



# Germany

There is no formal legal aid or public defender scheme in Germany.

There is no national police station advice scheme, so people are routinely interrogated without a lawyer.

## OUTLINE OF THE LEGAL AID SYSTEM

### HOW IS IT ORGANISED?

There is no formal legal aid scheme for criminal proceedings in Germany. Rather, legal aid is substituted by the mandatory defence regime (*notwendige Verteidigung*), which is based on the seriousness of the offence or vulnerability of the accused, not on financial need.

Every accused in a case of mandatory legal representation has the right to a court-appointed lawyer, regardless of their financial means. The accused can identify and request a specific lawyer. Every lawyer may be appointed as court-appointed counsel; there is no public defender scheme in Germany. However, this lawyer is not necessarily provided free of charge to the accused. Instead, the questions of payment are deferred until after the proceedings are complete. If convicted, the accused is responsible for the legal costs of the case. As a result, it is common for people to take out insurance against legal expenses in Germany, because of the risks of being held responsible for the costs of a case. If acquitted, the State pays the court-appointed lawyer under the codified ordinary fees scheme.

The system is decentralized, with the federal government establishing the laws regulating court-appointed lawyers and the individual states providing the pre-funding for the lawyers. The organizational responsibility for administering the system falls primarily on the courts. Courts are responsible for determining if the case is one of mandatory legal representation, and for the appointment of the lawyer. The court that hears the cases is responsible for assigning the costs of the case to the losing party. The court-appointed lawyer then files a remuneration claim to the court. The decision about whether the accused is indigent and can thus avoid a remuneration claim against them follows complex rules of German civil procedure.

### HOW IS IT FINANCED?

Since the financial administration of the criminal legal aid equivalent falls to the individual States, no comprehensive and uniform statistics on spending are available. Court-appointed lawyers receive fixed fees for legal services under the codified ordinary fees scheme, which are lower than fees charged by privately-hired lawyers. The payment process is bureaucratic and defence lawyers criticise the amount of time it takes.

### HOW IS IT MONITORED?

There is no separate quality control mechanism for court-appointed lawyers. All lawyers must be members of the Bar Association, and clients may submit complaints about their lawyer directly to the Bar Association. However, the Bar does not run any independent monitoring or quality assurance mechanism.



# LEGAL AID IN: Germany

## MAJOR ISSUES WITH LEGAL AID

**German criminal justice does not have a legal aid scheme**, but it does have a complex functional equivalent in limited circumstances, based on the seriousness of the offence and not on financial need.

If a defendant is convicted, they will generally **have to repay the cost of their court-appointed lawyer**, unless they can prove their indigence in a separate and complex civil proceedings regime.

**Lack of mechanisms** to provide free legal assistance at the police station.

**No quality control mechanism** for court-appointed lawyers.

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## ELIGIBILITY

### WHO IS ELIGIBLE FOR LEGAL AID?

Anyone accused in a mandatory legal representation case is eligible for a court-appointed lawyer, including foreign nationals and non-residents. Defendants shall be ordered a court-appointed lawyer if they are in pre-trial detention or they cannot defend themselves. Individuals who cannot defend themselves are defined as lacking the mental ability to understand the proceedings or the facts, or the legal issues are too complicated for the average person to understand.

### MEANS AND MERITS TEST

There is no means test. If a person is charged with a crime that is punishable by one year or less of imprisonment, such as petty theft, they are not entitled to a court-appointed lawyer, even if they are indigent and cannot afford to privately hire a lawyer. However some categories of vulnerable people still qualify for mandatory legal representation, such as those who cannot defend themselves and those who are committed to pre-trial detention by a judge.

## THE REALITIES OF ACCESS TO LEGAL AID

### ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Although accused persons have the right to legal advice prior to interrogation, there is no national mechanism to enable accused persons to consult with a lawyer, and very few positive obligations on the police to assist the accused to contact a lawyer. A broad variety of emergency defence lawyer services have been set up on a local basis, and lawyers can participate on a voluntary basis, but there is no national or centrally organised and managed scheme. In addition, the accused is not explicitly entitled to a lawyer during the interrogation itself, however the law provides for the right to access legal advice in each stage of proceedings. In practice, accused persons are routinely interrogated without receiving the assistance of a lawyer.

### QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

The quality of lawyers is ensured predominately by their compulsory membership of the Bar, which requires the lawyer to have passed the German State Examinations in Law. However, once a member, there is very little monitoring or requirements of quality assurance.

Quality is also linked to fees and to independence. Under the codified ordinary fee scheme, court-appointed lawyers receive considerably lower fees than privately-hired lawyers, leading to concerns that experienced criminal lawyers are unwilling to be appointed by the courts. In addition, because lawyers are usually chosen and appointed at the discretion of the courts, there have been some criticisms that those lawyers who are “regularly chosen” may not be fully independent and willing to stand up to the judges on whom they rely to earn their living.



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