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German Judiciary Act

(Deutsches Richtergesetz – DRiG)

German Judiciary Act as published on 19 April 1972 (Federal Law Gazette I, p. 713), as last amended by Article 4 of the Act of 25 June 2021 (Federal Law Gazette I, p. 2154)

Part 1

Judicial office in Federation and *Länder*

Division 1

Introductory provisions

Section 1

Professional and honorary judges

Judicial power is exercised by professional and honorary judges.

Section 2

Application to professional judges

Unless otherwise provided under this Act, the provisions of this Act apply only to professional judges.

Section 3

Service employer

Judges are in the service of the Federation or of a *Land*.

Section 4

Incompatible duties

(1) Judges may not simultaneously perform duties of adjudication and legislative or executive duties.

(2) Besides duties of adjudication judges may, however,

1. perform duties relating to 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 relating to examinations,
5. act as chairman in conciliation committees within the meaning of section 73 (2) sentence 1 of the Federal Staff Representation Act

(*Bundespersonalvertretungsgesetz*) of 9 June 2021 (Federal Law Gazette I, p. 1614).

Division 2
Qualification for judicial office

Section 5
Qualification for judicial office

(1) Qualification to hold judicial office is acquired by anyone who concludes their legal studies at a university by taking the first state examination and completes a subsequent period of preparatory training; the first state examination comprises a university examination covering areas of specialisation and a state examination covering compulsory subjects.

(2) The content of the university studies and preparatory training is to be coordinated.

Section 5a
University studies

(1) University studies last four and a half years; this period may be shorter if the requisite attainments for admission to the university examination covering areas of specialisation and to the state examination covering compulsory subjects have been demonstrated. At least two years must be spent studying 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 having successfully completed 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 are the core areas of civil law, criminal law, public law and the law of procedure, including their links to European law, the methodology of legal science and the philosophical, historical and social foundations; the teaching of the compulsory subjects also includes a critical analysis of the injustices of the National Socialist regime and of the Communist dictatorship in Germany. 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 course of studies covers the ethical foundations of law and promotes students' ability to reflect critically on the law; it, further, covers the practice of court adjudication, the administration and 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 in which lectures are not held, time is spent on practical studies for a total of at least three months. *Land* law may provide that the time spent on practical studies is spent continuously at one place.

(4) Detailed provision is made under *Land* law.

Section 5b
Preparatory training

(1) The period of preparatory training lasts two years.

(2) Training includes the following compulsory periods of training:

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 a lawyer (*Rechtsanwalt*),

and one or more elective periods of training in which appropriate training is guaranteed.

(3) The training may take place on an appropriate scale with supranational, intergovernmental or foreign training agencies or with foreign lawyers. Training undertaken at a faculty of law and at the German University of Administrative Sciences Speyer can be credited. *Land* law may provide that the training pursuant to subsection (2) no. 1 may partly be undertaken at a court with jurisdiction in labour matters and the training pursuant to subsection (2) no. 3 may partly be undertaken at a court with jurisdiction in administrative, financial or social matters.

(4) Each compulsory training period lasts at least three months, and compulsory training with a lawyer lasts nine months; *Land* law may provide that the training pursuant to subsection (2) no. 4 may be undertaken for up to three months with a public notary, a company, an association or at another training place 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) Provision may be made for training courses as part of training lasting up to a total of three months.

(6) The opportunity to undertake the preparatory training on a part-time basis is to be afforded upon application where a person is actually caring for or providing nursing care to

1. at least one child under the age of 18 years, or
2. a spouse, life partner or person related in the direct line who, according to a medical certificate, has nursing care needs.

Where special reasons exist which are comparable in nature and scope to the reasons referred to in sentence 1 and which constitute considerable hardship, the opportunity to undertake the preparatory training on a part-time basis is to be afforded upon application. Where the preparatory training is undertaken on a part-time basis, the regular training is reduced by one fifth. Preparatory training undertaken on a part-time basis lasts two and a half years. The period by which the preparatory training is extended is to be spread across the compulsory periods of training in an appropriate manner.

(7) Detailed provision is made under *Land* law.

Section 5c

Crediting of training for higher intermediate service

(1) Successfully completed training for the higher intermediate judicial administration service and for the higher intermediate non-technical administrative service can, on application and for a period not exceeding 18 months, count towards the length of training. However, no more than six months can count towards the preparatory training.

(2) Detailed provision is made under *Land* law.

Section 5d

Examinations; authorisation to issue statutory instruments

(1) The state and university examinations relate to the requirements as to content in section 5a (3) sentence 1; notwithstanding section 5a (2) sentence 2, examinations may also take account of foreign language skills. Standardisation of examination requirements and achievement rating is to be ensured. The Federal Ministry of Justice and Consumer Protection is authorised to determine, by way of a statutory instrument requiring the approval of the Bundesrat, 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 is to be designed so as to enable university studies to be completed after five 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 lists 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 70 per cent and the result of the university examination covering areas of specialisation contributes 30 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 are to be taken in the 18th month of training at the earliest and in the 21st month of training at the latest; where training is undertaken on a part-time basis in accordance with section 5b (6) sentence 1, appropriate account is to be taken of the fact that the preparatory training period has been extended. At a minimum, the written examinations relate to the compulsory training periods. Where *Land* law stipulates that a home assignment is to be performed in addition to assignments performed under invigilation, provision may be made to the effect that such assignment must be performed after completion of the last compulsory period of training. The oral examinations 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 better reflects the candidate's performance in view of the overall impression gained and this has no influence on the candidate's passing the examination; performance during preparatory training is also to be taken into consideration in respect of the second state examination. The deviation may not exceed one third of the average range of a particular mark. The proportion of oral examination attainments may not exceed 40 per cent of the total mark. In determining the total mark given for the second examination, no account is 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 is 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, the crediting of periods of study abroad, of illness or of release from study towards the total period of study, as well as the

repercussions of interrupted examinations, is made under *Land* law. *Land* law may enable candidates to repeat the examination for the purpose of improving their grade.

(6) Detailed provision is made under *Land* law. It may also determine that the written assignments forming part of the state examinations may be submitted in electronic form.

Section 6

Recognition of examinations

(1) Candidates may not be refused admission to preparatory training because they 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. Time spent in preparatory training in a *Land* within the area of application of this Act is to be credited in each German *Land*.

(2) Anyone who has acquired the qualification to hold judicial office within the area of application of this Act pursuant to section 5 is qualified to hold judicial office in the Federation and in each German *Land*.

Section 7

University professors

Each full professor of law at a university within the area of application of this Act is qualified to hold judicial office.

Division 3

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

Conditions for appointment

Judicial tenure may only be given to a person who

1. is a German within the meaning of Article 116 of the Basic Law,
2. makes it clear that he or she 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) Anyone who has worked as a judge for at least three years after acquiring the qualification to hold judicial office may be appointed as judge for life.

(2) Crediting towards the period referred to in subsection (1) is possible for activities

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

activities was similar to that involved in the execution of an office in the higher civil service,

3. as a teacher of law at a German scientific institution of higher education who is qualified to give instruction at a university,
4. as a lawyer, as a notary (*Notar*) or as a lawyer having acquired the qualification to hold judicial office (*Assessor*) assisting a lawyer or notary,
5. in other professions, provided that the type and significance of the activities was, like the activities referred to in nos. 1 to 4, suitable for teaching knowledge and experience for the exercise of judicial office.

Crediting of more than two years of such activities presupposes special knowledge and experience on the part of the person to be appointed.

Section 11

Appointment for specified term

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

Section 12

Appointment on probation

- (1) Those persons who are later to be employed as judges for life or as public prosecutors may be appointed as judges on probation.
- (2) Five years at the latest after their appointment, judges on probation are to be appointed judges for life or, on being given civil service tenure for life, they are to be appointed public prosecutors. This period is extended by any period of unpaid leave taken.

Section 13

Employment of judge on probation

Judges on probation can be employed without their consent only at a court, at a court administration authority or at a public prosecution office.

Section 14

Appointment as judge by commission

- (1) Civil servants for life or for a specified term can be appointed judges by commission if they are later to be employed as judges for life.
- (2) (repealed)

Section 15

Effects on civil service tenure

- (1) Judges by commission retain the office they hold. Their remuneration and pension is determined in accordance with the office held. In all other respects, the rights and duties of civil service tenure are suspended for the duration of judicial tenure by commission, with the exception of the duty to maintain official secrecy and the ban on accepting gifts.
- (2) Where judicial tenure is established in regard to another service employer, the service employer concerned is also bound to pay the remuneration provided for the office.

Section 16

Duration of employment as judge by commission

- (1) Two years at the latest after their appointment, judges by commission are to be appointed judges for life or proposed to a judicial selection committee for selection. If a judge declines the appointment, the judicial tenure by commission ceases.
- (2) The provisions relating to judges on probation apply accordingly to the employment of judges by commission.

Section 17
Appointment by deed

- (1) Judges are appointed by delivery of a deed.
- (2) Appointment is necessary
1. to establish judicial tenure,
 2. to convert one form of judicial tenure into another (section 8),
 3. to confer a different office with a different final basic salary.
- (3) In establishing judicial tenure the words '*unter Berufung in das Richterverhältnis*' (on being given judicial tenure) must be included in the deed of appointment, together with the adjunct *auf Lebenszeit* (for life), *auf Zeit* (for a specified term), *auf Probe* (on probation) or *kraft Auftrags* (by commission). Where judicial tenure is established for a specified term, the duration of the appointment is to 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), must 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 must be included in the deed of appointment.

Section 17a
Resignation of parliamentary seat in Bundestag

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

Section 18
Nullity of appointment

- (1) An appointment is null and void if it is made by an authority which is not competent to make such appointment. The appointment cannot be confirmed retrospectively.
- (2) An appointment is also null and void if, at the time of his or her appointment, the appointee
1. was not a German within the meaning 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 judge for life or for a specified term can only be alleged after it has been finally established by a court .

Section 19
Revocation of appointment

- (1) An appointment is to be revoked

1. if the appointee was not qualified to hold judicial office,
2. if participation of a judicial selection committee, as required by statute, was omitted and the judicial selection committee refused subsequent confirmation of the appointment,
3. if the appointment was procured by coercion, wilful deceit or bribery, or
4. if it was not known that the appointee had committed a serious criminal offence (*Verbrechen*) or a less serious criminal offence (*Vergehen*) which makes them seem unworthy of holding judicial tenure and where, on account of the criminal offence committed, they were, or will be, issued with a final sentence.

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

(3) In the absence of the judge's written consent, an appointment as judge for life or for a specified term can only be revoked on the strength of a final judicial decision.

Section 19a Official designations

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

(2) Judges by commission use the designation *Richter am...* (Judge) followed by an adjunct indicating the court concerned.

(3) Judges on probation use the designation *Richter am...* (Judge) and, when acting as public prosecutors, the designation *Staatsanwalt* (Public Prosecutor).

Section 20 General seniority

General seniority of judges is determined by the day on which a judicial office was conferred on them. Where judges have previously held other judicial office or another office with at least the same basic starting salary, their general seniority is determined by the day on which such office was conferred on them.

Section 21 Dismissal from service

(1) Judges are dismissed

1. if they lose their status of being a German within the meaning of Article 116 of the Basic Law,
2. if, unless otherwise provided by statute, they enter the service of, or take up office with, another public employer, or
3. if they are appointed as professional soldier or soldier serving for a specified term.

In the cases referred to in no. 2, the highest service authority concerned can, with the agreement of the new service employer and the consent of the judge, direct that judicial tenure is to continue in addition to the new service position or office held.

(2) Judges are to be dismissed

1. if they refuse to take the judicial oath (section 38),
2. if, at the time of their appointment, they were a member of the Bundestag or of a *Land* parliament and did not resign their parliamentary seat within the reasonable period set by the highest service authority,
3. if they were appointed after reaching retirement age,
4. if they request their own dismissal in writing,
5. if they have reached retirement age or are unfit for service and the service relationship has not ended in their retirement, or
6. if they take up residence or permanent residence abroad without the consent of the highest service authority.

(3) In the absence of their own written consent, judges for life or for a specified term can only be dismissed on the strength of a final judicial decision. Dismissal in accordance with subsection (1) of a judge for life or for a specified term cannot be enforced until it has been finally established by a court.

Section 22

Dismissal of judge on probation

(1) Judges on probation can be dismissed on the expiry of six, 12, 18 or 24 months following their appointment.

(2) Judges on probation can be dismissed on the expiry of three or four years

1. if they are not suited to holding judicial office, or
2. if a judicial selection committee refuses to give them judicial tenure for life or for a specified term.

(3) Judges on probation can, in addition, be dismissed if they have conducted themselves in a manner which would lead, in the case of judges for life, to a disciplinary measure impossible in formal disciplinary proceedings.

(4) The periods stipulated in subsections (1) and (2) are extended by any period of unpaid leave.

(5) In the cases referred to in subsections (1) and (2), the judge is to be notified of the dismissal order at least six weeks before the day of dismissal.

Section 23

Dismissal of judge by commission

The provisions concerning termination of probationary judicial tenure apply accordingly to termination of judicial tenure by commission.

Section 24

Termination of service by judicial decision

If 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, endangering the democratic state under the rule of law or concerning treason and endangering external security,

3. disqualification from holding public office, or

4. forfeiture of a basic right under Article 18 of the Basic Law,

then judicial tenure ceases on entry into final and binding effect of such judgment, without any need for a further judicial decision.

Division 4 Independence of judiciary

Section 25 Basic principle

Judges are independent and subject only to the law.

Section 26 Supervision of service

(1) Judges are subject to supervision only insofar as their independence is not compromised.

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

(3) If a judge contends that a supervisory measure compromises his or her independence, a court, on application by that judge, gives a ruling in compliance with this Act.

Section 27 Conferment of judicial office

(1) Judicial office is to be conferred on judges for life and on judges for a specified term at a particular court.

(2) Another judicial office can be conferred on such judges at another court insofar as this is permitted by statute.

Section 28 Court staffing with judges for life

(1) Unless 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 a court sits in the composition of several judges, a judge for life must act as presiding judge.

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

(1) When giving a court decision, no more than one judge on probation or one judge by commission or one judge on secondment may participate.

(2) In derogation from subsection (1), besides one of the judges referred to in subsection (1) a judge appointed for life who is promoted or transferred to another court in the course of ongoing proceedings and is subsequently seconded directly back, in full or in part, to the court of decision may participate when a court gives a decision.

(3) The judges designated in subsections (1) and (2) must be identified as such in the roster allocating court business.

Section 30

Transfer and discharge from office

(1) Judges for life or for a specified term can only be transferred to another office or discharged from office without their own written consent

1. in judicial impeachment proceedings (Article 98 (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 to the organisation of the courts (section 32).

(2) Save in the case referred to in subsection (1) no. 4, transfer or discharge from office can only be ordered on the strength of a final judicial decision.

(3) If a judge who holds several judicial offices is discharged from an office, such discharge is equal to transfer.

Section 31

Transfer in interests of administration of justice

Judges 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 their judicial occupation make a measure of this kind imperative in order to avoid grave prejudice to the administration of justice.

Section 32

Changes to organisation of courts

(1) Where a change is made to 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) If it is not possible for another judicial office to be conferred on the judge concerned, he or she can be discharged from office. A new judicial office can be conferred on him or her 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) sentence 1) can be effected no later than three months after the change has entered into force.

Section 33

Retention of full salary

(1) In the cases referred to in section 32, judges are paid their previous final salary including any pensionable or irrevocable service allowances and continue to move up the seniority scale within their previous salary grade. In all other respects, remuneration is paid in accordance with the general provisions of the law relating to salaries. Insofar as remuneration is dependent on a judge's official place of residence, the judge's last official place of residence is decisive in a case of discharge from office (section 32 (2) sentence 1).

(2) Judges who have been discharged from office are deemed to be retired judges for the purposes of application of the provisions concerning suspension of pension payments and the concurrence of several pensions.

Section 34

Retirement on account of unfitness for service

Judges for life or for a specified term can only be retired on account of unfitness for service without their own written consent on the strength of a final judicial decision. Sentence 1 applies accordingly to decisions concerning partial fitness for service.

Section 35

Provisional ban on carrying out official duties

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

Section 36

Membership of parliament or government

(1) If a judge consents to be nominated as a candidate for election to the Bundestag or to the legislative body of a *Land*, that judge is, on application, to be granted that unpaid leave in the last two months before election day which is necessary to be able to prepare for his or her election.

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

Section 37

Secondment

(1) Judges for life or for a specified term may only be seconded with their consent.

(2) Secondment is to be declared to last for a specified term.

(3) Judges for life or for a specified term may, within one business year, be seconded to other courts within the same jurisdiction without their consent and for a total of three months at the most.

Division 5

Special duties of judge

Section 38

Judicial oath

(1) Judges are to take the following oath at a public sitting of a 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 may be taken without the use of the words ‘so help me God’.

(3) In the case of judges who are in the service of a *Land*, the oath may include a commitment to the *Land* constitution and can be taken publicly in a different manner instead of being taken before a court.

Section 39

Maintenance of independence

Both while performing and not performing their official duties, including political activities, judges are to conduct themselves in such a manner that confidence in their independence is not jeopardised.

Section 40
Arbitrators and conciliators

(1) Judges may only be granted permission to act additionally as arbitrators or to give an expert opinion in arbitration proceedings if the parties to the arbitration agreement commission them jointly or if they are nominated by an agency which is not a party to the proceedings. Permission is to be refused where, at the time of the decision regarding the granting of permission, the judge concerned is seized of the case or may be seized thereof in the allocation of court business.

(2) Subsection (1) applies accordingly to judges who act additionally as conciliators in disputes between associations or between the latter and third parties.

Section 41
Expert legal opinion

(1) Judges may neither draw up expert legal opinions nor give legal advice for remuneration outside the course of their official duties.

(2) Professors of law or of political science who have civil servant status and who are also judges may draw up expert legal opinions and give legal advice with the permission of the highest public authority administering the courts. Such permission may only be granted generally or in an individual case if the professor's judicial activity 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 administration of justice

Judges can be obliged to perform an additional activity (subsidiary office, secondary employment) only in the administration of justice and the court administration.

Section 43
Secrecy of deliberations

Judges are to preserve secrecy regarding the course of deliberations and voting even after their service has ended.

Division 6
Honorary judges

Section 44
Appointment and termination of appointment of honorary judges

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

(1a) Appropriate consideration is, as a rule, to 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 under 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 is, as a rule, to 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 their 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 (4) of the Stasi Records Act (*Stasi-Unterlagen-Gesetz*) of 20 December 1991 (Federal Law Gazette I, p. 2272) or as a person equal in status to such employees under section 6 (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 or she does not meet the conditions under subsection (1).

Section 44b

Termination of appointment of honorary judges

- (1) Honorary judges are to have their appointment terminated if the facts described in section 44a (1) become subsequently known.
- (2) The procedure is governed by the provisions which otherwise apply to the termination of the appointment of the relevant type of honorary judge, unless 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 (1) are met, the court responsible for terminating the appointment may order that the honorary judge may not exercise his or her office until a decision has been given regarding the termination. The order is non-appealable.
- (4) The decision to terminate 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 (1) were not met. The next highest court gives a decision on the application by non-appealable order. If 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 finds in the matter. If no competent court pursuant to sentences 3 and 4 can be found, the decision is 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 honorary judge

- (1) Honorary judges are independent to the same extent as professional judges. They must preserve the secrecy of deliberations (section 43).
- (1a) No one may be restricted in assuming or exercising the office of honorary judge nor may anyone be placed at a disadvantage on account of assuming or exercising such office. Employers are required to 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 is not permitted. Further-reaching *Land* regulations remain unaffected.
- (2) Before performing their first official duty, honorary judges are to be sworn in by the presiding judge at a public sitting of the court. The oath remains in effect as long as the honorary judge holds office, and in the event of renewed appointment also for

the term of office immediately following. When taking the oath the swearer is, as a rule, to raise his or her right hand.

(3) Honorary judges 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 may be taken without the use of the words ‘so help me God’. The swearer is to be informed of this by the presiding judge before taking the oath.

(4) If an honorary judge states that he or she does not wish to take an oath on the grounds of faith or conscience, the judge is to 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 is equal to an oath.

(5) If an honorary judge states that, as a member of a religious or confessional group, he or she wishes to make a solemn declaration using the group’s form of affirmation, the judge may add those words to the oath or pledge.

(6) Honorary judges in the fiscal courts take an oath to the effect that they will 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 will preserve tax secrecy, that they will adjudicate to the best of their knowledge and belief, without distinction of person, and that they will serve the cause of truth and justice alone.

This applies accordingly to a pledge.

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

(8) A record is made of an honorary judge’s undertaking in respect of his or her office.

(9) In all other respects, the rights and duties of honorary judges are governed by the provisions applicable to each individual jurisdiction.

Section 45a

Designations used for honorary judges

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

Part 2

Judges in federal service

Division 1

General provisions

Section 46

Application of federal civil service law

Unless otherwise provided under this Act, the provisions applicable to federal civil servants apply accordingly to the legal relations of judges in federal service until special provision is made.

Section 47

Federal Staff Committee in matters concerning judges

The head of the personnel department of the Federal Ministry of Justice and Consumer Protection, whose deputy is another civil servant in the Federal Ministry of Justice and Consumer Protection, participates, as a further permanent ordinary member, in the Federal Staff Committee in matters concerning judges in federal service. Four judges are non-permanent ordinary members; they and their deputies must be judges for life in federal service. The civil servant in the Federal Ministry of Justice and Consumer Protection and the judges are nominated by the Federal Ministry of Justice and Consumer Protection with the agreement of the federal ministries concerned; three of the judges and their deputies are 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 reaching the age of 67 (standard retirement age).

(2) Retirement cannot be postponed.

(3) Judges for life who were born before 1 January 1947 reach standard retirement age on reaching the age of 65. The retirement age for judges for life who were born after 31 December 1946 is hereby 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 (2) of Book Nine of the Social Code (*Sozialgesetzbuch IX*) retire on reaching the age of 62. On their application, judges for life who are severely disabled within the meaning of section 2 (2) of Book Nine of the Social Code and who were born before 1 January 1952 retire on reaching the age of 60. The retirement age for judges who are severely disabled within the meaning of section 2 (2) of Book Nine of the Social Code and who were born after 31 December 1951 is hereby 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 to 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 are to retire on reaching the age of 63.

(6) Section 147 (2) of the Federal Civil Service Act (*Bundesbeamtengesetz*) applies accordingly.

Section 48a

Limitation of service and leave for family reasons

(1) On application, judges are to

1. have their service limited to up to half of their normal service,
2. be granted unpaid leave for up to three years with the possibility of an extension,

if the judge is actually looking after or nursing

- a) at least one child under the age of 18, 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 under section 48b (1), may not exceed 12 years. An application for the extension of limited service or of leave is to be made no later than six months before expiry of the approved release.

(3) Applications made pursuant to subsection (1) no. 1 are only to be approved if the judge simultaneously consents, at the outset or when changes are made to the limited service and at the time of transition to full-time employment, to also be employed in another court within the same jurisdiction. Applications made pursuant to subsection (1) no. 2 are only to be approved where the judge also consents to be employed in another judicial office within the same jurisdiction.

(4) During release from service in accordance with subsection (1), approval may only be given for those additional activities which 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 is given, on application, by the competent service authority. In cases of special hardship, it is, as a rule, to permit 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) sentence 2 applies accordingly.

(6) Applying the system of aid for public servants to judges receiving remuneration accordingly, then during the period of leave referred to in subsection (1) no. 2 in conjunction with subsection (2) sentence 1 judges are entitled to healthcare benefits. This does not apply if the judge becomes an entitled relative of an individual entitled to receive state medical aid or where he or she may claim family benefits under section 10 of Book Five of the Social Code (*Sozialgesetzbuch V*).

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, judges who have reached the age of 55 are, on application, to be granted unpaid leave, such application being required to cover the period until commencement of their retirement.

(2) Applications may only be granted where judges declare that during their leave they will refrain from engaging in paid additional activities and will only engage in

paid activities in accordance with section 46 of this Act in conjunction with section 100 (1) of the Federal Civil Service Act to the extent that they would be able to engage in such activities during full-time employment without infringing any official duties. Where this undertaking is culpably violated, permission is to be revoked. Notwithstanding a judge's declaration in accordance with sentence 1, 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 for which the leave was granted. In special cases of hardship, the competent service authority may permit judges to return from leave if they cannot reasonably be expected to continue their leave.

(3) If leave pursuant to subsection (1) was granted prior to 1 July 1997, section 48 (3) sentence 1 no. 1 in the version in force until 30 June 1997 continues to apply to the provisions of the commencement of retirement.

(4) Until 31 December 2004, leave pursuant to subsection (1) is to be granted to judges even after they have reached the age of 50. In conjunction with leave pursuant to section 48a (1), the duration of the leave may not exceed 15 years.

Section 48c **Part-time employment**

After part-time employment for at least 15 years and reaching the age of 50, judges are, on application, to be granted part-time employment up to three quarters of normal service if the conditions set out in section 48a (1) are not met and 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 in accordance with 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 this is justified on compelling pertinent grounds.

Division 2 **Representation of judges**

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

The following bodies are to be established at the federal courts to represent judges:

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

Section 50 **Composition of council of judges**

(1) A council of judges consists 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 Fiscal Court, the Federal Labour Court and the Federal Social Court.

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

(3) The president of the court and the president's permanent deputy cannot be members of the council of judges.

Section 51

Election of council of judges

(1) The members of a council of judges and an equal number of deputies are elected for a four-year term in a secret and direct ballot.

(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, convenes a judges' meeting. Under the chairmanship of the oldest judge, procedure for the election is determined at the meeting.

Section 52

Duties of council of judges

Section 2 (1), sections 65 to 71, section 79, section 80 (1) nos. 1, 4, 6 to 8, 14, 16 and 18, and section 84 (1) no. 1 and no. 2 and (2) of the Federal Staff Representation Act of 9 June 2021 (Federal Law Gazette I, p. 1614) applies accordingly to the powers and obligations of the council of judges.

Section 53

Joint duties of council of judges and staff representation

(1) Where both the council of judges and the staff representatives are concerned with a matter, the council of judges delegates some of their members to the staff representation for joint decision-making.

(2) The number of members delegated by the council of judges must bear the same ratio to the number of judges as the number of members of the staff representation bears to the number of civil servants, salaried employees and workers. However, the council of judges delegates at least as many members as are specified in section 17 (3) and (5) sentence 1 of the Federal Staff Representation Act of 9 June 2021 (Federal Law Gazette I, p. 1614).

Section 54

Formation of council for judicial appointments

(1) A council for judicial appointments is to be established at each supreme court of the Federation. The council for judicial appointments at the Federal Administrative Court is also competent for the military service courts. It comprises,

1. at the Federal Court of Justice, the president acting as chairman, the president's 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, the president acting as chairman, the president's permanent deputy, one member elected by the presidium from amongst their number and two further members.

If a permanent deputy is not appointed, the place of the permanent deputy is taken by the most senior presiding judge and, in a case of equal seniority, by the oldest presiding judge. The remaining members are elected, in a secret and direct ballot, by the judges of the court where the council for judicial appointments is established. Section 51 (2) applies accordingly.

(2) In matters concerning the judges of the military service courts, two members elected by the judges of these courts take the place of the two judges from the Federal Administrative Court; subsection (1) sentences 5 and 6 applies accordingly.

- (3) A council for judicial appointments is to be established for the Federal Patent Court; it comprises the president acting as chairman, the president's permanent deputy, two members elected by the presidium from amongst their number and three further members. Subsection (1) sentences 5 and 6 applies accordingly.
- (4) The term of office of the council for judicial appointments is four years.

Section 55

Duties of 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 is to be asked to participate in the matter. The same applies 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 requests the opinion of the council for judicial appointments. Papers supporting the candidates' or judges' applications as well as evidence of their past career and qualifications are to be appended to the application. Personal files may only be submitted with the consent of the candidates or judges.
- (2) On the request of a member of the judicial selection committee, the highest service authority is required to ask for an opinion.

Section 57

Opinion of council for judicial appointments

- (1) The council for judicial appointments delivers a written opinion, with reasons, on the candidate's or the judge's personal and professional aptitude. The opinion is to be placed in their personal file.
- (2) The council for judicial appointments is to deliver its opinion within one month.
- (3) Judges may only be appointed or selected when the council for judicial appointments has submitted its opinion or the period set out in subsection (2) has expired.

Section 58

Conduct of business, legal status of members

- (1) Bodies representing judges regulate their decision-making and the conduct of their business in rules of procedure.
- (2) Costs incurred by bodies representing judges are paid from the courts' budgets. The court administration provides rooms and everything else needed for the conduct of business.
- (3) Membership of a body representing judges is of an honorary nature. Sections 10 to 12 and sections 52 to 55 (2) of the Federal Staff Representation Act of 9 June 2021 (Federal Law Gazette I, p. 1614) apply accordingly to the rights and obligations of members.

Section 59

Judges on secondment

- (1) Judges who have been seconded to a federal court are eligible to vote in elections to the council of judges for that court as soon as their secondment has exceeded a period of three months. Judges in federal service who have been seconded to another court or to an administrative authority lose their eligibility to

vote in elections to the council of judges for the court to which they are still attached after three months.

(2) Judges on secondment may not be a member of the council for judicial appointments at the federal court to which they have been seconded; they are not eligible to vote in elections to the council for judicial appointments at that court. On commencement of their secondment, judges in federal service cease to be members of the council for judicial appointments at the court to which they are still attached; however, their eligibility to vote is not affected.

Section 60

Recourse to courts in matters concerning representation of judges

Recourse to the administrative courts is available for legal disputes resulting from the formation or the activity of bodies representing judges. In legal disputes resulting from the joint involvement of the council of judges and the staff representation (section 53 (1)), the administrative court hears the matter in accordance with the rules of procedure and in the composition laid down in section 108 (2) and in section 109 of the Federal Staff Representation Act of 9 June 2021 (Federal Law Gazette I, p. 1614).

Division 3

Federal Service Court

Section 61

Constitution of service court

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

(2) The Federal Service Court conducts its proceedings and gives its decisions sitting in a composition of a presiding judge, two permanent associate judges and two non-permanent associate judges. The presiding judge and permanent associate judges must be members of the Federal Court of Justice, and the non-permanent associate judges, as judges for life, must be members of the jurisdiction to which the judge concerned is attached. The president of a court and the president's permanent deputy cannot be members of the Federal Service Court.

(3) The presidium of the Federal Court of Justice appoints 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 is bound to follow the order in the list of nominations drawn up by the presidiums of the supreme courts of the Federation.

(4) The Federal Service Court is deemed to be a civil panel within the meaning of section 132 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*).

Section 62

Jurisdiction of Federal Service Court

(1) The Federal Service Court gives a final decision

1. in disciplinary matters, including those relating to retired judges;
2. on transfers in the interests of the administration of justice;
3. in the case of judges 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 to the organisation of the courts,
 - b) the secondment of a judge pursuant to section 37 (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 or her appointment is revoked or the nullity of his or her appointment is established, or by virtue of which he or she 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 (3),
 - f) an order concerning limitation of service or leave pursuant to sections 48a to 48c.

(2) The Federal Service Court also hears an appeal on points of law (*Revision*) from a judgment of a service court of the *Länder* (section 79).

Section 63

Disciplinary proceedings

- (1) The provisions of the Federal Disciplinary Act (*Bundesdisziplinargesetz*) apply analogously to proceedings in disciplinary matters.
- (2) On application by the highest service authority, the service court gives a ruling on a provisional discharge from office, the withholding of remuneration or the revocation of any of these measures. The order is to be served on the highest service authority and on the judge concerned.
- (3) Section 78 of the Federal Disciplinary Act apply, with the proviso that the provisions in respect of fees for proceedings on an appeal on points of fact and law (*Berufung*) applies analogously to disciplinary proceedings before the Federal Service Court. Proceedings on the imposition of a regulatory fine by the service court are equivalent, in respect of fees, to proceedings on an action against 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 in proceedings on the application for the suspension of these measures apply accordingly.

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 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) apply analogously to proceedings on a transfer in the interests of the administration of justice (transfer proceedings).

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

(3) The court declares one of the measures provided under section 31 to be admissible or dismisses the application.

Section 66

Scrutiny proceedings

(1) The provisions of the Code of Administrative Court Procedure apply analogously to proceedings in the cases referred to in section 62 (1) nos. 3 and 4 (scrutiny proceedings). The Representative of Federal Interests at the Federal Administrative Court does not participate in these proceedings.

(2) Preliminary proceedings only take place in the cases referred to in section 62 (1) no. 4.

(3) In the cases referred to in section 62 (1) no. 3, proceedings are initiated on application being made by the highest service authority and, in the cases referred to in no. 4, on application being made by the judge concerned.

Section 67

Operative provisions of judgment in scrutiny proceedings

(1) In the case referred to in section 62 (1) no. 3 (a), the court makes a finding of nullity or dismisses the application.

(2) In the cases referred to in section 62 (1) no. 3 (b) to (d), the court rules the measure or the dismissal to be admissible or dismisses the application.

(3) In the cases referred to in section 62 (1) no. 4 (a) to (d), the court revokes the contested measure or dismisses the application.

(4) In the case referred to in section 62 (1) no. 4 (e), the court rules the measure to be inadmissible or dismisses the application.

Section 68

Suspension of proceedings

(1) Where a supervisory measure is challenged on the grounds stated in section 26 (3) and the decision is dependent 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 is required to suspend the hearing until the other proceedings have been disposed of. Reasons are to be given for the suspension order.

(2) Where proceedings are not yet pending before the other court, the service court sets a reasonable period in the suspension order for initiating proceedings. On expiry of that period without proceedings having been initiated, the court dismisses 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 (3), the court is required to suspend the hearing until disposal of the proceedings before the service court. Reasons are to be given for the suspension order. Subsection (2) applies analogously.

Division 4

Justices of the Federal Constitutional Court

Section 69

Limited application of this Act

The provisions of this Act apply to justices of the Federal Constitutional Court only insofar as they are compatible with the special legal status of such justices under the Basic Law and the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*).

Section 70

Federal judges serving as justices of Federal Constitutional Court

(1) The rights and obligations of judges serving at a supreme court of the Federation are in abeyance for as long as they are members of the Federal Constitutional Court.

(2) On their own application, such judges are to retire as judges of a supreme court of the Federation at the point at which their tenure of office as a justice of the Federal Constitutional Court ends in accordance with section 98 of the Federal Constitutional Court Act.

Part 3

Judges in the service of a *Land*

Section 71

Application of Civil Service Status Act

Unless otherwise provided under this Act, the provisions of the Civil Service Status Act (*Beamtenstatusgesetz*) apply accordingly to the legal status of judges in the service of a *Land*, until special provision is made.

Section 71a

Application of Civil Service Pensions Act

Unless otherwise provided under this Act, Divisions 1 to 13 of the Civil Service Pensions Act (*Beamtenversorgungsgesetz*) apply accordingly to the pensions of judges in the service of a *Land*.

Section 72

Formation of councils of judges

Councils of judges are to be established in the *Länder*. Their members are elected by the judges from amongst their own number in a direct and secret ballot.

Section 73

Duties of council of judges

The councils of judges have, at a minimum, the following duties:

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

Section 74

Formation of council for judicial appointments

(1) A council for judicial appointments is to be established for each 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 comprises the president of a court, acting as chairman, and judges, at least one half of whom are to be elected by the judges concerned.

Section 75

Duties of council for judicial appointments

- (1) The council for judicial appointments is to participate in the appointment of a judge to an office with a final basic salary which is higher than the final basic salary of an initial office. It delivers 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 on reaching retirement age (standard retirement age).
- (2) Special retirement ages may be laid down by statute on the attainment of which judges are, on their application, to be retired.

Section 76a

Part-time employment

The possibility of working part-time is to be provided.

Section 77

Establishment of service courts

- (1) Service courts are to be established in the *Länder*.
- (2) The service courts give their decisions sitting in a composition of a presiding judge and an equal number of permanent associate judges and non-permanent associate judges. All the members must be judges appointed for life. The non-permanent members are, as a rule, to be members of the jurisdiction to which the judge concerned belongs.
- (3) The members of a service court are 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 the president's permanent deputy cannot be members of a service court.
- (4) Notwithstanding subsection (2) sentence 2, provision may be made under *Land* law to the effect that honorary judges who are lawyers admitted to the bar participate as permanent associate judges. Practising lawyers can only be appointed as a member of the service court if they can be elected to the executive board of the bar association concerned. The members of the service court may not concurrently be members of the executive board of the bar association or of the Lawyers' Parliament concerned or be employed on a full-time or part-time basis in the bar association or the Lawyers' Parliament concerned. The members who are practising lawyers are appointed for a five-year term 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 is bound by the list of nominations drawn up by the executive board of the bar association concerned in respect of the participation of permanent associate judges who are lawyers admitted to the bar. If there are several bar associations in the service court's jurisdiction, the number of members who are practising lawyers is, as a rule, to be proportional to the number of members of the individual bar associations. The presidium determines 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 makes provision for further procedure in respect of the appointment of members of the service court who are practising lawyers.

Section 78
Jurisdiction of service court

- (1) The service courts give a decision
1. in disciplinary matters, including those relating to judges in retirement;
 2. on transfers in the interests of the administration of justice;
 3. in the case of judges 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 to the organisation of the courts,
 - b) the secondment of a judge pursuant to section 37 (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 or her appointment is revoked or the nullity of his or her appointment is established, or by virtue of which he or she 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 (3),
 - f) an order concerning limitation of service or leave.

Section 79
Instances

- (1) Proceedings in the service courts are taken before at least two instances.
- (2) In the cases referred to in section 78 nos. 2, 3 and 4, the participants are entitled to lodge an appeal on points of law with the Federal Service Court in accordance with section 80.
- (3) In respect of the cases referred to in section 78 no. 1, *Land* legislation can make provision for an appeal on points of law to be filed with the Federal Service Court.

Section 80

Appeal on points of law in transfer proceedings and scrutiny proceedings

- (1) The provisions of the Code of Administrative Court Procedure apply analogously to appeals on points of law in transfer proceedings and in scrutiny proceedings. The Representative of Federal Interests at the Federal Administrative Court does not participate in these proceedings.
- (2) Leave is always to 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 the failure to apply a legal norm or the incorrect application of a legal norm.

Section 81

Admissibility of appeal on points of law in disciplinary proceedings

(1) Insofar as *Land* legislation has made provision for an appeal on points of law to be filed with the Federal Service Court in disciplinary matters (section 79 (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 is only to be granted where

1. the case 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 by lodging an appeal (*Beschwerde*) within two weeks after service of the judgment. The appeal is to be lodged with the court whose decision is to be challenged. In the notice of appeal the fundamental importance of the case must be expounded or reference must be made to the decision of the Federal Service Court from which the judgment deviates. The lodging of an appeal prevents the judgment from entering into final and binding effect. Where relief is not granted, a decision is given by the Federal Service Court by way of an order. Where the appeal is unanimously dismissed on the ground of inadmissibility or of ill-foundedness, the court is not required to give reasons. If the Federal Service Court rejects the appeal, the judgment becomes final and binding. If the appeal is allowed, the period for lodging an appeal on points of law begins to run from the time when notification is served concerning the outcome of the appeal.

(3) Leave to appeal is not necessary where, as material procedural defects, the objection is raised that

1. the court hearing the case was not sitting in the prescribed composition,
2. a judge who was disqualified by statute from exercising judicial office or who was successfully challenged for fear of bias participated in the decision, 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 is to be lodged, in writing or by means of a statement to be taken down in writing at the court registry, with the court whose judgment is being contested, within two weeks after service of the judgment or after service of the order giving leave to appeal on points of law, and reasons are to be given within two weeks at the latest. The reasons must contain an indication of the extent to which the judgment is being contested, of the amendments to the judgment for which application is being made and of how these applications will be substantiated. Section 80 (3) applies accordingly.

(2) The Federal Service Court is bound by 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 (1) and section 158 (1) of the Code of Administrative Court Procedure apply analogously. The judgment can only provide for the dismissal of the appeal on points of law or the quashing of the contested judgment.

Section 83

Procedural provisions

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

Section 84

Constitutional judges

Land law determines the extent to which this Act applies to the members of the constitutional court of a *Land*.

Part 4

Transitional and final provisions

Division 1

Amendment to federal law

Sections 85 to 103

(Amending and repealing provisions)

Section 104

Reference to repealed provisions

Insofar as reference is made in other laws and statutory instruments to provisions or designations which are repealed under this Act, they are replaced by the corresponding provisions or designations in this Act.

Division 2

Transformation of legal relationships

Sections 105 and 106

(repealed)

Section 107

(repealed)

Section 108

(repealed)

Section 109

Qualification for judicial office

Anyone who was qualified to hold judicial office on 1 July 2003 retains that qualification.

Sections 110 and 111

(repealed)

Section 112

Recognition of foreign examinations and qualifications acquired abroad

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

(2) Legal examinations which Germans originating from the territory referred to in Article 3 of the Unification Treaty (*Einigungsvertrag*) took outside of Germany before 3 October 1990 are to be recognised as equivalent to the first state examination under section 5 (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 Professional Qualifications Assessment Act (*Berufsqualifikationsfeststellungsgesetz*) does not apply.

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 Party to the Treaty on the European Economic Area or Switzerland and which 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 in Germany (*Gesetz über die Tätigkeit europäischer Rechtsanwälte in Deutschland*) are admitted to the preparatory training on application if their knowledge and skills correspond to the knowledge and skills attested by the state examination covering compulsory subjects in accordance with section 5 (1).

(2) The review of the knowledge and skills required under subsection (1) encompasses the university diploma and the submitted proofs, in particular 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 is conducted on application.

(3) The aptitude test consists of a state examination in German which relates to the required knowledge of German law and attests to the ability to successfully complete the legal preparatory training. The examinations 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 sentence 2 are to be taken for which the review referred to in subsection (2) sentence 1 has not already established sufficient proficiency.

(4) The aptitude test is 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 at least two legal fields referred to in subsection (3) sentence 2, 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) sentence 2 has already been provided as part of the review referred to in subsection (2) sentence 1, the examination papers in this field are deemed to have been passed.

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

(6) The establishment of equivalence under subsection (1) has the effect of a passed first state examination within the meaning of section 5 (1).

(7) The *Land* departments of justice or other offices responsible for holding the state examination covering compulsory subjects are 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 to 118
(repealed)**

**Division 3
Final provisions**

**Section 119
(repealed)**

Section 120

Technical members of Federal Patent Court

Anyone who fulfils the conditions set out in section 65 (2) of the Patent Act (*Patentgesetz*) is also qualified to hold judicial office at the Federal Patent Court. Section 19 (1) no. 1 applies accordingly.

Section 120a

Special provisions concerning official designations

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

Section 121

Judges in federal service as members of legislative body of a *Land*

The provisions set out in sections 5 to 7, section 23 (5) and section 36 (1) of the Members of the Bundestag Act (*Abgeordnetengesetz*) of 18 February 1977 (Federal Law Gazette I, p. 297) which are decisive for judges elected to the Bundestag apply accordingly in respect of the legal status of judges in federal service elected to the legislative body of a *Land* after 1 June 1978. Judges who are not entitled to the adequate remuneration of a public official on account of their membership of the legislative body are entitled to 50 per cent of their previous remuneration; account is taken of general increases in remuneration in accordance with section 14 of the Federal Civil Servants' Remuneration Act (*Bundesbesoldungsgesetz*).

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 is equal to judicial service within the meaning of section 10 (1).
- (3) Section 41 applies accordingly to public prosecutors.
- (4) Decisions in formal disciplinary proceedings against public prosecutors are given by service courts for judges. The non-permanent associate judges must be public prosecutors appointed for life. The Federal Ministry of Justice and Consumer Protection appoints the non-permanent associate judges of the Federal Service Court. Provision is made under *Land* law concerning the appointment of the non-permanent associate judges of the service courts in the *Länder*.
- (5) Subsections (1) to (4) apply accordingly to the Representative of Federal Interests at the Federal Administrative Court, to the Federal Disciplinary Prosecutor, to public prosecutors and public authority lawyers at the courts of administrative jurisdiction of the *Länder*, the Federal Ministry of Justice and Consumer Protection

appoints the non-permanent associate judges of the Federal Service Court in agreement with the federal ministry concerned.

Section 123

Staffing of professional disciplinary tribunals for practising lawyers

Section 94 (1) and section 101 (3) of the Federal Code for Lawyers (*Bundesrechtsanwaltsordnung*) remain unaffected by this Act. The *Land* departments of justice determine 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) Judges who are qualified as professional judges in accordance with Annex I Division III Subject Area A Part III No. 8 of the Unification Treaty of 31 August 1990 in conjunction with Article 1 of the Act of 23 September 1990 (Federal Law Gazette II 1990, p. 885) can also, on being given civil service tenure for life, be appointed as public prosecutors after their appointment as judges for life if they are qualified and competent and with their written consent.

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

(3) If the appraisal does not attest to the judge's suitability and aptitude, the judge continues in his or her previous employment.

(4) Subsections (1) to (3) apply accordingly in respect to an appointment as judge for a public prosecutor who is qualified as a public prosecutor in accordance with Annex I Division III Subject Area A Part III No. 8 (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 II 1990, p. 885) and who has, on being given civil service tenure for life, been appointed as public prosecutor. During the probationary period in the public prosecution service judges are designated as *Staatsanwalt* (Public Prosecutor).

Section 125

(repealed)

Section 126

Entry into force

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

Annex to Unification Treaty

Extract from the Unification Treaty

**Annex I Division III Subject Area A, Divisions III and IV
(Federal Law Gazette II 1990, p. 889, p. 929, p. 939)**

Division III

– Provisos applicable to the five acceding *Länder* (Article 1 (1) of the Unification Treaty) –

Division IV

– Provisos applicable to Berlin –

Division III

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

(...)

8. the German Judiciary Act as 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 apply to the territory referred to in Article 1 (1) of the Treaty:

aa) to ii) (no longer applicable)

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

z) The following applies to public prosecutors:

aa) and bb) (no longer applicable)

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

(...)

28. (no longer applicable)

Division IV

(...)

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

(...)

b) (no longer applicable)

(...)

j) (no longer applicable)