



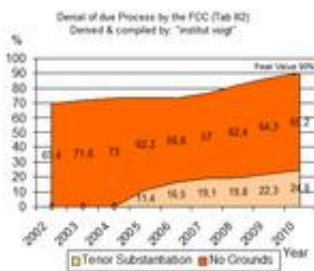
Open Letter to Mr. William H. Neukom, CEO World Justice Project

The Chief Executive Officer of the World Justice Project
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USA

21.06.2011

Subject: Open Letter on the Quality of Justice in Germany
Reference: 1. The Rule of Law Index 2011 (WJPROLI2011)
Dear Mr Neukom,

I must confess to not agreeing with your publication (Reference 1), particularly at the undeservedly high rating which you accorded to the Federal Republic of Germany.



I am basing my criticism on current investigations. These do not, in any way, present the complete picture, should, however, be enough to highlight the disgraceful state of German Justice today. These points covered are:

- o. The denial of the right to due process
- o. The suppression of free speech in Germany.
- o. Germany's non-adherence to judicial independence.

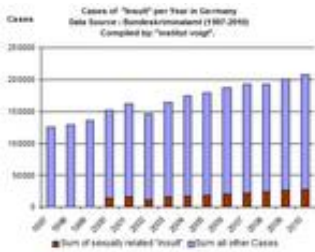
The Denial of the Right to due Process.

The latest statistics of the Federal Constitutional Court(FCC) give rise to the following: The FCC is the highest court in the Land and processes 5,000-6,000 constitutional complaints per year. Of these, 90% (see peak value on the curves) were rejected in 2010, without a proper statement of grounds. It is interesting that in 2004 the FCC introduced "Tenor Substantiation" (partial grounds), presumably a move to produce a resemblance of legality to the embarrassing statistics. At the moment, this form of rejection amounts to 24,8% of the total (see curves) leaving 65,2% rejection without even cosmetic justification. This does not however, fool anyone. We are talking about a current 90% denial of due process. The FCC thus compounds the human rights abuses of the lower courts.

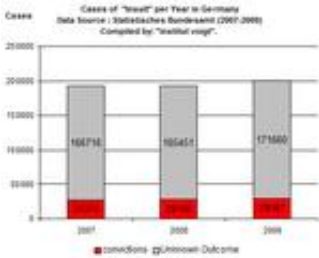
The lower courts regularly and repeatedly violate the right to due process. Some of these violations are reported in [1]. Where German judiciaries would seem to be aware of this, they "fudge" the processes to make them look right. The use of "fudged" procedures would not, of course, mean that the end result would always be wrong. Indeed some of the decisions, reached in some areas, are quite good. However, the transparency would be naturally missing in such cases. In the seemingly never ending list of false procedures, the most obvious is the fusion of the verdict and sentence phases in criminal trials. This causes a multiple pile-up of some of the most sacred principles of justice in the civilized world. The presumption of innocence is just one of these, for example. However, German judiciaries "fudge" it, as they have been doing for the last 150 years.

The calling of expert evidence is a current issue. The expert witnesses are generally called from the private lists of the judiciaries, rather than from a centrally controlled roster of approved and certified specialists, a custom which encourages corruption and favoritism. The appalling standards of the written work of the specialists was the subject of a report to the EU-Authorities [2] on the affairs of the German family courts. It should be noted that none of the thirty or so courts tested could carry out satisfactorily the simple action of placing a task on the experts.

The suppression of free speech in Germany.



The statistics of the Federal Police, for the years 1997-2010, related to the criminal offense of defamation are shown above. They show that Germany, with over 200,000 cases of this childishness, is probably the world leader in the field. The excess of 200,000 cases are investigated cases and not convictions: The actual convictions are, however, ostensibly smaller in number. The statistics are hard to come by but we at least have those for three years to examine. The situation is depicted in the plots which follow: The inflated rate of convictions are in themselves bad enough. The large area of uncertainty is most likely the result of the fines imposed in the form of a payment to a suitable charity in return for a dropping of the charges. The latter do not appear in the statistics and we have no definite information. In our experience, however, most charges of defamation result in some form of penalty or other. There are hardly any true acquittals.



The European Court of Human Rights in Strasbourg virtually abolished defamation as a criminal offense with a key judgment in 1986 [3]. In short, it said that free speech covers statements that shock or disturb and that prominent politicians must accept more rather than less of it. Particularly poignant is that the above statistics include a small number of cases where there is an increased penalty for defaming a "prominent" politician. In 2008 there were 10 such cases, which run contrary to the findings of the European Court of Human Rights[3]. Germany takes no notice, whatsoever, of the European Convention of Human Rights, nor is there any satisfactory implementation instructions for it in German law. The reason for the

favorable statistics achieved by Germany in the European Court of Human Rights has more to do with the fact she controls the registry and the translations for German applications rather than any strict observation of basic human rights. In other words, more "fudge" has been applied.

The OECD has been campaigning for years to have these laws abolished. One of the major factors in the deliberations is the "chilling effect" on the free press. This is discussed in more detail in [4]. Great Britain, whose statistics amounted, at the time, to about 0 to 5 cases a year, finally repealed its defamation laws in January 2010. Most other nations of Western Europe, except Germany, have done likewise or have pledged to repeal these laws soon.

Germany's non-adherence to Judicial Independence

The basic principles of the independence of the judiciary were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. These papers have never been published in Germany. The reasons for this are not difficult to ascertain, because German judiciaries are chosen on a political quota system. To secure a vote, it is necessary for a judiciary to be a party member or to be affiliated to a party. This party membership is allowed by the German State and can extend to active participation at all levels.



Where corruption and nepotism are rampant, German judiciaries can be found wallowing like Hippos in the surrounding political sleaze. There is a report on the problem in Para 2.3. of [2]. Dr. Ulrich Brosa has been dealing with similar problems in the state of Hessen. His Complaint (see below) about the participation of German judiciaries in politics fell within the 90% area of the first set of statistical curves above. The complaint was rejected without any form of justification by the FCC, as is usual.

It is said that corruption brings stability (of a sort). This being so, German judiciaries make an enormous contribution to it.

Concluding Remarks

Germany has the Justice system of an underdeveloped country with all its marsupial qualities. This has been so at least since the pre-Bismarck era, so the government has had plenty of practice explaining it away and building facades to cover it. Why this is apparently easier than putting the system right, is a mystery.

It may be advantageous to put the criteria for your justice index on a more formal basis. So that at least some of them can be answered with a simple yes or no.

If you are saying that, the system here has been studied intensely over the last four years by your people, what precisely did they study and to whom did they speak? In this time, how did they miss the wave of complaints to the EU in respect of Germany's notorious family courts?

Because there are many German victims of the corruption and nepotism fostered by German justice, we have instituted a protest on the internet and are asking for signatures contradicting the WJP rating for Germany (Reference 1).

Highest regards,

Peter Briody
institut voigt

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Bibliography:

Author

Titel

Location

1. Peter Briody	Germany's flawed Justice.	http://www.eucars.de/joomla/images/stories/GermanyFlawedJustice.html
2. Protesters	Para 3.3 and Annex B	http://www.eucars.de/download/family-courts/100329_ec_dgs_complaint_voll_en_sig.pdf
3. European Court of Human Rights	Case of Lingens v. Austria (Application no. 9815/82)	http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Lingens v. Austria&sessionid=72453687&skin=hudoc-en
4. Peter Briody	Defamation Laws and Press Freedom in Germany	http://www.eucars.de/joomla/images/stories/091221_insult_eng.html