

## **The German Judiciary Act**

in the version published on 19 April 1972 (Bundesgesetzblatt, Part I p. 713) as last amended by  
Article 1 of the Law of 11 July 2002 (Bundesgesetzblatt, Part I p. 2592)

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### FIRST PART

#### Judicial Office in the Federation and Laender

### 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 adjudicative 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 sentence 2 of the Federal Personnel Representation Act (Bundespersonalvertretungsgesetz).

## **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 examination and completes a subsequent period of preparatory training by taking the second state examination shall be qualified to hold judicial office; the first examination shall comprise a university-level examination on specialist subjects and a state examination of compulsory core 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 insofar as the requisite attainments for admission to the first university-level examination on specialist subjects and the state examination of compulsory core 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 curriculum of studies shall comprise compulsory core subjects and specialist modules with optional elements. Moreover proof shall be furnished of successful attendance of a course of law conducted in a foreign language or of a foreign-language course focusing on the

law; Land law may provide that proof of competence in a foreign-language be furnished in another way. Compulsory studies 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. Specialist subjects shall serve to supplement university studies, to deepen knowledge of the compulsory subjects to which they relate and to provide an insight into the interdisciplinary and international aspects of the law.

(3) In the subject-matter studied account shall be taken of practice in court adjudication, in the administration and in legal advice, including the key skills this requires such as negotiating management, leading discussions, verbal reasoning, dispute mediation, questioning techniques and the ability to communicate. 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 (Vorbereitungsdienst)**

(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 court with jurisdiction in criminal matters or at a public prosecutor's office,
3. at an administrative authority,
4. with counsel (Rechtsanwalt);

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

(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 at a faculty of law and at the *Deutsche Hochschule für Verwaltungswissenschaften Speyer* [German Academy of Administrative Science in Speyer]. Land law may provide that the training pursuant to subsection 2, number 1, may partly be given at a court with jurisdiction in labour matters and the training pursuant 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 at least 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 an individual case 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 (Gehobener Dienst)**

(1) Successfully completed training for the higher intermediate justice administration service and for the higher intermediate non-technical administrative service may, on application 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 take account of practice in court adjudication, in the administration and in legal advice including the attendant key skills pursuant to section 5a, subsection 3, first sentence; without prejudice to section 5a, subsection 2, second sentence, the examinations may also take account of foreign-language skills. The equivalence of examination requirements and of the assessment of performance shall be ensured. The Federal Minister of Justice shall be authorised with the assent of the Federal Council (Bundesrat) to lay down in an ordinance a scale of marks and points for the individual and total marks of all examinations.

(2) The syllabus for the university-level examination of specialist modules and the state examination of compulsory core subjects shall be so designed as to enable university studies to be completed after four-and-a-half years' study. At least one written assignment shall be performed during the university-level examination of specialist modules. Written and oral assignments shall be performed during the state examination of compulsory subjects; Land law may provide that written examination assignments be performed during the period of study though not, however, before the end of two-and-a-half years' study. The certificate relating to the first examination shall indicate the results of the successfully completed university-level specialist module examination and the results of the successfully completed state examination of compulsory core subjects and, in addition, a total mark composed of the result of the successfully completed state examination of compulsory core subjects and the successfully completed university-level specialist module examination in a ratio of 70 to 30 per cent respectively; the certificate shall be issued in the Land in which the state examination of compulsory subjects was passed.

(3) The written assignments in the second state examination shall be performed no earlier than the eighteenth and no later than the twenty-first month of training. They shall as a minimum relate to the training at 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 training at the final agency. The oral assignments shall relate to the training as a whole.

(4) In the state examinations the examiner may deviate, in his decision, from the arithmetically calculated total mark where such deviation gives a better reflection of candidate's performance in view of the overall impression gained and has no influence on the candidate's passing the examination; in respect of the second examination performance during preparatory training shall also be taken into consideration. The deviation made 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 of compulsory core subjects can be taken again on one occasion. An unsuccessful state examination of compulsory core 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 provide for repetition of the state examinations for the purpose of improving a candidate's grades.

(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 sat the university-level examination of specialist modules or the state examination of compulsory core 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 pursuant to section 5 the qualification to hold judicial office within the area of application of this Act 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 (Grundgesetz),
2. makes it clear that he will at all times uphold the free democratic basic order within the meaning of the Basic Law (Grundgesetz),
3. is qualified to hold judicial office (sections 5 to 7), and
4. has mastered 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 (Rechtsanwalt), as a notary, or as a lawyer who, having acquired the qualification to hold judicial office (Assessor), assisted 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 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 17 a**

Where a judge resigns his parliamentary seat and, at the same time, stands again for a seat in the German Federal Parliament (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, an 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 19 a 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, by virtue of this subsection, 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 as 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 Federal Parliament (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 the age-limit,
4. where he requests his own dismissal in writing,
5. where he has reached the age-limit 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 imposable in formal disciplinary proceedings before a court.

(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 rechtsstaat<sup>1</sup> 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 (Grundgesetz),

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

## **Fourth Chapter**

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<sup>1</sup> constitutional state

## 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 must 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 (section 98 subsection 2 and 5 of the Basic Law [Grundgesetz]),

2. in formal disciplinary proceedings before a court,
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 no. 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 Transfer on changes being made 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 sentence 1) 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 sentence 1).

(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 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 unfitness 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 Federal Parliament (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 Federal Parliament (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 (Grundgesetz) 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.

(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 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).

(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 (Grundgesetz) 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 (Grundgesetz) 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. .o

(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 (Grundgesetz) 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, whose deputy shall be another civil servant in the Federal Ministry of Justice, shall participate, as a further permanent ordinary member, on the Federal Personnel Committee in matters concerning judges in federal members; they and their deputies shall be judges for life in federal service. The civil servant in the Federal Ministry of Justice and the judges shall be nominated by the Federal Minister of Justice 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 shall retire at the end of the month in which they reach their sixty-



fifth birthday.

(2) Retirement may not be postponed.

(3) A judge for life shall be retired on his own application, but not

1. before reaching his sixty-third birthday or
2. before reaching his sixtieth birthday where he is a severely disabled person within the meaning of section 2, subsection 2, of the Ninth Book of the Social Security Code (Neuntes Buch des Sozialgesetzbuches).

An application made under number 2 may only be granted where the judge concerned gives an irrevocable undertaking that he will not receive additional earnings amounting to an average of more than 425 German marks a month from any occupation or gainful employment.

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

(1) On application being made a judge shall be granted

1. part-time service limited to not more than half of his normal service,
  2. 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 pursuant to section 48b, subsection 1, may not exceed twelve years' duration. An application for extension of part-time service or of leave shall be made not later than six months before expiry of the approved release.

(3) Applications made under subsection 1, number 1, shall be approved only where the judge also consents, at the outset or when changes are made to the part-time employment and at the time of transition to full-time employment, to employment in another judicial office within the same jurisdiction, including at another court. Applications pursuant to section 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 part-time employment 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 part-time employment or the transition to full-time employment if the judge cannot reasonably be expected to continue in part-time employment 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. The second sentence of subsection 2 shall apply mutatis mutandis.

(6) During the period of leave pursuant to subsection 1, number 2, read in conjunction with subsection 2, first sentence, there shall be a right to healthcare benefits in application, *mutatis mutandis*, of the Regulations on Medical Aid (Beihilferegelungen) for judges. 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 Security Code (Sozialgesetzbuch).

#### **Section 48 b 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 candidates for the public service, a judge who has reached his fifty-fifth birthday shall upon application 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 66 subsection 1 of the Federal Civil Servants Act (Bundesbeamtengesetz) 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. In spite of the declaration referred to in the first sentence the competent service authority may grant permission to engage in additional activities providing they do not run counter to the purpose for which permission was granted. In cases of special hardship, the competent service authority can permit a judge to return from leave where he cannot reasonably be expected to continue his leave.

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

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

#### **Section 48 c Part-time employment**

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

#### **Section 48 d Part-time employment, leave and professional advancement**

(1) Part-time employment and leave pursuant 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 imperative and 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 Patents Court,
2. three elected judges at the Federal Court of Administration, the Federal Finance Court, the Federal Labour Court, and 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 subsection 2 and subsection 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 (Bundespersonalvertretungsgesetz) of 15 March 1974 (Federal Law Gazette [Bundesgesetzblatt] 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. In any event the council of judges shall send at least as many members as are specified in section 17 subsection 3 and subsection 5 sentence 1 of the Federal Personnel Representation Act (Bundespersonalvertretungsgesetz).

### **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 Court of Administration 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 those courts shall take the place of the two judges from the Federal Court of Administration; subsection 1 sentences 5 and 6 shall apply mutatis mutandis.

(3) A council for judicial appointments shall be established for the Federal Patents 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 sentences 5 and 6 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 (Bundespersonalvertretungsgesetz) 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 (Bundespersonalvertretungsgesetz).

## **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 two permanent associate judges shall be members of the Federal Court of Justice, and the two non-permanent associate judges shall, as judges for life, be member 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 (Gerichtsverfassungsgesetz).

#### **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 and 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 unfitness 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 Laender (section 79).

### **Section 63 Disciplinary proceedings**

(1) The provisions of the Federal Disciplinary Rules (Bundesdisziplinarordnung) 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 provisional discharge from office and on the withholding of remuneration for service or on the revocation of these measures. The ruling shall be served on the highest service authority and on the judge concerned.

(3) [Repealed]

### **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 provision of the Administrative Courts Rules (Verwaltungsgerichtsordnung) shall apply mutatis mutandis to proceedings on a transfer in the interests of the administration of justice.

(2) Proceedings shall be initiated on application being made by the highest service authority concerned. Preliminary proceedings shall not be held. The Representative of the Interests of the Federation at the Federal Court of Administration (Vertreter des Bundesinteresses beim Bundesverwaltungsgericht) 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 Administrative Courts Rules (Verwaltungsgerichtsordnung) shall apply mutatis mutandis to proceedings in the cases referred to under numbers 3 and 4 of subsection 1 of section 62 (scrutiny proceedings). The Representative of the Interests of the Federation at the Federal Court of Administration (Vertreter des Bundesinteresses beim Bundesverwaltungsgericht) shall not participate in these proceedings.

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

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

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

(4) In the case referred to under number 4, letter e, of subsection 1 of section 62 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 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 insofar as they are compatible with the special legal status of such judges pursuant to the Basic Law (Grundgesetz) and to the Federal Constitutional Court Act (Gesetz über das Bundesverfassungsgericht).

#### **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 (Gesetz über das Bundesverfassungsgericht).

#### THIRD PART

##### Judges in the service of a Land

#### **Section 71 Adherence to framework provisions**

(1) The Laender shall be under an obligation to regulate the legal relations of judges in compliance with sections 72 to 84 and, except as otherwise provided in this Act, on the basis of Chapter I of the Framework Act for Civil Service Law (Beamtenrechtsrahmengesetz). In doing so they shall take account of the joint interests of the Federation and the Laender.

(2) In so far as the independent board (sections 61 and 62 of the Framework Act for Civil Service Law (Beamtenrechtsrahmengesetz) is responsible for matters concerning the judiciary at least one half of its members shall be judges.

(3) Except as otherwise provided in this Act sections 123 to 132 of the Framework Act for Civil Service Law (Beamtenrechtsrahmengesetz) shall apply mutatis mutandis to judges in the service of a Land.

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

Except as otherwise provided in this Act Chapters I to XIII of the Civil Servants' Pension Act (Beamtenversorgungsgesetz) 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 Laender. 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 appointment**

(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 personal and professional aptitude.

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

### **Section 76 Retirement age**

(1) The retirement age for judges shall be laid down by statute.

(2) Retirement cannot be deferred.

(3) Statutory provision may be made to the effect that pursuant to section 48, subsection 3, a judge who so applies may be retired early.

### **Section 76a Part-time employment and leave for family reasons**

Part-time employment and leave for family reasons shall be regulated in accordance with section 48a subsections 1 to 5.

### **Section 76b Leave for reasons relating to labour market conditions**

(1) Statutory provision can be made to the effect that, where the situation on the labour market is such that there is an exceptional shortage of applicants and consequently a urgent public interest exists in employing larger numbers of candidates for the public service, a judge shall

1. on application be granted unpaid leave for a duration not exceeding six years though of a minimum of one year,
2. having reached his fifty-fifth birthday on application be granted unpaid leave, such application being required to cover the period until commencement of his retirement.

(2) An application pursuant to subsection 1 may only be granted where

1. compelling service reasons are not an obstacle thereto,
2. the judge also consents to employment in another judicial office,
3. during the period for which permission has been granted he will refrain from engaging in paid additional activities and that he will only engage in paid activities pursuant to section 71 of this Act in conjunction with section 42 subsection 1 sentence 3 of the Framework Act for Civil Service Law (Beamtenrechtsrahmengesetz) to the extent that would permit him to engage in such activities during full-time employment without infringing his official duties.

Where the undertaking given in compliance with number 3 of sentence 1 is culpably violated, permission shall be revoked. The competent service authority may grant permission to engage in paid additional activities despite the judge's undertaking given in compliance with number 3 of sentence 1 so far as they do not run counter to the purpose for which permission for leave was given. The competent service authority can, in cases of special hardship, permit a judge to return from leave where he cannot reasonably be expected to continue his leave.

(3) The leave granted may not exceed twelve years' duration. Leave pursuant to subsection 1 and leave pursuant to section 76a counted together may not exceed twelve years' duration. Sentences 1 and 2 shall not be applied in the case referred to in subsection 1, number 2, if the judge can no longer reasonably be expected to return to full-time or part-time employment.

(4) Statutory provision can be made to the effect that the provisions on the commencement of retirement in force until 30 June 1997 shall continue to apply when determining the commencement of retirement within the meaning of subsection 1, number 2, if part-time employment or leave was granted pursuant to section 76a, subsection 2, sentence 1, number 2 or number 4 in the version of this Law in force until 30 June 1997.

(5) Statutory provision can be made to the effect that until 31 December 2004 leave pursuant to subsection 1, number 2, may be granted to a judge who has already reached his fiftieth birthday. Subsection 3, sentence 1 and 2, shall be applied under the condition that the leave may not exceed fifteen years' duration.

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

(1) Statutory provision can be made to the effect that a judge shall, upon application, be granted part-time employment up to half of normal service and for up to the duration applied for in each case. Part-time employment may also be managed in such a way that, according to a pattern fixed in advance, periods of full-time employment may be alternated with complete or partial release from normal service.

(2) An application pursuant to subsection 1 may be granted only if

1. the judicial field in which the judge works permits part-time employment,
2. compelling service reasons are not an obstacle thereto,
3. the judge also consents, at the outset or when changes are made to the part-time employment and at the time of transition to full-time employment, to employment in another judicial office within the same jurisdiction,
4. the judge undertakes, during the period in which permission is granted, to enter into professional commitments outside his activities in the judiciary only to the extent to which the exercise of paid additional activities is permitted under section 71 of this Act read in conjunction with section 42 of the Federal Civil Servants Act (Bundesbeamtengesetz).

Exemptions from the undertaking set out in number 4 shall be admissible only insofar as they can be reconciled with exercise of activities in the judiciary. Section 71 of this Law, read in conjunction with section 42, subsection 2, sentence 3 of the Federal Civil Servants Act (Bundesbeamtengesetz) shall be applied on the basis of normal weekly working hours while not taking into account the granting of part-time employment. Where the undertaking contained in sentence 1, number 4, is culpably violated, permission shall be revoked.

(3) A decision to alter the extent of part-time working or on the transition to full-time employment during the period in which permission 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 part-time employment or the transition to full-time employment if the judge cannot reasonably be expected to continue in part-time employment to the extent previously served.

### **Section 76d Release from service and professional advancement**

Part-time employment and leave pursuant to section 76a or section 76c may not impede professional advancement; judges in part-time employment may be treated differently than judges in full-time employment only if justified on imperative and pertinent grounds.

### **Section 76e Part-time employment on grounds of age**

Statutory provision can be made to the effect that a judge shall, upon application required to cover the period until commencement of his retirement, be granted permission for part-time employment in the form of age-related part-time employment of half his previous service, not

exceeding half of his normal service in the last two years prior to the commencement of age-related part-time employment if

1. the judicial field in which the judge works permits part-time employment,
2. the judge has reached his fifty-fifth birthday,
3. in the last five years prior to the commencement of age-related part-time employment he worked part-time during at least three years,
4. the age-related part-time employment commences prior to 1 January 2010, and
5. compelling service reasons are not an obstacle thereto.

An application for age-related part-time employment covering less than half the normal service is admissible only if the periods during which the judge is released from service are combined such that the judge is first serves at a rate of at least half his normal service; no account shall be taken in that context of periods of part-time employment during which the time served is only slightly reduced. An arrangement as defined in sentence 1 may be limited only to certain areas.

(2) Section 76c, subsection 2, sentence 1, number 4, and sentences 2 to 4 shall apply *mutatis mutandis*.

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

(1) Service courts shall be established in the Laender.

(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.

#### **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 and 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 pursuant to section 76a in conjunction with section 48a; an order concerning part-time employment or leave pursuant to section 76a subsections 2 to 5.

### **Section 79 Instances**

- (1) Proceedings in the service courts may be taken before at least two instances.
- (2) In the cases referred to under numbers 2,3 and 4 of section 78 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 number 1 of section 78 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 Administrative Court Rules (Verwaltungsgerichtsordnung) shall apply mutatis mutandis to transfer proceedings and to scrutiny proceedings. The Representative of the Interests of the Federation at the Federal Court of Administration (Bundesverwaltungsgericht) shall not participate in such 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; such appeal shall be lodged in writing or through a statement which shall be taken down in writing at the court registry, and reasons shall be given therefore 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 67 subsection 1 sentence 2 and subsection 2, section 73 subsection 1 number 1, subsections 2 and 3 and section 75 of the Federal Disciplinary Rules (Bundesdisziplinarordnung) 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.

### **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.

**Sections 85-126**

(Amending and repealing provisions; not reproduced here)