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THE LEGAL SYSTEM OF THE FEDERAL REPUBLIC
OF GERMANY

By WILLIAM T. SWEIGERT*

Last year I had the privilege of spending a month in Germany, with a group of six American lawyers, at the invitation of the German government for the purpose of making a survey of the legal system of the Republic.

The trip took us to Bonn, the federal capital, for conference with representatives of the Federal Ministry of Justice and Federal Parliament; to Karlsruhe, the seat of the principal federal courts; to Munich, capital of the State of Bavaria, for a study of the state courts; and to Berlin, Hamburg and other cities for further observation of the bench, the bar and the ministries.

We had the fine experience of attending courts of all kinds, federal and state, trial and appellate, and the pleasure of conferring with many German judges, lawyers and officials. Some of them had visited the United States to observe our courts. We were received with friendliness and hospitality and given every opportunity to satisfy ourselves concerning the institutions of postwar Germany.

I have tried to put down in this paper a summary and description of the German legal system as I observed it. The only purpose of the paper is to present the German system in brief outline for American lawyers and judges who may have some interest in comparative law, but little time to spend on the subject.

In order to give anyone interested better assurance than my own personal recollection, I submitted the paper to Dr. Hanns Heinze Heldmann, Institute for Foreign and International Law, Freiberg im Breisgau, for his comments. He has written: "Having read your paper, we find it an accurate and rather complete survey of our judicial system." I have also had the benefit of helpful comments and suggestions from Mr. Ernest Hill, San Francisco attorney, who has had a fine background as a practitioner in the German courts.

The New Republic

It may be well to recall a bit of recent history. In 1948, when the breakdown between the Russians and the western powers became complete, Britain, France and the United States called upon the German states

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lying within their occupation zones to call a Constitutional Convention. The new Constitution became effective May 23, 1949. In September, after free elections for the Federal Parliament the new Federal Republic of Germany became operative with its capital at Bonn and with the Christian Democratic Party in the majority under the leadership of Conrad Adenauer, the first, and the present Chancellor.

This German Republic, although it regards itself and is regarded by all non-Communist countries as the only freely and legitimately constituted German government entitled to speak for all the German people, is actually operative only in the area previously occupied by the western powers—an area with a present population of over 50 million people, two-thirds of the whole German population, and comprising about 100,000 square miles, slightly less than California, and about half the area of the prewar German Reich.

The rest of prewar Germany beyond the Iron Curtain and 17 million Germans are ruled by the so-called People’s Democratic Republic, a Communist satellite regime. The great city of Berlin, population four million, lies wholly within the Russian occupation zone and still retains its special four power occupation status.

The German people, who now fully realize the enormities of the political, racial and religious persecution perpetrated in their name by an outrageous Hitler dictatorship, seem to have found at last, in their new Constitution and in their new leadership, true expression for ideals of human dignity, political liberty and international peace and good will. They are very proud of their Constitution, or Basic Law, as they call it. It is the supreme law of the land and contains guarantees of civil rights similar to, and in some respects more extensive and more specific than, our own federal Constitution.

The Federal Constitution

All powers not delegated to the federal government are reserved to the ten German States and to the people. The legislative power is vested in a bicameral parliament consisting of the Bundestag, comparable to our House of Representatives and consisting of 516 delegates (including 19 non voting delegates from Berlin) elected directly by the people, and a Bundesrat, somewhat different from our Senate in that it consists of 45 delegates (including 4 from Berlin) elected, not by the people, but by the several state governments, which they represent and to which they are responsible—a feature designed to guard against centralization of power in the federal government and to preserve the influence of the states in the shaping of national policy. The executive power is formally lodged in a Federal President, presently, Dr. Theodor Heuss, selected by a conven-
ion composed of the Bundestag and representatives of the states, but the actual business of the federal government is conducted by the Chancellor, who is selected by, and serves at the pleasure of the Bundestag under a system of partisan majority rule.

A characteristic of the Federal Constitution is that the execution of federal laws is entrusted, with certain exceptions and with some federal supervision, to the several states rather than to a separate federal establishment.

The judicial power of Germany is vested in the courts, which will be described in this paper, with appropriate guarantees for due process of law, independence of the judiciary, and against ex post facto laws and double jeopardy.

The German legal system is well organized, has high standards for bench and bar, and well fulfills its purpose. Although there are many similarities between the German system and our own, there are also differences which may seem strange and, in some respects, controversial to American lawyers and judges.

Background of German Law

By way of distinction from the so-called common law system of Great Britain and the United States, the German system, like that of most continental nations, has a Romanesque background. This means only that the twelfth century revival of imperial Roman law, as reflected in the resurrected sixth century Code, Digest and Institutes of Justinian, had a more marked effect upon the Germanic law custom that had grown up on the continent than upon the Saxon and Norman customs which had become so strongly entrenched in isolated England as to resist the Romanesque revival and survive as a distinctive common law.

Present German law is the product of old Germanic clan custom, modified by the Romanesque revival, and crystallized during the European codification vogue of the nineteenth century.

The conventional distinctions generally made by legal scholars between the continental system and our common law are: The common law emphasis upon precedent rather than code, the greater use in common law countries of the jury as a mode of trial, and the relatively greater control and influence exercised by the bar in common law countries over legal procedure and over the shaping of legal rules. Some of these distinctions, however, are more apparent than real.

The Courts—In General

The judicial system of the Republic is built mainly around the courts of its ten states. Each state has three ordinary courts of record: 1. Lower
court of limited jurisdiction, comparable to our California Municipal courts, and known in Germany as Amtsgericht. 2. An intermediate court of general jurisdiction, corresponding to our American trial courts of record, and known in Germany as Landgericht. 3. A high state court, comparable to our American state appellate courts, and known in Germany as Oberlandesgericht.

In addition to these ordinary courts, each state has four special branches of jurisdiction—A Finanzgericht, or Tax Court, a Verwaltungsgericht, or Administrative Court, which hears controversies between citizens and the various administrative agencies of government concerning, for example, such matters as the granting of revocation of permits and licenses; a Sozialgericht, or Welfare Court, which hears disputes arising out of the various public welfare programs, such as old age, disability, unemployment and health insurance claims, and an Arbeitsgericht, or Labor Court, which hears disputes between workers, their unions, and employers.

These are all state courts, and they are the only courts where suits are brought in the first instance. Germany does not have a dual system of state and federal courts, as in the United States. There are no courts comparable with the United States District, or Circuit Courts of Appeal.

There are, however, federal courts in the Republic, but they are all appellate courts of last resort to which appeal lies from the state courts. There is a Federal Supreme Court, Bundesgerichtshof, which sits at Karlsruhe to hear, with a few minor exceptions, criminal and civil appeals from the Oberlandesgericht, the highest state court.

There is another federal court, Bundesverfassungsgericht, also sitting at Karlsruhe, a unique court created separately from the Federal Supreme Court to hear questions concerning the interpretation of the Federal Constitution.

There are also four federal courts of last resort corresponding to the four specialized state courts.

State Courts—Civil Jurisdiction

The procedure of the state courts, is governed in the main by nationally adopted Codes of Civil and Criminal Procedure. Also, because of the delegation of the execution of much of the national law to the states, a great deal of the substantive law passing through the state courts is really federal law.

A more detailed consideration of the German courts might well begin with the lowest of the ordinary state courts, Amtsgericht, which is really a town court established in districts with population over 2,000. Although
the overall size of this court depends upon the size of the community, Amtsgericht is a one-judge court with limited civil and criminal jurisdiction.

On the civil side, Amtsgericht is limited mainly to cases involving less than 1,000 DM ($250). Civil cases are heard by the Amtsgericht judge sitting alone. There is no provision in Germany for submission of civil issues in any court to a jury. In civil cases the single Amtsgericht judge hears the evidence, determines the facts, applies the law and renders the judgment, subject to appeal to the next higher court—Landgericht.

Landgericht, the main trial court of general jurisdiction, is established on a district basis in each state. It is a three-judge court, i.e., it functions in panels or senates of three judges. It has appellate jurisdiction over Amtsgericht and, of course, original criminal and civil jurisdiction over matters beyond the jurisdiction of Amtsgericht, e.g., civil cases involving more than 1,000 DM ($250), matrimonial cases and certain cases involving public officials.

In the exercise of its appellate jurisdiction over Amtsgericht, Landgericht has the power to conduct a de novo review which extends to the fact as well as the law. It is not restricted by the substantial evidence rule, nor even to the record. Landgericht, if it desires, can recall witnesses and take new evidence.

This kind of appellate review is typical of the German system. In fact, the first appeal taken from any German judgement really amounts to a continuation or resumption of the proceedings in the lower court. Consequently, the German equivalent of the American motion for new trial is hardly necessary and is used only in exceptional circumstances. After one such de novo review any further appeal would be limited to errors of law appearing in the record.

In civil cases, whether on appeal from Amtsgericht or within its original jurisdiction, Landgericht sits as a three judge court to pass upon issues of law and fact without any provision for a jury.

In cases within the original jurisdiction of Landgericht, appeal lies to the next court, Oberlandesgericht, the highest state court. This Oberlandesgericht review could be, as we have already indicated, a trial de novo of the law and the facts. Thus, Oberlandesgericht, although the highest state court, serves, not only as an appellate, but also in effect as a trial court.

The size of Oberlandesgericht varies in each state. The court is generally broken down into panels, or senates, for the hearing of appeals from Landgericht. Civil appeals are heard by panels of three Oberlandesgericht judges and criminal appeals by panels of five.

In certain cases, mainly those involving over 6,000 DM ($1,500), a further appeal would lie from Oberlandesgericht to the Federal Supreme
Court, *Bundesgerichtshof*, sitting at Karlsruhe, for revision of law. Such
further appeal to the federal court also lies whenever the *Oberlandesgericht*,
itself, specifically allows further review.

**State Courts—Criminal Jurisdiction**

On the criminal side, the jurisdiction of the lowest court, *Amtsgericht*, is
limited to crimes punishable by less than two years' imprisonment. Some
minor criminal infractions may be determined by the *Amtsgericht* judge
alone, but most criminal charges, even in *Amtsgericht*, must be determined
by the *Amtsgericht* judge sitting with two laymen, called *Schoeffen*. These
*Schoeffen* are drawn from the registry of citizens in much the same manner
as our American jurors.

Here we meet the German analogy to the American criminal jury. Although this German *Schoeffen* system resembles our American jury, it
differs from the latter in that the issues are determined in Germany, not
exclusively by the laymen sitting alone with the judge merely presiding at
the trial and instructing, as in our system, but by the laymen and the judge,
or judges, sitting and deliberating and voting together on issues of guilt and
penalty, with a two-thirds vote of the joint tribunal required.

This public participation in criminal cases is a survival of the old
Germanic clan custom under which disputes were resolved by an assembly
of the people upon a Hill of Law to voice the popular decision by shouts
or the clashing of shields.

In support of the German *Schoeffen* system, it is urged that there is
better administration of criminal justice when trained judges deliberate and
vote with the laymen. Against the system, the American lawyer would
probably argue that it tends to render the laymen subservient to the judges.

It is interesting to note that the Weimar Republic of Germany, established
after World War I, adopted the Anglo-American jury system between
1919 and 1924, but abandoned it to return to the traditional *Schoeffen*
system.

A criminal appeal from an *Amtsgericht* conviction would be heard by
*Landgericht* de novo with the usual broad power to review the facts and
the law as in civil matters.

Where the appeal is from some minor conviction rendered by the
*Amtsgericht* judge alone, the *Landgericht* appellate hearing would be
before one judge and two laymen. Where the appeal is from a conviction
rendered by an *Amtsgericht* judge sitting with two laymen, the *Landgericht*
appeal would be before three judges and two laymen. Any further review
of such *Amtsgericht* conviction would be to the *Oberlandesgericht* for
revision on the law only.

Criminal offenses beyond the jurisdiction of *Amtsgericht*, i.e., crimes
punishable by more than two years imprisonment, are within the original jurisdiction (Grosse Strafkammer) of the Landgericht. Trial of such offenses would be before three Landgericht judges sitting with two laymen with right of further appeal to the Oberlandesgericht and, in some instances, to the Federal Bundesgerichtshof.

Certain major crimes, such as murder, manslaughter, aggravated arson or robbery, would be tried in Landgericht before three judges sitting with six laymen. This particular jurisdiction is called Schwurgericht, and the laymen, when participating therein, are called, not Schoeffen, but Geschworenen. It should be noted at this point that capital punishment was abolished in Germany in 1949.

From such a trial only one appeal would lie, not to the Oberlandesgericht, as might be expected, but directly to the Federal Supreme Court (Bundesgerichtshof) for revision of law only—a strange exception to the otherwise general rule that in Germany there are always two appeals, one for de novo review, another for revision of errors of law.

Procedure

In all these state courts the judges wear black robes, white ties and flat, crown-like caps. Counsel also wear black robes in court. Present at any trial, civil or criminal, is the clerk of the court, who serves as a reporter of the proceedings, not with verbatim shorthand notes as in the United States, but with summary entries of the proceedings, the testimony, and such motions or orders as are dictated from time to time by the presiding judge to the clerk. Where important, exact phrasing of testimony is noted, but generally the record consists of condensations of the testimony and the proceedings.

In Landgericht the three judges are on the bench with the senior judge presiding. If the matter is criminal, the lay Schoeffen sit on the same bench with the single judge in Amtsgericht or with the three judges in Landgericht.

The trial of cases, whether civil or criminal, differs considerably from American court trials. The American trial is conceived as a single proof-taking session, called and held after the framing of legal issues by pleadings. In Germany, the trial is conceived as a series of sessions before the court for the purpose of bringing both legal and factual issues, and the case as a whole, into condition for the judgment.

A suit is initiated by a non-technical complaint which includes a statement of the factual grounds for the case; the sources of proof, either the names of witnesses or documents or both, and, as a matter of common practice, the code sections or legal theory of the case; and the relief requested, which must be specifically itemized as part of the pleading.
**Trial**

A summons brings the defendant, with a written answer of similar content, into court for an initial hearing. Oral discussion quite informal, between the judges, counsel, and even the parties, clarifies the factual and legal issues, including the burden of proof, discloses any related issues, and, if necessary, results in directions from the court for further proceedings—either further argument, based on supplementary written briefs, or proof-taking on some or all of any disputed issues of fact.

The court has wide power to order production of evidentiary matter and to direct explanation of detail to the opponent. Disclosure of witnesses to the court and counsel is required. The court decides upon the need for experts and may call its own experts. The presiding judge may order the case referred to one of the other judges to hear and to follow through with preliminary matters.

According to the nature of the case, the trial may involve several or many such sessions before the court considers the case ready for the judgment. On the other hand, whenever the court upon the pleadings, the written arguments and the proceedings, considers the claim, or defense, or any part thereof, to be without legal merit or factual substance, it simply so announces. The single judge assigned to the case may even hear the testimony of witnesses or may have the testimony of distant witnesses taken before the court in another jurisdiction and forwarded. Of course, if such testimony involves essentials or some question of credibility, it will be reviewed or reserved for further hearing by the full court.

It will be readily observed that the comparatively recent American vogue of pre-trial and discovery has been long inherent in the German system. The German procedure is informal, flexible and developmental. The judges do not hesitate to dissuade parties from continuance with hopeless causes or defenses, nor do they hesitate to discuss conciliation and settlement.

**Witnesses**

In Germany witnesses are summoned, not by the parties, but by the court itself, on application of counsel, whenever it appears that a requested witness has relevant knowledge. Attorneys are not allowed to call previously undisclosed witnesses, and they refrain from interviewing prospective witnesses without the knowledge and permission of the court. German attorneys obtain their information concerning the case, including information concerning witnesses, from their clients or from official sources. They generally caution their clients against dealings with witnesses which might be construed by the courts as undue influence or control.

If the case happens to be a medical malpractice case, the court’s expert
may be called from another jurisdiction. An expert will generally file a
written report subject to being called for questioning upon it.

At any proof taking session, the judge, or the senior of three judges,
states the issues of fact and proceeds to call such witnesses as have been
summoned by previous order of the court. Witnesses are called into the
courtroom one by one and examined by the senior judge or by the judge
specially assigned to the case. Only after this initial questioning by the
court are counsel invited to ask their questions. Even then, the questions
are often put through the medium of the court. Examination by the court
is generally so thorough and to the point that interrogation by the attorneys
is comparatively brief.

**Evidence**

One does not hear the technical objections to evidence so frequently
made in American trial practice. American exclusionary rules have few
counterparts in the German system. All available and relevant evidence is
admitted and is freely evaluated by the judges. The only limitation seems
to be the sound discretion of the judge. Hearsay, or secondhand evidence,
although not a proper basis for the proof of essential facts, is often heard
by the judge. A judge is held on appeal to accountability for the exercise
of his discretion concerning the receipt of evidence, the calling of witnesses,
and for the general fairness of the proceedings.

Whether a witness is to be sworn is within the discretion of the court,
and they are sworn only when the court believes that an oath may serve
some useful purpose. Parties and defendants are seldom sworn. Of course,
persons who give false or misleading testimony, even though unsworn, are
subject to prosecution, but not for perjury, for *fraud* on the court.

Whenever a witness is to be sworn, the oath is administered, not before
he has testified, but afterward. The presiding judge rises, removes his cap
and administers an oath to the effect that the witness has spoken the truth.

On completion of proof taking the counsel are asked for their views and
arguments to which the judges pay close attention and frequently interrupt
with questions and comment.

In criminal cases, with the Public Prosecutor present and with the
*Schoeffen* on the bench with the judges, procedure is much the same. The
court calls and questions the defendant who, although he can refuse to give
testimony against himself and is never sworn, seldom declines to take the
stand.

When a case is concluded, the judge or judges, together with the
*Schoeffen* in a criminal case, retire to chambers for deliberation and then
return to the courtroom for announcement of the decision by the senior
judge. In a criminal case, the decision includes both guilt and penalty.
The final judgment in any case is orally announced with an explanation of the grounds on which it is based, but this announcement is followed by a formal written judgment carefully prepared by some member of the court and setting forth the facts found, the law applied, and the relief granted. No dissents are ever filed.

**Criminal Procedure**

In criminal trials the court has before it the report of the Public Prosecutor which includes references, not only to the pending charge, but to the past record of the defendant. Although not a proper basis for proof of guilt of the pending charge, the past record is relevant to the issue of penalty. The Public Prosecutor's report, if part of the case file, is available to the defendant.

Contrary to the notion sometimes entertained in the United States, European judicial systems do not require a defendant to prove his innocence. The burden is upon the prosecution to produce clear proof of guilt, and in case of doubt the defendant must be acquitted.

Evidence obtained by means of an illegal search or seizure cannot be used against the defendant at the trial. The defendant has the right to challenge both the judge and, or the *Schoeffen* for good cause. He is entitled to liberty on bail, except where there is clear danger of escape or danger of molesting witnesses, and he is entitled to the services of a lawyer at state expense if he is unable to employ one.

Both the civil and criminal law of Germany is contained in the codes. But, whenever necessary to resolve questions not covered, or incompletely covered by the code, the German court, like our own American court, will look to analogous precedent or to authoritative law texts.

**The Caseload**

The German courts seem to be busy, not only on the criminal, but also on the civil side. There is a great deal of civil litigation consisting mainly, as in the United States, of commercial matters, domestic relations problems and personal injury suits arising out of traffic.

The courts seem to be able to dispose of their case load without undue delay. There is no equivalent in Germany for the American type jury trial of civil matters. Consequently, all civil litigation receives court attention much sooner after filing than in the United States. There is, for example, no such backlog of personal injury jury cases as plague civil calendars in the United States.

We were told in Hamburg that an ordinary case commenced in *Amtsgericht* could be disposed of by that court within three months, and that an appeal of the case to *Landgericht*, involving virtually a de novo
hearing, could be handled in another three months. German lawyers who had observed our American system seemed to think that the average court case in Germany could be disposed of in from one-fifth to one-third the time required for a similar case in the United States.

**Representation by Counsel—Costs—Damages**

In Germany, attorneys are not permitted to represent clients under the so-called contingency fee contract for services. Such contracts are illegal and unenforceable. But the courts, even in civil cases, may entertain applications by German litigants, either plaintiff or defendant, for advance allowance of attorney fees and expenses out of public funds. Such allowance will be made only upon a showing, not only that the applicant is without sufficient funds, but also that the claim or defense is meritorious.

A successful plaintiff is awarded his proved special damages, together with general damages, fixed by the court in accordance with the financial means of the parties. In making any such award, a defendant's public liability insurance, which is compulsory for automobile drivers in Germany, is deemed to be part of his financial resources and is therefore taken into consideration.

Also awarded to a successful litigant, plaintiff or defendant, is a judgment against the adversary for attorney fees and expenses. To the extent that attorneys' fees or expenses have been advanced from public funds, they must be refunded if collected from the adversary. When a party is only partially successful, fees and expenses may be apportioned accordingly and, because fees and costs are graduated according to the value of the object of litigation, parties exercise restraint in the statement of their demands.

The rule of civil liability for injury to person or property is basically the same as in the United States, *i.e.*, negligence—the failure to exercise the care of a reasonable person. In Germany, the contributory negligence of a plaintiff is not a complete defense. The rule of comparative negligence is applied. Judgments frequently determine the liability of a defendant in terms of a percentage of the damages proved up to the time of the judgment with leave to the plaintiff to come into court from time to time to litigate and establish further damages accruing or continuing after the original determination of liability. Thus, a party is not held to "one day in court" for the liquidation of prospective damages.

**The Federal Courts**

Turning now to the federal courts, there is the Supreme Federal Court, **Bundesgerichtshof**, already mentioned, which sits at Karlsruhe for the hearing of appeals from the **Oberlandesgericht** of the ten states.
The primary purpose of this court is to maintain uniformity of application of federal law. If we recall that in Germany the execution of federal law is delegated in large part to the various states and that there are no federal courts of original jurisdiction, we can better understand why cases involving even federal questions originate in the state courts.

To review such federal questions in civil cases involving over 6,000 DM and in certain criminal cases, this Supreme Court has been created. Its decisions on interpretation of the federal law are binding on all state courts with respect to the case reviewed.

The Bundesgerichtshof consists of 100 judges, red-robed to distinguish them from the state judges. The judges are appointed by the Federal Ministry of Justice and a committee representative of State Ministries and the Bundestag. The court is broken down into civil and criminal divisions and, further, into panels, or senates, or five judges for the hearing of cases, with provision for approval by larger senates or the whole court. Because this court reviews only the record for errors of law, its work consists of the hearing of argument and the study of briefs in much the same manner as our American appellate tribunals.

Many of the decisions of this court are reported and, since its creation in 1950, it has produced 21 volumes of civil, and 9 volumes of criminal, reports. Practice before this court in civil matters is presently restricted to 17 members of the bar for the asserted reason that its work load is expedited by presentations through lawyers familiar with its practice and expert in briefing and arguing matters before it.

The Federal Constitutional Court

A separate Federal Constitutional Court, Bundesverfassungsgericht, which also sits at Karlsruhe, a court which we earlier described as unique, consists of 24 red-robed judges, 12 of whom are named by the Bundestag and 12 by the Bundesrat. The court generally sits in panels but may sit en banc in important cases. The purpose of this Constitutional Court is to safeguard the Federal Constitution and to preserve uniformity in its interpretation. The jurisdiction of the court is limited exclusively to the decision of such constitutional questions. Federal questions generally, i.e., those which do not involve a constitutional point, are within the province of the Supreme Federal Court, Bundesgerichtshof, and of the other special Federal Courts.

Constitutional questions are presented to the Constitutional Court in several ways. First, although other state and federal courts have the power to uphold the constitutionality of federal or state statutes involved in their cases, they cannot declare such statutes to be repugnant to the federal constitution without first suspending proceedings in the case to present
the constitutional question to the Federal Constitutional Court. Only after such decision by the Constitutional Court can other courts resume proceedings in the pending case and proceed to render judgment accordingly.

Secondly, any person claiming to have been deprived by federal or state statute, or by governmental or judicial action, of rights guaranteed by the federal constitution, may directly petition the Constitutional Court for a decision upon the constitutional point. In practice, many such petitions are dismissed upon the ground of lack of hardship pending such time as the applicant may be aggrieved by the final judgment of one of the state or federal courts in which case the application may be made to the Constitutional Court.

This Constitutional Court also has been empowered to render declaratory judgments concerning the constitutionality of any act of the federal, or any state parliament at the request of the Federal Government, or of a State Government, or at the request of one-third of the Bundestag.

This Court also determines constitutional powers involved in disputes between the federal legislative and executive branches, or between the federal government and a state, or between states.

Finally, this court has been empowered to determine whether any political party seeks to destroy the free democratic order or endanger the existence of the Republic and, if so, to declare such party unconstitutional. One of the first decisions of this court outlawed a neo-Nazi party.

For the first time in German history, a judicial body, this Constitutional Court, has been given power to declare acts of the Parliament invalid if they violate the Federal Constitution. The Supreme Court of the United States is one of the very few courts in the world to hold such power. Not even in England has such judicial supremacy ever been recognized. For this reason, the German Constitutional Court is regarded as the highest Court of the Republic.

**The Special Federal Courts**

As we noted earlier, there are four special federal courts corresponding to the four special State courts. There is, for example, a Federal Tax court, Bundesfinanzhof, which sits at Karlsruhe, to hear appeals from the Tax Courts of the several states. There is a Federal Administrative Court, Bundesverwaltungsgericht, which sits at Berlin to hear appeals from the State Administrative Courts; a Federal Welfare Court, Bundessozialgericht, sitting at Kassel for appeals from the state Welfare Courts, and finally, a Federal Labor Court, Bundesarbeitsgericht, which also sits at Kassel as a court of appeal for the Labor Courts of the several states.

These special courts, state and federal, present some exceptions to the general rule that laymen do not participate in the determination of civil
cases. The state and federal Welfare Courts, which hear matters involving the various welfare programs, are composed of judges sitting with laymen. Likewise, the state and federal Labor Courts, which hear disputes between workers, their unions, and employers, are composed of judges, appointed through the ministries of Labor, sitting with laymen appointed to represent the employer and labor interests respectively.

Another interesting exception to the rule that laymen do not participate in civil trials is that certain commercial disputes between merchants, those involving commercial contracts, negotiable instruments, sale of a business, trade marks, patent infringements, unfair competition, etc., may be referred to a special department of Landgericht (Kammer fuer Handelsachen) for trial before one judge and two laymen, the latter selected from a Chamber of Commerce panel to serve without compensation as honorary judges.

To this outline of the German judicial system it may be well to add a few comments on the judiciary itself and the German bar.

The Judges and the Bar

The judges seem to be well-trained, devoted to their careers and, as I had ample opportunity to observe, they are not only thorough in their work, but courteous and considerate as well in their dealings with parties, counsel and witnesses.

A judgeship in Germany is a career upon which the law graduate enters by making an early choice between the alternatives of private law practice, with its greater independence and wider opportunities, and the judiciary with its salary range for judges as they progress through the judicial civil service.

Judges are not elected by the people. State judges receive their appointments through the State Ministries of Justice and, as we have already noted, federal judges are appointed through the Federal Government.

To become a lawyer in Germany one must have had 3½ years of law at a university after which he must pass a state examination to become what is known as a Referendar. He must then serve an apprenticeship, either as a law or court clerk, for another 3½ years to become an Assessor.

If he then elects to enter the private practice of the law, he is admitted to the bar as an Anwalts-Assessor. After one more year of practice under the direction of an attorney, he is entitled to full admission as a Rechtsanwalt, as attorneys are called in Germany. After ten years of law practice, an attorney may become a Notary and as such entitled to certify important contracts and other legal documents.

If, after attaining the rank of Assessor, one elects to enter the judiciary, he applies to the Justice Ministry of his State for a judicial appointment. Any such appointment will usually be made to the lowest court, Amtsgericht.
The appointee will progress by promotion from junior to senior judgeships in the lower court and then to the higher state courts, Landgericht and Oberlandesgericht, according to his record, experience and merit.

The German judge has tenure of office, subject to discipline by special courts for that purpose, but, as provided in the Federal Constitution, judges are independent, subject only to law, and can be transferred, suspended or removed only under authority of judicial decision on the grounds and in the form provided by law.

Attorneys, likewise, are required to belong to the Chamber of Attorneys, an organization of the bar similar to our self-governing State Bars. The Chamber has its own Courts of Honor for the investigation and discipline of professional conduct, subject to review by the courts.

**Judges Salaries**

The starting salary for a judge in Germany is 10,000 DM per year, a little more than $200 per month. This salary is increased periodically during service. Promotion to the Landgericht would bring the salary to 15,000 DM per year, a little over $300 per month. Service on the Oberlandesgericht, the highest state court, would mean 20,000 DM per year, around $400 per month. The salary on the Supreme Federal Court, Bundesgerichtshof, is 25,000 DM per year, about $520 per month, and on the Federal Constitutional Court, Bundesverfassungsgericht, which carries the highest salary of all, 33,000 DM per year, about $700 per month.

The range for all judicial salaries is therefore from $200 to $700 per month, and the average judicial salary is about $350 per month. Some idea of the relationship of these salaries to the German economy can be gained by bearing in mind that the average German worker receives the equivalent of about $90 per month. We were told that a good, active lawyer in Germany might earn around 25,000 DM per year, about $520 per month, comparable to the earnings of the highest state and federal courts. Of course, some lawyers make more, and the average for all attorneys would be much less.

In Germany the number of judges in relation to the number of lawyers is considerably higher than in the United States. For example, in the city of Munich, population nearly a million, there are over 300 judges of all kinds to 1,700 lawyers; in Hamburg, a city of 1.8 million, 500 judges to 1,250 lawyers; and in West Berlin, with 2.3 million people, 700 judges to 1,400 lawyers. This comparatively large number of judges can be explained by several factors. First, the important Landgericht, the main state trial court, functions in panels of three judges to a department. Then, the lower Amtsgericht, although a one-judge court, requires personnel to perform, not only its heavy trial duties, but also other functions, e.g., the
registry of commercial, realty and routine probate transactions, which would be handled in the United States by County Clerks, Recorders and probate courts. Finally, the four special courts, Tax, Labor, Welfare and Administrative, account for judges who handle matters that would be handled in part in the United States by quasi-judicial administrative agencies.

There are many more interesting observations that could be made concerning Germany and its legal system. But further detail or extension would be beyond the purpose and scope of this paper. The comparatively short survey upon which it is based will explain, if not excuse, its inadequacies and inaccuracies which, I hope, will not be serious enough to defeat its main purpose—stimulation of interest in comparative law as one means of furthering constant appraisal and improvement of the administration of justice.