

Compare and contrast the English and German Criminal Law trials.

“The keystone to justice is the belief that the legal system treats all fairly.” Janet Reno refers to the requirements of impartiality and protection of a legal system. This is essential in Criminal Law trials, the centre of decisions about the liberty of human individuals. The question is raised how processes of different western countries are treated. Thus, Criminal Law trials of Germany and the United Kingdom will be compared. It will be focused on the legal traditions, the creation of a verdict, the role of judges, the structure of courts and legal consequences. It shall be concluded that even though both countries have significant differences in delivering a verdict, the results are similar to each other.

The most significant point in comparing the criminal trial proceedings of the United Kingdom and Germany is their differing legal traditions, with Common Law in the United Kingdom and Civil Law in Germany. The former one is based on unwritten legal codes. Laws are made by judges of the Royal Court whereby legal decisions are made bound to the doctrines of precedent. For example, if you want to look up the definition of an “assault” it is expressed in the Criminal Justice Act 1988 based on previous cases. Precedent cases count as the primary source of Common Law. In contrast to the case law that is executed in the United Kingdom, Civil Law is based on texts and codified statutes representing the primary source of law in Germany. For the definition of an assault in Germany, you need to use the adequate legal text and legal code. Thus, both countries have a different starting point in working through a Criminal Law case. Even although their legal traditions are not the same, their principles are not dissimilar. The legal systems have similar results as they can be seen as predictable¹. The Common Law system is consistent as similar cases are considered in making a decision. Similarly, Civil Law is straightforward as judgements are only made based on the written laws. This makes English and German criminal cases justly accessible and

¹ Wacks, R. (2015) “Law’s roots,” in Law: A very short introduction. Oxford: Oxford University Press.

organised.

Whereas the legal traditions are dissimilar in their origins, the court system of English and German criminal trials shows similarities. In the English legal system 95% of all the criminal cases are heard in the Magistrates' court after the Crown Prosecution Service confirms the prosecution². Decisions about guilt are made by either three Magistrates or one District Judge. An example of such a case is burglary. The profound cases are brought to the Crown Court after being heard by the Magistrates. There, the Circuit Judge decides a verdict based on the decision of guilt made by a jury. The German court system works analogously. If the expected penalty is not more than a prison sentence of four years, cases are heard by the District Courts (Amtsgerichte). If the sentence is longer than four years, the Regional Court (Landgericht) is responsible for the trial. Serious political crimes like genocide or high treason are heard in the Higher Regional Court (Oberlandesgericht). A recent example that demonstrates the different responsibilities of courts is the double-murder committed by a 16 years old girl and her 18 years old boyfriend of her parents. As a result of a higher expected punishment, the Regional Court announced a prison sentence of nine and a half years and thirteen and a half years³. Both legal systems have similar proceedings in dealing with a criminal case, however in the United Kingdom every case starts at the Magistrates' court, whereas in Germany it is directly passed to the responsible Gremium. English criminal trials can take a longer time to be resolved when cases might need to be progressed through different courts. Nevertheless, the Magistrates Court solves most of the Criminal Law cases. From 1.14 million cases in the United Kingdom in 2021, only 98,000 were eventually passed

² Criminal (2022) Courts and Tribunals Judiciary. Available at: <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/criminal-jurisdiction/> (Accessed: February 22, 2023).

³ Doppelmord an Ärztepaar: Grausame Details bei der Urteilsverkündung (2023) online.de. Available at: https://www.t-online.de/region/nuernberg/id_100116550/bayreuth-doppelmord-in-mistelbach-grausame-details-bekannt.html (Accessed: February 22, 2023).

to the Crown court ⁴. It allows the higher court a greater specialisation because of a reduction of reached cases. This demonstrates that even though English criminal cases might require more effort than the German ones, the final verdict is highly reliable.

In spite of the similar court structure, the Crown Court trials work differently compared to the German ones, through a jury. A jury is in the legal context defined as a “group of people who have been chosen from the general public to listen to the facts about a crime and to decide whether the person accused is guilty or not.” ⁵. It is made up of 12 randomly selected citizens being the administration of justice. In English cases that are heard in the Magistrates’ court, there is no jury present. But as a trial takes place in the Crown Court a jury judges the guilt of the accused. This system demonstrates the oral tradition the Common Law possesses. Lord Devlin suggests that “Trial by jury is more than an instrument of justice and more than a wheel of the constitution; it is the lamp that shows that freedom lives.” It is based on democracy as a judgement is created by the community. In contrast to that are the German trial proceedings as there is no jury present. In minor cases the decisions are made by one career judge, whereas others involve a career judge and two lay judges. If the case contains the death of a victim or other serious matters, three career judges and two lay judges are entailed.

The law trials differ from each other as a verdict is created differently. Whereas the English one does only involve the opinion of legal professionals, the German one trusts in the process of evidence and facts without any legal experience. On the one hand the jury trial can be more preferable as the jurors have more sympathy for the victim making their

⁴ Sturge, G. (2023) Court Statistics for England and Wales , House Of Commons Library . Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdf> (Accessed: February 22, 2023).

⁵ Sturge, G. (2023) Court Statistics for England and Wales , House Of Commons Library . Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdf> (Accessed: February 22, 2023).

judgement seeing the bigger picture besides the pure consideration of laws. However, jurors do not have the duty to deliver an objective verdict. ⁶ Several studies were made by Professor Nuñez and her team to research the impact of emotions on a jury's verdict. In one experiment jurors had to rate their emotions based on anger, sadness and fear before and after seeing a reenactment of a murder trial with a possible death sentence. It was discovered that the most significant emotion influencing the jurors' decisions was anger. The angrier they became during seeing the trial, the more likely were the accused to be given the death penalty. This demonstrates that emotions take an important part in jury trials which therefore cannot always be objective. ⁷ In Germany, judgements are made by experts. Legal professionals evaluate the law and evidence wisely before coming to a final judgement. This so-called "bench trial" is often quicker as delays caused by disagreements or illness are avoided. The fraud and money laundering case of Edwin and Lorraine McLaren in the United Kingdom took 20 months before a final verdict was delivered by the jury. ⁸ Hence, costs and time can be spared in the criminal trials in Germany where there is no jury present.

Adding on this argument, the role of judges in Criminal Law is unlike. The English legal system is an adversarial one. The Prosecution and Defence control the case, getting evidence and questioning witnesses.

⁶ Gaille, L. (2020) 15 advantages and disadvantages of the jury system, Vittana.org. Available at: <https://vittana.org/15-advantages-and-disadvantages-of-the-jury-system> (Accessed: February 22, 2023).

⁷ Nunez, N., Estrada-Reynolds, V. and Schweitzer, K.A. (no date) Emotions in the courtroom: How sadness, fear, anger, and disgust affect ... Available at: https://www.researchgate.net/profile/Narina-Nunez/publication/309092607_The_Impact_of_Emotions_on_Juror_Judgments_and_Decision-Making/links/5ac3d621a6fdcc1a5bd01011/The-Impact-of-Emotions-on-Juror-Judgments-and-Decision-Making.pdf (Accessed: February 22, 2023).

⁸ Nunez, N., Estrada-Reynolds, V. and Schweitzer, K.A. (no date) Emotions in the courtroom: How sadness, fear, anger, and disgust affect ... Available at: https://www.researchgate.net/profile/Narina-Nunez/publication/309092607_The_Impact_of_Emotions_on_Juror_Judgments_and_Decision-Making/links/5ac3d621a6fdcc1a5bd01011/The-Impact-of-Emotions-on-Juror-Judgments-and-Decision-Making.pdf (Accessed: February 22, 2023).

The judge and jury are neutral, whereby the task of the judge is to “ensure fairness to the accused”⁹ and to make the jury aware of the laws. The police work independently of the judge. In contrast to this is the inquisitorial system applied in Germany. An investigation magistrate is responsible for taking care of gathering evidence and determining the facts with police support. The information gathered by the magistrate will be reviewed by the trial judge. He is allowed to question witnesses, evaluate the evidence and deliver a verdict.¹⁰ This system is more open to bias as the prosecutor and the detailed informed magistrate may push through their personal convenience to the trial judge. Conversely, the adversarial system is seen as particularly fair as Defence and Prosecutor have the chance to present their results while proceeding in questioning witnesses, analyse information and represent their side. However, the risk of a verdict by the jury based on strong arguments made by competing lawyers rather than an evaluation of evidence must be considered as emotions influence the jurors’ judgement.

Even though the role of the judge differs from each other in the United Kingdom and Germany, the legal consequences for guilty found parties are similar. The main consequences are imprisonment and monetary penalties. The United Kingdom includes these additionally having discharge, community orders and driving disqualifications as further common sentences. Both countries have similar lengths of life sentences where releases are usually asked for after 15 years of imprisonment. The judgements are fair as particular actions are evenly punished.

⁹ Fromiti (2018) Organised crime module 9 key issues: Adversarial versus Inquisitorial Legal Systems, Organized Crime Module 9 Key Issues: Adversarial versus Inquisitorial Legal Systems. Available at: <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legalsystems.html> (Accessed: February 23, 2023)

¹⁰ International Legal Systems - an introduction (no date) United States Department of Justice . United States Department of Justice National Security Division. Available at: <https://www.justice.gov/archives/nsd-ovt/page/file/934636/download> (Accessed: February 12, 2023).

Concluding the essay, the Criminal Law trials of the United Kingdom and Germany have different starting points and proceedings, benefits and drawbacks. Summarised, the English and German Criminal Law cases are different from each other in their tradition, but have similar results in terms of efficiency. Even though when directly looking at the trial system the structure of the courts has the same idea, German trials are less cost and time consuming. Eventually, the involvement of professionals builds a significant contrast as an independent police and jury are part of an adversarial system. However, Germany enables a judgement only made by experts, averting from a probable subjectivity influencing the verdict by a jury. Lastly, both systems embody fairness as the main consequences of crimes are very similar to each other.

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