

Übersetzung durch Brian Duffett und Ute Reusch

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## **The German Judiciary Act**

German Judiciary Act in the version promulgated on 19 April 1972 (Federal Law Gazette I p. 713), as last amended by Article 9 of the Act of 8 June 2017 (Federal Law Gazette I p.1570)

### **FIRST PART**

#### **Judicial office in the Federation and *Länder***

##### **First Chapter**

##### **Introductory provisions**

##### **Section 1**

##### **Professional and honorary judges**

Judicial power shall be exercised by professional and honorary judges.

##### **Section 2**

##### **Application to professional judges**

The provisions of this Act shall apply only to professional judges except as otherwise provided by this Act.

##### **Section 3**

##### **Service employer**

Judges shall be in the service of the Federation or of a *Land*.

##### **Section 4**

##### **Incompatible duties**

(1) A judge shall not simultaneously perform duties of adjudication and legislative or executive duties.

(2) Besides duties of adjudication a judge may, however,

1. perform duties involving court administration,
2. perform other duties assigned by statute to the courts or judges,
3. undertake research and give instruction at a scientific institution of higher education, at a public teaching institution, or at an official teaching institution,
4. perform duties in matters concerned with examination,

5. act as chairman in conciliation agencies and in corresponding independent agencies within the meaning of section 104, second sentence, of the Federal Personnel Representation Act.

## **Second Chapter Qualification for judicial office**

### **Section 5 Qualification for judicial office**

(1) Whoever concludes his legal studies at a university by taking the first state examination as well as a subsequent period of preparatory training by taking the second state examination shall be qualified to hold judicial office; the first state examination comprises a university examination covering areas of specialisation and a state examination covering compulsory subjects.

(2) University studies and preparatory training shall be harmonised in content.

#### **Section 5a University studies**

(1) University studies shall last for four years; this period may be of shorter duration in so far as the requisite attainments for admission to the university examination covering areas of specialisation and to the state examination covering compulsory subjects are demonstrated. Not less than two years shall be spent on studies at a university within the area of application of this Act.

(2) The course of studies comprises compulsory subjects and areas of specialisation with elective subjects. In addition, proof is required of the successful completion of a law course in a foreign language or a language course geared specifically to law; provision may be made under *Land* law that proof of foreign language skills can be provided in another manner. Compulsory subjects shall comprise the core areas of civil law, criminal law, public law and the law of procedure, including the links with European law, the methodology of legal science and the philosophical, historical and social foundations. The areas of specialisation serve to supplement university studies, to deepen knowledge of the compulsory subjects to which they relate, and to impart the interdisciplinary and international bearing of the law.

(3) The programme of studies shall cover the practice in court adjudication, in the administration and in legal advice, including the key qualifications required therefor, such as negotiation management, negotiation skills, rhetoric, conciliation, mediation, questioning techniques and communication skills. During the period where lectures are not held time shall be spent on practical studies for a total of not less than three months. *Land* law may provide that the time taken for practical studies shall be spent at one agency continuously.

(4) Detailed provision shall be made by *Land* law.

#### **Section 5b Preparatory training**

(1) The period of preparatory training shall last for two years.

(2) Training shall be given at the following compulsory agencies:

1. at a court of ordinary jurisdiction in civil matters,
2. at a public prosecutor's office or at a court with jurisdiction in criminal matters,
3. at an administrative authority,

4. with counsel;

and at one or more optional agencies where proper training is guaranteed.

(3) The training may take place on an appropriate scale with supranational, intergovernmental or foreign training agencies or with foreign lawyers. Credit may be given for training undergone at a faculty of law and at the German Academy of Administrative Science in Speyer. *Land* law may provide that the training according to subsection (2) number 1 may partly be given at a court with jurisdiction in labour matters and the training according to subsection (2) number 3 may partly be given at a court with jurisdiction in administrative, finance or social matters.

(4) Training at a compulsory agency shall last for no less than three months, compulsory training with counsel shall last for nine months; *Land* law may provide that the training pursuant to subsection (2) number 4 may be undertaken for up to three months with a public notary, a company, an association or at another training agency where appropriate training in the provision of legal advice is ensured. Preparatory training may be extended in individual cases for compelling reasons but not, however, on account of inadequate performance.

(5) During training provision may be made for training courses for a total period of three months.

(6) Detailed provision shall be made by *Land* law.

#### **Section 5c**

##### **Account taken of training for the higher intermediate service**

(1) Successfully completed training for the higher intermediate judicial administration service and for the higher intermediate non-technical administrative service may, on application being made and for a period not exceeding eighteen months, be taken into account in respect of the length of training. However, not more than six months may be taken into account in respect of preparatory training.

(2) Detailed provision shall be made by *Land* law.

#### **Section 5d**

##### **Examinations**

(1) The state and university examinations shall relate to the practice in court adjudication, in the administration and in legal advice, including the key qualifications required therefor according to section 5a subsection (3), first sentence; notwithstanding section 5a subsection (2), second sentence, examinations may also take account of foreign language skills. Standardisation of examination requirements and achievement rating must be ensured. The Federal Minister of Justice and Consumer Protection shall be authorised with the approval of the Bundesrat to lay down by legal ordinance a scale of marks and points for the individual and overall marks for all examinations.

(2) The syllabus for the university examination covering areas of specialisation and for the state examination covering compulsory subjects shall be so designed as to enable university studies to be completed after four-and-a-half years of study. The university examination covering areas of specialisation must include at least one written assignment. The state examination covering compulsory subjects must comprise both written assignments and oral examinations; *Land* law may provide that examinations can be taken during the course of studies, though not before the end of two-and-a-half years of study. The first state examination certificate shall list the results of the university examination covering areas of specialisation which has been passed and of the state examination covering compulsory subjects which has been passed, as well as the overall mark, to which the result of the state

examination covering compulsory subjects contributes seventy per cent and the result of the university examination covering areas of specialisation contributes thirty per cent; the certificate is issued by that *Land* in which the state examination covering compulsory subjects was passed.

(3) The written examinations forming the second state examination may be taken in the eighteenth month of training at the earliest and in the twenty-first month of training at the latest. They shall at least relate to the training undergone in the compulsory agencies. Where *Land* law stipulates that a home assignment shall be performed in addition to assignments performed under invigilation, provision may be made to the effect that such assignment shall be performed after completion of the last compulsory agency. The oral examinations shall relate to the entire period of training

(4) In the first and the second state examinations the examining body may deviate in its decision from the arithmetically calculated total mark where such deviation gives a better reflection of the candidate's performance in view of the overall impression gained and this has no influence on the candidate's passing the examination; in respect of the second state examination performance during preparatory training shall also be taken into consideration. The deviation shall not exceed one third of the average range within a class of mark. The proportion of oral examination attainments shall not exceed forty per cent of the total mark. In determining the total mark given for the second examination no account shall be taken of marks given during preparatory training.

(5) The state examination covering compulsory subjects may be repeated once. A failed state examination covering compulsory subjects shall be deemed not to have been taken if the candidate registered early for the examination and completed the required examination assignment in full. Detailed provision, in particular as regards the expiry of the registration deadline, account to be taken of periods of study abroad, of illness or of release from study in respect of the total period of study, as well as the repercussions of interrupted examinations, shall be made by *Land* law. *Land* law may enable a candidate to repeat the examination for the purpose of improving his grade.

(6) Detailed provision shall be made by *Land* law.

#### **Section 6 Recognition of examinations**

(1) A candidate shall not be refused admission to preparatory training for the reason that he took the university examination covering areas of specialisation or the state examination covering compulsory subjects pursuant to section 5 in another *Land* within the area of application of this Act. Account shall be taken in every German *Land* of time spent on preparatory training in a *Land* within the area of application of this Act.

(2) Whoever has acquired the qualification to hold judicial office within the area of application of this Act pursuant to section 5 shall be qualified to hold judicial office in the Federation and in every German Land.

#### **Section 7 University professors**

Every full professor of law at a university within the area of application of this Act shall be qualified to hold judicial office.

#### **Third Chapter Judicial tenure**

#### **Section 8 Legal forms of judicial service**

Judges may only be appointed for life, for a specified term, on probation or by commission.

### **Section 9 Preconditions for appointments**

Judicial tenure may only be given in the case of a person who

1. is a German in terms of Article 116 of the Basic Law,
2. makes it clear that he will at all times uphold the free democratic basic order within the meaning of the Basic Law,
3. is qualified to hold judicial office (sections 5 to 7), and
4. has the requisite social skills.

### **Section 10 Appointment for life**

(1) Whoever has worked as a judge for at least three years after acquiring the qualification to hold judicial office may be appointed a judge for life.

(2) In respect of the period of time referred to in subsection (1) account may be taken of work done

1. as a civil servant in the higher civil service,
2. in the German civil service or in the service of an international or supranational institution, provided that the type and significance of the work done was similar to that involved in the execution of an office within the higher civil service,
3. as a teacher of law at a German scientific institution of higher education, being a teacher qualified to give instruction at a university,
4. as counsel, as a notary, or as a lawyer having acquired the qualification to hold judicial office (*Assessor*) assisting counsel or a notary,
5. in other professions, provided that the type and significance of the work done was, like the work mentioned under numbers 1 to 4, fit for imparting knowledge and experience for exercising judicial office.

Taking account of more than two years of such work shall presuppose special knowledge and experience on the part of the person to be appointed.

### **Section 11 Appointment for a specified term**

Appointment as a judge for a specified term shall only be permissible under the conditions and for the duties stipulated by federal legislation.

### **Section 12 Appointment on probation**

(1) Whoever is later to be employed as a judge for life or as a public prosecutor may be appointed as a judge on probation.

(2) Five years at the latest after his appointment, a judge on probation shall be appointed a judge for life or, on being given civil service tenure for life, he shall be appointed a public prosecutor. This time-limit shall be extended for any unpaid leave taken.

### **Section 13 Employment of a judge on probation**

A judge on probation can be employed without his consent only at a court, at a court administration authority or at a public prosecution office.

**Section 14**  
**Appointment as a judge by commission**

(1) A civil servant for life or for a specified term can be appointed a judge by commission if he is later to be employed as a judge for life.

(2) (repealed)

**Section 15**  
**Effects on civil service tenure**

(1) A judge by commission shall retain the office he holds. His remuneration and pension shall be determined in accordance with the office held. In all other respects the rights and duties of civil service tenure shall be suspended for the duration of judicial tenure by commission with the exception of the duty to maintain official secrecy and of the ban on accepting gifts.

(2) Where judicial tenure is established in regard to another service employer, the service employer concerned shall also be bound to pay the remuneration provided for the office.

**Section 16**  
**Duration of employment as a judge by commission**

(1) Two years at the latest after his appointment, a judge by commission shall be appointed a judge for life or he shall be proposed to a judicial selection committee for selection. Where a judge declines an appointment his judicial tenure by commission shall cease.

(2) The provisions relating to judges on probation shall apply *mutatis mutandis* to the employment of a judge by commission.

**Section 17**  
**Appointment by deed**

(1) A judge shall be appointed through delivery of a deed.

(2) Appointment shall be necessary

1. for the establishment of judicial tenure,
2. for the conversion of one form of judicial tenure into another (section 8),
3. for the conferment of a different office with a different final basic salary.

(3) In establishing judicial tenure the words "on being given judicial tenure" shall be included in the deed of appointment with the adjunct "for life", "for a specified term", "on probation" or "by commission". Where judicial tenure is established for a specified term the duration of the appointment shall be stated in the deed.

(4) Where one form of judicial tenure is converted into another the words determining the other form of judicial tenure, as used in subsection (3), shall be included in the deed of appointment; where an office is conferred for the first time or where a different office is conferred with a different final basic salary and a different official designation, the official designation of the office concerned shall be included in the deed of appointment.

**Section 17a**

Where a judge resigns his parliamentary seat and, at the same time, stands again for a seat in the German Bundestag the conferment of another office with a higher final basic salary is not permissible.

### **Section 18 Nullity of an appointment**

(1) An appointment shall be null and void where it is made by an authority that is not competent to make such appointment. The appointment cannot be confirmed retrospectively.

(2) An appointment shall also be null and void where the appointee at the time of his appointment

1. was not a German in terms of Article 116 of the Basic Law, or
2. (repealed),
3. did not have the capacity to hold public office.

(3) The nullity of an appointment as a judge for life or for a specified term can only be alleged after a court declaration having final and binding effect.

### **Section 19 Revocation of an appointment**

(1) An appointment shall be revoked

1. where the appointee was not qualified to hold judicial office,
2. where participation of a judicial selection committee, as required by statute, was omitted and where the judicial selection committee refused subsequent confirmation of the appointment,
3. where the appointment was procured by coercion, wilful deceit or bribery, or
4. where it was not known that the appointee had committed a serious or a minor criminal offence that makes him seem unworthy of holding judicial tenure and where, on account of the criminal offence committed, he was, or will be, sentenced to a penalty with final and binding effect.

(2) An appointment can be revoked where it was not known that an order had been made in court proceedings removing the appointee from office or from his profession or withdrawing his pension rights.

(3) In the absence of the judge's written consent an appointment as a judge for life or for a specified term can only be revoked on the strength of a judicial decision that has entered into final and binding effect.

### **Section 19a Official designations**

(1) Official designations for judges for life or for a specified term shall be "Judge", "Presiding Judge", "Director", "Vice President" or "President", followed by an adjunct indicating the court concerned (*Richter am ...*, *Vorsitzender Richter am ...*, *Direktor des ...*, *Vizepräsident des ...*, *Präsident des ...*).

(2) A judge by commission shall use the designation "Judge" followed by an adjunct indicating the court concerned (*Richter am...*).

(3) A judge on probation shall use the designation "Judge", and when acting as a public prosecutor he shall use the designation "Public Prosecutor" (*Staatsanwalt*).

## **Section 20 General seniority**

The general seniority of a judge shall be determined by the day upon which a judicial office was conferred upon him. Where a judge has previously held other judicial office or another office with at least the same commencing basic salary his general seniority shall be determined by the day upon which such office was conferred upon him.

## **Section 21 Dismissal from service**

(1) A judge shall be dismissed

1. where he loses his status of being a German in terms of Article 116 of the Basic Law,
2. where, except as otherwise provided by statute, he enters the service of, or takes up office with, another public employer, or
3. where he is appointed a professional soldier or a soldier serving for a specified term.

In cases under number 2 the highest service authority concerned can, with the agreement of the new service employer and with the consent of the judge, direct that judicial tenure shall continue in addition to the new service position or office held.

(2) A judge shall be dismissed

1. where he refuses to take the judicial oath (section 38),
2. where at the time of his appointment he was a member of the German Bundestag or of a *Land* parliament and did not resign his parliamentary seat within the reasonable time-limit set by the highest service authority concerned,
3. where he was appointed after reaching retirement age,
4. where he requests his own dismissal in writing,
5. where he has reached retirement age or is unfit for service and the service relationship has not ended in his retirement, or
6. where he takes up abode or permanent residence abroad without the consent of the highest service authority.

(3) In the absence of his own written consent a judge for life or for a specified term can only be dismissed on the strength of a judicial decision that has entered into final and binding effect. Dismissal pursuant to subsection (1) of a judge for life or for a specified term can only be alleged after a court declaration having final and binding effect.

## **Section 22 Dismissal of a judge on probation**

(1) A judge on probation can be dismissed on expiry of six, twelve, eighteen or twenty-four months following his appointment.

(2) A judge on probation can be dismissed on expiry of the third or fourth year

1. where he is not suited to hold judicial office, or

2. where a judicial selection committee refuses to give him judicial tenure for life or for a specified term.

(3) A judge on probation can in addition be dismissed where he has conducted himself in a manner which would lead, in the case of a judge for life, to a disciplinary measure impossible in formal disciplinary proceedings.

(4) The time-limits stipulated in subsections (1) and (2) shall be extended to cover any period of unpaid leave.

(5) In the cases under subsections (1) and (2) the judge shall be notified of the dismissal order at least six weeks before the day of dismissal.

### **Section 23 Dismissal of a judge by commission**

The provisions concerning termination of probationary judicial tenure apply *mutatis mutandis* to the termination of judicial tenure by commission.

### **Section 24 Termination of service by judicial decision**

Where judgment is given against a judge by a German court within the area of application of this Act imposing

1. a sentence of at least one year's imprisonment for a criminal offence committed with intent,
2. a sentence of imprisonment for a criminal offence committed with intent and punishable in accordance with the provisions concerning the ban on wars of aggression, high treason, jeopardy to the democratic constitutional state or concerning espionage and jeopardy to external security,
3. disqualification from holding public office, or
4. forfeiture of a basic right under Article 18 of the Basic Law,

judicial tenure shall cease upon entry into final and binding effect of such judgment without any need for a further judicial decision.

## **Fourth Chapter Independence of the judiciary**

### **Section 25 Basic principle**

A judge shall be independent and subject only to the law.

### **Section 26 Supervision of service**

(1) A judge shall be subject to supervision only in so far as there is no detracting from his independence.

(2) Subject to the provision in subsection (1), supervision shall also include the power to censure an improper mode of executing an official duty and to urge proper and prompt attention to official duties.

(3) Where a judge contends that a supervisory measure detracts from his independence a court shall, on application being made by the judge, give a ruling in compliance with this Act.

**Section 27**  
**Conferment of a judicial office**

- (1) A judicial office shall be conferred upon a judge for life and upon a judge for a specified term at a particular court.
- (2) Another judicial office can be conferred upon the judge concerned at another court so far as may be permitted by any statute.

**Section 28**  
**Court staffing with judges for life**

- (1) Except as otherwise provided by a federal statute, only judges for life may act as judges of a court.
- (2) Only a judge may preside over a court. Where the bench takes action a judge for life shall act as presiding judge.

**Section 29**  
**Court staffing with judges on probation, judges by commission and judges on secondment**

Where a court gives a decision no more than one judge on probation or one judge by commission or one judge on secondment may participate therein. The judge concerned shall be identified as such in the roster allocating court business.

**Section 30**  
**Transfer and discharge from office**

- (1) A judge for life or for a specified term can only be transferred to another office or discharged from office without his own written consent
1. in judicial impeachment proceedings (Article 98 paragraphs 2 and 5 of the Basic Law),
  2. in formal disciplinary proceedings,
  3. in the interests of the administration of justice (section 31),
  4. on changes being made in the organisation of the courts (section 32).
- (2) Save in the case of subsection (1) number 4, a transfer or discharge from office can only be ordered on the strength of a judicial decision that has entered into final and binding effect.
- (3) Where a judge who holds several judicial offices is discharged from an office, such discharge shall be equal to a transfer.

**Section 31**  
**Transfer in the interests of the administration of justice**

A judge for life or for a specified term can be

1. transferred to another judicial office with the same final basic salary,
2. provisionally retired, or
3. retired

where facts unconnected with his judicial occupation make a measure of this kind imperative in order to avoid grave prejudice to the administration of justice.

### **Section 32**

#### **Changes in the organisation of the courts**

(1) Where a change is made in the organisation of the courts or their districts another judicial office can be conferred on a judge for life or for a specified term who is attached to the courts concerned. Where employment is not possible in a judicial office with the same final basic salary, a judicial office with a lower final basic salary can be conferred on the judge concerned.

(2) Where it is not possible for another judicial office to be conferred on the judge concerned he can be discharged from office. A new judicial office can be conferred on him at any time, including one with a lower final basic salary.

(3) Conferment of another judicial office (subsection (1)) and discharge from office (subsection (2), first sentence) shall be effected not later than three months after the change has entered into force.

### **Section 33**

#### **Retention of full salary**

(1) In the cases stated under section 32 the judge shall be paid his previous final salary including any pensionable or irrevocable service allowances and shall continue to move up the seniority scale within his previous salary grade. Remuneration for service, shall otherwise be made in accordance with the general provisions of the law relating to salaries. So far as remuneration for service is dependent on a judge's official place of residence, the judge's last official place of residence shall be decisive in a case of discharge from office (section 32 subsection (2), first sentence).

(2) A judge who has been discharged from office shall be deemed to be a retired judge for the purposes of application of the provisions concerning suspension of pension payments and concerning the concurrence of several pensions.

### **Section 34**

#### **Retirement on account of unfitness for service**

A judge for life or for a specified term can only be retired on account of unfitness for service without his own written consent on the strength of a judicial decision that has entered into final and binding effect. The first sentence shall apply *mutatis mutandis* to decisions concerning partial fitness for service.

### **Section 35**

#### **Provisional prohibition from carrying out official duties**

In proceedings under section 18 subsection (3), under section 19 subsection (3), under section 21 subsection (3) or under sections 30 and 34 the court can, on application being made, provisionally prohibit the judge concerned from carrying out his official duties.

### **Section 36**

#### **Membership of a parliamentary body or government**

(1) Where a judge consents to his nomination as a candidate for the election to the German Bundestag or to the legislative body of a *Land* he shall, on application being made, be granted unpaid leave, being necessary in preparation for his election, during the last two months before election day.

(2) Where a judge accepts election to the German Bundestag or to the legislative body of a *Land* or where the judge is appointed, with his own consent, a member of the Federal Government or of the government of a *Land*, the right and the duty to hold judicial office shall cease without a court decision and in accordance with specific statutory provision.

### **Section 37 Secondment**

- (1) A judge for life or for a specified term may only be seconded with his own consent.
- (2) Secondment shall be declared to last for a specified term.
- (3) A judge for life or for a specified term may, within one business year, be seconded to other courts within the same jurisdiction without his own consent and for altogether three months at the most.

## **Fifth Chapter Special duties of a judge**

### **Section 38 Judicial oath**

- (1) A judge shall take the following oath at a public sitting of the court:  
"I swear to exercise judicial office in conformity with the Basic Law of the Federal Republic of Germany and with the law, to adjudicate to the best of my knowledge and belief, without distinction of person, and to serve the cause of truth and justice alone - so help me God."
- (2) The oath can be taken without use of the words "so help me God".
- (3) In respect of judges who are in the service of a *Land* the oath can include a commitment to the *Land* constitution concerned and can be taken publicly in a different manner instead of being taken before a court.

### **Section 39 Maintenance of independence**

In and outside office a judge shall conduct himself, in relation also to political activity, in such a manner that confidence in his independence will not be endangered.

### **Section 40 Arbitrators and conciliators**

- (1) A judge may only be granted permission to act additionally as an arbitrator or give an expert opinion in arbitration proceedings where the parties to the arbitration agreement commission him jointly or where he is nominated by an agency that is not a party to the proceedings. Permission shall be refused where at the time of the decision regarding the granting of permission the judge is seized of the case or can be seized thereof in the allocation of court business.
- (2) Subsection (1) shall be applied *mutatis mutandis* to a judge who acts additionally as a conciliator in disputes between associations or between the latter and third parties.

### **Section 41 Expert legal opinion**

- (1) A judge shall not draw up expert legal opinions, nor shall he give legal advice for remuneration outside the course of his official duties.
- (2) A professor of law or of political science who has civil servant status and who is also a judge may draw up expert legal opinions and give legal advice with the permission of the highest public authority administering the courts. Such permission shall only be granted generally or in an individual case where the judicial activity of the professor does not exceed

the scale of an additional activity and it is not to be feared that official interests are being impaired.

**Section 42**  
**Additional activities in the administration of justice**

A judge can be obliged to perform an additional activity (additional office, additional occupation) only in the administration of justice and in court administration.

**Section 43**  
**Secrecy of deliberations**

A judge shall preserve secrecy regarding the course of deliberations and voting also after his service has ended.

**Sixth Chapter**  
**Honorary judges**

**Section 44**  
**Appointment and termination of appointment in respect of honorary judges**

(1) Honorary judges may only act in court on the basis of a statute and on the conditions laid down by statute.

(1a) Appropriate consideration shall be given to both women and men in the procedures to elect, nominate or appoint honorary judges.

(2) The appointment of an honorary judge can be terminated before expiry of the judge's term of office only on the conditions laid down by statute, and such appointment can be terminated against the judge's will only through a court decision.

**Section 44a**  
**Obstacles to appointment as honorary judge**

(1) No one shall be appointed to the office of honorary judge who

1. has violated the fundamental principles of humanity or of the constitutional state, or
2. is not qualified to hold the office of honorary judge on account of his activities as a full-time or unofficial member of the state security service of the former German Democratic Republic within the meaning of section 6 subsection (4) of the Stasi Records Act of 20 December 1991 (Federal Law Gazette I p. 2272) or as a person equal in status to these employees according to section 6 subsection (5) of the Stasi Records Act.

(2) To that end the office responsible for the appointment may require the person whose name has been put forward to make a written declaration to the effect that he does not fulfil the conditions under subsection (1).

**Section 44b**  
**Termination of appointment of honorary judges**

(1) An honorary judge shall have his appointment terminated where the facts described under section 44a subsection (1) become subsequently known.

(2) The procedure shall adhere to the provisions that otherwise apply to the termination of the appointment of the relevant type of honorary judge except as otherwise provided under subsections (3) and (4).

(3) Where an application for the termination of an appointment has been made or the termination proceedings have been initiated *ex officio* and there is a strong suspicion that the

conditions under section 44a subsection (1) are met, the court responsible for the termination of the appointment may order that the honorary judge may not exercise his office until such time as a decision has been taken regarding the termination. The order is non-appealable.

(4) The decision on the termination of an appointment is non-appealable. The honorary judge whose appointment has been terminated may, within a period of one year after the decision becomes effective, apply to the court to establish that the conditions under section 44a subsection (1) were not met. The next highest court shall give a decision on the application by non-appealable ruling. Where the next highest court is a supreme federal court or the decision was given by a supreme federal court, another tribunal of that court which gave the decision shall find in the matter. Where no competent court according to the third and fourth sentences can be found, the decision shall be given by that higher regional court which has its seat in the district in which the original decision was given.

### **Section 45**

#### **Independence and special duties of an honorary judge**

(1) An honorary judge shall be independent to the same extent as a professional judge. He shall preserve the secrecy of deliberations (section 43).

(1a) No one may be restricted in assuming or exercising the office of honorary judge nor may he be placed at a disadvantage on account of assuming or exercising such office. Employers shall release honorary judges from their work for the duration of their term of office. Termination of employment on account of assuming or exercising the office shall be inadmissible. Further-reaching *Land* regulations shall remain unaffected.

(2) Before performing his first official duty an honorary judge shall be sworn in by the presiding judge at a public sitting of the court. The oath shall remain in effect as long as he holds office, and in the event of renewed appointment also for the term of office immediately following. When taking the oath the swearer shall raise his right hand.

(3) An honorary judge shall take the oath by speaking the following words:

"I swear to carry out the duties of an honorary judge in conformity with the Basic Law of the Federal Republic of Germany and with the law, to adjudicate to the best of my knowledge and belief without distinction of person, and to serve the cause of truth and justice alone - so help me God."

The oath can be taken without use of the words "so help me God". The swearer shall be informed of this by the presiding judge before taking the oath.

(4) Where an honorary judge states that he does not wish to take an oath on grounds of faith or conscience he shall speak the following words:

"I pledge to carry out the duties of an honorary judge in conformity with the Basic Law of the Federal Republic of Germany and with the law, to adjudicate to the best of my knowledge and belief without distinction of person, and to serve the cause of truth and justice alone."

The pledge shall be equal to an oath.

(5) Where an honorary judge states that as a member of a religious or confessional group he wishes to make a solemn declaration using a formula of words of this group, he can add these words to the oath or the pledge.

(6) Honorary judges in the finance courts shall take an oath to the effect that they shall carry out the duties of an honorary judge in conformity with the Basic Law of the Federal Republic of Germany and with the law, that they shall preserve tax secrecy, that they shall adjudicate

to the best of their knowledge and belief, without distinction of person, and that they shall serve the cause of truth and justice alone.

This shall apply *mutatis mutandis* to a pledge.

(7) In respect of honorary judges in the *Land* courts the oath and the pledge can include an additional commitment to the *Land* constitution concerned.

(8) A record shall be made of an honorary judge's undertaking in respect of his office.

(9) The rights and duties of honorary judges shall otherwise be governed by the provisions applicable to the individual jurisdictions.

#### **Section 45a** **Designations used for honorary judges**

Honorary judges in the criminal courts shall use the designation "Lay Judge" (*Schöffe*); honorary judges in the commercial chambers shall use the designation "Commercial Judge" (*Handelsrichter*) and other honorary judges shall use the designation "Honorary Judge" (*ehrenamtlicher Richter*).

### **SECOND PART** **Judges in federal service**

#### **First Chapter** **General provisions**

#### **Section 46** **Application of federal civil service law**

Except as otherwise provided in this Act the provisions applying to federal civil servants shall apply *mutatis mutandis* to legal relations of judges in federal service until special provision is made.

#### **Section 47** **Federal Personnel Committee in matters concerning judges**

The head of the personnel division of the Federal Ministry of Justice and Consumer Protection, whose deputy shall be another civil servant in the Federal Ministry of Justice and Consumer Protection, shall participate, as a further permanent ordinary member, on the Federal Personnel Committee in matters concerning judges in federal members. Four judges shall be non-permanent ordinary members; they and their deputies shall be judges for life in federal service. The civil servant in the Federal Ministry of Justice and Consumer Protection and the judges shall be nominated by the Federal Minister of Justice and Consumer Protection with the agreement of the federal ministers concerned; three of the judges and their deputies shall be nominated by virtue of their names having been put forward by the central bodies of the professional associations of judges.

#### **Section 48** **Retirement**

(1) Judges for life retire at the end of that month in which they reach the retirement age applicable to them. They generally reach retirement age on their sixty-seventh birthday (standard retirement age).

(2) Retirement may not be postponed.

(3) Judges for life who were born before 1 January 1947 reach standard retirement age on their sixty-fifth birthday. The retirement age for judges for life who were born after 31 December 1946 shall be raised in line with the following table:

Year of birth	Increase in months	Retirement age	
		Year	Month
1947	1	65	1
1948	2	65	2
1949	3	65	3
1950	4	65	4
1951	5	65	5
1952	6	65	6
1953	7	65	7
1954	8	65	8
1955	9	65	9
1956	10	65	10
1957	11	65	11
1958	12	66	0
1959	14	66	2
1960	16	66	4
1961	18	66	6
1962	20	66	8
1963	22	66	10

(4) On their application, judges for life who are severely disabled within the meaning of section 2 subsection (2) of the Ninth Book of the Social Code shall be retired on their sixty-second birthday. On their application, judges for life who are severely disabled within the meaning of section 2 subsection (2) of the Ninth Book of the Social Code and who were born before 1 January 1952 shall be retired on their sixtieth birthday. The retirement age for judges who are severely disabled within the meaning of section 2 subsection (2) of the Ninth Book of the Social Code and who were born after 31 December 1951 shall be raised in line with the following table:

Year of birth Month of birth	Increase in months	Retirement age	
		Year	Month
1952 January	1	60	1
February	2	60	2
March	3	60	3

April	4	60	4
May	5	60	5
June-December	6	60	6
1953	7	60	7
1954	8	60	8
1955	9	60	9
1956	10	60	10
1957	11	60	11
1958	12	61	0
1959	14	61	2
1960	16	61	4
1961	18	61	6
1962	20	61	8
1963	22	61	10

(5) On their application, judges for life shall be retired on their sixty-third birthday.

(6) Section 147 subsection (2) of the Act on Federal Civil Servants shall apply *mutatis mutandis*.

**Section 48a**  
**Limitation of service and leave for family reasons**

(1) On application being made a judge shall

1. have his service limited to not more than half of his normal service,
2. be granted unpaid leave for up to three years with the possibility of an extension, where he is actually looking after or nursing
  - a) at least one child under the age of eighteen, or
  - b) some other relative who, according to expert medical opinion, is in need of nursing care.

(2) Leave within the meaning of subsection (1) also in conjunction with leave according to section 48b subsection (1) may not exceed twelve years' duration. An application for extension of limited service or of leave shall be made not later than six months before expiry of the approved release.

(3) Applications made according to subsection (1) number 1 shall only be approved where the judge consents, at the outset or when changes are made to the limited service and at the time of transition to full-time employment, to employment also in another court within the same jurisdiction. Applications pursuant to subsection (1) number 2 shall be approved only where the judge also consents to employment in another judicial office within the same jurisdiction.

(4) During release from service under subsection (1) approval may only be given to those additional activities that do not run counter to the purpose of such release.

(5) A decision to alter the scope of limited service or on the transition to full-time employment during the period for which leave is granted shall be taken upon application by the competent service authority. It shall permit, in cases of special hardship, an alteration to the extent of the limited service or the transition to full-time employment if the judge cannot reasonably be expected to continue in limited service to the extent previously served. In cases of special hardship the competent service authority may permit a return from leave if the judge cannot reasonably be expected to continue leave. Subsection (2), second sentence, shall apply *mutatis mutandis*.

(6) During the period of leave pursuant to subsection (1) number 2 in conjunction with subsection (2), first sentence, there shall be a right to healthcare benefits in application, *mutatis mutandis*, of the system of aid for public servants to judges receiving remuneration. This shall not apply where the judge becomes an entitled relative of an individual entitled to receive state medical aid or where he may claim family benefits pursuant to section 10 of the Fifth Book of the Social Code.

#### **Section 48b**

##### **Leave for reasons relating to labour market conditions**

(1) Where the situation on the labour market is such that there is an exceptionally large number of applicants and consequently an urgent public interest in employing more applicants in the public service, a judge who has reached his fifty-fifth birthday shall, upon application being made, be granted unpaid leave, such application being required to cover the period until commencement of his retirement.

(2) An application may only be granted where the judge concerned declares that during his leave he will refrain from engaging in paid additional activities and that he will only engage in paid activities pursuant to section 46 of this Act in conjunction with section 100 subsection (1) of the Act on Federal Civil Servants to the extent that he would be able to engage in such activities during full-time employment without infringing his official duties. Where this undertaking is culpably violated, permission shall be revoked. Notwithstanding the judge's declaration in accordance with the first sentence, the competent service authority may give permission for a judge to engage in additional activities to the extent that they do not run counter to the purpose to which the leave was granted. In special cases of hardship the competent service authority may permit a judge to return from leave where he cannot reasonably be expected to continue his leave.

(3) Where leave according to subsection (1) was granted prior to 1 July 1997, section 48 subsection (3), first sentence, number 1 in the version in force until 30 June 1997 shall continue to apply concerning the provisions of the commencement of retirement.

(4) Until 31 December 2004, leave according to subsection (1) shall be granted to a judge even after he has reached his fiftieth birthday. In conjunction with leave according to section 48a subsection (1), the duration of the leave may not exceed fifteen years.

#### **Section 48c**

##### **Part-time employment**

After part-time employment for at least fifteen years and after his fiftieth birthday a judge shall, upon application being made, be granted part-time employment up to three quarters of normal service where the conditions set out in section 48a subsection (1) are not fulfilled and where the judge can no longer reasonably be expected to return to full-time employment.

#### **Section 48d**

##### **Part-time employment, leave and professional advancement**

Part-time employment and leave according to section 48a or section 48c may not impede professional advancement; judges in part-time employment may be treated differently than judges in full-time employment only if justified on compelling pertinent grounds.

## **Second Chapter Representation of judges**

### **Section 49 Council of judges and council for judicial appointments**

For the representation of judges the following bodies shall be established at the federal courts:

1. councils of judges for participation in relation to general and social matters,
2. councils for judicial appointments for participation in appointing judges.

### **Section 50 Composition of the council of judges**

(1) The council of judges shall be composed of

1. five elected judges at the Federal Court of Justice and at the Federal Patent Court,
2. three elected judges at the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court, the Federal Social Court.

(2) A council of judges consisting of three elected judges shall be established for the judges of the military service courts. The council of judges shall specify its seat to be at one of the military service courts.

(3) The president of the court and his permanent deputy may not be members of the council of judges.

### **Section 51 Election of the council of judges**

(1) The members of the council of judges as well as an equal number of deputies shall be elected for a term of four years in a secret and direct election.

(2) In order to prepare for the election the president of the court, or in the case of the military service courts the oldest judge, shall convene a judges' meeting. Under the chairmanship of the oldest judge procedure for the election shall be determined at the meeting.

### **Section 52 Duties of the council of judges**

Section 2 subsection (1), sections 66 to 74, section 75 subsections (2) and (3) numbers 1 to 5, and numbers 11 to 16, section 76 subsection (2), section 78 subsection (1) numbers 1 and 2, and subsections (2) to (4), and sections 80 and 81 of the Federal Personnel Representation Act of 15 March 1974 (Federal Law Gazette I p. 693) shall apply *mutatis mutandis* to the powers and obligations of the council of judges.

### **Section 53 Joint duties of the council of judges and the body representing staff**

(1) Where both the council of judges and the body representing staff are concerned with a matter the council of judges shall send some of their members to the body representing staff for joint decision-making.

(2) The number of members sent by the council of judges shall bear the same ratio to the number of judges as the number of members of the body representing staff bears to the number of civil servants, employees and workers. However, the council of judges shall send at least as many members as are specified in section 17 subsection (3) and subsection (5), first sentence, of the Federal Personnel Representation Act.

#### **Section 54** **Formation of the council for judicial appointments**

(1) A council for judicial appointments shall be established at every supreme court of the Federation. The council for judicial appointments at the Federal Administrative Court shall also be competent for the military service courts. The council for judicial appointments shall

1. at the Federal Court of Justice, be composed of the president acting as chairman, his permanent deputy, two members elected by the presidium from amongst their number and three further members;
2. at the other supreme courts of the Federation, be composed of the president acting as chairman, his permanent deputy, one member elected by the presidium from amongst their number and two further members.

Where a permanent deputy is not appointed, his place shall be taken by the most senior presiding judge, and in a case of equal seniority by the oldest presiding judge. The remaining members shall be elected, in a secret and direct election, by the judges of the court where the council for judicial appointments is established. Section 51 subsection (2) shall apply *mutatis mutandis*.

(2) In matters concerning the judges of the military service courts, two members elected by the judges of these courts shall take the place of the two judges from the Federal Administrative Court; subsection (1), fifth and sixth sentences, shall apply *mutatis mutandis*.

(3) A council for judicial appointments shall be established for the Federal Patent Court; it shall be composed of the president acting as chairman, his permanent deputy, two members elected by the presidium from amongst their number and three further members. Subsection (1), fifth and sixth sentences, shall apply *mutatis mutandis*.

(4) The term of office of the council for judicial appointments shall last four years.

#### **Section 55** **Duties of the council for judicial appointments**

Before a judge is appointed or selected, the council for judicial appointments at the court where the judge is to be employed shall be asked to participate in the matter. The same shall apply where a judicial office is to be conferred on a judge at a court of a different jurisdiction.

#### **Section 56** **Initiation of participation**

(1) The highest service authority shall request the opinion of the council for judicial appointments. Papers supporting the candidate's or the judge's application as well as the evidence of his past career and of his qualifications shall be appended to the application. Personal files shall only be submitted with the consent of the candidate or the judge.

(2) Upon a request being made by a member of the judicial selection committee the highest service authority shall ask for an opinion.

#### **Section 57** **Opinion of the council for judicial appointments**

(1) The council for judicial appointments shall deliver a written opinion, with reasons, on the candidate's or the judge's personal and professional aptitude. The opinion shall be placed in the personal file.

(2) The council for judicial appointments shall deliver its opinion within one month.

(3) A judge may only be appointed or selected when the council for judicial appointments has submitted its opinion or where the time-limit in subsection (2) has expired.

#### **Section 58**

##### **Conduct of business, legal status of members**

(1) Bodies representing judges shall regulate their decision-making and the conduct of their business in rules of procedure.

(2) The costs incurred by bodies representing judges shall be borne by the budget for the courts. The court administration shall provide room accommodation as well as everything else needed for the conduct of business.

(3) Membership of a body representing judges shall be of an honorary nature. Sections 8 to 11, section 46 subsections (3) to (7) and section 47 subsection (2) of the Federal Personnel Representation Act shall apply *mutatis mutandis* to the rights and obligations of members.

#### **Section 59**

##### **Judges on secondment**

(1) A judge who has been seconded to a federal court shall be eligible to vote in elections to the council of judges for that court as soon as his secondment has exceeded a period of three months. Where a judge in federal service has been seconded to another court or to an administrative authority, he shall, after three months, lose his eligibility to vote in elections to the council of judges for the court to which he is still attached.

(2) A judge on secondment may not be a member of the council for judicial appointments at the federal court to which he has been seconded; he shall not be eligible to vote in elections to the council for judicial appointments at that court. Upon commencement of his secondment a judge in federal service shall cease to be a member of the council for judicial appointments at the court to which he is still attached; his eligibility to vote shall not, however, be affected.

#### **Section 60**

##### **Recourse to the courts in matters concerning the representation of judges**

Recourse to the administrative courts shall be available for legal disputes resulting from the formation or the activity of bodies representing judges. In legal disputes resulting from joint involvement of the council of judges and of the body representing staff (section 53 subsection (1)) the administrative court shall hear the matter in accordance with the rules of procedure and in the composition laid down in section 83 subsection (2) and in section 84 of the Federal Personnel Representation Act.

### **Third Chapter**

#### **Federal Service Court**

#### **Section 61**

##### **Constitution of the service court**

(1) A special division of the Federal Court of Justice shall be established as a Federal Service Court for judges in federal service.

(2) The Federal Service Court shall conduct its proceedings and give its decisions sitting with a presiding judge, two permanent associate judges and two non-permanent associate

judges. The presiding judge and the permanent associate judges shall be members of the Federal Court of Justice, and the non-permanent associate judges shall, as judges for life, be members of the jurisdiction to which the judge concerned is attached. The president of a court and his permanent deputy may not be members of the Federal Service Court.

(3) The presidium of the Federal Court of Justice shall appoint the presiding judge as well as the associate judges and their deputies for five business years. When bringing in the non-permanent associate judges the presidium shall be bound to follow the order on the list of nominations drawn up by the presidiums of the supreme courts of the Federation.

(4) The Federal Service Court shall be deemed to be a criminal division within the meaning of section 132 of the Courts Constitution Act.

## **Section 62**

### **Jurisdiction of the Federal Service Court**

(1) The Federal Service Court shall give a final decision

1. in disciplinary matters, relating to judges in retirement as well;
2. on a transfer in the interests of the administration of justice;
3. in the case of a judge for life or for a specified term in respect of
  - a) nullity of an appointment,
  - b) revocation of an appointment,
  - c) dismissal,
  - d) retirement on account of unfitness for service,
  - e) limited employment on account of limited fitness for service;
4. on a challenge being made to
  - a) a measure taken in view of a change in the organisation of the courts,
  - b) the secondment of a judge pursuant to section 37 subsection (3),
  - c) an order by virtue of which a judge on probation or a judge by commission is dismissed, or by virtue of which his appointment is revoked or the nullity of his appointment is established, or by virtue of which he is retired on account of unfitness for service,
  - d) procurement for an additional activity,
  - e) a supervisory measure taken for the reasons stated in section 26 subsection (3),
  - f) an order concerning limitation of service or leave pursuant to section 48a to section 48c.

(2) The Federal Service Court shall also hear appeals on points of law from the judgments of the service courts of the *Länder* (section 79).

## **Section 63**

### **Disciplinary proceedings**

(1) The provisions of the Federal Disciplinary Act shall apply *mutatis mutandis* to proceedings in disciplinary matters.

(2) Upon application being made by the highest service authority, the service court shall give a ruling on a provisional discharge from office, on the withholding of remuneration for service

or on the revocation of any of these measures. The ruling shall be served on the highest service authority and on the judge concerned.

(3) Section 78 of the Federal Disciplinary Act shall be applicable with the proviso that the provisions in respect of fees for appeal proceedings shall apply *mutatis mutandis* to disciplinary proceedings before the Federal Service Court. Proceedings on the imposition of a regulatory fine by the service court shall be equivalent, in respect of fees, to proceedings on the appeal from a corresponding disciplinary ruling by the supervisor. In proceedings concerning an application for the ordering of the provisional discharge from office or the withholding of remuneration, the provisions in respect of fees for the proceedings on the application for the suspension of these measures shall apply *mutatis mutandis*.

#### **Section 64** **Disciplinary measures**

(1) Only a reprimand can be given in a disciplinary ruling.

(2) Only a reprimand, a regulatory fine or removal from office can be imposed on a judge of one of the supreme courts of the Federation.

#### **Section 65** **Transfer proceedings**

(1) The provisions of the Rules of the Administrative Courts shall apply *mutatis mutandis* to proceedings on a transfer in the interests of the administration of justice (transfer proceedings).

(2) Proceedings shall be initiated on application being made by the highest service authority concerned. Preliminary proceedings shall not be held. The Representative of Federal Interests at the Federal Administrative Court shall not participate in these proceedings.

(3) The court shall declare one of the measures provided by section 31 to be admissible or it shall dismiss the application.

#### **Section 66** **Scrutiny proceedings**

(1) The provisions of the Rules of the Administrative Courts shall apply *mutatis mutandis* to proceedings in the cases referred to under section 62 subsection (1) numbers 3 and 4 (scrutiny proceedings). The Representative of Federal Interests at the Federal Administrative Court shall not participate in these proceedings.

(2) Preliminary proceedings shall only take place in the cases referred to under section 62 subsection (1) number 4.

(3) In the cases referred to under section 62 subsection (1) number 3 proceedings shall be initiated through an application being made by the highest service authority and in the cases referred to under number 4 they shall be initiated through an application being made by the judge concerned.

#### **Section 67** **Operative provisions of a judgment in scrutiny proceedings**

(1) In the case referred to under section 62 subsection (1) number 3 (a), the court shall make a finding of nullity or it shall dismiss the application.

(2) In the cases referred to under section 62 subsection (1) number 3 (b) to (d), the court shall rule the measure or the dismissal to be admissible or it shall dismiss the application.

(3) In the cases referred to under section 62 subsection (1) number 4 (a) to (d), the court shall revoke the contested measure or it shall dismiss the application.

(4) In the case referred to under section 62 subsection (1) number 4 (e), the court shall rule the measure to be inadmissible or it shall dismiss the application.

#### **Section 68 Suspension of proceedings**

(1) Where a supervisory measure is challenged on the grounds stated in section 26 subsection (3) and where the decision depends on the existence or non-existence of a legal relationship which forms, or is capable of forming, the subject-matter of other proceedings, the service court shall suspend the hearing until the other proceedings have been disposed of. Reasons shall be given for the suspension order.

(2) Where proceedings are not yet pending before the other court, the service court shall set a reasonable time-limit in the suspension order for initiating proceedings. Upon expiry of the time-limit without proceedings having been initiated the court shall dismiss the application without further examination on the merits.

(3) Where the decision of a court other than a service court depends on whether a supervisory measure is inadmissible on the grounds stated in section 26 subsection (3), the court shall suspend the hearing until disposal of the proceedings before the service court. Reasons shall be given for the suspension order. Subsection (2) shall apply *mutatis mutandis*.

### **Fourth Chapter Judges of the Federal Constitutional Court**

#### **Section 69 Limited application of this Act**

The provisions of this Act apply to judges of the Federal Constitutional Court only in so far as they are compatible with the special legal status of such judges pursuant to the Basic Law and to the Federal Constitutional Court Act.

#### **Section 70 Federal judges serving as judges of the Federal Constitutional Court**

(1) The rights and obligations of a judge serving at a supreme court of the Federation shall be in abeyance for as long as he is a member of the Federal Constitutional Court.

(2) On his own application, such a judge shall also be retired as a judge of a supreme court of the Federation at the moment when his tenure of office as a judge of the Federal Constitutional Court ends in accordance with section 98 of the Federal Constitutional Court Act.

### **THIRD PART Judges in the service of a *Land***

#### **Section 71 Application of the Act on the Status of Civil Servants**

Except as otherwise provided in this Act, the provisions of the Act on the Status of Civil Servants shall apply *mutatis mutandis* to the legal status of judges in the service of a *Land* until special provision is made.

#### **Section 71a Application of the Civil Servants' Pensions Act**

Except as otherwise provided in this Act, Chapters I to XIII of the Civil Servants' Pension Act shall apply *mutatis mutandis* to the pensions of judges in the service of a *Land*.

#### **Section 72** **Formation of councils of judges**

Councils of judges shall be established in the *Länder*. The members thereof shall be elected by the judges from amongst their own number in a direct and secret election.

#### **Section 73** **Duties of the council of judges**

The council of judges shall have the following minimum duties:

1. involvement in general and social matters affecting judges;
2. joint involvement together with the body representing staff in general and social matters affecting both judges and staff at the court concerned.

#### **Section 74** **Formation of the council for judicial appointments**

(1) A council for judicial appointments shall be established for every jurisdiction. Statutory provision can be made for the establishment of a joint council for judicial appointments for several jurisdictions.

(2) A council for judicial appointments shall be composed of a president of a court, acting as chairman, and of judges, of whom at least one half are to be elected by the judges concerned.

#### **Section 75** **Duties of the council for judicial appointments**

(1) The council for judicial appointments shall be asked to participate in the appointment of a judge to an office with a final basic salary that is higher than the final basic salary of an initial office. It shall deliver a written opinion, with reasons, on the judge's personal and professional aptitude.

(2) Further duties can be assigned to the council for judicial appointments.

#### **Section 76** **Retirement age**

(1) Judges for life retire upon reaching retirement age (standard retirement age).

(2) Special retirement ages may be laid down by statute on the attainment of which a judge is, on his application, to be retired.

#### **Section 76a** **Part-time employment**

The possibility of working part-time shall be provided.

#### **Section 77** **Establishment of service courts**

(1) Service courts shall be established in the *Länder*.

(2) The service courts shall give their decisions sitting with a presiding judge and with an equal number of permanent associate judges and non-permanent associate judges. All

members shall be judges appointed for life. The non-permanent members shall be members of the jurisdiction to which the judge concerned belongs.

(3) The members of a service court shall be appointed by the presidium of the court at which the service court has been established. *Land* legislation can bind the presidium to follow the list of nominations drawn up by the presidiums of other courts. The president of a court or his permanent deputy may not be members of a service court.

(4) Notwithstanding subsection (2), second sentence, provision may be made under *Land* law to the effect that honorary judges who are lawyers admitted to the bar shall participate as permanent associate judges. A practising lawyer may only be appointed as a member of the service court if he can be elected to the Board of Directors of the bar association concerned. The members of the service court may not concurrently be members of the Board of Directors of the bar association or the statutory assembly concerned or be employed on a full-time or part-time basis in the bar association or the statutory assembly concerned. The members who are practising lawyers shall be appointed for a term of five years by the presidium of the court at which the service court has been established; they may be re-appointed after the end of their term of office. The presidium shall be bound by the list of nominations drawn up by the Board of Directors of the bar association concerned in respect of the participation of permanent associate judges who are lawyers admitted to the bar. Where there are several bar associations in the jurisdiction of the service court, the number of members who are practising lawyers shall be proportional to the number of members of the individual bar associations. The presidium shall determine the required number of members who are practising lawyers. The lists of nominations must contain the names of at least one-and-a-half times the required number of practising lawyers. *Land* legislation shall make provision for further procedure in respect of the appointment of members of the service court who are practising lawyers.

### **Section 78** **Jurisdiction of a service court**

(1) The service court shall give a decision

1. in disciplinary matters, relating to judges in retirement as well;
2. on a transfer in the interests of the administration of justice;
3. in the case of a judge for life or for a specified term in respect of
  - a) nullity of an appointment,
  - b) revocation of an appointment,
  - c) dismissal,
  - d) retirement on account of unfitness for service,
  - e) limited employment as a result of limited fitness for service;
4. on a challenge being made to
  - a) a measure taken in view of a change in the organisation of the courts,
  - b) the secondment of a judge pursuant to section 37 subsection (3),
  - c) an order by virtue of which a judge on probation or a judge by commission is dismissed, or by virtue of which his appointment is revoked or the nullity of his appointment is established, or by virtue of which he is retired on account of unfitness for service,

- d) procurement for an additional activity,
- e) a supervisory measure taken for the reasons stated in section 26 subsection (3),
- f) an order concerning limitation of service or leave.

### **Section 79 Instances**

- (1) Proceedings in the service courts may be taken before at least two instances.
- (2) In the cases referred to under section 78 numbers 2, 3 and 4, the participants are entitled to lodge an appeal on points of law to the Federal Service Court pursuant to section 80.
- (3) In respect of the cases referred to under section 78 number 1, *Land* legislation can make provision for an appeal on points of law to the Federal Service Court.

### **Section 80 Appeal on points of law in transfer proceedings and in scrutiny proceedings**

- (1) The provisions of the Rules of the Administrative Courts shall apply *mutatis mutandis* to appeals on points of law in transfer proceedings and scrutiny proceedings. The Representative of Federal Interests at the Federal Administrative Court shall not participate in these proceedings.
- (2) Leave shall always be granted for an appeal on points of law.
- (3) An appeal on points of law can only be lodged on the ground that the judgment concerned was based on failure to apply a legal norm or on incorrect application of a legal norm.

### **Section 81 Admissibility of an appeal on points of law in disciplinary proceedings**

- (1) In so far as *Land* legislation has made provision for an appeal on points of law to the Federal Service Court in disciplinary matters (section 79 subsection (3)) such appeal can only be lodged, subject to subsection (3), where leave has been granted by the *Land* service court concerned. Leave to lodge such an appeal shall only be granted where
  - 1. the case concerned is of fundamental importance, or
  - 2. the judgment deviates from a decision of the Federal Service Court and is based on such deviation.
- (2) A refusal to grant leave to appeal on points of law can be challenged independently through the lodging of a complaint within two weeks after service of the judgment. The complaint shall be lodged with the court whose decision is to be challenged. In the notice of complaint the fundamental importance of the case shall be expounded or reference shall be made to the decision of the Federal Service Court from which the judgment deviates. The lodging of a complaint shall prevent the judgment from entering into final and binding effect. Where relief is not given in the light of the complaint, a decision shall be given by the Federal Service Court in the form of a ruling. Where the complaint is unanimously dismissed on the ground of inadmissibility or of ill-foundedness, the court shall not be required to give reasons. On rejection of the complaint by the Federal Service Court the judgment shall become final and binding. Where the complaint is accepted the time-limit for lodging an appeal on points of law shall run from the time when notification is served concerning the outcome of the complaint.

(3) Leave to appeal shall not be necessary where, as material procedural defects, it is objected that

1. the court hearing the case was not sitting in the prescribed composition,
2. there was participation in the decision by a judge who was disqualified by statute from exercising judicial office or who was successfully challenged for fear of bias, or
3. reasons were not given for the decision.

### **Section 82 Appeal on points of law in disciplinary proceedings**

(1) An appeal on points of law shall be lodged with the court whose judgment is being contested within two weeks after service of the judgment or after service of the ruling on leave to appeal on points of law in writing or through a statement which shall be taken down in writing at the court registry, and reasons shall be given therefor within two weeks at the latest. The reasons shall contain an indication of the extent to which the judgment is being contested, of the amendments to the judgment that are being applied for and of how these applications are substantiated. Section 80 subsection (3) shall apply *mutatis mutandis*.

(2) The Federal Service Court shall adhere to the findings of fact made in a contested judgment unless admissible and substantiated grounds are submitted for an appeal on points of law against such findings.

(3) Section 144 subsection (1) and section 158 subsection (1) of the Rules of the Administrative Courts shall apply *mutatis mutandis*. The judgment can only provide for the dismissal of the appeal on points of law or for the quashing of the contested judgment.

### **Section 83 Procedural provisions**

Disciplinary proceedings, transfer proceedings and scrutiny proceedings shall be regulated in accordance with section 63 subsection (2), section 64 subsection (1) and sections 65 to 68. Provision may be made under *Land* legislation in respect of court fees for disciplinary matters pertaining to judges in the service of a *Land*.

### **Section 84 Constitutional judges**

*Land* law shall determine the extent to which this Act shall apply to the members of the constitutional court of a *Land*.

## **FOURTH PART Transitional and concluding provisions**

### **First Chapter Amendment to federal law**

#### **Sections 85-103 (Amending and repealing provisions)**

#### **Section 104 Reference to repealed provisions**

In so far as reference is made in other acts and ordinances to provisions or designations which are repealed on account of this Act, they shall be replaced by the corresponding provisions or designations in this Act.

## **Second Chapter Transformation of legal relationships**

### **Section 105**

#### **Transitional provisions in respect of judges for life and judges for a specified term**

(1) Whoever was given civil service status for life or for a specified term before the entry into force of this Act and holds permanent judicial office shall have the legal status of a judge for life or for a specified term within the meaning of this Act.

(2) Whoever was not qualified to hold judicial office upon the entry into force of this Act may continue his employment at a court only in accordance with the provisions applicable until the entry into force of this Act.

(3) Whoever took an oath after 8 May 1945 on the occasion of the transfer of judicial office shall be exempt from the obligation to take the judicial oath (section 38).

### **Section 106**

#### **Transitional provisions in respect of judges on probation, judges by commission and judges on secondment**

(1) Whoever carries out the duties of a judge with civil service status on probation on the entry into force of this Act shall acquire the legal status of a judge on probation. The time-limits set out in section 12 subsection (2) and section 22 subsections (1) and (2) shall run from the time of his appointment.

(2) A civil servant for life or for a specified term who is entrusted with exercising judicial office at the time of the entry into force of this Act, may continue in that office for a maximum of one year after the entry into force of this Act. Thereafter he may only hold judicial office in accordance with the provisions of this Act.

### **Section 107 (repealed)**

### **Section 108 (repealed)**

### **Section 109 Qualification for judicial office**

Whoever was qualified to hold judicial office on 1 July 2003 shall retain that qualification.

### **Section 110 Qualification for higher administrative service**

Whoever was qualified, prior to the entry into force of this Act, for higher administrative service after studying law at a university for three years or after three years of training in public service by passing the legally specified examinations may be appointed as a judge in the jurisdiction of the constitutional courts, of the administrative courts and of the social courts after the entry into force of this Act. Section 19 subsection (1) number 1 shall apply *mutatis mutandis*.

### **Section 111 Presidents of the labour courts and social courts**

(1) Whoever fulfilled the conditions set out in section 18 subsection (3) of the Labour Courts Act or set out in section 9 subsection (2) of the Social Courts Act in the version applicable until the entry into force of this Act may also be appointed president of a labour court or of a social court for a maximum of two years after the entry into force of this Act. Section 19 subsection (1) number 1 shall apply *mutatis mutandis*. Up until that point the president of a

labour court may also be appointed a judge for life. Section 18 subsection (4) and section 19 of the Labour Courts Act in the version applicable until the entry into force of this Act shall apply to judges for a specified term.

(2) The same shall apply to an appointment as president on the basis of *Land* law pursuant to section 207 subsection (1) of the Social Courts Act.

### **Section 112** **Recognition of foreign examinations and qualifications acquired abroad**

(1) The provisions concerning the recognition of examinations according to the Federal Act on Refugees and Expellees and provisions under *Land* law concerning the recognition of the university examination covering areas of specialisation shall remain unaffected by this Act.

(2) Legal examinations which Germans originating from the territory referred to in Article 3 of the Unification Treaty took outside of Germany before 3 October 1990 shall be recognised as equivalent to the first state examination according to section 5 subsection (1) if they were equal in the German Democratic Republic to the final examinations of a graduate in law (*Diplom-Jurist*) on the basis of an international agreement with the Soviet Union or with states in Central and Eastern Europe which were allied to the Soviet Union, or by legal statute and they are equivalent to the first state examination.

(3) The Act on the Recognition of Professional Qualifications shall not be applicable.

### **Section 112a** **Certification of equivalence for admission to judicial preparatory training**

(1) Anyone holding a university diploma in law which was conferred in one of the Member States of the European Union, another contracting state to the Treaty on the European Economic Area or Switzerland and provides access in that state to post-university training for the profession of "European Lawyer" pursuant to section 1 of the Act on the Activities of European Lawyers Practising in Germany shall be admitted to the preparatory training on application being made if their knowledge and skills correspond to the knowledge and skills attested by the state examination covering compulsory subjects according to section 5 subsection (1).

(2) The review of the knowledge and skills required under subsection (1) shall cover the university diploma and the submitted proofs, especially degree certificates, examination certificates, other proofs of qualification and proofs of relevant work experience. Where no or only partial equivalence is certified, an aptitude test will be conducted on application being made.

(3) The aptitude test consists of a state examination in German which relates to the required knowledge of German law and which attests to the ability to successfully complete the legal preparatory training. The examinations shall cover civil law, criminal law and public law, including the associated law of procedure. Those written examination papers of the state examination covering compulsory subjects in the legal fields referred to in the second sentence shall be taken for which the review referred to in subsection (2), first sentence, did not already establish sufficient proficiency.

(4) The aptitude test shall be deemed to have been passed where a candidate

1. has passed the number of examination papers required to pass the state examination covering compulsory subjects according to the law of that *Land* in which the examination is taken, in any event at least half of the examination papers required by the state examination covering compulsory subjects, and

2. has passed examination papers in no less than two legal fields referred to in subsection (3), second sentence, of which at least one must be an examination paper in civil law.

Where proof of sufficient proficiency in one of the legal fields referred to in subsection (3), second sentence, has already been provided within the framework of the review referred to in subsection (2), first sentence, the examination papers in this field shall be deemed to have been passed.

(5) A failed aptitude test may be repeated once.

(6) The establishment of equivalence according to subsection (1) shall have the effect of a passed first state examination within the meaning of section 5 subsection (1).

(7) The *Land* judicial administrations or other offices responsible for holding the state examination covering compulsory subjects shall be responsible for certifying the equivalency of examinations and for conducting the aptitude test. Several *Länder* may establish a joint examination board for the purposes of conducting these examinations.

### **Sections 113 – 118 (repealed)**

### **Third Chapter Concluding provisions**

#### **Section 119 (repealed)**

#### **Section 120 Technical members of the Federal Patent Court**

Whoever fulfils the conditions set out in section 65 subsection (2) of the Patent Act shall also be qualified to hold judicial office at the Federal Patent Court. Section 19 subsection (1) number 1 shall apply *mutatis mutandis*.

#### **Section 120a Special provisions concerning official designations**

The provisions of this Act concerning official designations shall not apply to judges of the Federal Constitutional Court.

#### **Section 121 Judges in federal service as members of the legislative body of a *Land***

The provisions set out in sections 5 to 7, section 23 subsection (5) and in section 36 subsection (1) of the Act on the Legal Status of Members of the German Bundestag of 18 February 1977 (Federal Law Gazette I p. 297), which are decisive for judges elected to the German Bundestag, shall apply *mutatis mutandis* in respect of the legal status of judges in federal service elected to the legislative body of a *Land* after 1 June 1978. Where the judge is not entitled to the adequate remuneration of a public official on account of his membership of the legislative body, he shall be entitled to fifty per cent of his previous remuneration; account shall be taken of general increases in remuneration according to section 14 of the Civil Servants' Remuneration Act.

#### **Section 122 Public prosecutors**

(1) Only those who are qualified to hold judicial office (sections 5 to 8) may be appointed as public prosecutors.

(2) Service as a public prosecutor shall be equal to judicial service within the meaning of section 10 subsection (1).

(3) Section 41 shall apply to public prosecutors *mutatis mutandis*.

(4) Service courts for judges shall render decisions in formal disciplinary proceedings against public prosecutors. The non-permanent associate judges must be public prosecutors appointed for life. The Federal Minister of Justice and Consumer Protection shall appoint the non-permanent associate judges of the Federal Service Court. Provision shall be made under *Land* law in respect of the appointment of the non-permanent associate judges of the service courts in the *Länder*.

(5) Subsections (1) to (4) and section 110, first sentence, shall apply *mutatis mutandis* to the Representative of Federal Interests at the Federal Administrative Court, to the Disciplinary Attorney General, to public prosecutors and public authority lawyers at the courts of administrative jurisdiction of the *Länder*; the Federal Minister of Justice and Consumer Protection shall appoint the non-permanent associate judges of the Federal Service Court with the approval of the federal minister concerned.

### **Section 123**

#### **Staffing of professional disciplinary tribunals for practising lawyers**

Section 94 subsection (1) and section 101 subsection (3) of the Federal Lawyers' Act of 1 August 1959 (Federal Law Gazette I p. 565) shall remain unaffected by this Act. The *Land* judicial administrations shall specify before which court the honorary judges who are the presidents of a lawyers' disciplinary court (*Anwaltsgericht*) or of a higher lawyers' court (*Anwaltsgerichtshof*) are to be sworn into office.

### **Section 124**

#### **Career change**

(1) A judge who is qualified as a professional judge according to Annex I Chapter III A Part III Number 8 of the Unification Treaty of 31 August 1990 in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette 1990 II p. 885) may, on being given civil service tenure for life, also be appointed as public prosecutor after his appointment as judge for life where he is qualified and competent and with his written approval.

(2) Proof of suitability and aptitude shall be provided in the course of a two-year probationary period with the public prosecution office and by means of an appraisal.

(3) Where the appraisal does not attest to the judge's suitability and aptitude, the judge shall continue in his previous employment.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* in respect to an appointment as judge for a public prosecutor who is qualified as a public prosecutor in accordance with Annex I Chapter III A Part III Number 8 letter (z) (cc) of the Unification Treaty of 31 August 1990 in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette 1990 II p. 885) and has, on being given civil service tenure for life, been appointed as public prosecutor. During the probationary period in the public prosecution service judges shall be designated as "Public Prosecutor" (*Staatsanwalt*).

### **Section 125**

**(repealed)**

### **Section 126**

#### **Entry into force**

This Act shall enter into force on 1 July 1962. Sections 114 and 116 shall, however, enter into force on the day following promulgation.

## **Annex to Unification Treaty**

### **Extract from the Unification Treaty, Annex I Chapter III A, Parts III and IV**

**(Federal Law Gazette II 1990, p. 889, p. 929, p. 939)**

#### **Part III - Provisos applicable to the five acceding *Länder* (Article 1, para. 1 of the Unification Treaty) -**

#### **Part IV - Provisos applicable to Berlin -**

##### Part III

(... and) save as provided in the special regulation applicable to Berlin set out in Part IV, federal law shall enter into force on the territory referred to in Article 3 of the Treaty with the following provisos:

(...)

8. the German Judiciary Act in the version published on 19 April 1972 (Federal Law Gazette I p. 713) as last amended by Article 4 of the Act of 26 June 1990 (Federal Law Gazette I p. 1206), with the following provisos:

a) to x) (no longer applicable)

y) The following transitional provisions shall apply to the territory referred to in Article 1 para. 1 of the Treaty:

aa) to ii) (no longer applicable)

jj) A degree awarded by Potsdam-Eiche University of Law or a comparable institution shall not qualify the holder to engage in a legal profession regulated by statute.

z) The following shall apply to public prosecutors:

aa) and bb) (no longer applicable)

cc) In all other respects, the provisos a), b), c), e), h), k), p), q), v), w) y) aa), y) bb), y) ee), y) ff) and y) jj shall apply *mutatis mutandis*.

(...)

28. (no longer applicable)

##### Part IV

(...)

3. The following special features shall apply in Berlin in respect of the legal provisions referred to in Part III:

(...)

b) (no longer applicable)

(...)

j) (no longer applicable)