participating in filing vacancies on court management boards, and generally providing broader guidance and direction. The Ministry also approves the judicial budget before the funding is allocated by the Parliament, although the formula for calculating the annual budget is predetermined through negotiations with the Council on the Judiciary. The Council, for its part, provides regular reports on judicial operations to the Ministry, but otherwise is not responsible to any other government body. In general, the Ministry’s role is one of broad oversight, handling long-term legal developments, ensuring that funding is sufficient, and maintaining the judiciary’s infrastructure. As such, the Dutch judiciary enjoys almost complete autonomy, and both legislation and public scrutiny ensure that the other branches of government respect this independence.

Perhaps largely due to the powers vested in the Council for the Judiciary, the Netherlands has become one of the Western European countries that have moved farthest in the direction of more autonomous court administration. In addition, the Netherlands has introduced the principle of integral management, meaning that each court is responsible for its own administrative management, as well as the administration of justice. To this end, each court has a three-person court management board, consisting of two judges (one of whom is court president) and a non-judicial member with experience in managing professional organizations, titled the director of court operations (directeur bedrijfsvoering). These bodies have the overall responsibility for the daily management and operational control of their respective courts. Thus, each court has effectively become a self-administering autonomous organization – albeit accountable to and supervised by the Council for the Judiciary. Although the full effects of these developments are yet to be seen, they have already proven instrumental in reinforcing the
independence of the judiciary, in increasing administrative capacity of the courts, and unifying the judiciary.

Like the Netherlands, the United States has also passed legislation transferring oversight of the judiciary from the executive branch to a central agency for administrative support, the Administrative Office of the United States Courts (AOUSC). Composed of a variety of professionals, including lawyers, accountants, statisticians, and engineers, it is unique for the vast array of services it provides to the judiciary. Its Director functions as the chief administrative officer for the federal court system. As with the Dutch Council for the Judiciary, the creation of the AOUSC was a big step toward judicial independence and promoting the judiciary’s ability to govern itself. Previously, administrative oversight and management of the federal courts in the US had been the responsibility of the US Department of Justice, an executive branch agency. The AOUSC similarly transformed the practice of court administration in the US, streamlining the court procedures and issuing guidelines. It also became an important force in lobbying on behalf of the judiciary’s interests, obtaining permission to increase the numbers of court staff and pushing for better employment conditions.

Further strengthening judicial independence, the US Congress has authorized the federal judiciary to prescribe its own rules of practice, procedures, and evidence, subject to congressional approval. The Judicial Conference of the United States, composed of the chief judge of each circuit court of appeals, the Chief Judge of the Court of International Trade, and a district judge from each judicial circuit, and presided over by the Chief Justice of the US Supreme Court, sets administrative policies, proposes rules of procedure and uniform management, and generally oversees the business of the US courts. The Judicial Conference predates the AOUSC and supervises it: the Conference sets the policy, while the AOUSC is charged with implementing it. Today, the main influence exerted by the executive branch over the judiciary is the President’s authority to appoint federal judges, including the Supreme Court justices. However, this power is checked by the legislative branch, which reviews and may subsequently veto the President’s judicial nominees.

The autonomy granted to the judiciary as a whole is reflected in the management systems of individual courts. Working alongside the chief judge, the clerk of court functions as the chief administrative officer of a court and is responsible for all non-judicial aspects of its operations. The development of the AOUSC was closely intertwined with that of the clerks’ role. The AOUSC initially sought to exert a high level of control over the federal courts, but soon realized that such an approach was counterproductive and that delegating various administrative functions to individual courts and their clerks was, in fact, more efficient. This delegation of authority empowered clerks of court, turning a once clerical job into an executive-level position that is charged with managing court operations and implementing judicial policies.

III. Status of Court Administrators

As mentioned in the previous section, each of the four countries covered in this study relies, to a varying degree, on professional court managers or administrators to provide day-to-day managerial and administrative support and oversight to the work of individual courts. This section will review recruitment, selection, and appointment procedures for these non-judicial court officers; the educational and professional requirements for their appointment; and the nature of the relationship between non-judicial court managers, on one hand, and court
presidents or other judges, on the other hand. It will also describe what, if any, professional development and training opportunities exist for court administrators.

Generally speaking, the differences in the various models of court administration discussed above result in great variations in judicial leadership structures and the process through which court managers are selected. The organizational structure also influences the relationship between court presidents or chief judges (and, to a degree, other judges), who historically have been viewed as the court leaders, and non-judge court managers, who in many countries have become respected court officers in their own right.

**A. Selection and Hiring of Court Administrators**

In selecting their professional court administrators, the US and the Dutch courts often look to outside candidates. This should be contrasted with Germany, where existing court officers are chosen to become court managers; and with France, where existing court officers and other civil servants follow an internal track in competitions for vacant chief clerk positions, separate from competition open to external candidates. Unlike in Germany and France, there is no required course of education or training program for court managers in the Netherlands and the US. In all four countries, court administrators do not necessarily have to be lawyers, who do have to go through a more specific legal education program and meet certain criteria.

In France, Germany, and the Netherlands, professional court administrators (like all other court support staff) are employed as civil servants. Although, as will be discussed later in this section, the appointment models vary among the three countries, court staff members in all of these countries enjoy employment stability and job security, and receive numerous benefits accorded by the civil service regulations. On the other hand, categorizing court staff as civil servants can create challenges should a court wish to discipline or dismiss one of its officers. In Germany, for example, a court president may issue warnings or reprimands against administrative personnel, but only a specialized administrative court, following a formal disciplinary proceeding, can impose more serious disciplinary measures or dismiss court staff. In France, the chiefs on first-instance courts (e.g., president of the court or greffier en chef) may not impose any disciplinary sanctions and are instead required to report any alleged violations to the court of appeal, which will then, if warranted, transfer the case to the High Council for the Judiciary or the Ministry of Justice to conduct formal disciplinary proceedings and issue a sanction.

The United States is unique among the four countries in this aspect, in that non-judicial federal court personnel are not employed within the federal classified civil service system. Nevertheless, in order to ensure a stable and efficient personnel system, the AOUSC established an employment framework similar to that of the civil service, including defined job categories and pay grades. Although inclusion in the civil service would have offered heightened job security and other employment protections, it would also have subjected court staff to executive branch oversight and regulation, as they would be federal government employees. Seeking to preserve judicial independence and to eliminate any vestiges of executive control, the judiciary chose a hiring process that is generally free of bureaucracy that so often encumbers executive branch hiring procedures.

Thus, under the US system, clerks of courts and their administrative staff are hired directly by the courts – specifically, by the chief judges or by a representative panel of judges. Neither the Department of Justice nor the AOUSC or any other external agencies are directly involved.
Each court has unique hiring needs and therefore may impose its own set of requirements when selecting a court administrator, though generally most courts seek candidates with educational backgrounds in business, public policy, or judicial administration, and who have demonstrated business management skills. The clerks report directly to judges who hired them and may be dismissed for sub-standard performance, often without first going through the dismissal procedures that shield government employees.

In Germany, both the federal and the Länder Ministries of Justice play a major role in educating and hiring court managers and other officers. Anyone seeking to become a Rechtspfleger must complete a standardized course of study at a professional school, followed by the passage of a series of examinations and participation in a period of apprenticeship overseen by each state’s Ministry of Justice. After successfully passing the exams, candidates are awarded the academic degree of Diplom-Rechtspfleger. Furthermore, Geschäftsleiter, or court managers, are hired from among the existing staff. Typically, the court president or director looks to internal candidates and selects those best suited to take on the position. Although some thought has been given to seeking outside candidates in order to bring in fresh perspectives, the rationale for the current process is that existing staff are already familiar with the court and the legal process, and have established relationships with their colleagues. Additionally, because court managers must be civil servants, it would be difficult to hire an “outsider” (and then have to dismiss them).

Similarly, in France, the Ministry of Justice is responsible for providing the courts with any needed human resource support, including recruiting and training greffiers and greffiers en chef. Greffiers en chef are selected on the basis of a nationwide competition, open to both external candidates with a complete university-level degree and internal candidates – i.e., greffiers and other civil servants with at least four years of work experience. Successful candidates are then required to undergo an 18-month training course in the National School for Judicial Clerks (École Nationale des Greffes, or ENG), consisting of both theoretical training in managerial skills and a practical apprenticeship in courts.

By contrast, in the Netherlands, candidates for all open positions on court management boards are interviewed by current board members, as well as representatives of the court’s judges and support staff. This is followed by an interview of short-listed candidates with a panel consisting of a member of the Council for the Judiciary, a court’s board member, and a colleague from a management board of another court. The final nomination is then sent, via the Ministry of Security and Justice, to the King for official appointment. Court management board members are all appointed to six-year terms, although they may be reappointed. This set appointment length was a radical change for the Dutch system, which previously appointed court presidents to life terms. Implementing a limited time period means that a court president (or other board member) can now be “dismissed” from service on the board when the term ends, if he/she is not performing adequately. Additionally, the Ministry of Security and Justice may, at the Council’s recommendation, suspend or dismiss a member of a management board, and if necessary appoint temporary replacements.

**B. Relationship Between Court Administrators and Judges**

Because all four systems involve judges working closely with non-judicial staff to administer their courts, the question of the relationship between the two professions arises. In the US, clerks of court are hired directly by, and report to, the judges of the court. This means that the
clerks are not accountable to any other body. Naturally, this often results in a very close working relationship between judges and their clerks. Judges place a great deal of trust and responsibility in their clerks, and clerks of court are highly respected as the non-judicial counterpart of judges – executive-level professionals in their own right.

Germany’s hiring model is perhaps most similar to that of the US, in that German court presidents personally choose the staff members they believe to be most capable of handling the duties of a court manager. The Geschaeftsleiter are selected by the court president based on the judge’s own assessment of a candidate’s talent and capability. Respected as the chief judge’s administrative counterpart, the Geschaeftsleiter, ideally, will have a very strong relationship with that judge, as they must work closely together on administration. The Geschaeftsleiter cannot act independently and are not involved in managing cases, and they are always subordinate and report directly to court presidents. Rechtspfleger, on the other hand, have independent jurisdiction in making decisions, and therefore are generally viewed as the “second column” of the judiciary, and not subordinate to judges.

In the Netherlands, as described above, the court president does not have sole control over the selection of the court operations director, as the hiring process involves numerous stages and the input of multiple parties. Similarly, in France, presidents of the courts have no input in the hiring decisions for greffiers en chef, as all judicial staff are centrally recruited and assigned to individual courts by the Ministry of Justice. While the court president has hierarchical authority over, and can give general directives to, the greffier en chef, he/she cannot supervise the greffiers of the service, as they are subordinated to the chief clerk. Nevertheless, the importance of having a close working relationship amongst the members of the court management team cannot be understated, as it is responsible for effectively and efficiently managing the court’s business.

C. Professional Development and Training of Court Administrators

Many courts have realized that comprehensive training and continuing education are critical to retaining well-trained, competent court managers. Providing access to professional development opportunities helps staff stay up to date on current issues in court administration, further their management expertise, and grow as professionals. Additionally, participating in such programs often is a good way for managers from different courts to network and exchange ideas and best practices, further contributing to innovation and collaboration in their field.

In France, there are two state entities responsible for training and continuing professional development of all members of the courts. First, as mentioned above, the ENG conducts the required initial training for greffiers and greffiers en chef in the beginning of their careers. Additionally, to maintain their level of professional efficiency, greffiers are required to participate in at least 10 days of continuing training for every five years of their service, also arranged through the ENG. Second, the National School for Magistrates (École Nationale de la Magistrature, or ENM), which is responsible for the professional development of judges and prosecutors, includes courses in court administration principles geared towards new court presidents, whose responsibilities will include supervising the work of greffiers en chef. If they choose, judges may also attend court administration classes later in their careers at the ENG. In addition, the ENM also offers joint training sessions to court chiefs and greffiers en chef, to increase their familiarity with their necessary ways of collaboration and understanding.
In Germany, training courses focusing on management and administration are offered both at the national level, by the German Judges’ Academy (Deutsche Richterakademie), and by the Ministries of Justice of many of the Länder. These continuing education programs have become particularly important, as they not only keep court personnel current on traditional legal issues, but also focus on developing professional skills and gaining expertise in areas like information technology. Some courts require attendance, but even where participation in trainings is voluntary, excellent performance in certain areas can put a court officer in line for advancement in his/her career. An additional professional development resource for German court administrators is the Union of German Rechtspfleger (Bund Deutscher Rechtspfleger), the professional association of court managers. It is made up of the federal and state Rechtspfleger associations that exist in each of the 16 Länder. The organization represents the professional interests of the Rechtspfleger and promotes networking and increased collaboration between court managers from across the country.

Neither the Netherlands nor the United States require court administrators to participate in continuing education and professional development, either formally or informally. Nevertheless, a number of relevant opportunities and resources are available in both countries. For example, in the Netherlands, the Stichting Studiecentrum Rechtspelging (the Training and Study Center for the Judiciary, or SSR) offers numerous professional training and education opportunities for judges, prosecutors, and other court staff, both on legal and management topics. In addition to continuing education programs, it is also responsible for the initial education of judicial staff. The Institute is also attended by court staff from the Netherlands Antilles and Aruba. The SSR falls under the responsibility of the Council for the Judiciary, which also partly funds it. Additionally, some courts have sufficient funding to enable their operations directors to participate in training programs offered by private firms and other organizations.

The US courts similarly have a number of agencies and external resources to turn to for additional research and training support. A variety of local and national professional organizations, including the National Association for Court Management, the Institute for Court Management, and the Conference of State Court Administrators, provide educational and training opportunities for court administrators, conduct regular conferences and meetings to promote networking, and distribute publications on issues in court administration. These organizations also provide an important forum for administrators to share best practices and build a strong professional network. In addition to organizations specifically for court administration, the Federal Judicial Center and the National Center for State Courts also offer extensive resources and support for courts, including research and public education initiatives, as well as training programs for judges and court personnel.

Overall, although trainings for court administrators are usually conducted through the relevant ministry of justice or another body in charge of court administration, a number of independent organizations are increasingly beginning to offer them as well. There are now also organizations that operate internationally to connect court administration professionals from different countries. One such organization is the International Association for Court Administration, whose mission is to promote professional court administration and management. It sponsors global conferences, as well as continuing education and training programs, and provides technical resources and an information database. The European Union of Rechtspfleger (EUR) is another international organization that brings together judicial officials across the EU member states. In addition to representing their professional interests, its mission includes promoting judicial cooperation and harmonization of laws in Europe and increasing public access to the
courts. The EUR works closely with the Union of German Rechtspfleger and similar professional organizations across the continent, including those in France and the Netherlands.

IV. Core Functions of Court Administration

A. Budget and Financial Management

This section will review issues such as the degree to which the judiciary as a whole and individual courts have autonomy over matters that concern their budgets. Specifically, it discusses which bodies are responsible for drafting annual budget requests and proposals for the judiciary, as well as for approving the budget and determining the ultimate budget allocations; which bodies have overall responsibility for budget management and regular reporting; and which bodies oversee day-to-day expenditures in individual courts.

Control over the judicial budget is a major factor in the perception of judicial independence. Although the legislative branch is typically required to approve the national budget annually and the executive power generally retains control over the actual allocation of funds, the judiciary may be granted a degree of autonomy in drafting and justifying its own budget. In some countries, the judiciary is also delegated the ability to manage the expenditure of its own funds.

In the traditional model of budgeting, the executive power, usually a ministry of justice or the equivalent agency, holds sole authority in managing and allocating the judicial budget. A newer approach, one that is increasingly becoming the trend in Europe, is to vest this power in an independent judicial council or a similarly positioned body within the judicial branch. Both of these models are present in the judicial administration systems of the four countries surveyed in this document, with France and Germany following the traditional model, and the Netherlands and the US delegating the budgetary and financial management authority to an autonomous judicial council.

As previously described, the Ministries of Justice in France and in Germany bear the overall responsibility for administration and management of the court system. This influence is especially true of the budgeting system, as the Ministries of Justice are ultimately responsible for court budgets, and there is no separate judicial council to support the Ministry in this task. Nevertheless, courts in both countries are able to have certain input in determining the amounts that are allocated to them. Thus, in France, the annual preparation of the budget is based on a formalized dialogue between the courts and the Judicial Services Department of the Ministry of Justice. Presidents of the courts of appeal submit to the Ministry of Justice budget requests on behalf of all courts within their region of jurisdiction and lead the discussion with the Ministry. They have to argue and justify the reasons for their funding requests. In Germany, the judicial budget is part of the Ministry of Justice’s budget. The annual budget requests are based on the previous year’s budget. The Ministries of Justice and Finance formally negotiate and agree upon the final budget proposal, which is then submitted to the Bundestag for approval, and once the funds are allocated, the Ministry of Justice distributes them to individual courts. A similar process occurs in most of the Länder. As such, the judiciary does not have a formal opportunity to take part in the budget process. However, the president of each court plays a role in preparing budget proposals for his/her court, and subsequently managing the allocated funds. In some courts, the Geschaeftsleiter is also involved in drafting the budget proposals and may be charged with the actual budget management.
The Netherlands has adopted the more modern approach of granting power over the judicial budget to an independent judicial council. The judiciary’s budget is no longer included in the overall budget of the Ministry of Security and Justice, but rather stands as a separate category in the national budget. Although the Ministry is still formally responsible for presenting and justifying the judiciary’s budget request before Parliament and allocating the approved funding to the Council, the annual budget is calculated according to an objective and precise formula that takes into account the number of cases that is anticipated to be resolved during the year and the cost per case, with the input data mutually agreed upon by all the parties involved – i.e., the court management boards, the Council for the Judiciary, and the Ministry of Security and Justice.

Once the financial figures have been calculated, the Council for the Judiciary is responsible for their allocation to individual courts, whereupon responsibility for financial management is assumed by the court management boards. However, the Council retains supervisory authority over expenditures. The court boards must account for their spending in order to determine whether the budget calculation formula (which is based on previous year’s caseload statistics) is accurate, and whether there is a surplus or a deficit. In managing its budget and tracking expenditures, the court management board goes through an extensive process to ensure that the accounting is thorough and reliably conducted. Each court and the Council for the Judiciary are required to conduct an independent external audit of their budget, and the auditor’s report is attached to an annual report sent by the courts to the Council for the Judiciary and by the Council to the Ministry of Justice. Given the complexity of this process, courts often hire one or more financial experts or accountants to assist in managing this process and in tracking day-to-day expenses.

In the US, the AOUSC is responsible for overall administration and management of the federal judiciary’s budget. As in the Netherlands, the judiciary’s budget is separate from that of the Department of Justice, further preserving judicial independence. However, as part of its oversight duties, the Congress, which determines annual funding appropriations for the judiciary, also requires that the judiciary provide regular expenditure reports to the Department of the Treasury. Judicial leaders can also be summoned to appear before the Congress to justify their budget requests. Similarly to the Netherlands, each court may utilize its budget as its administrators see fit, and thus individual courts also enjoy a great deal of autonomy in managing the details of their finances.

On the state level, the state governments typically have financial responsibility for their respective judiciaries, approving and allocating funding for the judiciary. Previously, state trial courts were the responsibility of local county governments; however, this led to significant inequalities in distribution of resources. Some counties were wealthier than others, and this disparity was reflected in the quality of their courts. In order to remedy this uneven distribution of resources, financial management was centralized in the state governments and is now overseen by the state court administrators. However, as with federal courts, day-to-day management of judicial budgets is generally handled by the court administrators of individual courts.

Courts and the Council for the Judiciary are required to cover the deficit out of their own reserve funds. Furthermore, as an incentive, those courts that manage to keep their costs low can retain a surplus. If an individual court or the judiciary as a whole ends a budget year with an operational surplus, this amount is credited to a court’s or the judiciary’s own reserve funds, which are capped at, respectively, 3% and 5% of the annual contribution.
B. Human Resources Management

Managing human resources is one of the most fundamental tasks in court administration. Having a well-trained, professional staff is critical to ensuring the efficient administration of justice. This can be accomplished by a variety of means, as evidenced by the variations in the different court administration models with respect to the delegation of authority over hiring and managing the court staff. In some systems, for example, individual courts and judges control the process and appoint staff of their personal choosing. In others, personnel are hired centrally by the ministry of justice or another agency, which also sometimes retains supervisory responsibility for those employees. An overview of these differences in responsibility over the courts’ personnel will be the subject of this section.

Both the Netherlands and the US represent examples of the first approach. Thus, in the US, the hiring of non-judicial staff is done by each court. Individual judges have the authority to hire their own clerks and administrative staff. The clerk of the court, in turn, has supervisory responsibility for the rest of the non-judicial staff. Unlike in other countries, court support personnel in the US federal courts are not classified as federal civil servants, even though the AOUSC established an employment framework similar to that of the civil service. Nevertheless, personnel management in the federal courts is largely free of bureaucracy that is often present in similar matters in connection with civil servants.

In the Netherlands, the court management board at each court is charged with managing all human resources matters of that court. This includes recruitment, selection, appointment, and discipline, as well as supervisory authority over all non-judicial support officers of the court. In fulfilling these tasks, the boards must follow general rules applicable to civil servants in the Netherlands. Courts are typically staffed with a team of trained human resources managers, who are dedicated to providing professional human resources support primarily to non-judge employees and, occasionally, to judges. In addition, court management boards, in consultation with general meetings of judges, provide feedback to the Council for the Judiciary with respect to proposed candidates for appointment as new judges, while court presidents play a role in facilitating the professional advancement of judges.

In Germany, the Geschaeftsleiter is responsible for managing non-judicial court support staff, including recruiting and firing them as necessary. The Geschaeftsleiter themselves are selected from among the current Rechtspfleger by the court presidents. The Rechtspfleger are appointed by the Ministry of Justice, and German law mandates that all courts of first instance and some of the Federal Supreme Courts have at least one Rechtspfleger on staff. However, the Länder may only appoint as many Rechtspfleger as are allocated in their court budgets; as in France, there is a system for determining the number of clerks needed to support each court.

The French Ministry of Justice assesses the annual staffing needs of the country’s courts and calculates the number of greffiers needed in each court. On the basis of this calculation, the Ministry allocates resources and assigns greffiers and other support staff to courts based on the listed vacancies. As such, court presidents and greffiers en chef have no input in the selection process. Once at the court, greffiers are assigned by the greffier en chef to assist particular judges or to perform other duties. As a practical matter, judges in specialized areas, such as juvenile law, are usually consulted about proposed clerk assignments.
C. Information Technology Management

This section compares the responsibilities for overseeing the judiciary's information technology systems in the court administration of four countries surveyed, including overall planning and system development and day-to-day management and provision of IT services.

Rapid advancements in technology have revolutionized the way courts operate and share information. Court management information systems assist with caseflow management, record keeping, and enabling public access to the courts. In countries with complex hierarchies of courts and divisions between federal and state judiciaries, developing and administering a uniform system involves ongoing challenges; in particular, balancing a national system with the needs of individual courts.

The French Ministry of Justice has responsibility for supporting the courts' ICT systems. However, each court has a designated technology specialist, often a *greffier* with specialized background, who maintains technical equipment in the court, provides onsite assistance to IT users, and ensures the security of the data, as well as can organize training sessions for staff. Because of the high degree of formality and regulation that characterizes France's justice system, several laws and regulations had to be passed regulating and permitting the use of new ICT tools by the judiciary and the public, so it was not until relatively recently that official electronic communications within the courts became effective. The Ministry of Justice is also charged with providing judges with complete access to judicial data and other professional knowledge, including by means of a centralized Intranet with access to information from the Ministry and subscriptions to specialized websites containing information on recent case law and procedural issues. Additionally, the Ministry is currently devoting significant effort to increasing the use of video-conferencing and the electronic communication between the courts and their stakeholders.

In most of the German *Länder*, the Ministries of Justice oversee and direct general questions of court administration. Having centralized procedures is viewed as particularly important for ICT programs, which usually have to be uniform throughout the *Länder*, and often throughout the federal courts as well. Therefore, overall planning, programming, and structuring of ICT are generally controlled by the Ministry. The bulk of the practical, day-to-day operations, however, are delegated to special units, which are administered by one of the regional courts. North Rhine-Westphalia, for example, is planning to set up a central IT service unit for the entire *Land* at the appellate court in Cologne, while planning and programming will be administered by the Ministry of Justice. In Bavaria, the regional appellate court in Munich has a large central unit for all the courts' ICT business. A primary concern with this approach is ensuring that the courts, as well as the prosecutors' offices, have control over their data, so that other government agencies are unable to access confidential judicial information or even more sensitive data concerning investigations by the prosecutors.

In the US, the central agency responsible for the federal judiciary, the AOUSC, is also responsible for its ICT system. Together with the Judicial Conference, its Committee on Information Technology develops long-range strategies and planning. The AOUSC also maintains a centralized system providing electronic access to case information to the public, as well as internal case management files and a host of other technologies that improve access to court proceedings and make administrative processes more efficient. That being said, court
administrators play a large role in determining the technology needs of their respective courts and in implementing systems that address those specific needs.

In addition to the common programs administered by the AOUSC, individual courts also develop their own systems to address their unique needs. Though the judiciary shares basic practices, the details of their day-to-day approaches vary widely depending on factors such as the size of the court jurisdiction, local traditions, and judicial demands, and thus courts routinely utilize their own programs in addition to the national ones. Many of these local programs are often useful to other courts, and the Judicial Conference is currently promoting efforts to increase their abilities to share such innovations by encouraging collaboration and developing centralized support systems. Such efforts would naturally bring the individual variations into the mainstream system. At the same time, in light of the importance placed on judicial independence in the US, there is a natural hesitance to insist on complete uniformity. As such, maintaining a balance between a centralized national system and supporting the court autonomy is a continuing challenge.

Similarly to the US, ICT management in the Netherlands is provided centrally. Out of the four countries analyzed in this report, the Netherlands has perhaps the most centralized approach to information technology management. The courts have no responsibility for their own ICT management. Instead, in order to promote standardization and efficiency, the Council for the Judiciary has decided to centralize all maintenance of ICT systems under a national office subordinate to the Council, called SPIR-IT. Courts, therefore, receive these services in-kind and are not responsible for any associated costs and budgets. SPIR-IT serves as the judiciary's IT service provider and facilitates a national network providing access to Internet, Intranet, secured email, and central files. It also develops software, provides up-to-date case management information, legal research resources, and communications. Finally, it functions as a central location for all financial and budgetary information, so that all courts throughout the country have access to current data. The courts themselves are responsible for purchasing the actual hardware needed, via a strictly-controlled and audited procurement process. The individual courts and sectors also play an important role in providing input on how best to develop a system that will meet their needs and harmonize their work processes. However, technical support for the functioning of the ICT systems is centralized in SPIR-IT, which has access to local computers and can provide assistance remotely.

D. Facilities Management

This section reviews the roles and responsibilities of various entities involved in court administration with respect to managing and supporting the court facilities. In performing this role, court administrators need to keep in mind that many ordinary justice users often find contact with the court intimidating and unfamiliar. As such, the goal of managing the court premises should be not only to ensure a safe and secure environment for employees and visitors, but also to make litigants and other members of the public feel welcome. This approach is reflected in the court administration systems in all four countries, which place the primary focus on making courthouses easily accessible to all citizens and designing a layout that is user-friendly and practical for both court staff and the general public.

Management of court facilities is performed in a similar manner in the Netherlands and the US, in that central judicial administration agencies provide general guidance and assistance, but the details of actual space management are left to the respective courts. Despite the general autonomy of the judiciary in the United States, the executive branch does play a key role in
providing and maintaining federal court facilities. Federal courts are typically housed in government-owned or leased properties, and the General Services Administration, an executive agency, functions as the landlord for the courts, taking responsibility for acquiring the facilities and providing proper maintenance. The AOUSC also employs engineers and architects dedicated to providing additional facilities support, and the Judicial Conference issues guidelines and design standards for federal courthouses. In terms of court security, the US Marshals Service, which provides security to federal courthouses and individual judges, is a branch of the Department of Justice. The marshals are also responsible for the transportation of prisoners between courthouses and federal prisons. Otherwise, individual clerks of court are responsible for managing the physical space in courthouses.

Similarly, in the Netherlands, the Council for the Judiciary provides general design guidance and policies for the construction and layout of court facilities, in order to ensure comparable organizational outlook and safety among the various court buildings throughout the country. However, the day-to-day management of space is the responsibility of the individual court management boards. A key feature is that the public functions are concentrated mainly near the entrance and on lower floors of the courthouse, while office areas are closed to the public. Unlike in the US, the Dutch judiciary does not have its own security force. Instead, to help in an emergency situation, a general police unit that specializes in courthouse assistance and guarding the detainees is stationed within each courthouse. Although these units fall under the responsibility of local police chief, they receive and are required to follow instructions given by the court.

In Germany, responsibility for the physical infrastructure and organization of federal courts lies with the federal Ministry of Justice, while the Länder Ministries of Justice oversee the courts in their areas. The court president typically handles the day-to-day management of space in each court, although in some Länder, the Ministry of Justice is in charge of this task. Many of the Länder hire outside private companies for their security and facility maintenance needs.

The infrastructure of the French judiciary, like Germany’s, is also the responsibility of the Ministry of Justice, which insures that courthouses are designed and organized to meet the needs of justice users. It also provides appropriate security equipment, such as electronic metal detectors installed at court entrances. Court presidents must have up-to-date information about potential risks, both natural and man-made, that could result in accidents, and they and their staffs are generally responsible for ensuring that the courthouse is safe and accessible on a day-to-day-basis.

### E. Communications and Media Relations Management

This section will review the responsibility for managing public and media relations and communications on behalf of the judiciary, which is one of the essential modern functions of a court system.

The role and responsibilities of the media liaison on behalf of the judiciary are largely the same across all four countries: communicating with and providing information to the media and the public, responding to inquiries where appropriate, and conducting public outreach and education on the judiciary and the broader legal system. All of the countries also have similar policies restricting the court spokesperson from commenting directly on specific cases, except
to provide facts and objective information. However, the person or department charged with these responsibilities differs slightly from country to country.

In France, the Ministry of Justice develops and coordinates internal and external communications management on behalf of the judiciary. The Ministry’s Office of Information and Communication has provided for a special arrangement, under which one of the magistrates on each court of appeal has been designated to handle all communications and public/media relations matters and to keep the media informed of court policies. He/she also handles media interest in sensitive or sensational cases. The Judicial Services Department of the Ministry of Justice manages this network of communications magistrates in coordination with the chiefs of the courts of appeal.

The Dutch Council for the Judiciary has a full-fledged communications department that sets media policy for national courts and acts as the main media liaison. It also issues press guidelines and provides public education services. In response to increased public debates about legal issues and decisions, the Council recently created a “spokesperson’s pool,” which engages with the media in public debates on such topics (e.g., helping to explain the rationale behind sentencing guidelines). Additionally, each court has a communications department that handles similar issues on behalf of that court. Among others, these offices regularly organize Open Days, when judges, court staff, and other stakeholders (such as local legal aid officers, bar associations, prosecutor’s offices, probation organizations, and child and youth protection services) are available to provide information to the visitors.

Germany and the US follow a more decentralized approach in this area. For example, each of the larger German courts has a court spokesperson on staff in order to issue information about cases and provide public education on the legal system. This individual reports directly to the court president, but is also overseen by the press department at the Ministry of Justice. In smaller courts, the court president himself/herself handles media relations. In the US, the office of the clerk of each court is responsible for managing public relations. As in the other countries, its tasks involve responding to inquiries, providing accurate and reliable information, public education initiatives, and generally liaising with the media.