

## **L) Law on Civil Servants and Judges**

### **1. Framework Act to Unify the Law on Civil Service - Civil Service Law Framework Act (Rahmengesetz zur Vereinheitlichung des Beamtenrechts - Beamtenrechtsrahmengesetz - BRRG)**

*of 1 July 1957 (Federal Law Gazette [BGBl.] Part I p. 677), in the version of the proclamation  
of 31 March 1999 (BGBl. Part I p. 654), last amended by Act of 16 February 2002  
(BGBl. Part I p. 693)*

## **Chapter I: Provisions for Land Legislation**

### **Part 1: The Employment of Civil Servants**

#### *Section 7 [Principle of Equality]*

Nominations shall be in accordance with aptitude, qualifications and professional performance without regard to gender, origin, race, faith, religious or political views, origin or connections.

## **Chapter II: Provisions Which Apply Uniformly and Directly**

### **Part 1: General Provisions**

#### *Section 121 [Employer Capacity]*

The right to have civil servants shall be possessed, apart from the Federation, by

1. the Länder, the municipalities and the municipal associations,
2. other corporations, institutes and foundations under public law who have this right at the time of entry into force of this act or to whom it is given after this time by statute, executive order law or ordinance; such ordinances shall require the approval of an agency thereto empowered by law.

## **Chapter III: General Final Provisions**

#### *Section 135 [No Application of this Act to Public-Law Religious Societies]*

This act shall not apply to the public-law religious societies and their associations. The latter shall remain free to govern the legal circumstances of their civil servants and pastors in accordance with this act and to declare applicable the provisions of Chapter II Part II.

## **2. Federal Act on Civil Servants (*Bundesbeamtengesetz*)**

*of 14 July 1953 (Federal Law Gazette [BGBl.] Part I p. 551), in the version of the proclamation of 31 March 1999 (BGBl. Part I p. 675), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)*

### *Section 8 [Job Advertisements - Selection]*

(1) Applicants shall be identified by means of a job advertisement. Their selection shall be effected in accordance with aptitude, qualifications and professional performance without regard to gender, descent, race, faith, religious or political views, origin or connections.

(...)

### *Section 58 [Form of Oath]<sup>51</sup>*

(1) The civil servant shall give the following oath of office:

»I swear to preserve the Basic Law for the Federal Republic of Germany and all statutes applicable in the Federal Republic and to carry out my official duties conscientiously, so help me God.«

(2) The oath may also be given without the words »so help me God«.

(3) If a statute permits the members of a religious society to use another form of affirmation instead of the words »I swear«, a civil servant who is a member of such a religious community may use this form of affirmation.

(4) In cases in which in accordance with section 7 subsection (3) an exception from section 7 subsection (1) No. 1 has been permitted, the taking of an oath can be waived; unless otherwise provided, the civil servant shall promise solemnly that he/she will carry out his/her official duties conscientiously.

## **3. Federal Act on Remuneration (*Bundesbesoldungsgesetz*)**

*of 23 May 1975 (Federal Law Gazette [BGBl.] Part I p. 1173), in the version of the proclamation of 3 December 1998 (BGBl. Part I p. 3434), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)*

### *Section 1 Area of Application*

(1) This act shall regulate the remuneration of

1. Federal civil servants, civil servants of the Länder, the municipalities, the municipal associations and other corporations, institutes and foundations under public law subject to the supervision of a Land; honorary civil servants and the civil servants until recalled, who are deployed on an ad-hoc basis shall be exempted therefrom,

(...)

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<sup>51</sup> Note: Comparable regulations are to be found in section 9 subsection (1) of the Soldiers Act (*Soldatengesetz*) in relation to the oath taken by professional and regular soldiers, and in section 62 of the Hamburg Civil Servants Act (*Hamburgisches Beamtengesetz*).

(5) This act shall not apply to the public-law religious societies and their associations.

#### *Section 28 Remuneration Service Age*

(1) The remuneration service age shall commence on the first of the month in which the civil servant or soldier has turned twenty-one.

(2) The start of the remuneration service age in accordance with subsection (1) shall be postponed by times after turning thirty-one in which there was no right to remuneration, by one-quarter of the time until the age of thirty-five and by one-half of the further time. (...) Remuneration within the meaning of the first sentence shall be the equivalent of payments from full-time work in the service of a public-law employer (section 29), in the service of public-law religious societies and their associations and in the service of another employer applying the collective agreements that pertain in the public service or collective agreements with largely the same content and in which the state is substantially involved by payment of contributions or subsidies or in another manner.

(...)

#### *Section 29 Public-Law Employers*

(1) Public-law employers within the meaning of this act shall be the Reich, the Federation, the Länder, the municipalities (municipal associations) and other corporations, institutes and public-law foundations, with the exception of the public-law religious societies and their associations.

#### *Section 40 Stages of the Family Allowance*

(...)

(6) Public service within the meaning of subsections (1), (4) and (5)<sup>52</sup> is an activity performed in the service of the Federation, of a Land, of a municipality or of other corporations, institutes and foundations under public law or of the associations of such; work in public-law religious societies or their associations shall be exempted therefrom unless the preconditions of the third sentence are met with organisationally-independent facilities, in particular schools, universities, hospitals, kindergartens, homes for the elderly. (...)

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<sup>52</sup> Subsections 1, 4 and 5 govern the preconditions for receipt of a family allowance.

**4. Act Governing Benefits Relating to Civil Servants and Judges in the Federation and the Länder - Civil Servants Benefits Act (Gesetz über die Versorgung der Beamten und Richter in Bund und Ländern - Beamtenversorgungsgesetz - BeamtVG)**

of 24 August 1976 (Federal Law Gazette [BGBl.] Part I p. 3839), in the version of the proclamation of 16 March 1999 (BGBl. Part I p. 322, corr. pp. 847 and 2033), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)

**Part I: General Provisions**

*Section 1 Area of Application*

(1) This act governs the benefits relating to Federal civil servants, civil servants of the Länder, the municipalities, the municipal associations and the other corporations, institutes and foundations under public law subject to the supervision of a Land.

(...)

(3) This act shall not apply to the public-law religious societies and their associations.<sup>53</sup>

**Part II: Pension, Maintenance Contribution**

*Section 11 Other Times*

The time during which a civil servant after reaching the age of seventeen prior to being called to the public service

1. (...)

b) worked full-time in the service of public-law religious societies or their associations (article 140 of the Basic Law) or in the public or non-public school service (...)

or (...)

may be taken into account as pensionable service time, but the time in accordance with No. 1 (a) and No. 3 may be counted at most up to one-half and as a rule not more than ten years.

**Part VII: Shared Provisions**

*Section 53 Combination of Pension Payments with Work Income and Income Equivalent to Work Income*

(...)

(8) On expiry of the month in which the pensioner reaches the age of sixty-five, subsections (1) to (7)<sup>54</sup> shall apply only to work income from use in the public service (deployment income).

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<sup>53</sup> Note: A comparable regulation on the non-applicability of the corresponding act to churches, other public law religious communities and their associations is contained inter alia in section 1 subsection (2) of the Act on the Grant of an Annual Special Payment (Gesetz über die Gewährung einer jährlichen Sonderzuwendung) of 15.7.1965 (BGBl. Part I p. 609), in the version of the proclamation of 15.12.1998 (BGBl. Part I p. 3642), last amended on 16.2.2002 (BGBl. Part I p. 693) and section 6 of the Act on Capital-forming Benefits for Civil Servants with Life Tenure, Judges, Professional Soldiers and Regular Soldiers (Gesetz über vermögenswirksame Leistungen für Beamte, Richter, Berufssoldaten und Soldaten auf Zeit) of 17.7.1970 (BGBl. Part I p. 1097), in the version of the proclamation of 15.12.1998 (BGBl. Part I p. 3646).

This shall be any employment in the service of corporations, institutes and foundations of the German public law or their associations, excepting employment in public-law religious societies or their associations. (...)

## **Part XV: Final Provisions**

### *Section 105 Cessation of Application*

Where legal provisions correspond to or contradict the provisions of this act, they shall cease to apply with the entry into force of this act. This shall not apply to the following provisions in the version valid when this act comes into force:

(...)

5. Land statutes and administrative agreements relating to the application of the pension provisions in use in the service of public-law religious societies and their associations or at replacement schools,

(...)

### **5. German Judiciary Act (*Deutsches Richtergesetz*)**

*of 8 September 1961 (Federal Law Gazette [BGBl.] Part I p. 1665), in the version of the proclamation of 19 April 1972 (BGBl. Part I p. 713), last amended by Act of 9 July 2001 (BGBl. Part I p. 1510)*

## **Part I: Judicial Office in the Federation and the Länder**

### *Section 38 Judges Oath<sup>55</sup>*

(1) The judge<sup>56</sup> shall take the following oath in a public sitting of a court:

»I swear to exercise the office of judge true to the Basic Law for the Federal Republic of Germany and true to the statutes, to the best of my knowledge and ability and to judge without bias, and only to serve truth and justice, so help me God.«

(2) The oath may be taken without the words »so help me God«.

(3) The oath may contain for judges in the service of a Land an obligation to preserve the Land Constitution, and may be given publicly in another manner instead of before a court.

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<sup>54</sup> Note: Subsections (1) to (7) determine that a pensioner who receives work or work replacement income additionally receives his/her pension payments on principle only until reaching a specific maximum limit.

<sup>55</sup> Note: A similar provision is also contained in section 11 of the Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz) of 12.3.1951 (BGBl. Part I p. 243), in the version of 11.8.1993 (BGBl. Part I p. 1473), last amended on 16.7.1998 (BGBl. Part I p. 1823). At Land level, there is a similar provision, for instance in section 2 of the Hamburg Judiciary Act (Hamburgisches Richtergesetz) of 2.5.1991 (Hamburg Law and Ordinance Gazette [HmbGVBl.] p. 169), last amended on 25.5.1999 (HmGVBl. pp. 95 and 97).

<sup>56</sup> Note: Comparable provisions for the taking of an oath by honorary judges can be found inter alia in section 45 of the Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz) and - at Land level - for instance in section 3 of the Hamburg Judiciary Act (cf. the source information in the previous footnote).

**6. Hamburg Civil Service Act (*Hamburgisches Beamtengesetz - HmbBG*)**  
*of 13 March 1961 (Hamburg Law and Ordinance Gazette [HmbGVBl.] p. 49), in the version of  
29 November 1977 (Hamburg Law and Ordinance Gazette p. 367), last amended by Act  
of 30 January 2001 (Hamburg Law and Ordinance Gazette p. 19)*

**Part I: Area of Application**

*Section 1*

- (1) This act<sup>57</sup> shall apply in addition to the directly applicable civil servants law provisions of the Federation to the civil servants of the Free and Hanseatic City of Hamburg (Land civil servants) and to civil servants of the indirect Land corporations, institutes and foundations under public law (corporation civil servants) unless otherwise prescribed in detail.
- (2) The act shall not apply to civil servants of the churches and religious societies.

**Part II: Public Service Employment**

*Section 7*

- (1) Applicants shall be selected by their suitability, qualification and professional performance without regard to gender, sexual identity and orientation, descent, race, faith, religious or political views, home, origin or connections.
- (...)

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<sup>57</sup> Note: This act governs inter alia public service employment, the legal position of civil servants, personnel, complaints and legal protection.