

## Proposed Reform of Criminal Procedure Moves Ahead

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[1] The Federal Justice Ministry presented its proposal for reform of Germany's Code of Criminal Procedure at the 63rd German Lawyer's Day. The German system suffers from the problems common to most modern criminal justice systems: cases linger far too long in the "pipeline," cases are too often handled improperly in the first instance resulting in reversals on appeal, prisons are overcrowded, and the entire system costs too much. The recent round of proposed reform of Germany's criminal procedure originated with the previous governing coalition (CDU/CSU/FDP) and follows frequent "tinkering" with the system over the last 25 years.

[2] The Ministry of Justice commissioned three reports as it undertook the current comprehensive reform. Professors Doelling and Feltes were asked to study the length of time criminal cases required in proceedings before the local regional courts. The Max-Planck-Institute in Freiburg made a comparative study of Germany's criminal procedure and the related international standards. The German Judges' Association produced a comprehensive proposal for reform. The debate, in the academic and professional journals, has focused on these reports, especially the radical proposals in the German Judges' report that called for, among other things, the fusion of the first two stages (out of a potential four stages) of the process resulting in a three tier system that would include (1) trial of facts/law before a local regional court, (2) an appeal of legal questions and a strictly limited set of factual questions before the highest state court, and (3) strictly legal review before the Federal Court of Justice.

[3] The emerging proposal does not, however, go as far as was feared by some and hoped by others. Instead, the proposal leaves the current four-tier system intact but with greater limitations on access to the second stage of review. The proposal also seeks to reduce the potential for appellate issues by involving defense counsel to a greater degree much earlier in the case, especially during the investigative process conducted by the prosecution and the court. Pursuant to this change, defense counsel will have the opportunity to name and participate in interviews with witnesses during the investigation. The proposal also seeks to make more transparent the heavily used plea-bargaining process that has so far been regulated only by standards articulated by the Federal Court of Justice in a decision from 1997. The codification of these standards will require that much of the deal making takes place in open court.

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### For More Information:

Prof. Dr. Albrecht, Peter-Alexis, "Reformbemuehungen und Versaeumnisse Aktueller Strafrechtspolitik", *Neue Justiz* 449 (2000).

Articles from Prof. Dr. Felix Herzog, Dr. Frank Nobis, and Prof. Dr. Rainer Hamm in: *Strafverteidiger* of August, 2000.

Prantl, Heribert, "Schneller, Transparenter, Gerechter: Justizministerin Daeubler-Gmelin legt die Eckpunkte zur Reform der Strafverfahren vor," *Sueddeutsche Zeitung*, Nr. 222, Seite 6, September 26, 2000.