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Courts Constitution Act

(Gerichtsverfassungsgesetz – GVG)

Courts Constitution Act in the version published on 9 May 1975 (Federal Law Gazette I, p. 1077), as last amended by Article 14 of the Act of 27 December 2024 (Federal Law Gazette 2024 I no. 438)

First Title

Jurisdiction

Section 1

Judicial power is exercised by independent courts that are subject only to the law.

Sections 2 to 9

(repealed)

Section 10

Under the supervision of a judge, trainee jurists (*Referendare*) may handle requests for mutual assistance and, except in criminal matters, hear persons participating in the proceedings, take evidence and conduct the oral hearing. Trainee jurists are not authorised to order administration of an oath or to administer an oath.

Section 11

(repealed)

Section 12

Ordinary jurisdiction is exercised by local courts (*Amtsgerichte*), regional courts (*Landgerichte*), higher regional courts (*Oberlandesgerichte*) and by the Federal Court of Justice (*Bundesgerichtshof*, the highest federal court for the area of ordinary jurisdiction).

Section 13

The ordinary courts have jurisdiction over the civil disputes, family matters and non-contentious matters (civil matters) as well as criminal matters for which neither the competence of administrative authorities nor the jurisdiction of the administrative courts (*Verwaltungsgerichte*) has been established and for which no special courts have been created or permitted by provisions of federal law.

Section 13a

(1) The *Land* governments are authorised to issue statutory instruments providing that matters of all kinds be assigned either entirely or partially to a single court for the districts of several courts and to establish external adjudicating bodies of courts insofar as this serves the purpose of material furtherance or swifter disposal of the proceedings. The *Land* governments may transfer this authorisation to the *Land* departments of justice. Special authorisations by the *Land* governments for the issue of statutory instruments have priority.
(2) A number of *Länder* may agree to establish a joint court or joint adjudicating bodies of a court, or may agree to the extension of judicial districts across *Land* borders, including solely for particular areas.

Section 14

Inland waterways courts (*Gerichte der Schifffahrt*) are permitted as special courts for the matters designated in international treaties.

Section 15 (repealed)

Section 16

Extraordinary courts are not allowed. No one may be removed from the jurisdiction of his or her lawful judge.

Section 17

(1) Once an action has been brought before a court, the admissibility of such recourse is not affected by any subsequent change in the circumstances upon which it is founded. The matter may not be brought before another court by any party while it is pending.
(2) The court of admissible recourse decides the dispute in the light of all relevant legal aspects. Article 14 (3) sentence 4 and Article 34 sentence 3 of the Basic Law (*Grundgesetz*) remain unaffected.

Section 17a

(1) If a court has declared with final and binding effect that the recourse taken to it is admissible, other courts are bound by that decision.
(2) If the recourse taken is inadmissible, the court declares this ex officio after hearing the parties and at the same time refers the legal dispute to the competent court of admissible recourse. If several courts are competent, the dispute is referred to the court to be selected by the plaintiff or applicant or, if no selection is made, to the court designated by the referring court. The decision in respect of the recourse is binding upon the court to which the dispute has been referred.
(3) If the recourse taken is admissible, the court may make a statement to that effect in advance. It must give a preliminary decision if a party challenges the admissibility of the recourse.
(4) The decision under subsections (2) and (3) may be given without an oral hearing. The grounds on which it is based must be indicated. Immediate complaint (*Beschwerde*) is available against the decision in accordance with the provisions of the respective applicable code of procedure. The participants are only entitled to lodge a complaint against a decision of a higher regional court at the highest federal court if this has been admitted in the decision. The complaint must be admitted if the legal issue concerned is of fundamental importance or if the court deviates from a decision of a highest federal court or from a decision of the Joint Panel of the highest federal courts (*Gemeinsamer Senat der obersten Gerichtshöfe des Bundes*). The highest federal court is bound by the admission of the complaint.
(5) The court that rules on an appellate remedy against a judgment on the main issue does not review whether the recourse taken was admissible.
(6) Subsections (1) to (5) apply accordingly to adjudicating bodies with jurisdiction over civil disputes, family matters and non-contentious matters in relation to each other.

Section 17b

- (1) After the decision on referral has become final and absolute, the legal dispute is pending at the court designated in the decision upon receipt of the file by that court. The effects of pendency continue to exist.
- (2) If a dispute is referred to another court, the costs of the proceedings before the first court are treated as part of the costs incurred at the court to which the dispute was referred. The plaintiff bears the additional costs incurred even if he or she prevails on the main issue.
- (3) Subsection (2) sentence 2 does not apply to family matters and non-contentious matters.

Section 17c

- (1) In such case as concentrations of jurisdiction or changes in judicial districts are undertaken on account of this Act, on account of provisions of other Federal legislation or on account of *Land* legislation, provisions of Federal law which do not affect the legal jurisdiction in pending or sub judice proceedings do not preclude allocation of these proceedings to the new competent court under *Land* legislation.
- (2) If at the time of the allocation, the main hearing has begun but has not been concluded in a criminal or administrative fine case, it may only be continued before the court competent after the entry into force of the change in competence if the persons appointed to adjudicate are the same persons as those adjudicating at the beginning of the main hearing. If they are not the same persons, the court that began the main hearing remains competent.

Section 18

The members of the diplomatic missions established in the territory of application of this Act, the members of their families and their private domestic employees are exempt from German jurisdiction under the Vienna Convention on Diplomatic Relations of 18 April 1961 (Federal Law Gazette 1964 II, p. 957 et seqq.). That also applies if their sending state is not a party to that Convention; in such case, Article 2 of the Act of 6 August 1964 relating to the Vienna Convention on Diplomatic Relations of 18 April 1961 (Federal Law Gazette 1964 II, p. 957) applies accordingly.

Section 19

- (1) The members of the consular missions established in the territory of application of this Act, including the honorary consular officers, are exempt from German jurisdiction under the Vienna Convention on Consular Relations of 24 April 1963 (Federal Law Gazette 1969 II, p. 1585 et seqq.). That also applies if their sending state is not a party to that Convention; in such case, Article 2 of the Act of 26 August 1969 relating to the Vienna Convention on Consular Relations of 24 April 1963 (Federal Law Gazette 1969 II, p. 1585) applies accordingly.
- (2) Special international agreements concerning the exemption of the persons designated in subsection (1) from German jurisdiction remain unaffected.

Section 20

- (1) German jurisdiction also does not apply to representatives of other states and persons accompanying them who are staying in the territory of application of this Act at the official invitation of the Federal Republic of Germany.
- (2) In all other cases, German jurisdiction also does not apply to persons other than those designated in subsection (1) and in sections 18 and 19 insofar as they are exempt from it under the general rules of international law or on the basis of international agreements or other legislation. Functional immunity does not prevent the application of German jurisdiction to the prosecution of criminal offences in accordance with the Code of Crimes against International Law (*Völkerstrafgesetzbuch*).

Section 21

Sections 18 to 20 do not preclude execution of a request for transfer of a person in custody and for mutual assistance communicated by an international criminal court established by a legal instrument that is binding on the Federal Republic of Germany.

Second Title

General provisions concerning the presiding committee and the allocation of court business

Section 21a

- (1) A presiding committee is to be established at each court.
- (2) The presiding committee is composed of the president or supervising judge acting as chairperson and,
1. at courts with at least eighty permanent judicial posts, ten elected judges,
 2. at courts with at least forty permanent judicial posts, eight elected judges,
 3. at courts with at least twenty permanent judicial posts, six elected judges,
 4. at courts with at least eight permanent judicial posts, four elected judges,
 5. at the other courts, the judges eligible to stand for election under section 21b (1).

Section 21b

- (1) Eligible to vote in elections to the presiding committee are the judges appointed for life and the judges appointed for a specified term upon whom a judicial office has been conferred at the court as well as the judges on probation who are working at the court, the judges by commission and the judges on secondment for a term of at least three months who are performing judicial duties at the court. Eligible to stand for election to the presiding committee are the judges appointed for life and the judges appointed for a specified term upon whom a judicial office has been conferred at the court. Neither eligible to vote in elections nor eligible to stand for election are judges who have been seconded to another court for more than three months, who have been on leave for more than three months or who have been seconded to an administrative authority.
- (2) Each eligible voter may vote for no more than the prescribed number of judges.
- (3) The election must be direct and secret. The persons receiving the most votes are deemed to have been elected. Provision for other election procedures for the election to the presiding committee may be made by *Land* law; in such case, the *Land* government lays down the necessary rules governing the election procedure in a statutory instrument; it may transfer the authorisation for this to the *Land* department of justice. In the case of a tie, a decision is taken by drawing lots.
- (4) Members are elected for four years. Half of the members leave every two years. The first members to leave are determined by drawing lots.
- (5) The election procedure is regulated in a statutory instrument issued by the Federal Government with the approval of the Bundesrat.
- (6) In the event that a law is infringed in the course of the election, the election may be challenged by the judges designated in subsection (1) sentence 1. Such challenge is to be decided by a division of the competent higher regional court, in the case of the Federal Court of Justice by a panel of that court. If the challenge is declared to be well founded, an appellate remedy lodged against a court decision may not be based on the assertion that the presiding committee consequently was not properly composed. In all other cases, the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) apply to the procedure accordingly.

Section 21c

- (1) In the event that the president or supervising judge is unable to be present, he or she is represented by his or her deputy (section 21h). If the president or supervising judge is present, his or her deputy, if he or she has not himself or herself been elected to the

presiding committee, may attend the meetings of the presiding committee in an advisory capacity. The elected members of the presiding committee do not have deputies.

(2) If an elected member of the presiding committee leaves the court, is seconded to another court for more than three months, is granted leave for more than three months, is seconded to an administrative authority or becomes a member of the presiding committee by statute, he or she is to be replaced by the person who is next in line on the basis of the last election.

Section 21d

(1) The size of the presiding committee is governed by the number of permanent judicial posts at the end of the day six months preceding the day on which the business year begins.

(2) If the number of permanent judicial posts at a court with a presiding committee under section 21a (2) nos. 1 to 3 has fallen below the respective specified minimum number, the following number of judges is to be elected at the next election held under section 21b (4):

1. four judges at a court with a presiding committee under section 21a (2), no. 1,
2. three judges at a court with a presiding committee under section 21a (2), no. 2,
3. two judges at a court with a presiding committee under section 21a (2), no. 3.

In addition to the members leaving the presiding committee under section 21b (4), a further member leaves, to be selected by drawing lots.

(3) If the number of permanent judicial posts at a court with a presiding committee under section 21a (2) nos. 2 to 4 has risen above the maximum number specified for the previous size of the presiding committee, the following number of judges is to be elected at the next election held under section 21b (4):

1. six judges at a court with a presiding committee under section 21a (2) no. 2,
2. five judges at a court with a presiding committee under section 21a (2) no. 3,
3. four judges at a court with a presiding committee under section 21a (2) no. 4.

One of these members, to be selected by drawing lots, leaves the given presiding committee at the end of two years.

Section 21e

(1) The presiding committee determines the composition of the adjudicating bodies, appoints the investigating judges, regulates representation and allocates court business. It makes these arrangements prior to the beginning of the business year for the latter's duration. The president determines which judicial duties he or she is to perform. Each judge may belong to several adjudicating bodies.

(2) The judges who are not members of the presiding committee are to be given an opportunity to be heard prior to the allocation of court business.

(3) The arrangements under subsection (1) may only be changed in the course of the business year if this becomes necessary due to the excessive or insufficient workload of a judge or adjudicating body or as a result of the transfer or prolonged absence of individual judges. The presiding judges of the adjudicating bodies affected by the change in the allocation of court business are to be given an opportunity to be heard prior to such change.

(4) The presiding committee may order that a judge or adjudicating body that has been handling a case continue to be responsible for that case following a change in the allocation of court business.

(5) If a judge is to be assigned to another adjudicating body or if his or her sphere of competence is to be changed, he or she is to be given an opportunity to be heard beforehand, except in urgent cases.

(6) If a judge is to be released, either entirely or partially, in order to perform judicial administration functions, the presiding committee is to be heard beforehand.

(7) The presiding committee decides by a majority vote. Section 21i (2) applies accordingly.

(8) The presiding committee may rule that judges of the court may be present during the deliberations and votes of the presiding committee, either for the entire duration or for a part thereof. Section 171b applies accordingly.

(9) The roster allocating court business must be open for inspection at the registry of the court designated by the president or supervising judge; it need not be published.

Section 21f

(1) The adjudicating bodies at the regional courts, at the higher regional courts and at the Federal Court of Justice are to be presided over by the president and the presiding judges.

(2) In the event that the presiding judge is unable to be present, the member of the adjudicating body designated by the presiding committee presides. In the event that this deputy is also unable to be present, the most senior member or, in a case of equal seniority, the oldest member of the adjudicating body presides.

Section 21g

(1) Within an adjudicating body composed of several judges, court business is allocated among the members by a ruling of all the professional judges belonging to the adjudicating body. In the case of a tie, the presiding committee decides.

(2) The ruling must specify, prior to the beginning of the business year and for the latter's duration, the principles governing the participation of the members in the proceedings; it may only be amended if this becomes necessary due to the excessive or insufficient workload, transfer or prolonged absence of individual members of the adjudicating body.

(3) If, under the provisions of procedural law, proceedings may be assigned by the adjudicating body to one of its members for decision as a judge sitting alone, subsection (2) applies accordingly.

(4) Where a professional judge is unable to present at the time of the ruling, his or her place is to be taken by the deputy designated in the roster allocating court business.

(5) Section 21i (2) applies accordingly, with the proviso that the arrangements are made by the presiding judge.

(6) The professional judges affected by the ruling are to be given an opportunity to be heard before it is given.

(7) Section 21e (9) applies accordingly.

Section 21h

The president or supervising judge, in respect of the court business assigned to him or her under this Act that is not to be allocated by the presiding committee, is represented by his or her permanent deputy; where there are several permanent deputies, he or she is represented by the most senior deputy or, in a case of equal seniority, by the oldest deputy. Where a permanent deputy has not been designated or is unable to be present, the president or supervising judge is represented by the most senior judge or, in a case of equal seniority, by the oldest judge.

Section 21i

(1) A quorum of the presiding committee exists if at least half of its elected members are present.

(2) If a timely decision of the presiding committee cannot be given, the arrangements specified in section 21e are to be made by the president or by the supervising judge. The reasons for the arrangements are to be stated in writing. The arrangements are to be submitted to the presiding committee for approval without delay. They remain in force as long as the presiding committee does not rule otherwise.

Section 21j

(1) If a court is established, and if the presiding committee is to be established under section 21a (2) nos. 1 to 4, the arrangements specified in section 21e are to be made by the president or by the supervising judge until the presiding committee is established. Section 21i (2) sentences 2 to 4 applies accordingly.

(2) A presiding committee under section 21a (2) nos. 1 to 4 is to be established within three months after the establishment of the court. The term specified in section 21b (4) sentence 1 starts at the beginning of the business year following the business year in which the presiding committee is established if the presiding committee has not been established at the beginning of a business year.

(3) The day on which the court is established takes the place of the time specified in section 21d (1).

(4) When the electoral board is appointed for the first time, the functions under section 1 (2) sentences 2 and 3 and section 1 (3) of the Election Regulations for the Presiding Committees of the Courts (*Wahlordnung für die Präsidien der Gerichte*) of 19 September 1972 (Federal Law Gazette I, p. 1821) are discharged by the president or by the supervising judge. The end of the time period specified in subsection (2) sentence 1 is deemed to be the end of the business year specified in section 1 (2) sentence 2, and section 3 sentence 1 of the Election Regulations for the Presiding Committees of the Courts.

Third Title **Local courts**

Section 22

(1) The local courts (*Amtsgerichte*) are presided over by judges sitting alone.

(2) A judge at a local court may at the same time be conferred an additional judicial office at another local court or at a regional court.

(3) Responsibility for general supervision of service may be transferred by the *Land* department of justice to the president of the superior regional court. If this is not done, and if the local court is staffed with several judges, the *Land* department of justice is to transfer responsibility for general supervision of service to one of them.

(4) Each local court judge performs the duties incumbent upon him or her as a judge sitting alone unless otherwise provided under this Act.

(5) Judges by commission may also be employed. Judges on probation may be employed except as otherwise provided under subsection (6), section 23b (3) sentences 2 to 5, section 23c (2) or section 29 (1) sentence 2.

(6) A judge on probation may not handle insolvency and restructuring matters during the first year after his or her appointment. Judges in insolvency and restructuring matters, to the extent that this is required to fulfil the respective judicial task, must have proven knowledge in the fields of insolvency law, restructuring law, commercial law and company and partnership law as well as basic knowledge of the aspects of labour law, social law, tax law and accounting that are required for insolvency and restructuring proceedings. A judge who has no proven knowledge in these fields may be assigned the duties of an insolvency or restructuring judge only if it is anticipated that he or she will acquire this knowledge in the very near future.

Section 22a

At local courts with a presiding committee consisting of all the judges eligible to stand for election (section 21a (2) no. 5), the president of the superior regional court or, if the president of another local court is vested with responsibility for supervision of service, that president belongs to the presiding committee as chairperson.

Section 22b

(1) If a local court is staffed with only one judge, the presiding committee of the regional court designates a judge in its district to serve as the permanent representative of the local court judge.

(2) If it is necessary for a judge at a local court to be temporarily represented by a judge at another court, the presiding committee of the regional court designates a judge in its district to represent the local court judge for no longer than two months.

- (3) In urgent cases, the president of the regional court may appoint a provisional representative. The grounds for the arrangements must be specified in writing.
- (4) In the case of local courts where the president of another local court is responsible for supervision of service, the presiding committee of the other local court is competent in the cases of subsections (1) and (2) and its president is competent in the case of subsection (3).

Section 22c

- (1) The *Land* governments are authorised to issue statutory instruments providing that a joint standby duty schedule be compiled for several local courts in the district of one regional court or several regional courts in the district of one higher regional court, or that a single local court handle standby duty business, either entirely or partially, if this is advisable in order to ensure a more equitable distribution of standby duty assignments among the judges. The judges of the local courts designated in sentence 1 are to be scheduled for standby duty. The statutory instrument issued under sentence 1 may stipulate that the judges of the regional courts also be scheduled for standby duty. Standby duty business, under section 21e, is to be allocated by the presiding committees of the regional courts in mutual agreement and in agreement with the presiding committees of the local courts concerned. If no agreement can be reached, such allocation is to be made by the presiding committee of the higher regional court to the district of which the regional courts belong.
- (2) The *Land* governments may transfer the authorisation under subsection (1) to the *Land* departments of justice.

Section 22d

The validity of an act performed by a judge at a local court is not affected by the fact that the act should have been performed by another judge according to the roster allocating court business.

Section 23

The jurisdiction of the local courts in civil disputes encompasses the following, insofar as they have not been assigned to the regional courts irrespective of the value of the matter in dispute:

1. disputes concerning claims involving an amount or with a monetary value not exceeding the sum of five thousand euros;
2. irrespective of the value of the matter in dispute:
 - a) disputes concerning claims arising out of a lease of living accommodation or concerning the existence of such a lease; this jurisdiction is exclusive;
 - b) disputes between travellers and providers of food or lodging, carriers, shippers or passage brokers at ports of embarkation concerning bills for food or lodging, carriage charges, passage monies, carriage of travellers and their belongings and loss of or damage to the latter, as well as disputes between travellers and craftspersons arising on the occasion of travel;
 - c) disputes under section 43 (2) of the Apartment Ownership Act (*Wohnungseigentumsgesetz*); this jurisdiction is exclusive;
 - d) disputes concerning damage caused by game;
 - e) (repealed)
 - f) (repealed)
 - g) claims arising out of a contract for a life annuity, life endowment or life interest or for vacation of premises that is connected with the transfer of possession of a piece of land.

Section 23a

(1) The local courts furthermore have jurisdiction over

1. family matters;
2. non-contentious matters, insofar as no other jurisdiction has been established by statutory provisions.

The jurisdiction under sentence 1 no. 1 is exclusive.

(2) Non-contentious matters are

1. adult guardianship matters, placement matters and matters relating to adult guardianship appointments;
2. matters relating to probate and estate division;
3. register matters;
4. proceedings under company law under section 375 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction;
5. the further non-contentious matters under section 410 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction;
6. proceedings in imprisonment matters under section 415 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction;
7. proceedings by public notice process;
8. land register matters;
9. proceedings under section 1 nos. 1 and 2 to 6 of the Act on Court Procedure in Agricultural Matters (*Gesetz über das gerichtliche Verfahren in Landwirtschaftssachen*);
10. shipping register matters as well as
11. other non-contentious matters, insofar as they have been assigned to the courts by federal law.

(3) In derogation from subsection (1) sentence 1 no. 2, competence for the tasks incumbent upon the local courts in matters relating to property division within the meaning of section 342 (2), no. 1, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction lies with the notaries instead of the local courts.

Section 23b

(1) Divisions for family matters (family courts) are to be established at the local courts.

(2) If several divisions for family matters are established, then all the family matters relating to the same group of persons should be assigned to the same division. If a matrimonial matter becomes pending at one division while another family matter relating to the same group of persons or a common child of both spouses is pending at first instance at another division, the latter matter is to be transferred ex officio to the division handling the matrimonial matter. If an application in proceedings under sections 10 to 12 of the Act to Implement Certain Legal Instruments in the Field of International Family Law (*Internationales Familienrechtsverfahrensgesetz*) of 26 January 2005 (Federal Law Gazette I, p. 162) becomes pending at one division while a family matter relating to the same child is pending at first instance at another division, the latter matter is to be transferred ex officio to the first-mentioned division; this does not apply if the application is manifestly inadmissible. Upon concurring application of both parents, the arrangements specified in sentence 3 are also to be applied to other family matters in which the parents are involved.

(3) The divisions for family matters are to be composed of family court judges. A judge on probation may not perform the duties of a family court judge during the first year after his or

her appointment. Family court judges must have proven knowledge in the fields of family law, particularly the law on parent and child matters, procedural law in family matters and the parts of the law on child and youth welfare services required for proceedings in family matters, as well as proven basic knowledge of psychology, particularly child development psychology, and communication with children. A judge who has no proven knowledge in these fields may be assigned the tasks of a family judge only if it is anticipated that he or she will acquire this knowledge in the very near future. Derogations from the requirements under sentences 3 and 4 are permitted in the case of judges who are occupied with performing family court tasks only in the context of standby duty if an orderly operation of standby duty acceptable to the judges concerned would otherwise not be guaranteed.

Section 23c

(1) Divisions for adult guardianship matters, placement matters and matters relating to adult guardianship appointments (adult guardianship courts (*Betreuungsgerichte*)) are to be established at the local courts.

(2) The adult guardianship courts are to be composed of adult guardianship court judges. A judge on probation may not perform the duties of an adult guardianship court judge during the first year after his or her appointment.

Section 23d

The *Land* governments are authorised to issue statutory instruments assigning to one local court the family matters and, either entirely or partially, the commercial matters, non-contentious matters and decisions on measures requiring a prior court order or court authorisation under the enforcement laws for the districts of several local courts, insofar as such concentration serves the purpose of material furtherance of the proceedings or appears advisable in order to ensure uniform administration of justice. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

Section 24

(1) In criminal matters, the local courts have jurisdiction unless

1. the jurisdiction of the regional court is established under section 74 (2) or section 74a or the jurisdiction of the higher regional court is established under section 120 or section 120b,
2. in an individual case, a sentence of imprisonment exceeding four years or placement of the accused in a psychiatric hospital in lieu of or in addition to a penalty or placement of the accused in preventive detention (sections 66 to 66b of the Criminal Code (*Strafgesetzbuch*)) is to be expected, or
3. the public prosecution office prefers charges before the regional court due to the particular need for protection of persons aggrieved by the criminal offence who might be considered witnesses or due to the particular scale or the special significance of the case.

A particular need for protection under sentence 1 no. 3 is deemed to exist in particular if it is to be expected that the examination will constitute a particular burden for the aggrieved person and multiple examinations should therefore be avoided.

(2) The local court may not impose a sentence of imprisonment exceeding four years and may neither order placement in a psychiatric hospital in lieu of or in addition to a penalty nor order placement in preventive detention.

Section 25

A local court judge is to give a decision as a criminal court judge on less serious criminal offences

1. if they are prosecuted by way of a private prosecution or

2. if a penalty more severe than a two-year sentence of imprisonment is not to be expected.

Section 26

(1) In the case of criminal offences committed by adults through which a child or a juvenile is injured or directly endangered, and in the case of violations by adults of legal provisions serving the protection or education of young people, the juvenile courts also have jurisdiction in addition to the courts with jurisdiction over general criminal matters. Sections 24 and 25 apply accordingly.

(2) In matters relating to the protection of children and juveniles, the public prosecution office should prefer charges before the juvenile courts if the interests meriting protection of children or juveniles who are required as witnesses in the proceedings can thus be better protected. In all other cases, the public prosecution office should only prefer charges before the juvenile courts if a hearing before the juvenile court appears expedient for other reasons.

(3) Subsections (1) and (2) apply accordingly to the application for court investigatory acts in investigation proceedings.

Section 26a (repealed)

Section 27

In all other cases, the jurisdiction and scope of duties of the local courts is determined by the provisions of this Act and the provisions of the codes of procedure.

Fourth Title Courts with lay judges

Section 28

Courts with lay judges (*Schöffengerichte*) are to be established at the local courts to hear and decide criminal matters falling under the jurisdiction of the local courts, insofar as such matters are not decided by a criminal court judge.

Section 29

(1) The bench consists of a local court judge as presiding judge and two lay judges. A judge on probation may not serve as presiding judge during the first year after his or her appointment.

(2) Upon application by the public prosecution office, it may be decided at the opening of the main proceedings that a second local court judge be added to the bench (extended bench) if his or her participation appears necessary in the light of the scale of the matter. An application by the public prosecution office is not required if a court of higher rank opens the main proceedings before a court with lay judges.

Section 30

(1) Except where the law provides for exceptions, during the main hearing the lay judges exercise judicial office in full and with the same voting rights as the local court judges and also participate in the decisions to be made in the course of a main hearing that are entirely unrelated to the delivery of the judgment and may be made without an oral hearing.

(2) The necessary decisions to be made outside the main hearing are to be made by the local court judge.

Section 31

The office of lay judge is an honorary position. It may only be held by Germans.

Section 32

The following persons are ineligible for the office of lay judge:

1. persons who as a result of a judicial decision do not have the capacity to hold public office or who have been sentenced to imprisonment exceeding six months for an intentional act;
2. persons against whom investigation proceedings are pending for an offence that may result in loss of capacity to hold public office.
3. (repealed)

Section 33

The following persons should not be appointed to the office of lay judge:

1. persons who would not yet have attained the age of twenty-five by the beginning of the term of office;
2. persons who have attained the age of seventy or would have attained the age of seventy by the beginning of the term of office;
3. persons who are not residing in the municipality at the time the list of nominees is compiled;
4. persons who are unsuitable candidates for health reasons;
5. persons who are unsuitable candidates due to lack of a sufficient command of the German language;
6. persons who are no longer able to freely dispose over their assets.

Section 34

(1) The following also should not be appointed to the office of lay judge:

1. the Federal President;
2. the members of the Federal Government or of a *Land* government;
3. civil servants who could be provisionally suspended or retired at any time;
4. judges and officials of the public prosecution office, notaries and attorneys-at-law;
5. court bailiffs, police officers and prison staff as well as full-time probation officers and staff of the court assistance agency;
6. ministers of religion and members of religious associations that by their rules are committed to the common life.

(2) In addition to the officials designated above, *Land* legislation may designate higher administrative officials who should not be appointed to the office of lay judge.

Section 35

The following may decline appointment to the office of lay judge:

1. members of the Bundestag, the Bundesrat, the European Parliament, a *Land* parliament or a second chamber;
2. persons who
 - a) acted as honorary judges in two consecutive terms of office in the criminal justice system, insofar as the last term of office is still continuing at the time of compilation of the list of nominations;
 - b) during the previous term of office discharged the obligation to serve as an honorary judge in the criminal justice system on at least forty days or

- c) are already serving as honorary judges;
- 3. doctors, dentists, nurses, paediatric nurses, orderlies and midwives;
- 4. heads of pharmacies that do not employ any other pharmacists;
- 5. persons who can credibly demonstrate that their immediate obligation to personally care for their families would make it particularly difficult for them to perform the duties of the office;
- 6. persons who have attained the age of sixty-five or would have attained the age of sixty-five by the end of the term of office;
- 7. persons who can credibly demonstrate that performing the duties of the office would constitute a particular hardship either for them or for a third party because it would jeopardise or considerably impair an adequate livelihood.

Section 36

- (1) The municipality is to compile a list of prospective lay judges every five years. Inclusion in the list requires the approval of two thirds of the members of the municipal assembly who are present, but at least half of the statutory number of members of the municipal assembly. The respective rules for the adoption of resolutions by the municipal assembly remain unaffected.
- (2) The list of nominees should adequately reflect all groups within the population in terms of sex, age, occupation and social status. It must contain the family name, first names, different name at birth if applicable, year of birth, place of residence including the postal code and occupation of the person nominated; in the case of common names, the city district or part of town of the place of residence is to be included.
- (3) The list of nominees is to be open to public inspection in the municipality for one week. The time at which it will be laid out for inspection must be publicly announced in advance.
- (4) The lists of nominees for the district of the local court must contain at least twice as many names as the required number of principal lay judges and substitute lay judges specified in section 43. Their allocation among the municipalities of the district is to be undertaken by the president of the regional court (president of the local court) in keeping with the populations of the municipalities.

Section 37

Objections to the list of nominees may be lodged within one week, calculated from the end of the period of public inspection, either in writing or for the record on the grounds that persons have been included in the list of nominees who are ineligible for inclusion under section 32 or should not have been included under sections 33 and 34.

Section 38

- (1) The chairperson of the municipal council is to send the list of nominees and the objections to the judge at the local court of the district.
- (2) If corrections to the list of nominees become necessary after it has been sent, the chairperson of the municipal council must notify the judge at the local court accordingly.

Section 39

The judge at the local court must consolidate the municipalities' lists of nominees into a district list and prepare the ruling on the objections. He or she must verify that the provisions of section 36 (3) have been observed and ensure that any defects are remedied.

Section 40

- (1) A committee must convene at the local court every five years.
- (2) The committee is to be composed of the judge at the local court as chairperson and an administrative official to be designated by the *Land* government as well as seven upstanding individuals as associate members. The *Land* governments are authorised to issue statutory instruments regulating the competence for designation of the administrative official in

derogation from sentence 1. They may issue statutory instruments transferring this authorisation to the highest *Land* authorities.

(3) The associate members are to be elected from among the inhabitants of the district of the local court by the representative body of the corresponding administrative subdivision by a two-thirds majority of the members present, but at least by half of the statutory number of members. The respective rules for the adoption of resolutions by this representative body remain unaffected. If the district of the local court encompasses several administrative districts or parts of several administrative districts, the competent highest *Land* authority determines the number of associate members to be elected by the representative bodies of these administrative districts.

(4) A quorum of the committee exists if at least the chairperson, the administrative official and three associate members are present.

Section 41

The committee rules on the objections to the list of nominees by a simple majority vote. In the case of a tie, the chairperson has the casting vote. The decisions must be placed on record. They are not contestable.

Section 42

(1) From the corrected list of nominees, the committee, by a two-thirds majority vote, selects the following for the next five business years:

1. the necessary number of lay judges;
2. the necessary number of persons to take the place of any lay judges who become unavailable or to serve as lay judges in the cases of sections 46 and 47 (substitute lay judges). Persons should be selected who reside at the seat of the local court or in the immediate vicinity.

(2) Care should be taken at the time of selection to ensure that all groups within the population are adequately represented in terms of sex, age, occupation and social status.

Section 43

(1) The number of principal lay judges and substitute lay judges required for each local court is to be determined by the president of the regional court (president of the local court).

(2) The number of principal lay judges should be calculated in such a way that each one is likely to be called to serve on no more than twelve ordinary sitting days per year.

Section 44

The names of the selected principal lay judges and substitute lay judges must be entered in separate lists (*Schöffenlisten*) at each local court.

Section 45

(1) The dates of the ordinary sittings of a court with lay judges must be set in advance for the entire year.

(2) The order in which the principal lay judges are to participate in the year's individual ordinary sittings is to be decided by drawing lots in a public sitting of the local court. If several benches with lay judges have been established at a local court, lots may be drawn in such a way that each principal lay judge only participates in the sittings of one bench. Lots are to be drawn in such a way that each principal lay judge selected is called to serve on twelve sitting days if possible. Sentence 1 applies accordingly to the order in which the substitute lay judges take the place of lay judges who become unavailable (list of substitute lay judges - *Ersatzschöffensliste*); sentence 2 does not apply to substitute lay judges.

(3) Lots are to be drawn by the judge at the local court.

(4) The lists of lay judges are to be maintained by a registry clerk of the court registry (*Schöffengeschäftsstelle*). He or she must record the drawing of lots. The judge at the local court must inform the lay judges of the results of the drawing. At the same time, the principal

lay judges must be informed of the sitting days on which they must serve and advised of the legal consequences of failure to appear. A lay judge who is not called to serve on a sitting day until after the commencement of the business year must be informed in the same manner once he or she has been called.

Section 46

If an additional bench with lay judges is established at a local court during the business year, the number of principal lay judges required for its ordinary sittings is to be drawn by lots from the list of substitute lay judges under section 45 (1), (2) sentence 1, (3) and (4). The lay judges selected in this manner must be deleted from the list of substitute lay judges.

Section 47

If court business necessitates the scheduling of extraordinary sittings or if it becomes necessary for lay judges other than the ones initially appointed or for additional lay judges to be called to serve at individual sittings, they are to be selected from the list of substitute lay judges.

Section 48

(1) Additional lay judges (section 192 (2) and (3)) are to be assigned from the list of substitute lay judges.

(2) In the event that a principal lay judge is unable to be present, the additional lay judge initially assigned from the list takes his or her place even if the unavailability of the principal lay judge becomes known prior to the beginning of the sitting.

Section 49

(1) If it becomes necessary for substitute lay judges to be called to serve at individual sittings (section 47 and section 48 (1)), they are to be assigned from the list of substitute lay judges in the order in which they appear on the list.

(2) If a principal lay judge is deleted from the list of lay judges, he or she must be replaced by the substitute lay judge who is next in line on the list of substitute lay judges; the name of the replacement must then be deleted from the list of substitute lay judges. The designated registry clerk of the court registry must thereupon inform the new principal lay judge in accordance with section 45 (4) sentences 3 and 4.

(3) The order of calling is to be determined by the date of receipt by the registry of lay judges of the order or ruling indicating the necessity of calling substitute lay judges. The designated registry clerk is to make a note of the date and time of receipt on the order or ruling. Proceeding in the order of receipt, he or she assigns the substitute lay judges to the various sittings in accordance with subsection (1) or transfers them to the list of principal lay judges in accordance with subsection (2). In the event that several orders or rulings are received simultaneously, transfers are first to be made of names from the list of substitute lay judges to the list of principal lay judges in accordance with subsection (2) in alphabetical order of the surnames of the principal lay judges deleted from the list of lay judges; in all other cases the alphabetical order of the surnames of the first defendants is decisive.

(4) If a substitute lay judge is assigned to a sitting day, he or she may not be called again until all the other substitute lay judges have likewise been assigned or released from their service commitment or deemed unreachable (section 54). This is also the case even if, following such assignment, a substitute lay judge has been released from the service commitment or deemed unreachable.

Section 50

If a sitting extends beyond the time for which the lay judge was initially called, he or she must continue to serve until the end of the sitting.

Section 51

(1) A lay judge is to be removed from office if he or she is guilty of a gross breach of his or her official duties.

(2) The decision is to be given by a criminal division of the higher regional court upon application of the local court judge in a ruling after hearing the public prosecution office and the lay judge concerned. The decision is not contestable.

(3) The division competent under subsection (2) sentence 1 may order that the lay judge not be called to serve at sittings until the decision on his or her removal from office has been given. The order is not contestable.

Section 52

(1) A lay judge must be deleted from the list of lay judges if

1. he or she becomes ineligible for the office of lay judge or if such ineligibility becomes known, or
2. circumstances arise or become known that are such that he or she should not be appointed to the office of lay judge.

In the cases of section 33 no. 3, however, this only applies if the lay judge gives up his or her residence in the district of the regional court.

(2) Upon his or her application, a lay judge must be deleted from the list of lay judges if he or she

1. gives up his or her residence in the district of the local court in which he or she is serving, or
2. has participated in sittings on more than 24 sitting days during one business year.

In the case of principal lay judges, such deletion only becomes effective for the sittings that begin more than two weeks after the day on which the application is received by the designated registry clerk of the court registry. If a substitute lay judge has already been notified that he or she has been called to serve on a specific sitting day, his or her deletion from the list does not become effective until after the conclusion of the main hearing begun on that sitting day.

(3) If the lay judge has died or moved out of the district of the regional court, the judge at the local court must order his or her deletion from the list. In all other cases, he or she decides on the application after hearing the public prosecution office and the lay judge concerned.

(4) The decision is not contestable.

(5) If a substitute lay judge is transferred to the list of principal lay judges, the service commitments for which he or she was previously called as a substitute lay judge take precedence.

(6) If the number of substitute lay judges on the list of substitute lay judges has declined to half the original number, additional lay judges are to be selected from the existing lists of nominees by the committee that was responsible for selecting the original lay judges. The judge at the local court may dispense with selecting additional lay judges if such selection would have to take place during the last six months of the period for which the lay judges have been selected. Section 45 applies accordingly to determining the order in which new substitute lay judges are to participate in sittings, with the proviso that the places on the list of substitute lay judges following the last lay judge on the list at the time of the selection are determined by drawing lots.

Section 53

(1) Grounds for refusing service are only to be considered if they are put forward by the lay judge concerned within one week of the time he or she was informed of his or her assignment. If such grounds arise or become known at a later date, the time limit is to be calculated from that point onward.

(2) The judge at the local court is to rule on the request after hearing the public prosecution office. The decision is not contestable.

Section 54

(1) The judge at the local court may release a lay judge from his or her service commitment on specific sitting days upon the latter's application due to obstacles that have arisen. An obstacle is deemed to have arisen if the lay judge is prevented from serving by circumstances that are beyond his or her control or if it would be unreasonable to expect him or her to serve.

(2) For the purposes of calling substitute lay judges, it is deemed equivalent to being prevented from serving if a lay judge cannot be reached. A lay judge who does not appear at a sitting and whose appearance foreseeably cannot be effected without considerably delaying commencement of the sitting is deemed to be unreachable. A substitute lay judge is also deemed to be unreachable if calling him or her would necessitate a postponement of the hearing or a considerable delay in its commencement. The decision as to whether a lay judge is unreachable is to be made by the judge at the local court. Section 56 remains unaffected.

(3) The decision is not contestable. The application under subsection (1) and the decision are to be recorded in the files.

Section 55

The lay judges and the associate members of the committee receive remuneration under the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*).

Section 56

(1) A coercive fine is imposed on lay judges and associate members of the committee who fail to appear at the sittings on time without a sufficient excuse or otherwise shirk their obligations. At the same time, they are to be charged with the costs incurred.

(2) The decision is to be made by the judge at the local court after hearing the public prosecution office. If a sufficient excuse is subsequently provided, the decision may be either entirely or partially revoked. A complaint by the person concerned against the decision is admissible under the provisions of the Code of Criminal Procedure (*Strafprozessordnung*).

Section 57

The *Land* department of justice must specify the date by which the lists of nominees are to be compiled and submitted to the judge at the local court as well as the date on which the committee is to be convened and lots are to be drawn to select the lay judges.

Section 58

(1) The *Land* governments are authorised to issue statutory instruments providing that criminal matters, either entirely or partially, as well as certain kinds of decisions in criminal matters and requests for mutual assistance in criminal matters from agencies outside the territorial scope of this Act be assigned to a single local court for the districts of several local courts insofar as such concentration serves the purpose of material furtherance or swifter disposal of the proceedings. The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.

(2) If a joint court with lay judges is established for the districts of several local courts, the president of the regional court (president of the local court) must determine the necessary number of principal and substitute lay judges and allocate the number of principal lay judges among the individual local court districts. If the seat of the local court at which a joint court with lay judges is established is a city that encompasses districts of the other local courts or parts of such districts, the president of the regional court (president of the local court) must allocate the number of substitute lay judges among these local courts; the *Land* department of justice may exempt certain local courts from this. The president of the local court only takes the place of the president of the regional court if all the local courts concerned are subject to his or her supervision of service.

(3) All the other provisions of this Title apply accordingly.

Fifth Title Regional courts

Section 59

- (1) The regional courts are composed of a president, presiding judges and additional judges.
- (2) The judges at a regional court may at the same time be conferred an additional judicial office at a local court.
- (3) Judges on probation and judges by commission may be employed.

Section 60

- (1) Unless otherwise determined, both civil and criminal divisions are to be established at each regional court.
- (2) The *Land* governments are authorised to issue statutory instruments to establish exclusively civil or criminal divisions at a regional court with at least 100 judicial posts and to assign to it the civil or criminal matters for the districts of several regional courts. The *Land* governments may transfer the authorisation under sentence 1 to the *Land* departments of justice.

Sections 61 to 69 (repealed)

Section 70

- (1) Insofar as the representation of a member by a member of the same court is not possible, it is, upon application of the presiding committee, to be arranged by the *Land* department of justice.
- (2) The assignment of a judge on probation or a judge by commission is to be limited to a specific period of time and may not be revoked prior to the expiration of this period.
- (3) The provisions of *Land* law under which judicial functions may only be exercised by judges appointed for life and the provisions of *Land* law governing representation by judges appointed for life remain unaffected.

Section 71

- (1) The civil divisions, including the commercial chambers, have jurisdiction over all civil disputes that are not assigned to the local courts.
- (2) The regional courts have exclusive jurisdiction over the following, irrespective of the value of the matter in dispute:

1. claims brought against the fiscal authorities on the basis of civil service law;
2. claims against judges and civil servants for overstepping their official powers or for failing to perform official duties;
3. claims specified in section 1 (1) of the Capital Markets Model Case Act (*Kapitalanleger-Musterverfahrensgesetz*);
4. proceedings under
 - a) (repealed)
 - b) sections 98, 99, 132, 142, 145, 258, 260, 293c and 315 of the Stock Corporation Act (*Aktiengesetz*),
 - c) section 26 of the SE Implementation Act (*SE-Ausführungsgesetz*),
 - d) section 10 of the Company Transformation Act (*Umwandlungsgesetz*),
 - e) the Award Proceedings Act (*Spruchverfahrensgesetz*),
 - f) sections 39a and 39b of the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*);

5. disputes

- a) concerning a customer's order rights under section 650b of the German Civil Code (*Bürgerliches Gesetzbuch*),
- b) concerning the amount of a claim to remuneration resulting from a customer's order (section 650c of the German Civil Code);

6. concerning claims deriving from the Corporate Stabilisation and Restructuring Act (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*).

(3) It is left to *Land* legislation to assign claims against the state or against a corporation established under public law arising out of directions of administrative authorities as well as claims arising out of public charges exclusively to the regional courts, irrespective of the value of the matter in dispute.

(4) The *Land* governments are authorised to issue statutory instruments assigning the decisions in proceedings under subsection (2) no. 4 (a) to (e) and no. 5 for the districts of several regional courts to one regional court. In proceedings under subsection (2) no. 4 (a) to (e), such assignment may only take place if it serves to ensure uniform administration of justice. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

Section 72

(1) The civil divisions, including the commercial chambers and the divisions specified in section 72a, are the courts hearing appeals (*Berufungsgerichte*) and the courts hearing complaints (*Beschwerdegerichte*) in the civil disputes heard by the local courts, insofar as the higher regional courts do not have jurisdiction. The regional courts are furthermore the courts hearing complaints in matters involving deprivation of liberty and in the matters decided by the adult guardianship courts.

(2) In disputes under section 43 (2) of the Apartment Ownership Act, the regional court with jurisdiction for the seat of the higher regional court is the joint court hearing appeals and complaints for the district of the higher regional court in which the local court has its seat. The *Land* governments are authorised to issue statutory instruments designating another regional court in the district of the higher regional court instead of this court. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

Section 72a

(1) One or several civil divisions for the following areas are to be established at the regional courts:

- 1. disputes deriving from banking and financial transactions,
- 2. disputes deriving from building and architectural contracts as well as from engineering contracts, insofar as they are connected with building services,
- 3. disputes deriving from therapeutic treatment,
- 4. disputes deriving from insurance policy relationships,
- 5. disputes regarding claims deriving from publications in press media, image and sound carriers of any kind, in particular in the press, and on radio, film and television,
- 6. disputes under the law of succession and
- 7. disputes and complaints under insolvency law, avoidance matters under the Creditors' Avoidance of Transfers Act (*Anfechtungsgesetz*) as well as disputes and complaints arising from the Corporate Stabilisation and Restructuring Act.

(2) The *Land* governments are authorised to issue statutory instruments to establish at the regional courts one or several civil divisions for other areas. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

(3) Disputes under sections 71 and 72 may also be assigned to the civil divisions under subsections (1) and (2).

Section 73

(1) The criminal divisions are to rule on complaints against directions of a local court judge as well as against decisions of a local court judge and decisions of benches with lay judges.

(2) The criminal divisions furthermore are to handle the matters assigned to the regional courts under the Code of Criminal Procedure.

Section 73a (repealed)

Section 74

(1) The criminal divisions, as adjudicating courts of first instance, have jurisdiction over all serious criminal offences that do not fall under the jurisdiction of the local court or the higher regional court. They also have jurisdiction over all criminal offences where a sentence of imprisonment exceeding four years or placement of the accused in a psychiatric hospital in lieu of or in addition to a penalty or placement of the accused in preventive detention is to be expected or where the public prosecution office prefers charges before the regional court in the cases of section 24 (1) no. 3.

(2) In the case of the serious criminal offences of

1. sexual abuse of children resulting in death (section 176d of the Criminal Code),
2. sexual assault, coercion and rape resulting in death (section 178 of the Criminal Code),
3. murder (section 211 of the Criminal Code),
4. manslaughter (section 212 of the Criminal Code),
5. (repealed)
6. abandonment resulting in death (section 221 (3) of the Criminal Code),
7. bodily injury resulting in death (section 227 of the Criminal Code),
8. child stealing resulting in death (section 235 (5) of the Criminal Code),
- 8a. stalking resulting in death (section 238 (3) of the Criminal Code),
9. deprivation of liberty resulting in death (section 239 (4) of the Criminal Code),
10. extortionate kidnapping resulting in death (section 239a (3) of the Criminal Code),
11. hostage taking resulting in death (section 239b (2) in conjunction with section 239a (3) of the Criminal Code),
12. robbery resulting in death (section 251 of the Criminal Code),
13. robbery-like theft resulting in death (section 252 in conjunction with section 251 of the Criminal Code),
14. robbery-like extortion resulting in death (section 255 in conjunction with section 251 of the Criminal Code),
15. arson resulting in death (section 306c of the Criminal Code),

16. causing an explosion by nuclear power (section 307 (1) to (3) of the Criminal Code),
 17. causing an explosion by use of explosives resulting in death (section 308 (3) of the Criminal Code),
 18. misuse of ionising radiation exposing a vast number of human beings to such radiation (section 309 (2) and (4) of the Criminal Code),
 19. defective construction of a nuclear facility resulting in death (section 312 (4) of the Criminal Code),
 20. causing a flood resulting in death (section 313 in conjunction with section 308 (3) of the Criminal Code),
 21. poisoning dangerous to the public resulting in death (section 314 in conjunction with section 308 (3) of the Criminal Code),
 22. robbery-like assault on the driver of a motor vehicle resulting in death (section 316a (3) of the Criminal Code),
 23. assaults on air and sea traffic resulting in death (section 316c (3) of the Criminal Code),
 24. damaging important facilities resulting in death (section 318 (4) of the Criminal Code),
 25. an intentional environmental crime resulting in death (section 330 (2) no. 2 of the Criminal Code),
 26. causing a severe danger by releasing poison resulting in death (section 330a (2) of the Criminal Code),
 27. causing bodily harm while exercising a public office resulting in death (section 340 (3) in conjunction with section 227 of the Criminal Code),
 28. supplying, administering or making available narcotics for direct use resulting in death (section 30 (1) no. 3, of the Narcotics Act (*Betäubungsmittelgesetz*)),
 29. smuggling of foreigners into the Federal territory resulting in death (section 97 (1) of the Residence Act (*Aufenthaltsgesetz*)),
- a criminal division with lay judges (*Schwurgericht*) has jurisdiction. Section 120 remains unaffected.
- (3) The criminal divisions are to furthermore have jurisdiction for hearing and ruling on the appellate remedy of appeal (*Berufung*) against judgments of a criminal court judge or a court with lay judges.

Section 74a

(1) At the regional courts in the district of which a higher regional court has its seat, a criminal division for the district of this higher regional court is the adjudicating court of first instance with jurisdiction over the criminal offences of

1. crimes against peace in the cases of section 80a of the Criminal Code,
2. endangering the democratic state based on the rule of law in the cases of sections 84 to 86, sections 87 to 90, section 90a (3) and section 90b of the Criminal Code,
3. endangering the national defence in the cases of sections 109d to 109g of the Criminal Code,

4. violation of a ban of an organisation in the cases of section 129, also in conjunction with section 129b (1), of the Criminal Code and section 20 (1) sentence 1 nos. 1 to 4 of the Associations Act (*Vereinsgesetz*); this does not apply if the same act constitutes a criminal offence under the Narcotics Act, the Act on the Handling of Cannabis for Non-Medical Use (*Konsumcannabisgesetz*) or the Act on the Supply of Cannabis for Medicinal and Medicinal-Scientific Purposes (*Medizinal-Cannabisgesetz*),
5. abduction (section 234a of the Criminal Code),
6. forced disappearance of persons (section 234b of the Criminal Code) and
7. casting political suspicion (section 241a of the Criminal Code).

(2) The regional court does not have jurisdiction if the Federal Prosecutor General takes over the prosecution prior to the opening of the main proceedings due to the special significance of the case, unless jurisdiction has been vested in the regional court through transfer under section 142a (4) or referral under section 120 (2) sentence 3.

(3) In the cases over which a criminal division has jurisdiction under subsection (1), it must also give the decisions designated in section 73 (1).

(4) At the regional courts in the district of which a higher regional court has its seat, a division that is not seized of main proceedings in criminal matters has jurisdiction for the district of this higher regional court to order measures under sections 100b and 100c of the Code of Criminal Procedure.

(5) Within the scope of subsections (1), (3) and (4), the district of the regional court encompasses the district of the higher regional court.

Section 74b

In matters relating to the protection of children and juveniles (section 26 (1) sentence 1), the juvenile division as adjudicating court of first instance has jurisdiction along with the criminal division with jurisdiction over general criminal matters. Section 26 (2) and sections 73 and 74 apply accordingly.

Section 74c

(1) For criminal offences

1. under the Patent Act (*Patentgesetz*), the Utility Model Act (*Gebrauchsmustergesetz*), the Semiconductor Protection Act (*Halbleiterschutzgesetz*), the Plant Variety Protection Act (*Sortenschutzgesetz*), the Trade Mark Act (*Markengesetz*), the Design Act (*Designgesetz*), the Copyright Act (*Urheberrechtsgesetz*), the Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*), the Trade Secrets Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*), the Insolvency Code (*Insolvenzordnung*), the Corporate Stabilisation and Restructuring Act, the Stock Corporation Act, the Act concerning Accounting of Certain Enterprises and Groups (*Gesetz über die Rechnungslegung von bestimmten Unternehmen und Konzernen*), the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), the Commercial Code (*Handelsgesetzbuch*), the SE Implementation Act, the Act to Implement Council Regulation (EEC) on the European Economic Interest Grouping (EEIG) (*Gesetz zur Ausführung der EWG-Verordnung über die Europäische wirtschaftliche Interessenvereinigung*), the Cooperatives Act (*Genossenschaftsgesetz*), the SCE Implementation Act (*SCE-Ausführungsgesetz*) and the Company Transformation Act,
2. under the laws governing the banking industry, the custody and acquisition of securities, the stock exchanges and the credit system as well as the Act on the Supervision of Insurance Companies (*Versicherungsaufsichtsgesetz*), the Payment Services Supervision Act (*Zahlungsdienstleistungsaufsichtsgesetz*), the German Crypto Markets

Supervision Act (*Kryptomärkteaufsichtsgesetz*) and the Securities Trading Act (*Wertpapierhandelsgesetz*),

3. under the Economic Offences Act of 1954 (*Wirtschaftsstrafgesetz 1954*), the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*), the Sanctions Enforcement Act (*Sanktionsdurchsetzungsgesetz*), foreign exchange control legislation as well as fiscal monopoly, tax and customs laws, including cases where their criminal provisions are applicable under other laws; this does not apply if the same act constitutes a criminal offence under the Narcotics Act and does not apply to fiscal offences involving the motor vehicle tax,

4. under the Wine Act (*Weingesetz*) and food products legislation,

5. involving subsidy fraud, capital investment fraud, credit fraud, bankruptcy offences, violation of book-keeping duties, preferential treatment for a creditor and preferential treatment for a debtor,

5a. involving agreements in restriction of competition upon invitations to tender, taking and offering bribes in business transactions, taking bribes in the health sector, offering bribes in the health sector, taking bribes from and offering bribes to foreign and international public employees, as well as under the Act on Combating International Bribery (*Gesetz zur Bekämpfung internationaler Bestechung*),

6.

a) involving money laundering, fraud, computer fraud, breach of trust, withholding and embezzling wages or salaries, usury, accepting benefits, taking bribes, granting benefits, and offering bribes,

b) under the Labour Leasing Act (*Arbeitnehmerüberlassungsgesetz*), the Act for Strengthening the Protection of the Financial Interests of the EU (*EU-Finanzschutzstärkungsgesetz*) and the Act to Combat Clandestine Employment (*Schwarzarbeitsbekämpfungsgesetz*),

to the extent that special knowledge of business operations and practices is required in order to judge the case, insofar as the regional court has jurisdiction as court of first instance under section 74 (1) and jurisdiction for hearing and ruling on the appellate remedy of appeal against judgments of a court with lay judges under section 74 (3), jurisdiction is to be vested in a criminal division as an economic offences division. Sections 120 and 120b remain unaffected.

(2) In the cases over which an economic offences division has jurisdiction under subsection (1), it must also give the decisions designated in section 73 (1).

(3) The *Land* governments are authorised, for the purpose of material furtherance or swifter disposal of the proceedings, to issue statutory instruments assigning to one regional court, either entirely or partially, the criminal matters for the districts of several regional courts that involve the criminal offences designated in subsection (1). The *Land* governments may transfer this authorisation to the *Land* departments of justice by means of a statutory instrument.

(4) Within the scope of subsection (3), the district of the subsequently designated regional court encompasses the districts of the other regional courts.

Section 74d

(1) The *Land* governments are authorised to issue statutory instruments assigning to one regional court the criminal matters designated in section 74 (2) for the districts of several regional courts, insofar as this serves the purpose of material furtherance of the proceedings. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

(2) (repealed)

Section 74e

Among the various criminal divisions with jurisdiction under the provisions of sections 74 to 74d, precedence is to be accorded

1. firstly, to the criminal division with lay judges (section 74 (2) and section 74d),
2. secondly, to the economic offences division (section 74c),
3. thirdly, to the criminal division under section 74a.

Section 74f

(1) If at first instance a criminal division has reserved the order of preventive detention or, in the case of section 66b of the Criminal Code, has ruled as the trial court, that criminal division has jurisdiction at first instance for hearing and ruling on the order of preventive detention reserved in the judgment or on the subsequent order of preventive detention.

(2) If in the case of section 66b of the Criminal Code the local court has ruled exclusively as the trial court at first instance, a criminal division of the superior regional court has jurisdiction at first instance for hearing and ruling on the subsequent order of preventive detention.

(3) In the case of section 66b of the Criminal Code, section 462a (3) sentences 2 and 3 of the Code of Criminal Procedure applies accordingly.

(4) In proceedings in which a decision is to be given on the order of preventive detention reserved in the judgment or on the subsequent order of preventive detention, the grand criminal division is to be composed of three judges including the presiding judge, and two lay judges. The lay judges may not participate in decisions made outside the main hearing.

Section 75

The civil divisions, insofar as the provisions of procedural law do not provide for a decision to be given by a judge sitting alone in the place of a full bench, is to be composed of three members including the presiding judge.

Section 76

(1) The criminal divisions are to be composed of three judges, including the presiding judge, and two lay judges (grand criminal divisions); in proceedings involving appeals against a judgment of a criminal court judge or of a court with lay judges, they are to be composed of the presiding judge and two lay judges (small criminal divisions). The lay judges may not participate in decisions made outside the main hearing.

(2) At the opening of the main proceedings, the grand criminal division rules on its composition during the main hearing. If the main proceedings have already been opened, it rules on its composition at the scheduling of the main hearing. It rules that it will be composed of three judges, including the presiding judge, and two lay judges if

1. it has jurisdiction as a criminal division with lay judges,
2. the order of placement in preventive detention, its reservation or the order of placement in a psychiatric hospital is to be expected, or
3. the participation of a third judge appears necessary due to the scale or complexity of the case.

In all other cases, the grand criminal division rules that it will be composed of two judges, including the presiding judge, and two lay judges.

(3) The participation of a third judge under subsection (2) sentence 3 no. 3, as a rule, is necessary if the main hearing is expected to last longer than ten days or if the grand criminal division has jurisdiction as an economic offences division.

(4) If the criminal division has ruled that it will be composed of two judges, including the presiding judge, and two lay judges, and if new circumstances arise prior to the commencement of the main hearing, which, under subsections (2) and (3), necessitate a

composition of three judges, including the presiding judge, and two lay judges, it must rule on such composition.

(5) If a case has been referred back by a court of appeal on points of law only (*Revisionsgericht*), or if the main hearing has been suspended, the respective competent criminal division may once again rule on its composition under subsections (2) and (3).

(6) In proceedings involving appeals against a judgment by an extended bench (section 29 (2)), a second judge must be brought in. Decisions outside the main hearing must be made by the presiding judge alone.

Section 77

(1) The provisions concerning the lay judges serving on the benches of the local courts apply accordingly to the lay judges serving in the criminal divisions of the regional courts with the following proviso:

(2) The president of the regional court allocates the number of principal lay judges required for the criminal divisions among the local court districts belonging to the district of the regional court. The substitute lay judges are selected by the committee at the local court in the district of which the regional court has its seat. If the regional court has its seat outside its district, the *Land* department of justice determines which one of the committees of the local courts belonging to the district of the regional court is to select the substitute lay judges. If the seat of the regional court is a city encompassing two or more of the local court districts, or parts thereof, belonging to the district of the regional court, sentence 1 applies accordingly to the selection of the substitute lay judges by the committees established at these local courts; the *Land* department of justice may exempt certain local courts from this arrangement. The names of the selected principal lay judges and substitute lay judges must be communicated by the judge at the local court to the president of the regional court. The president of the regional court must consolidate the names of the principal lay judges into the regional court's list of lay judges.

(3) The president of the regional court takes the place of the local court judge at the drawing of lots to determine the order in which the principal lay judges are to participate in the individual ordinary sittings and the order in which the substitute lay judges are to take the place of lay judges who become unavailable; section 45 (4) sentences 3 and 4 applies accordingly. If the lay judge has died or moved out of the district of the regional court, the presiding judge of the criminal division must order his or her deletion from the list; in other cases, the decision as to whether a lay judge should be deleted from the list of lay judges and the ruling on the grounds for refusal of service put forward by a lay judge is to be given by a criminal division. In all other cases, the presiding judge of the criminal division takes the place of the judge at the local court.

(4) An honorary judge may only be designated either lay judge for a bench of a local court or lay judge for a criminal division of a regional court for one and the same business year. If a person has been appointed to more than one such office in a single district, or to such an office in more than one district for one and the same business year, the appointee must assume the office to which he or she was first appointed.

(5) Section 52 (2) sentence 1 no. 1 does not apply.

Section 78

(1) Where the distance to the seat of a regional court is great, the *Land* governments are authorised to issue statutory instruments providing that a criminal division be established at one local court for the district of one or more local courts and that the workload of the criminal division of the regional court involving that district be assigned, either entirely or partially, to that division. The serious criminal offences designated in section 74 (2) may not be assigned to a criminal division established under sentence 1. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

(2) The division is to be composed of members of the regional court or judges at the local court of the district for which it is established. The presiding judge and the other members are to be designated by the presiding committee of the regional court.

(3) The president of the regional court allocates the required number of principal lay judges among the local court districts belonging to the district of the criminal division. The substitute lay judges are selected by the committee at the local court where the external criminal division has been established. The other functions assigned in section 77 to the president of the regional court are to be exercised by the presiding judge of the criminal division.

Title 5a

Criminal divisions with jurisdiction over execution of sentences

Section 78a

(1) Criminal divisions with jurisdiction over execution of sentences (*Strafvollstreckungskammern*) are to be established at the regional courts if institutions for adults are maintained in their district in which sentences of imprisonment or measures of reform and prevention involving deprivation of liberty are executed or if other prison authorities have their seat in their district. These are competent to give the decisions

1. under sections 462a and 463 of the Code of Criminal Procedure, except as otherwise provided by the Code of Criminal Procedure,
2. under section 50 (5), section 109 and section 138 (3) of the Prison Act (*Strafvollzugsgesetz*),
3. under section 50, section 58 (2), section 84g (1), sections 84j, 90h (1), section 90j (1) and (2) and section 90k (1) and (2) of the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*).

If a decision on suspension of execution is to be given for more than one prison sentence at the same time under section 454b (3) or (4) of the Code of Criminal Procedure, one criminal division with jurisdiction over execution of sentences gives a decision on suspension of execution of all of the sentences.

(2) The *Land* governments issue statutory instruments assigning the criminal matters under subsection (1) sentence 2 no. 3 to the regional courts designated in subsection (1) sentence 1 for the districts of the regional courts at which no criminal divisions with jurisdiction over execution of sentences are to be established. The *Land* governments are authorised to issue statutory instruments assigning to one of the regional courts designated in subsection (1) for the districts of several regional courts the criminal matters falling within the competence of the criminal divisions with jurisdiction over execution of sentences and providing that criminal divisions with jurisdiction over execution of sentences also or exclusively have their seat in places within their district where the regional court does not have its seat, insofar as such provisions serve the purpose of material furtherance or swifter disposal of the proceedings. The *Land* governments may issue statutory instruments transferring the authorisations under sentences 1 and 2 to the *Land* departments of justice.

(3) If an institution in which sentences of imprisonment or measures of reform and prevention involving deprivation of liberty are executed is maintained by one *Land* on the territory of another *Land*, the *Länder* concerned may agree that competence lies with the criminal division with jurisdiction over execution of sentences at the regional court in the district of which the supervisory authority responsible for the institution has its seat.

Section 78b

(1) The criminal divisions with jurisdiction over execution of sentences are composed of

1. three judges, including the presiding judge, in proceedings concerning suspension of execution of the remainder of a sentence of life imprisonment or concerning suspension of execution of placement in a psychiatric hospital or in preventive detention; if a decision is to be taken on a number of prison sentences at the same time under section 454b (4) of the Code of Criminal Procedure, criminal divisions composed of

three judges with jurisdiction over execution of sentences decide on all the prison sentences if this composition is prescribed for decisions on one of the prison sentences,

2. one judge in all other cases.

(2) The members of the criminal divisions with jurisdiction over execution of sentences is appointed by the presiding committee of the regional court from among the members of the regional court and the judges in its district who are employed at the local court.

Sixth Title **Criminal divisions with lay judges (repealed)**

Sections 79 to 92 **(repealed)**

Seventh Title **Commercial chambers**

Section 93

(1) The *Land* governments are authorised to issue statutory instruments providing that commercial chambers be established at the regional courts for their districts or for geographically limited parts thereof. Such divisions may also have their seat in places within the district of the regional court where the court does not have its seat.

(2) The *Land* governments may transfer the authorisation under subsection (1) to the *Land* departments of justice.

Section 94

If a commercial chamber has been established at a regional court, commercial matters are to be handled by this chamber instead of by the civil divisions subject to the following provisions.

Section 95

(1) Commercial matters within the meaning of this Act are civil disputes in which an action is brought to assert a claim:

1. against a merchant within the meaning of the Commercial Code, insofar as he or she is registered in the commercial register or the cooperatives register or need not be registered under a special statutory arrangement governing corporate entities established under public law, arising out of transactions that are commercial transactions for both parties;
2. arising out of a bill of exchange within the meaning of the Bills of Exchange Act (*Wechselgesetz*) or arising out of one of the documents designated in section 363 of the Commercial Code;
3. on the basis of the Cheque Act (*Scheckgesetz*);
4. arising out of one of the legal relationships designated below:
 - a) out of the legal relationship between the members of a commercial partnership or cooperative or between the partnership or cooperative and its members or between the silent partner and the owner of the commercial business, both during the existence of and after the dissolution of the partnership relationship, and out of the legal relationship between the managers or liquidators of a commercial partnership or cooperative and the partnership or its members;
 - b) out of the legal relationship concerning the right to use the commercial firm name;

- c) out of the legal relationships concerning the protection of trademarks, other identifying marks and registered designs;
 - d) out of the legal relationship originating in the acquisition of an existing commercial business inter vivos between the previous owner and the acquirer;
 - e) out of the legal relationship between a third party and the party liable on grounds of lack of proof of statutory authority or commercial power of attorney;
 - f) out of the legal relationships under maritime law, especially those concerning the shipping business, those concerning the rights and obligations of the manager or owner of a ship, the ship's husband and the crew of the ship, and those concerning average, compensation for damages in the event of collisions between ships, salvage operations and claims of maritime lien holders;
- 5. on the basis of the Act against Unfair Competition;
 - 6. arising out of sections 9, 10, 11, 14 and 15 of the Securities Prospectus Act (*Wertpapierprospektgesetz*) or sections 20 to 22 of the Capital Investment Act (*Vermögensanlagengesetz*).
- (2) Commercial matters within the meaning of this Act are furthermore
- 1. the legal disputes over which the regional court has jurisdiction under section 246 (3) sentence 1 or section 396 (1) sentence 2 of the Stock Corporation Act, under section 51 (3) sentence 3 or section 81 (1) sentence 2 of the Cooperatives Act or under section 87 of the Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen*), unless these concern claims for information or damages under cartel law or claims for information or damages for an infringement of Article 5, 6 or 7 of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265 of 12.10.2022, page 1) and section 13 (4) of the EU Consumer Protection Implementing Act (*EU-Verbraucherschutzdurchsetzungsgesetz*),
 - 2. the proceedings specified in section 71 (2) no. 4 (b) to (f).

Section 96

- (1) A legal dispute must be heard by the commercial chamber if the plaintiff so requests in the statement of claim.
- (2) If a legal dispute must be referred by the local court to the regional court under the provisions of sections 281 and 506 of the Code of Civil Procedure (*Zivilprozessordnung*), the plaintiff must submit the application for a hearing before the commercial chamber to the local court.

Section 97

- (1) If an action over which the commercial chamber has no jurisdiction is brought before it, the legal dispute must, upon application of the defendant, be referred to the civil division.
- (2) If the action or, in the case of section 506 of the Code of Civil Procedure, the cross-action is one over which the commercial chamber has no jurisdiction, it is also entitled ex officio to refer the dispute to the civil division as long as no hearing has been held on the main issue and no ruling has been pronounced in that respect. The referral ex officio may not be made on the grounds that the defendant is not a merchant.

Section 98

- (1) If an action over which the commercial chamber has jurisdiction is brought before the civil division, the legal dispute, upon application of the defendant, must be referred to the commercial chamber. A defendant who is not registered in the commercial register or the

cooperatives register may not base his or her application on the assertion that he or she is a merchant.

(2) The application must be rejected if the cross-action brought under section 506 of the Code of Civil Procedure would not be an action over which the commercial chamber has jurisdiction.

(3) The civil division is not entitled to make a referral ex officio.

(4) The civil division is entitled to reject the application even if the plaintiff has consented to it.

Section 99

(1) If, in a legal dispute pending before the commercial chamber, the scope of the action is extended under section 256 (2) of the Code of Civil Procedure through an application for determination of the existence or non-existence of a legal relationship or through a cross-action, and if the extended action or cross-action is not an action over which the commercial chamber has jurisdiction, the dispute, upon application of the opponent, is referred to the civil division.

(2) Subject to the restriction of section 97 (2), the division is also entitled to make a referral ex officio. This authority also accrues if, as a result of amendment of an action, a claim is asserted over which the commercial chamber has no jurisdiction.

Section 100

Sections 96 to 99 apply accordingly to appellate proceedings before the commercial chambers.

Section 101

(1) An application for referral of a legal dispute to another division is only admissible prior to the hearing of the applicant on the matter itself. If the applicant has been set a time limit to submit a statement of defence or a response to an appeal prior to the oral hearing, he or she must file the application within that time limit. Section 296 (3) of the Code of Civil Procedure applies accordingly; the excuse must be substantiated if the court so requires.

(2) A preliminary decision must be given on the application. The decision may be given without an oral hearing.

Section 102

The decision on referral of a legal dispute to the civil division or the commercial chamber is not contestable. If the dispute is referred to another division, that decision is binding on the division to which the dispute is referred. The date for another oral hearing must be set ex officio and announced to the parties.

Section 103

A claim under section 64 of the Code of Civil Procedure may only be asserted before the commercial chamber if the legal dispute is one over which the commercial chamber has jurisdiction under the provisions of sections 94 and 95.

Section 104

(1) Where the commercial chamber, sitting as the court hearing complaints, is seized of a complaint over which it has no jurisdiction, the complaint must be referred ex officio to the civil division. Likewise, where the civil division, sitting as the court hearing complaints, is seized of a complaint relating to a commercial matter, it must refer the complaint ex officio to the commercial chamber. The provisions of section 102 sentences 1 and 2 apply accordingly.

(2) A complaint may not be referred to another division if the main issue is pending at the division seized of the complaint or if that division has already given a decision on the main issue.

Section 105

- (1) The commercial chambers must give decisions sitting with one member of the regional court as presiding judge and two honorary judges, insofar as the presiding judge is not required to decide in lieu of the division under the provisions of procedural law.
- (2) All members of the commercial chamber have the same voting rights.
- (3) (repealed)

Section 106

In the case of section 93 (1) sentence 2, a local court judge may be presiding judge of the commercial chamber.

Section 107

- (1) The honorary judges who have neither their residence nor their business establishment at the seat of the commercial chamber receive per diem and overnight accommodation allowances under the provisions applicable to judges at the regional court.
- (2) The honorary judges are to be reimbursed for their travel expenses in analogous application of section 5 of the Judicial Remuneration and Compensation Act.

Section 108

The honorary judges are to be appointed on the qualified recommendation of the chambers of industry and commerce for a term of five years; re-appointment is not excluded.

Section 109

- (1) A person may be appointed to the office of honorary judge if he or she
 - 1. is a German,
 - 2. has attained the age of thirty and
 - 3. is or was registered in the commercial register or in the cooperatives register as a merchant, as a member of the board of management or as a managing director of a corporate entity, or as an officer with statutory authority or if, as a member of the board of management of a corporate entity established under public law, he or she need not be registered in those registers on the basis of a special statutory arrangement for such corporate entities.
- (2) A person who fulfils these requirements should only be appointed if he or she
 - 1. lives in the district of the commercial chamber or
 - 2. has a business establishment in that district or
 - 3. is employed by a business enterprise that has its domicile or a branch in that district.

Furthermore, appointment should only be possible in the case of

- 1. an officer with statutory authority if he or she holds a position of responsibility in the enterprise that is comparable to the independent position of an entrepreneur,
 - 2. a member of the board of management of a cooperative if he or she is employed full time in a cooperative that engages in commercial activity in a manner similar to a commercial partnership.
- (3) A person may not be appointed to the office of honorary judge if he or she is ineligible for the office of lay judge or should not be appointed to the office of lay judge under section 33 no. 4. A person should not be appointed to the office of honorary judge if he or she should not be appointed to the office of lay judge under section 33 no. 6.

Section 110

At seaports, honorary judges may also be appointed from the circle of individuals with a knowledge of shipping and navigation.

**Section 111
(repealed)**

Section 112

Honorary judges have all the rights and duties appurtenant to the office of a judge for the duration of their term of office.

Section 113

(1) An honorary judge is to be removed from office if he or she

1. no longer meets one of the necessary criteria for his or her appointment or if circumstances arise or subsequently become known that preclude an appointment under section 109 or
2. is guilty of a gross breach of his or her official duties.

(2) An honorary judge should be removed from office if circumstances arise or become known the existence of which should preclude an appointment under section 109 (3) sentence 2.

(3) The decision is to be given by the first civil division of the higher regional court in a ruling after hearing the person concerned. It is incontestable.

(4) If an honorary judge himself or herself asks to be relieved of his or her office, the decision is to be made by the *Land* department of justice.

Section 114

The commercial chamber may, on the basis of its own expertise and knowledge, give decisions on matters for which the judgment of a commercial expert is sufficient as well as decisions concerning the existence of commercial practices.

**Eighth Title
Higher regional courts**

Section 115

The higher regional courts are composed of a president, presiding judges and additional judges.

**Section 115a
(repealed)**

Section 116

(1) Civil and criminal divisions are to be established at the higher regional courts. Investigating judges are to be appointed at the higher regional courts with jurisdiction under section 120; any member of another higher regional court the seat of which is located in the territory designated in section 120 may also be appointed investigating judge.

(2) The *Land* governments are authorised to issue statutory instruments providing that civil or criminal divisions be established outside the seat of the higher regional court for the district of one or more regional courts and that they be entirely or partially assigned the functions of the civil or criminal divisions of the higher regional court for that district. An external family division may be established for the districts of several family courts.

(3) The *Land* governments may transfer the authorisation under subsection (2) to the *Land* departments of justice.

Section 117

The provision of section 70 (1) applies accordingly.

Section 118

The higher regional courts have jurisdiction in civil disputes at first instance for hearing and ruling on model case proceedings under the Act on Model Case Proceedings in Disputes under Capital Markets Law (*Kapitalanleger-Musterverfahrensgesetz*).

Section 119

(1) The higher regional courts have jurisdiction in civil matters for hearing and ruling on the appellate remedies of:

1. complaint against decisions of the local courts
 - a) in the matters decided by the family courts;
 - b) in non-contentious matters with the exception of imprisonment matters and the matters decided by the adult guardianship courts;
2. appeal and complaint against decisions of the regional courts.

(2) Section 23b (1), (2) and (3) sentences 3 and 4 applies accordingly.

Section 119a

(1) One or several civil divisions for the following areas are to be established at the higher regional courts:

1. disputes deriving from banking and financial transactions,
2. disputes deriving from building and architectural contracts as well as from engineering contracts, insofar as they are connected with building services,
3. disputes deriving from therapeutic treatment,
4. disputes deriving from insurance policy relationships,
5. disputes regarding claims deriving from publications in press media, on image and sound carriers of any kind, in particular in the press and on radio, film and television,
6. disputes under the law of succession, and
7. disputes under insolvency law, avoidance matters under the Creditors' Avoidance of Transfers Act as well as disputes arising from the Corporate Stabilisation and Restructuring Act.

(2) The *Land* governments are authorised to issue statutory instruments to establish at the higher regional courts one or several civil divisions for other areas. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

(3) Disputes under section 119 (1) may also be assigned to the civil divisions under subsections (1) and (2).

Section 119b

(1) The *Land* governments are authorised to establish by statutory instrument in each case one or several divisions at a higher regional court or a highest regional court as a court that has jurisdiction in the first instance for the following disputes with a value in dispute of 500 000 euros or more:

1. civil disputes between traders (section 14 of the German Civil Code) with the exception of disputes related to intellectual property rights, copyright law and claims under the Act against Unfair Competition,
2. disputes from or related to the acquisition of an undertaking or of shares in an undertaking,
3. disputes between a company and its directors or managers.

The jurisdiction of the commercial court under sentence 1 may be restricted to specific areas. Jurisdiction under sentence 1 may also be extended to areas where there is provision for the exclusive jurisdiction of the regional court or another exclusive jurisdiction. The jurisdiction of the commercial court under sentence 1 may not be provided for disputes on

the effectiveness or legitimacy of decisions by partners, shareholders or corporate bodies, proceedings under section 71 (2) no. 4 of this Act or under section 375 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

(2) The commercial court has jurisdiction through the parties' express or implicit agreement if the conditions of subsection (1) are met. The agreed jurisdiction is exclusive if the parties have not expressly agreed otherwise. Under the conditions of subsection (1), the commercial court also has jurisdiction if the plaintiff has applied for this in the statement of claim and the defendant accepts it without objection in the statement of defence.

(3) If several higher regional courts are established in a *Land*, the *Land* government, by statutory instrument, may determine the jurisdiction of the commercial court beyond the territory of the higher regional court.

(4) In derogation from section 119 (1) no. 2, the *Land* governments are authorised to assign jurisdiction by statutory instrument to the commercial court for hearing and ruling on the appellate remedies of appeal and complaint against decisions by regional courts based on a dispute concerning the areas of the commercial court.

(5) The *Land* governments may transfer, by statutory instrument, the authorisations specified in subsections (1), (3) and (4) to the *Land* departments of justice.

(6) Several *Länder* may agree to establish a joint commercial court at a higher regional court or a highest regional court. The jurisdiction of a joint commercial court in accordance with sentence 1 may be agreed across *Land* borders.

(7) Provisions in international agreements, insofar as they have become directly applicable domestic law, take precedence over this provision. Provisions in legal acts adopted by the European Union remain unaffected. The provisions for the implementation and execution of agreements and legal acts within the meaning of the provisions laid down in sentences 1 and 2 remain unaffected. Insofar as an agreement as to the choice of venue regarding the international and, if relevant, local jurisdiction would be effective subject to less stringent requirements in accordance with the primacy of international law, this applies within the scope of this law in the same way to the agreement under subsection (2) sentence 1.

Section 120

(1) In criminal matters, the higher regional courts in the districts of which the *Land* governments have their seat have jurisdiction for the territory of the given *Land* for hearing and deciding cases at first instance involving

1. (repealed),
2. high treason (sections 81 to 83 of the Criminal Code),
3. treason and endangering external security (sections 94 to 100a of the Criminal Code) as well as criminal offences under section 52 (2) of the Patent Act, under section 9 (2) of the Utility Model Act in conjunction with section 52 (2) of the Patent Act, or under section 4 (4) of the Semiconductor Protection Act in conjunction with section 9 (2) of the Utility Model Act and section 52 (2) of the Patent Act,
4. an assault against entities and representatives of foreign states (section 102 of the Criminal Code),
5. a crime against constitutional entities in the cases of sections 105 and 106 of the Criminal Code,
6. a violation of a ban of an organisation under section 129a, also in conjunction with section 129b (1), of the Criminal Code,
7. failure to report crimes under section 138 of the Criminal Code if the failure to report concerns a crime falling under the jurisdiction of the higher regional court and
8. criminal offences under the Code of Crimes against International Law.

(2) These higher regional courts furthermore have jurisdiction for hearing and deciding cases at first instance involving

1. the criminal offences designated in section 74a (1), if the Federal Prosecutor General takes over the prosecution due to the special significance of the case under section 74a (2),
2. murder (section 211 of the Criminal Code), manslaughter (section 212 of the Criminal Code) and the criminal offences designated in section 129a (1) no. 2 and section 129a (2) of the Criminal Code, if there is a connection with the activity of an organisation not or not only existing in Germany the purpose or activity of which is to commit criminal offences of this kind and the Federal Prosecutor General takes over the prosecution due to the special significance of the case,
3. murder (section 211 of the Criminal Code), manslaughter (section 212 of the Criminal Code), abduction for the purpose of blackmail (section 239a of the Criminal Code), hostage taking (section 239b of the Criminal Code), serious arson and especially serious arson (sections 306a and 306b of the Criminal Code), arson resulting in death (section 306c of the Criminal Code), causing an explosion by nuclear power in the cases of section 307 (1) and (3) no. 1 of the Criminal Code, causing an explosion in the cases of section 308 (1) to (3) of the Criminal Code, misuse of ionising radiation in the cases of section 309 (1) to (4) of the Criminal Code, acts preparatory to causing an explosion or radiation offence in the cases of section 310 (1) nos. 1 to 3 of the Criminal Code, causing a flood in the cases of section 313 (2) in conjunction with section 308 (2) and (3) of the Criminal Code, poisoning dangerous to the public in the cases of section 314 (2) in conjunction with section 308 (2) and (3) of the Criminal Code and assaults on air and sea traffic in the cases of section 316c (1) and (3) of the Criminal Code, if under the circumstances the offence is capable of
 - a) undermining the continued existence or security of a state,
 - b) destroying, invalidating or undermining constitutional principles of the Federal Republic of Germany,
 - c) undermining the security of the troops of the North Atlantic Treaty Organization stationed in the Federal Republic of Germany or of its non-German member states, or
 - d) undermining the continued existence or security of an international organisation

and the Federal Prosecutor General takes over the prosecution due to the special significance of the case.

4. criminal offences under the Foreign Trade and Payments Act, under the Sanctions Enforcement Act and under the Act on the Control of Weapons of War (*Gesetz über die Kontrolle von Kriegswaffen*), if, under the circumstances, the offence, or in the case of a punishable attempt, also its imputed completion
 - a) is capable of seriously endangering the external security or the foreign relations of the Federal Republic of Germany or
 - b) is intended to and is capable of disrupting the peaceful coexistence of peoples

and the Federal Prosecutor General takes over the prosecution due to the special significance of the case.

Special significance of the case is also to be presumed if, in the cases under sentence 1, it appears necessary for the Federal Prosecutor General to have jurisdiction for the investigation on account of the cross-regional character of the offence. At the opening of the main proceedings, the higher regional courts, in the cases of no. 1, refer the matter to the regional court and, in the cases of nos. 2 to 4, to the regional court or the local court, if the case is not deemed to be of special significance.

(3) In the matters under the jurisdiction of these higher regional courts under subsections (1) or (2), they must also give the decisions designated in section 73 (1). They must furthermore rule on complaints against directions of the investigating judges of the higher regional courts (section 169 (1) sentence 1 of the Code of Criminal Procedure) in the cases designated in section 304 (5) of the Code of Criminal Procedure.

(4) These higher regional courts must also rule on complaints against directions and decisions of the court with jurisdiction under section 74a. For rulings on complaints against directions and decisions of the court with jurisdiction under section 74a (4) and in the cases of section 100e (2) sentence 6 of the Code of Criminal Procedure, a division that is not seized of main proceedings in criminal matters has jurisdiction.

(5) The place of jurisdiction is governed by the general provisions. The *Länder* concerned may agree to transfer the functions assigned to the higher regional courts under subsections (1) to (4) to the duly competent court of one *Land* for the territory of another *Land* as well.

(6) Insofar as the competence of the Federation to prosecute criminal cases has been established under section 142a, these higher regional courts are to exercise jurisdiction under Article 96 (5) of the Basic Law.

(7) Insofar as the *Länder*, on the basis of criminal proceedings in which the higher regional courts rule in exercise of jurisdiction of the Federation, must bear costs of the proceedings and expenses of participants in the proceedings or pay remuneration, they may request reimbursement from the Federation.

Section 120a

(1) If at first instance a criminal division has reserved the order of preventive detention or, in the case of section 66b of the Criminal Code, has ruled as the trial court, that criminal division has jurisdiction at first instance for hearing and ruling on the order of preventive detention reserved in the judgment or on the subsequent order of preventive detention.

(2) In the case of section 66b of the Criminal Code, section 462a (3) sentences 2 and 3 of the Code of Criminal Procedure apply accordingly.

Section 120b

In criminal matters, the higher regional courts in the districts of which the *Land* governments have their seat have jurisdiction for the territory of the given *Land* for hearing and deciding cases at first instance involving the taking and offering of a bribe by elected mandate holders (section 108e of the Criminal Code) and inadmissible representation of interests (section 108f of the Criminal Code). Section 120 (3) and (5) applies accordingly.

Section 121

(1) In criminal matters, the higher regional courts furthermore have jurisdiction for hearing and ruling on the appellate remedies of:

1. appeal on points of law (*Revision*) against
 - a) judgments delivered by criminal court judges that may not be contested by an appeal;
 - b) judgments in appeals delivered by small criminal divisions and grand criminal divisions;
 - c) judgments delivered by the regional court at first instance if the appeal on points of law is exclusively based on the violation of a legal norm contained in *Land* legislation;

2. complaint against decisions of criminal court judges, except where the criminal divisions or the Federal Court of Justice have jurisdiction;
3. complaint on points of law against decisions of the criminal divisions with jurisdiction over execution of sentences under section 50 (5), section 116 and section 138 (3) of the Prison Act and decisions of the juvenile divisions under section 92 (2) of the Juvenile Courts Act (*Jugendgerichtsgesetz*).
4. objection to the composition of a criminal division in the case of section 222b (3) sentence 1 of the Code of Criminal Procedure.

(2) If, in its decision, a higher regional court wishes to deviate

1. under subsection (1) no. 1 (a) or (b) from a decision given after 1 April 1950,
2. under subsection (1) no. 3 from a decision given after 1 January 1977,
3. under subsection (1) no. 2 from a decision on the disposal of a measure of placement in preventive detention or in a psychiatric hospital, or on the admissibility of its further execution, given after 1 January 2010 or
4. under subsection (1) no. 4 from a decision

by another higher regional court or from a decision by the Federal Court of Justice, it must submit the matter to the Federal Court of Justice.

(3) A *Land* in which several higher regional courts have been established may, under a statutory instrument issued by the *Land* government, assign to one higher regional court for the districts of several higher regional courts, or to the highest regional court (*Oberstes Landesgericht*) the decisions under subsection (1) no. 3 insofar as such assignment serves the purpose of material furtherance or swifter disposal of the proceedings. The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.

Section 122

(1) The divisions of the higher regional courts, unless decisions are to be given by a judge sitting alone in lieu of a division under the provisions of procedural law, are to give decisions sitting with three members, including the presiding judge.

(2) The criminal divisions are to rule on the opening of the main proceedings at first instance sitting with five judges, including the presiding judge. At the opening of the main proceedings, the criminal division is to rule that it will be composed of three judges, including the presiding judge, during the main hearing unless the participation of two more judges appears necessary due to the scale or complexity of the case. The criminal division rules on the termination of the main proceedings due to a procedural impediment in the composition prescribed for the main hearing. If a case has been referred back by a court hearing an appeal on points of law, the then competent criminal division may once again rule on its composition under sentence 2.

Ninth Title Federal Court of Justice

Section 123

The seat of the Federal Court of Justice (*Bundesgerichtshof*) is Karlsruhe.

Section 124

The Federal Court of Justice is composed of a president, presiding judges and additional judges.

Section 125

- (1) The members of the Federal Court of Justice are chosen jointly by the Federal Minister of Justice and Consumer Protection and the judicial selection committee in accordance with the Judicial Selection Act (*Richterwahlgesetz*) and appointed by the Federal President.
- (2) A person may only be appointed a member of the Federal Court of Justice if he or she has attained the age of thirty-five.

**Sections 126 to 129
(repealed)**

Section 130

- (1) Civil panels and criminal panels are to be established and investigating judges are to be appointed at the Federal Court of Justice. Their number is to be determined by the Federal Minister of Justice and Consumer Protection.
- (2) The Federal Minister of Justice and Consumer Protection is authorised to also establish civil panels and criminal panels outside the seat of the Federal Court of Justice and to determine the official seats of the investigating judges of the Federal Court of Justice.

**Section 131
(repealed)**

**Section 131a
(repealed)**

Section 132

- (1) A grand civil panel and a grand criminal panel are to be established at the Federal Court of Justice. The grand panels form the united grand panels.
- (2) In the event that a panel wishes to deviate from the decision of another panel on a legal issue, the grand civil panel decides if a civil panel wishes to deviate from another civil panel or from the grand civil panel, the grand criminal panel decides if a criminal panel wishes to deviate from another criminal panel or from the grand criminal panel, and the united grand panels decide if a civil panel wishes to deviate from a criminal panel or from the grand criminal panel or if a criminal panel wishes to deviate from a civil panel or from the grand civil panel or if a panel wishes to deviate from the united grand panels.
- (3) A submission to the grand panel or to the united grand panels is only admissible if the panel from whose decision there is to be deviation has declared in response to an inquiry of the adjudicating panel that it stands by its legal opinion. If the panel from whose decision there is to be deviation can no longer be seized of the legal issue due to a change in the roster allocating court business, its place is to be taken by the panel that would be competent under the roster allocating court business for the case in which the divergent decision was given. The ruling on the inquiry and the response is to be given in a ruling by the respective panel in the composition prescribed for judgments; section 97 (2) sentence 1 of the Act on Tax Advisors (*Steuerberatungsgesetz*) and section 74 (2) sentence 1 of the Auditors' Regulations (*Wirtschaftsprüferordnung*) remain unaffected.
- (4) The adjudicating panel may submit an issue of fundamental importance to the grand panel for a decision if it deems this necessary for the development of the law or in order to ensure uniform application of the law.
- (5) The grand civil panel is composed of the president and one member from each of the civil panels; the grand criminal panel is composed of the president and two members from each of the criminal panels. If submission is by another panel, or if there is to be deviation from the decision of another panel, a member of that panel also sits on the grand panel. The united grand panels are composed of the president and the members of the grand panels.
- (6) The members and their deputies are appointed by the presiding committee for one business year. This also applies to the member of another panel under subsection (5) sentence 2 and to his or her deputy. The grand panels and the united grand panels are presided over by the president or, in the event that he or she is unable to be present, by the most senior member. In the case of a tie, the presiding judge has the casting vote.

Section 133

In civil matters, the Federal Court of Justice has jurisdiction for hearing and ruling on the appellate remedies of appeal on points of law, leapfrog appeal on points of law (*Sprungrevision*), complaint on points of law (*Rechtsbeschwerde*) and leapfrog complaint on points of law (*Sprungrechtsbeschwerde*).

Section 134 (repealed)

Section 134a (repealed)

Section 135

(1) In criminal matters, the Federal Court of Justice has jurisdiction for hearing and ruling on the appellate remedy of appeal on points of law only against judgments of the higher regional courts at first instance and against judgments of the regional courts at first instance, unless the jurisdiction of the higher regional courts has been established.

(2) The Federal Court of Justice furthermore rules on

1. complaints against rulings and directions given by the higher regional courts in the cases designated in section 138d (6) sentence 1, section 304 (4) sentence 2 and section 310 (1) of the Code of Criminal Procedure,
2. complaints against directions of the investigating judge at the Federal Court of Justice (section 169 (1) sentence 2 of the Code of Criminal Procedure) in the cases designated in section 304 (5) of the Code of Criminal Procedure and
3. objections to the composition of a higher regional court in the case of section 222b (3) sentence 1 of the Code of Criminal Procedure.

Section 136 (repealed)

Section 137 (repealed)

Section 138

(1) The grand panels and the united grand panels give a decision on the point of law only. They may decide without an oral hearing. The decision is binding on the panel adjudicating the case at hand.

(2) The Federal Prosecutor General is to be heard prior to the decision of the grand criminal panel or the united grand panels and in legal disputes the subject of which is the contestation of a declaration of death. The Federal Prosecutor General may also present his or her opinion at the sitting.

(3) If a decision on the matter requires another oral hearing before the adjudicating panel, the participants are to be summoned to the hearing and informed in the summons of the decision given on the point of law.

Section 139

(1) The panels of the Federal Court of Justice give decisions sitting with five members, including the presiding judge.

(2) The criminal panels give decisions on complaints sitting with three members, including the presiding judge. This does not apply to the decision on complaints against rulings through which the opening of the main proceedings is refused or the proceedings are terminated due to a procedural impediment.

Section 140

The official procedure is to be governed by rules of procedure that are adopted by the full court.

Title 9a

Jurisdiction over proceedings to reopen cases in criminal matters

Section 140a

(1) In proceedings to reopen a case, a decision is given by another court with the same substantive jurisdiction as the court against whose decision the application for the reopening of proceedings is directed. The decision on an application against a judgment delivered in appellate proceedings on points of law is given by another court of the same rank as the court against whose judgment the appeal on points of law was filed.

(2) Prior to the beginning of the business year, the presiding committee of the higher regional court designates the courts within its district that have local jurisdiction over decisions in proceedings to reopen cases.

(3) If only one regional court has been established within the district of a higher regional court, the decision on an application over which the regional court has jurisdiction under subsection (1) is to be given by another criminal division of the regional court, which is designated by the presiding committee of the higher regional court prior to the beginning of the business year. The *Land* governments are authorised to issue statutory instruments providing that the decision to be given under subsection (2) by the presiding committee of a higher regional court in the district of which only one regional court has been established be assigned to the presiding committee of a neighbouring higher regional court in respect of those applications over which the regional court has jurisdiction under subsection (1). The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.

(4) In the *Länder* in which only one higher regional court and only one regional court have been established, subsection (3) sentence 1 applies accordingly. The *Land* governments of these *Länder* are authorised to agree with a neighbouring *Land* that the duties of the presiding committee of the higher regional court under subsection (2) are transferred to a neighbouring higher regional court of another *Land* in respect of applications over which the regional court has jurisdiction under subsection (1).

(5) In the *Länder* in which only one regional court has been established and in which one local court has been assigned the criminal matters for the districts of the other local courts, subsection (3) sentence 1 and subsection (4) sentence 2 apply accordingly.

(6) If the reopening of proceedings is requested for a case that was decided by a higher regional court at first instance, another division of this higher regional court has jurisdiction. Section 120 (5) sentence 2 applies accordingly.

(7) Subsections (1) to (6) apply accordingly to decisions on applications to prepare for the reopening of proceedings.

Tenth Title

Public prosecution office

Section 141

A public prosecution office should exist at each court.

Section 142

(1) The official duties of the public prosecution office are discharged:

1. at the Federal Court of Justice by a Federal Prosecutor General and by one or more federal prosecutors;
2. at the higher regional courts and the regional courts by one or more public prosecutors;
3. at the local courts by one or more public prosecutors or officials of the public prosecution office with a right of audience before the local courts.

(2) The competence of the officials of the public prosecution office with a right of audience before the local courts does not encompass the local court proceedings to prepare public charges in criminal matters falling under the jurisdiction of courts other than the local courts.
(3) Trainee jurists may be assigned responsibility for discharging the duties of an official of the public prosecution office with a right of audience before the local courts and, in an individual case, for discharging the duties of a public prosecutor under the latter's supervision.

Section 142a

(1) The Federal Prosecutor General discharges the duties of the public prosecution office in respect of the criminal matters falling under the jurisdiction of the higher regional courts at first instance under section 120 (1) and (2) at these courts as well. In order for prosecution to be transferred to the Federal Prosecutor General it is sufficient if adequate factual indications exist to fulfil the preconditions for his or her jurisdiction. The public prosecution office informs the Federal Prosecutor General without delay of any events that give cause to examine the transfer of prosecution to him or her. If, in the cases of section 120 (1), the officials of the public prosecution office of a *Land* and the Federal Prosecutor General cannot agree which of them should take over the prosecution, the Federal Prosecutor General decides.
(2) The Federal Prosecutor General transfers the proceedings to the *Land* public prosecution office prior to filing a bill of indictment or a written application (section 435 of the Code of Criminal Procedure)

1. if the following criminal offences are the subject of the proceedings:
 - a) criminal offences under section 82, section 83 (2) or sections 98, 99 or 102 of the Criminal Code,
 - b) criminal offences under sections 105 or 106 of the Criminal Code, if the offence is directed against an entity of a *Land* or against a member of such an entity,
 - c) criminal offences under section 138 of the Criminal Code in conjunction with one of the provisions of the Criminal Code designated in letter (a) or
 - d) criminal offences under section 52 (2) of the Patent Act, under section 9 (2) of the Utility Model Act in conjunction with section 52 (2) of the Patent Act, or under section 4 (4) of the Semiconductor Protection Act in conjunction with section 9 (2) of the Utility Model Act and section 52 (2) of the Patent Act;
2. in cases of lesser importance.

(3) The proceedings are not to be transferred to the *Land* public prosecution office

1. if the offence affects the interests of the Federation to a considerable degree or
2. if it is advisable in the interest of legal uniformity for the Federal Prosecutor General to prosecute the offence.

(4) The Federal Prosecutor General transfers a case that he or she has taken over under section 120 (2) sentence 1 nos. 2 to 4, or under section 74a (2) back to the *Land* public prosecution office if the case is no longer of special significance.

Section 142b

(1) In proceedings in which the European Public Prosecutor's Office is competent under Articles 22 and 23 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), (OJ L 283 of 31 October 2017, p.1), and has assumed prosecution in accordance with Article 25 of that Regulation, the official duties of the public prosecution office are to be discharged by public prosecutors who at the same time have been appointed as European

Delegated Prosecutors for the Federal Republic of Germany in accordance with that Regulation. In cases before the Federal Court of Justice, the official duties of the public prosecution office are to be discharged by a federal prosecutor who at the same time has been appointed as European Delegated Prosecutor in accordance with Regulation (EU) 2017/1939. If the European Prosecutor appointed for the Federal Republic of Germany in accordance with Regulation (EU) 2017/1939 acts in accordance with Article 28 (4) of that Regulation, the official duties of the public prosecution office are to be discharged by him or her.

(2) In the case of Article 25 (6) of Council Regulation (EU) 2017/1939, the Federal Prosecutor General decides upon the application of the public prosecution office concerned or of the European Public Prosecutor's Office. The public prosecution office concerned or the European Public Prosecutor's Office may lodge a complaint with the Federal Court of Justice against the decision by the Federal Prosecutor General.

Section 143

(1) The local competence of the public prosecution office is to be determined by the local jurisdiction of the court at which the public prosecution office exists. If a venue cannot be established in any court within the territorial scope of this Act, or if such court cannot be ascertained, the public prosecution office first seized of the matter is competent. If in the cases referred to in sentence 2 the jurisdiction of a court is established, the proceedings are to be referred to the public prosecution office competent under sentence 1 as soon as all necessary measures have been taken to secure the proceedings and the state of the proceedings permits an orderly transfer. Sentence 3 applies accordingly where the competence of one public prosecution office has ceased to exist and another public prosecution office has become competent.

(2) In exigent circumstances, an official of the public prosecution office who lacks competence must perform the official acts necessary in his or her district.

(3) If the public prosecution offices of different *Länder* cannot agree which one of them is to take over the prosecution, the Federal Prosecutor General decides. Upon the application of a public prosecution office, he or she also decides if the public prosecution offices of different *Länder* cannot agree on combining connected criminal cases.

(4) The officials of one public prosecution office may be assigned competence for the districts of several regional or higher regional courts for the prosecution of certain kinds of criminal matters, for the execution of sentences in respect of these matters, and for the processing of requests for mutual assistance from agencies outside the territorial scope of this Act, insofar as such assignment serves the purpose of material furtherance or swifter disposal of the proceedings; in such cases, the local competence of the officials of the public prosecution office for the matters assigned to them encompasses all the courts of the districts for which they have been assigned these matters.

(5) The *Land* governments are authorised to issue statutory instruments providing that competence for execution of sentences or for execution of measures of reform and prevention be assigned either entirely or partially to a single public prosecution office for the districts of several regional or higher regional courts, insofar as such assignment serves the purpose of material furtherance or swifter disposal of the execution proceedings. The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.

(6) In derogation from subsection (1) sentence 1, European Delegated Prosecutors appointed in the Federal Republic of Germany in accordance with Regulation (EU) 2017/1939 are competent for all criminal matters within the territory of application of this Act with which they are seized under Regulation (EU) 2017/1939, regardless of their seat. Sentence 1 applies accordingly to a German European Prosecutor who acts in accordance with Article 28 (4) of Regulation (EU) 2017/1939.

Section 144

If the public prosecution office of a court is composed of several officials, the persons assigned to the highest-ranking official act as his or her deputy; when they act in his or her stead, they are authorised to perform all his or her official tasks without proof of a special commission.

Section 145

(1) The highest-ranking officials of the public prosecution office at the higher regional courts and the regional courts are entitled to take over all the official tasks of the public prosecution office at all the courts in their district themselves or to commission an official other than the initially competent official to perform these tasks.

(2) Officials of the public prosecution office with a right of audience before the local courts may only discharge the official duties of the public prosecution office at the local courts.

Section 145a (repealed)

Section 146

The officials of the public prosecution office must comply with the official instructions of their superiors.

Section 147

The right of supervision and direction lies with:

1. the Federal Minister of Justice and Consumer Protection in respect of the Federal Prosecutor General and the federal prosecutors;
2. the *Land* department of justice in respect of all the officials of the public prosecution office of the *Land* concerned;
3. the highest-ranking official of the public prosecution office at the higher regional courts and the regional courts in respect of all the officials of the public prosecution office of the given court's district.

Section 148

The Federal Prosecutor General and the federal prosecutors must be civil servants.

Section 149

The Federal Prosecutor General and the federal prosecutors are appointed by the Federal President on the proposal of the Federal Minister of Justice and Consumer Protection, who requires the approval of the Bundesrat.

Section 150

The public prosecution office is independent of the courts in the performance of its official tasks.

Section 151

The public prosecutors may not perform judicial functions. They also may not be assigned responsibility for supervising the service of judges.

Section 152

(1) The investigative personnel of the public prosecution office are obliged in this capacity to comply with the orders of the public prosecution office of their district and the orders of the officials superior thereto.

(2) The *Land* governments are authorised to issue statutory instruments designating the groups of civil servants and salaried staff who are to be subject to this provision. The salaried staff must be public service employees, must have attained the age of 21 and must have been employed in the designated groups of civil servants or salaried staff for at least

two years. The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.

Eleventh Title Court registry

Section 153

(1) A court registry staffed with the necessary number of registry clerks is to be established at each court and at each public prosecution office.

(2) Anyone who has completed two years of preparatory training (*Vorbereitungsdienst*) and passed the examination for the intermediate judicial service or for the intermediate service in the area of labour jurisdiction may be entrusted with the duties of a registry clerk of the court registry. Six months of the preparatory training should consist of a specialised course of instruction.

(3) Anyone

1. who has passed the judicial administration officer's examination (*Rechtspflegerprüfung*) or the examination for the higher intermediate service in the area of labour jurisdiction,

2. who has qualified for a career in the intermediate judicial service under the provisions governing career track changes,

3. who, as another applicant, has been admitted to the intermediate judicial service career track under the provisions of *Land* law

may also be entrusted with the duties of a registry clerk of the court registry.

(4) The detailed provisions governing implementation of subsections (1) to (3) are to be enacted by the Federation and the *Länder* for their areas. They may also specify whether and to what extent periods of other training or employment conducive to realisation of the training objective may be credited towards the period of preparatory training.

(5) The Federation and the *Länder* may furthermore specify that a person may also be entrusted with the duties of a registry clerk of the court registry if he or she can demonstrate a level of knowledge and proficiency in the area to be transferred to him or her that is equivalent to the level imparted through the training under subsection (2). In the *Länder* Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, those persons may continue to be entrusted with the duties of a registry clerk of the court registry who were entrusted with such duties until 25 April 2006 under Annex I Chapter III Subject Area A section III, no. 1 (q) paragraph (1) of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990 (Federal Law Gazette 1990 II, pp. 889, 922).

Twelfth Title Officials entrusted with service and execution

Section 154

The status and duties of the officials entrusted with service, summons and execution (court bailiffs) are to be determined at the Federal Court of Justice by the Federal Minister of Justice and Consumer Protection and at the regional courts by the *Land* department of justice.

Section 155

The court bailiff is barred by law from exercising his or her office:

I. in civil disputes:

1. if he himself or she herself is a party or the statutory representative of a party or is jointly entitled or jointly obligated along with a party or is liable for damages to a party;

2. if his or her spouse or life partner is a party, even if the marriage or life partnership no longer exists;
 3. if a party is a person with whom he or she is or was lineally related or related by marriage, collaterally related to the third degree, or related by marriage to the second degree;
- II. in criminal matters:
1. if he himself or she herself was aggrieved by the criminal offence;
 2. if he or she is or was the spouse or life partner of the accused or of the aggrieved party;
 3. if he or she is or was related or related by marriage to the accused or to the aggrieved party in the manner designated under no. I 3.

Thirteenth Title Mutual assistance

Section 156

The courts provide mutual assistance in civil matters and in criminal matters.

Section 157

- (1) A request for mutual assistance must be addressed to the local court in the district of which the official act is to be performed.
- (2) The *Land* governments are authorised to issue statutory instruments providing that the handling of requests for mutual assistance is assigned either entirely or partially to a single local court for the districts of several local courts insofar as this serves to facilitate or expedite the provision of mutual assistance. The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.

Section 158

- (1) A request may not be refused.
- (2) A request by a court that is not a superior appellate instance must, however, be refused if the act to be performed is prohibited by the law of the court to which the request has been addressed. If the requested court does not have local jurisdiction, it transfers the request to the competent court.

Section 159

- (1) If a request is refused, or if it is granted in contravention of the provision of section 158 (2), the matter is to be decided by the higher regional court to the district of which the requested court belongs. The decision is only contestable if it declares the mutual assistance to be inadmissible and the requesting and requested courts belong to the districts of different higher regional courts. The Federal Court of Justice is to rule on the complaint.
- (2) The decisions, upon application of the participants or the requesting court, are to be given without an oral hearing.

Section 160

Execution, summons and service are effected under the provisions of procedural law, irrespective of whether they are to be performed in the *Land* to which the trial court belongs or in another German *Land*.

Section 161

Courts, public prosecution offices and court registries may, for the purpose of commissioning a court bailiff, avail themselves of the assistance of the court registry of the local court in the district of which the commission is to be executed. The court bailiff commissioned by the court registry is deemed to be directly commissioned.

Section 162

If a person sentenced to a term of imprisonment is staying at a place outside the district of the executing authority, this authority may request the public prosecution office of the regional court in the district of which the convicted person is staying to execute the sentence.

Section 163

If a prison sentence is to be executed in the district of another court or if a convicted person staying in the district of another court is to be apprehended and handed over in order to serve his or her sentence, the public prosecution office at the regional court of that district must be asked to perform the act.

Section 164

- (1) The costs and expenses entailed in the provision of mutual assistance are not reimbursed by the requesting authority.
- (2) Fees or other public charges to which the documents (certificates, records) sent by the requesting authority are subject under the law of the requested authority may not be levied.

Section 165 (repealed)

Section 166

Within the territorial scope of this Act, a court may also perform official acts outside its district.

Section 167

- (1) The police officers of one German *Land* are authorised to continue to pursue a fugitive on the territory of another German *Land* and to apprehend the fugitive there.
- (2) The apprehended person must be taken without delay to the nearest court or the nearest police authority of the *Land* in which he or she was apprehended.

Section 168

The provisions existing in one German *Land* concerning the communication of files of a public authority to a court of that *Land* also apply in the event that the requesting court belongs to another German *Land*.

Fourteenth Title Publicity and court officers

Section 169

- (1) Hearings before the adjudicating court, including the pronouncement of judgments and rulings, are public. Audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content are inadmissible. Audio transmissions to a workspace for persons reporting for the press, radio, television or other media may be authorised by the court. Audio transmissions may, in part, be prohibited in order to protect the legitimate interests of the participants or of third parties or to ensure the proper course of proceedings. In all other cases, sentence 2 applies to audio transmission to a workspace accordingly.
- (2) Audio recordings or audio and film recordings of hearings, including the pronouncement of judgments and rulings, may be authorised by the court for scientific and historical purposes if the relevant proceedings are of paramount significance for contemporary history. In order to protect the legitimate interests of the participants or of third parties and to ensure the proper course of proceedings, the making of such recordings may, in part, be prohibited. The recordings are not to be included in the files of the proceedings and may not be disclosed, nor may they be used or reviewed for purposes of the recorded or other proceedings. Upon the conclusion of the proceedings, the court must offer to transfer the recordings to the competent Federal Archives or *Land* archive; the Federal Archives or *Land* archive must determine, in accordance with the Federal Archives Act (*Bundesarchivgesetz*)

or a *Land* Archive Act (*Landesarchivgesetz*), whether the recordings are of lasting value. If the Federal Archives or the respective *Land* archive do not accept the recordings, the court must delete the recordings.

(3) By way of derogation from subsection (1) sentence 2, the court may admit audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content for the pronouncement of decisions of the Federal Court of Justice in special cases. In order to protect the legitimate interest of the participants or of third parties and to ensure the proper course of proceedings, the making or transmission of recordings may be prohibited in part or further conditions may be attached thereto.

(4) The court's rulings in accordance with subsections (1) to (3) are incontestable.

Section 170

(1) Proceedings, discussions and hearings in family matters and in non-contentious matters are not public. The court may admit the public but not against the will of a participant. In adult guardianship and placement matters, at the request of the person concerned, a person of his or her confidence is to be permitted to be present.

(2) The court hearing a complaint on points of law may admit the public provided there is no overriding interest of a participant in non-public discussion.

Section 171 (repealed)

Section 171a

The public may be excluded from the main hearing or from a part thereof if the subject of the proceedings is the placement of the accused in a psychiatric hospital or in an institution for withdrawal treatment in lieu of or in addition to a penalty.

Section 171b

(1) The public may be excluded if circumstances from the private sphere of a party to the proceedings, a witness or a person aggrieved by an unlawful act (section 11 (1) no. 5 of the Criminal Code) are mentioned, the public discussion of which would violate interests meriting protection. This does not apply if there is an overriding interest in public discussion of these circumstances. The particular burdens on children and juveniles that may be associated with a public main hearing must be taken into account. The same applies accordingly to persons of full legal age who were children or juveniles when aggrieved by the criminal offence.

(2) The public should be excluded if a witness under 18 years of age is to be examined in proceedings relating to criminal offences against sexual self-determination (sections 174 to 184k of the Criminal Code) or against life (sections 211 to 222 of the Criminal Code), to ill-treatment of an individual placed in the charge of another (section 225 of the Criminal Code) or to criminal offences against personal liberty under sections 232 to 233a of the Criminal Code. Subsection (1) sentence 4 applies accordingly.

(3) The public is to be excluded if the preconditions of subsections (1) or (2) exist and the person whose private sphere is affected applies for such exclusion. The public is to be excluded from the final motions in proceedings relating to the criminal offences referred to in subsection (2) without an application being required for such exclusion if the public was excluded from the hearing either entirely or in part under the preconditions referred to in subsections (1) or (2) or in section 172 no. 4.

(4) In derogation from subsections (1) and (2), the public may not be excluded if the persons whose private sphere is affected object to exclusion of the public.

(5) The decisions under subsections (1) to (4) are not contestable.

Section 172

The court may exclude the public from a hearing or from a part thereof if

1. endangerment of state security, the public order or public morals is to be feared,
- 1a. endangerment of the life, limb or liberty of a witness or another person is to be feared,
2. an important business, trade, invention or tax secret is mentioned, the public discussion of which would violate overriding interests meriting protection,
3. a private secret is discussed, the unauthorised disclosure of which carries a penalty,
4. a person under the age of 18 is examined.

Section 173

- (1) The pronouncement of the judgment as well as the final decision in matrimonial matters and family dispute matters must in any case be public.
- (2) The public may, under the preconditions of sections 171b and 172, also be excluded from the pronouncement of the reasons for the decision or a part thereof by a special ruling of the court.

Section 174

- (1) The issue of exclusion of the public must be discussed in a non-public sitting if a participant so applies or if the court deems this appropriate. The ruling excluding the public must be pronounced in public; it may be pronounced in a non-public sitting if there is fear that its public pronouncement would seriously disrupt order in the sitting. In the cases of sections 171b, 172 and 173, the reason for exclusion of the public must be stated at the time of pronouncement.
- (2) Insofar as the public is excluded on the grounds of endangerment of state security, the press, radio and television may not make public any reports concerning the hearing or the content of an official document relating to the matter.
- (3) If the public has been excluded on the grounds of endangerment of state security or on the grounds designated in section 171b and section 172 nos. 2 and 3, the court may obligate the persons present to observe secrecy in respect of facts of which they become aware in the course of the hearing or through an official document relating to the matter. The ruling must be included in the record of the sitting. It is contestable. The complaint does not have suspensive effect.

Section 175

- (1) Access to public hearings may be denied to minors and to persons who appear in a manner that is not in keeping with the dignity of the court.
- (2) The court may grant individuals access to non-public hearings. In criminal matters, the aggrieved person should be granted access. The participants need not be heard.
- (3) Exclusion of the public does not preclude the presence of the judicial administration officials responsible for supervision of service at the hearings before the adjudicating court.

Section 176

- (1) The maintenance of order in the sitting is incumbent upon the presiding judge.
- (2) Persons participating in the hearing may not cover their face entirely or partially during the sitting. The presiding judge may allow exceptions if and insofar as it is not necessary to identify the face either for the purposes of establishing identity or of evaluating evidence.

Section 177

Parties, accused persons, witnesses, experts or persons not participating in the hearing who fail to follow the orders given to maintain order may be removed from the courtroom or taken into coercive detention and held for a period of time to be determined; such period may not exceed twenty-four hours. Decisions on measures under sentence 1 in respect of persons

who are not participants in the hearing must be made by the presiding judge and in all other cases by the court.

Section 178

(1) A coercive fine of up to one thousand euros may be imposed or coercive detention of up to one week may be ordered and immediately executed against parties, accused persons, witnesses, experts or persons not participating in the hearing who are found to be in contempt of court at the sitting, subject to prosecution by a criminal court. At the time the coercive fine is imposed, a determination is also to be made concerning the extent to which it is to be replaced by coercive detention in the event that the fine cannot be collected.

(2) The decision on imposition of coercive measures in respect of persons who are not participants in the hearing is to be made by the presiding judge and in all other cases by the court.

(3) If a person is later sentenced for the same offence, the coercive fine or coercive detention is to be credited against the sentence.

Section 179

Execution of the coercive measures designated above must be ordered directly by the presiding judge.

Section 180

The powers designated in sections 176 to 179 are also vested in a single judge performing official acts outside the sitting.

Section 181

(1) If, in the cases of sections 178 and 180, a coercive measure has been imposed, a complaint may be lodged against the decision within a time limit of one week after its notification unless it has been given by the Federal Court of Justice or by a higher regional court.

(2) The complaint does not have suspensive effect in the case of section 178 and does have suspensive effect in the case of section 180.

(3) The higher regional court must rule on the complaint.

Section 182

If a coercive measure has been imposed for contempt of court, or if a person has been taken into coercive detention, or if a person participating in the hearing has been removed from the courtroom, the ruling of the court and the reasons for it are to be included in the record of the proceedings.

Section 183

If a criminal offence is committed at the sitting, the court must establish the facts and communicate the record thereof to the competent authority. Where appropriate, the provisional arrest of the perpetrator must be ordered.

Fifteenth Title Language of the court

Section 184

The language of the court is German. The right of the Sorbs to speak Sorbian before the courts in the home districts of the Sorbian population is guaranteed.

Section 184a

(1) The *Land* governments are authorised to determine by statutory instrument in each case that proceedings concerning selected areas of the disputes specified in section 119b (1) sentence 1 are conducted entirely in English

1. at selected regional courts, also for the district of several regional courts, by civil chambers and commercial chambers determined for this purpose and by divisions of the

higher regional courts with jurisdiction for appeals and complaints concerning rulings by the commercial chambers and

2. at the commercial court.

In the statutory instrument under sentence 1, the *Land* governments may also assign to the commercial chambers, also for the district of several regional courts within their jurisdiction, disputes relating to the selected areas of the disputes specified in section 119b (1) sentence 1 to be handled in German. In the statutory instrument in accordance with sentence 1, the determination of the commercial chambers may be restricted to civil chambers or to commercial chambers. If civil chambers are determined to be commercial chambers, section 98 does not apply.

(2) The *Land* governments may transfer the authorisation specified in subsection (1) by statutory instrument to the *Land* departments of justice. Several *Länder* may agree to establish one or several joint commercial chambers across *Land* borders.

(3) If on account of a statutory instrument under subsection (1) English has been determined as the court language and the parties have expressly or implicitly agreed this or the defendant accepts this language without raising any objections in his or her statement of defence, the entire proceedings, in derogation from section 184, are to be conducted in English with the following provisos:

1. an interpreter or a translator may be enlisted at any stage of the proceedings if necessary in the individual case;

2. section 142 (3) of the Code of Civil Procedure is not applicable to English-language certificates;

3. section 142 (3) of the Code of Civil Procedure applies to German-language certificates with the proviso that, upon application, the court may direct that a translation into English be provided by the party presenting the certificate.

If the court language is German or, in accordance with sentence 1, English, the parties are not prevented from also speaking the respective other language before the courts specified in subsection (1) sentence 1 if they have expressly or implicitly agreed this or none of the parties opposes it without undue delay.

(4) If a third party is involved in proceedings to be held entirely in English in accordance with subsection (3) as a third party intervening in support of a party to the dispute or through a third-party notice or if the judgment is to take effect for and against a third party, an interpreter is to be enlisted upon application by the third party. Section 185 of this Act and section 142 (3) of the Code of Civil Procedure apply.

(5) If proceedings first conducted in English are continued in German, the proceedings are also held in German in the subsequent instance.

Section 184b

(1) The civil panels of the Federal Court of Justice conduct proceedings in English if

1. appeal or complaint proceedings have previously been conducted in accordance with section 184a (1) sentence 1 no. 1 or proceedings have been conducted in accordance with section 184a (1) sentence 1 no. 2,

2. an application is made to this effect in the notice or brief seeking an appellate remedy and

3. the civil panel grants the application.

If the civil panel approves the proceedings being conducted in English, section 184a (3) and (4) apply with the proviso that section 142 (3) of the Code of Civil Procedure remains applicable.

(2) The civil panel may direct, at any time during the proceedings, that the proceedings be continued in German. The civil panel may also direct, at any time, that parts of the case file be translated into German.

Section 185

(1) If persons are participating in the hearing who do not have a command of the German language, an interpreter must be called in. No additional record is to be made in the foreign language; however, testimony and declarations given in the foreign language should also be included in the record or appended thereto in the foreign language if and to the extent that the judge deems this necessary in view of the importance of the case. Where appropriate, a translation to be certified by the interpreter should be annexed to the record.

(1a) The presiding judge may permit or order the interpreter to take part in the proceedings, hearing or examination by audio-visual transmission. The presiding judge may also order the interpreter to be in the same place as the person who does not have a command of the German language.

(2) An interpreter may be dispensed with if all the persons participating have a command of the foreign language.

(3) In family matters and in non-contentious matters, an interpreter need not be called in if the judge has a command of the language in which the persons participating make their statements.

(4) Persons who report for the press, radio, television or for other media and who do not have a command of the German language may use interpretation during court hearings. The court may admit the use of interpretations provided by the court. Section 176 (1) remains unaffected.

Section 186

(1) Communication with a hearing impaired or speech impaired person during the hearing may, at his or her choice, take place orally, in writing or with the assistance of a communication facilitator to be called in by the court. The court must furnish suitable technical aids for oral and written communication. The hearing impaired or speech impaired person must be advised of his or her right to choose.

(2) The court may require written communication or order a person to be called in as an interpreter if the hearing impaired or speech impaired person has not availed himself or herself of his or her right to choose under subsection (1) or if adequate communication is not possible in the form chosen under subsection (1) or would require disproportionate effort.

(3) The Federal Ministry of Justice and Consumer Protection must specify in a statutory instrument which requires the approval of the Bundesrat,

1. the extent of the right to provision of appropriate communication aids under subsections (1) and (2),
2. the principles of appropriate remuneration for the use of communication aids under subsections (1) and (2),
3. the appropriate communication aids by means of which the communication specified in subsections (1) and (2) is to be guaranteed, and
4. whether and how the person with a hearing or speech impairment is required to cooperate.

Section 187

(1) The court must call in an interpreter or a translator for an accused or convicted person who does not have a command of the German language, insofar as this is necessary for the exercise of his or her rights under the law of criminal procedure. The court must advise the accused in a language he or she understands that he or she may to this extent demand that an interpreter or a translator be called in for the entire criminal proceedings free of charge.

(2) As a rule, a written translation of orders involving deprivation of liberty as well as of bills of indictment, penal orders and non-binding judgments is necessary for the exercise of the rights under the law of criminal procedure of an accused who does not have a command of the German language. An excerpted written translation is sufficient if the rights of the accused under the law of criminal procedure are thereby safeguarded. The written translation must be made available to the accused without delay. An oral translation of the documents or an oral summary of the content of the documents may be substituted for a written translation if the rights of the accused under the law of criminal procedure are thereby safeguarded. As a rule, this may be assumed if the accused has defence counsel.

(3) The accused may only effectively waive a written translation if he or she has been instructed beforehand concerning his or her right to a written translation under subsections (1) and (2) and concerning the consequences of a waiver of a written translation. The instruction under sentence 1 and the waiver of the accused must be documented.

(4) Subsection (1) applies accordingly to persons who have the right to join a public prosecution as a private accessory prosecutor under section 395 of the Code of Criminal Procedure.

Section 188

Persons who do not have a command of the German language must swear oaths in the language they speak fluently.

Section 189

(1) The interpreter must swear an oath affirming that he or she will translate faithfully and conscientiously. If the interpreter states that he or she does not wish to swear an oath for reasons of faith or conscience, he or she must make an affirmation. This affirmation is equivalent to an oath; the interpreter must be informed of this fact.

(2) For translations of the kind involved, if the interpreter has been generally sworn in under the Court Interpreters Act (*Gerichtsdolmetschergesetz*) or in a *Land* under the provisions of *Land* law, a reference to that oath is sufficient before all courts of the Federation and the *Länder*.

(3) In family matters and in non-contentious matters, the interpreter need not be sworn in if the persons participating waive this requirement.

(4) The interpreter or translator must observe secrecy concerning circumstances that become known to him or her in his or her professional capacity. The court must advise him or her of this fact.

Section 190

The services of an interpreter may be rendered by the registry clerk of the court registry. No special administration of an oath is required.

Section 191

The provisions governing the exclusion and rejection of experts apply accordingly to the interpreter. The decision is to be made by the court or by the judge who called in the interpreter.

Section 191a

(1) A blind or visually impaired person may submit pleadings and other documents to the court in a form accessible to him or her. He or she may, as provided in the statutory instrument under subsection (2), demand that pleadings and other documents of court proceedings be made available to him or her in a barrier-free form. If the blind or visually impaired person is to be granted access to the files, he or she may demand that this access be granted him or her barrier-free as provided in the statutory instrument under subsection (2). A blind or visually impaired person who has been entrusted or appointed to safeguard another person's rights also has a right within the meaning of sentences 1 to 3. No charges may be made for providing barrier-free access.

(2) The Federal Ministry of Justice and Consumer Protection must specify in a statutory instrument which requires the approval of the Bundesrat the conditions under which and the manner in which the documents mentioned in subsection (1) and the documents submitted by the parties for the record must be made accessible to a blind or visually impaired person as well as whether and how this person is to participate in the safeguarding of his or her rights.

(3) Electronic documents represented in graphic characters must be rendered accessible for blind or visually impaired persons. Any secure transmission of an electronic document must be done in an accessible manner. If electronic forms are introduced (section 130c of the Code of Civil Procedure, section 32c of the Code of Criminal Procedure, section 14a of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, section 46f of the Labour Courts Act (*Arbeitsgerichtsgesetz*), section 65c of the Social Courts Act (*Sozialgerichtsgesetz*), section 55c of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*), section 52c of the Finance Courts Code (*Finanzgerichtsordnung*), section 110b of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*)), these must be rendered accessible for blind or visually impaired persons. The standards of section 3 of the Ordinance on Barrier-Free Information Technology (*Barrierefreie-Informationstechnik-Verordnung*) of 12 September 2011 (Federal Law Gazette I, p. 1843) in the respective applicable version prevails.

(4) Video conference technology used in court proceedings is to be made accessible barrier-free for communication with a blind or visually impaired person upon his or her request. Subsection (3) sentence 4 applies accordingly.

Sixteenth Title Deliberations and voting

Section 192

(1) Only the statutory number of judges may participate in decisions.

(2) At hearings of lengthy duration, the presiding judge may order that additional judges be called in to attend the hearing and take the place of a judge in the event that he or she is unable to be present.

(3) These provisions are also applicable to lay judges.

Section 193

(1) The deliberations and voting may be conducted entirely or partially by means of audio-visual transmission with the agreement of all the judges who have been appointed to give the decision. In that case, the secrecy of deliberations is to be ensured by means of organisational and technical measures.

(2) Except for the judges who have been appointed to give the decision, only those persons who are employed at the same court for the purposes of their judicial training and the specialist auxiliary staff who are employed there may be present during deliberations and voting, insofar as the presiding judge permits them to be present.

(3) Foreign professional judges, public prosecutors and attorneys-at-law who have been assigned to a court in the context of a study visit may be present during deliberations and voting at the same court, insofar as the presiding judge permits them to be present and they are placed under an obligation under subsections (4) and (5). Sentence 1 applies accordingly to foreign jurists who are undergoing training in the seconding state.

(4) The persons designated in subsection (3), upon their application, are to be placed under a special obligation to observe secrecy. Section 1 (2) and (3) of the Obligations Act (*Verpflichtungsgesetz*) of 2 March 1974 (Federal Law Gazette I, pp. 469 and 547), as amended by section 1 no. 4 of the Act of 15 August 1974 (Federal Law Gazette I, p. 1942), applies accordingly. Persons who have been placed under a special obligation under sentence 1 are deemed to be the equivalent of persons with special public service obligations for the purposes of application of the provisions of the Criminal Code on the violation of private secrets (section 203 (2) sentence 1 no. 2, section 203 (2) sentence 2,

section 203 (5) and (6) and section 205), exploitation of secrets of another (sections 204 and 205), violation of official secrecy (section 353b (1) sentence 1 no. 2, section 353b (1) sentence 2, and section 353b (3) and (4)) and violation of tax secrecy (section 355).

(5) The obligation must be imposed by the president or by the supervising judge of the court. He or she may transfer this authority to the presiding judge of the adjudicating body or to the judge to whom the persons designated in subsection (3) have been assigned. A renewal of the obligation is not required for the duration of the study visit. In the cases of section 355 of the Criminal Code, the judge imposing the obligation is entitled to file a request in addition to the aggrieved party.

Section 194

(1) The presiding judge presides over the deliberations, asks the questions and collects the votes.

(2) Differences of opinion concerning the subject matter, wording and sequence of the questions or concerning the result of the vote must be resolved by the court.

Section 195

No judge or lay judge may refuse to vote on a question because he or she was in the minority when a vote was taken on a previous question.

Section 196

(1) The court must give its decisions by an absolute majority vote unless otherwise provided by statute.

(2) If more than two opinions emerge in connection with amounts to be decided and no one of them can command a majority, the number of votes cast for the largest amount are to be added to the votes initially cast for the next smaller amount(s) until a majority is reached.

(3) If more than two opinions emerge in a criminal matter, aside from the question of guilt, and no one of them can command the necessary majority, the votes cast for the decision most unfavourable to the accused are to be added to those initially cast for the next less unfavourable decision(s) until the necessary majority is reached. If two opinions emerge on the question of sentencing and neither can command the necessary majority, the more lenient opinion is to prevail.

(4) If there is a tie at a court composed of two judges and two lay judges on an issue to be decided by a simple majority, the presiding judge has the casting vote.

Section 197

The judges vote in order of seniority, and in a case of equal seniority in order of age, whereas the honorary judges and lay judges vote in order of age; the younger one votes before the older one. The lay judges vote before the judges. If a rapporteur has been appointed, he or she must vote first. The presiding judge must vote last.

Seventeenth Title

Legal redress for excessive length of court proceedings and of criminal investigation proceedings

Section 198

(1) Whoever as the result of the unreasonable length of a set of court proceedings experiences a disadvantage as a participant in those proceedings must be given reasonable compensation. The reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the particular case concerned, in particular the difficulty and complexity of the proceedings and the conduct of the participants and of third parties.

(2) A disadvantage not constituting a pecuniary disadvantage is to be presumed to have occurred in a case where a set of court proceedings has been of unreasonably long duration. Compensation may be claimed for it only insofar as reparation by other means, having regard to the circumstances of the particular case, is not sufficient in accordance with subsection (4). Compensation under sentence 2 is to amount to EUR 1,200 for every year of

the delay. Where having regard to the circumstances of the particular case the sum under sentence 3 is inequitable, the court may assess a higher or lower sum.

(3) A participant in proceedings is to obtain compensation only if he or she has complained about the length of the proceedings to the court seized of the case (censure of delay). A censure of delay may be filed only if there is cause to fear that the case will not be concluded within a reasonable time; a censure of delay may be reiterated at the earliest after six months, but not in a case where a shorter duration is necessary by way of exception. Where expedition of the proceedings depends on factors that have not yet been introduced into the proceedings, reference must be made to these in the complaint. Otherwise, in the assessment of the reasonable length of proceedings, account is not to be taken of these factors by the court required to give the decision on compensation (court of compensation). Where the proceedings are further delayed before another court, it is necessary to file a new censure of delay.

(4) Reparation by other means is possible in particular where the court of compensation makes a finding that the length of the proceedings was unreasonable. Such finding does not require the making of a prior application. In serious cases, the finding may be made in addition to compensation; it may also be made where one, or more than one, precondition under subsection (3) has not been fulfilled.

(5) A court action to enforce a claim under subsection (1) may be brought at the earliest six months after the filing of the censure of delay. The court action must be brought no later than six months following entry into final and binding force of the decision ending the proceedings, or following another manner of disposal of the proceedings. The claim is not transferable until a final and binding decision has been given in the court action.

(6) Within the meaning of this provision

1. a set of court proceedings means every set of proceedings from their introduction until their conclusion with final and binding force, including proceedings for granting interim relief and for granting assistance with court costs or legal aid; an exception to this is insolvency proceedings once they have been opened; where insolvency proceedings have been opened, the obtaining of a decision is deemed to be a set of court proceedings;

2. a participant in proceedings means any party to, and any participant in, a set of court proceedings with the exception of entities of constitutional rank, of public administration entities and of other public agencies, so far as the latter are not participating in a set of proceedings in the exercise of a right of self-governance.

Section 199

(1) Section 198 applies, subject to subsections (2) to (4), to criminal proceedings, including proceedings in preparation of public charges.

(2) During proceedings in preparation of public charges, the public prosecution office and, in the cases under section 386 (2) of the Fiscal Code (*Abgabenordnung*), the revenue authority is to act in lieu of the court; section 198 (3) sentence 5 applies accordingly to the proceedings subsequent to preferment of public charges.

(3) Where for the benefit of the accused a criminal court or the public prosecution office has taken account of the unreasonable length of the proceedings, this constitutes, under section 198 (2) sentence 2, sufficient reparation by other means; to this extent section 198 (4) does not apply. Where the accused in criminal proceedings seeks compensation for excessive length of proceedings, the court of compensation is bound, in respect of the assessment of the reasonableness of the length of the proceedings, by a decision given by the criminal court.

(4) A private prosecutor is not a participant in proceedings within the meaning of section 198 (6) no. 2.

Section 200

For disadvantages occurring as the result of delays at courts of a *Land*, the *Land* concerned bears liability. For disadvantages occurring as the result of delays at courts of the Federation, the Federation bears liability. Sentences 1 and 2 apply accordingly to public prosecution offices and revenue authorities in the cases under section 386 (2) of the Fiscal Code.

Section 201

(1) Where a *Land* is to be sued in a court action for compensation, jurisdiction lies with the higher regional court in whose district proceedings in the litigation were conducted. Where the Federation is to be sued in a court action for compensation, jurisdiction lies with the Federal Court of Justice. Such jurisdiction is exclusive in each case.

(2) The provisions of the Code of Civil Procedure governing proceedings conducted before the regional courts at first instance are to be applied accordingly. Jurisdiction to give a decision does not lie with a judge sitting alone. Subject to section 543 of the Code of Civil Procedure, an appeal on points of law is possible in respect a decision given by the higher regional court; section 544 of the Code of Civil Procedure is to be applied accordingly.

(3) The court of compensation may suspend its proceedings if the court proceedings upon whose length a claim under section 198 depends are still continuing. In criminal proceedings, including proceedings in preparation of public charges, the court of compensation is to suspend its proceedings for as long as the criminal proceedings have not yet been concluded.

(4) In a case where a compensation claim does not apply, or does not exist to the extent pleaded, but where a finding is made to the effect that the proceedings have been of unreasonable length, the court is to give a decision on the costs at its equitable discretion.