

Law of Appeal in Criminal Proceedings

1 COURTS OF FIRST INSTANCE

1.1 LOCAL COURTS (AMTS-GERICHTE)



Criminal Court Judge
(Straf-Richter)



Court of Lay Assessors
(Schoeffen-Gericht)

Criminal Court Judge:

Misdemeanours¹, if expected sentence does not exceed imprisonment of two years.

Court of Lay Assessors:

Misdemeanours and Felonies², if the expected sentence does not exceed imprisonment of four years.

1.2 STATE COURTS (LAND-GERICHTE)



Grand Criminal Chamber
(Grosse Straf-Kammer)



„Jury Court“
(Schwur-Gericht)

Grand Criminal Chamber:

Misdemeanours and Felonies, if the expected sentence exceeds imprisonment of four years.

Additionally, Certain political crimes are prosecuted before a State Security Chamber (Staats-Schutz-Kammer) and certain economic crimes before an Economic Criminal Chamber (Wirtschafts-Straf-Kammer).

„Jury Court“:

Special Criminal Chamber for offences resulting in death.

1.3 HIGHER STATE COURTS (OBER-LANDES-GERICHTE)



Criminal Senate
(Straf-Senat)

Criminal Senate:

Very serious political crimes, such as crimes against peace, high treason, assault against organs and representatives of foreign states, forming terrorist organisations etc.

* : Lay justice (Schoeffe); : Professional Judge

¹ Misdemeanours are offences, where the law doesn't state a minimum penalty

² Felonies are offences, where the law states a minimum penalty of one year's imprisonment

2 APPELLATE COURTS

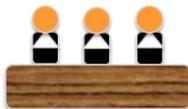
2.1 STATE COURTS (LAND-GERICHTE)



Petty Criminal Chamber
(Kleine Straf-Kammer)

Appeal on law and fact against the decisions of Local Court panels.

2.2 HIGHER STATE COURTS (OBER-LANDES-GERICHT)



Criminal Senate
(Straf-Senat)

Leap-frog appeal on law only against the decisions of Local Court panels and appeal on law only against the second instance decisions of the State Courts (decisions of the Petty Criminal Chamber).

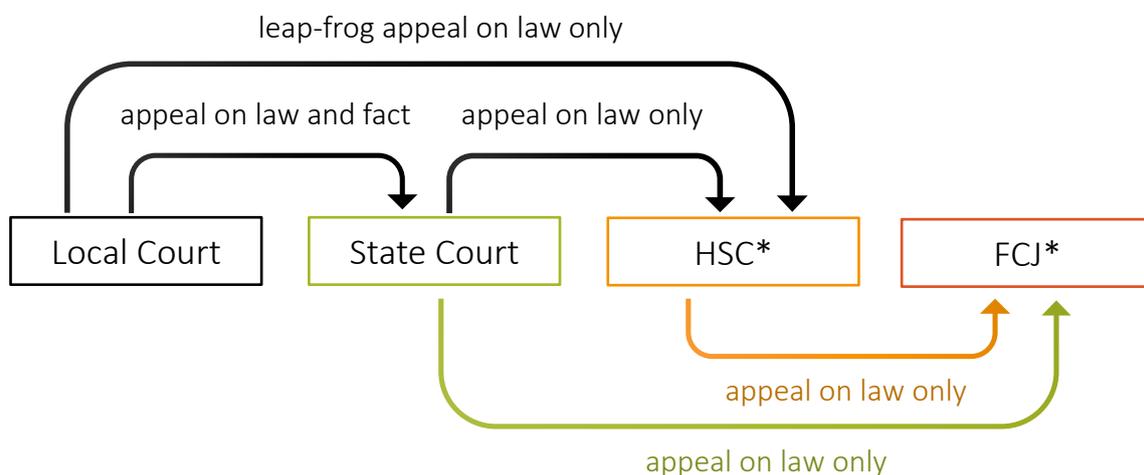
2.3 FEDERAL COURT OF JUSTICE (BUNDES-GERICHTS-HOF)



Criminal Senate
(Straf-Senat)

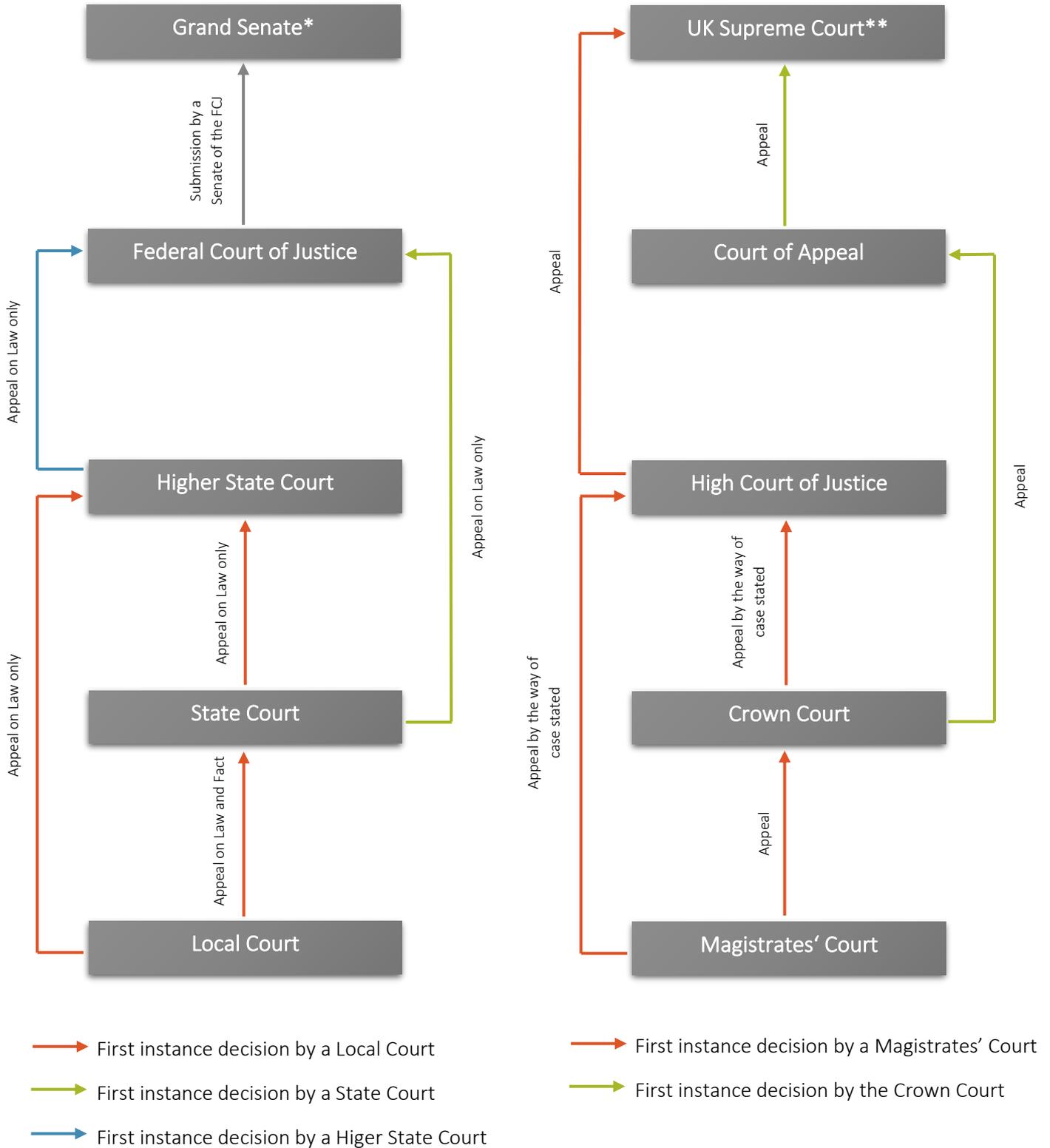
Appeal on law only against the first instance decisions of the State Courts (decisions of the Grand and specialized Criminal Chambers and the "Jury Court").

3 SCHEMATIC OF THE COURT SYSTEM OF GERMANY



* HSC: Higher State Court; FCJ: Federal Court of Justice

4 COMPARISON OF COURT STRUCTURES: GERMANY AND WALES



* Grand Senate: Grand Senate for Criminal Matters (Grosser Senat fuer Straf-Sachen)

** UK Supreme Court: Supreme Court of the United Kingdom

5 CRITICISM ON THE LAW OF APPEAL IN GERMANY

5.1 CAUSE OF CRITICISM

- Two appeals in minor cases
 - *Appeal on law and fact* from the Local Court to the State Court (Petty Criminal Chamber)
 - *Appeal on law only* from the Petty Criminal Chamber to the Higher State Court (Criminal Senate)
- Only one appeal in more serious cases
 - *Appeal on law only* from the State Court (Grand Criminal Chamber or “Jury Court”) to the Federal Court of Justice (Criminal Senate)
 - *Appeal on law only* from the Higher State Court (Criminal Senate) to the Federal Court of Justice (Criminal Senate)
 - This one appeal is additionally restricted on points of law

5.2 POSSIBLE EXPLANATIONS

- The Constitution only provides protection (by means of a judicial review) *through* judges, but not *against* judges...
- There are more (professional) judges in the first instance panels of the State Courts and the Higher State Courts than in the first instance panels of the Local Courts; therefore, the State Courts and Higher State Courts allegedly make less mistakes...

5.3 WHY THESE EXPLANATIONS ARE NOT CONVINCING

- ... but the decision of a judge at a criminal court can violate the rights of a citizen in the same way as an administrative decision
- ... true, but it does not mean that the State Courts make no mistakes at all. Therefore, it still would be wise to have means to control the fact-findings of the State Courts

5.4 WORKING THEORY

- The organisation of the law of appeal in Germany is a historical compromise from 1877, which was never intended to remain in force until today; additionally, also a State Court decision can base on the vote of only one professional judge