ภาคผนวก

ภาคผนวก ก.

กฎกระทรวง ฉบับที่ 4 (พ.ศ. 2540)
ออกตามความในพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. 2539

กฎกระทรวง

ฉบับที่ ๔ (พ.ศ. ๒๕๔๐)

ออกตามความในพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง

พ.ศ. ๒๕๓๙[1]

อาศัยอำนาจตามความในมาตรา ๖ และมาตรา ๔๕ วรรคสาม แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ นายกรัฐมนตรีโดยคำเสนอแนะของคณะกรรมการวิธีปฏิบัติราชการทางปกครอง ออกกฎกระทรวงไว้ดังต่อไปนี้

ข้อ ๑ ในกฎกระทรวงนี้คำสั่งทางปกครองไม่รวมถึง

(๑) คำสั่งทางปกครองอันเป็นการวินิจฉัยอุทธรณ์ที่ได้ดำเนินการตามข้อ ๒

(๒) คำสั่งทางปกครองอันเป็นการวินิจฉัยอุทธรณ์ตามขั้นตอนที่มีกฎหมายกำหนดไว้เป็นการเฉพาะ

ข้อ ๒ การพิจารณาอุทธรณ์คำสั่งทางปกครองในกรณีที่เจ้าหน้าที่ผู้ทำคำสั่งไม่เห็นด้วยกับคำอุทธรณ์ให้เป็นอำนาจของเจ้าหน้าที่ ดังต่อไปนี้

(๑) หัวหน้าส่วนราชการประจำจังหวัด ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นเจ้าหน้าที่ในสังกัดของส่วนราชการประจำจังหวัดหรือส่วนราชการประจำอำเภอของ กระทรวง ทบวง กรมเดียวกัน

(๒) เลขานุการรัฐมนตรีเลขานุการกรม หัวหน้าส่วนราชการระดับกองหรือเทียบเทียบเท่าหัวหน้าส่วนราชการตามมาตรา ๓๑ วรรคสอง แห่งพระราชบัญญัติระเบียบบริหารราชการแผ่นดิน พ.ศ. ๒๕๓๔ หรือหัวหน้าส่วนราชการประจำเขต แล้วแต่กรณี ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นเจ้าหน้าที่ในสังกัดของส่วนราชการนั้น

(๓) อธิบดีหรือหัวหน้าส่วนราชการที่มีฐานะเป็นกรม แล้วแต่กรณีในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นเลขานุการกรม หัวหน้าส่วนราชการระดับกองหรือส่วนราชการตามมาตรา ๓๑

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[1] ราชกิจจานุเบกษา ฉบับกฤษฎีกา เล่ม ๑๑๔ ตอนที่ ๑๗ ก วันที่ ๒๒ พฤษภาคม ๒๕๔๐

วรรคสอง แห่งพระราชบัญญัติระเบียบบริหารราชการแผ่นดิน พ.ศ. ๒๕๓๔ หรือหัวหน้าส่วนราชการประจำเขตหรือผู้อยู่ใต้บังคับบัญชาของอธิบดีหรือหัวหน้าส่วนราชการที่มีฐานะเป็นกรมซึ่งดำรงตำแหน่งสูงกว่านั้น

(๔) ปลัดกระทรวงหรือปลัดทบวง แล้วแต่กรณี ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นผู้ดำรงตำแหน่งอธิบดีหรือเทียบเท่า

(๕) นายกรัฐมนตรีหรือรัฐมนตรี แล้วแต่กรณี ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นหัวหน้าส่วนราชการที่ขึ้นตรงต่อนายกรัฐมนตรีหรือรัฐมนตรีหรือเป็นผู้ดำรงตำแหน่งปลัดกระทรวงหรือปลัดทบวง

(๖) ประธานวุฒิสภา ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นผู้ดำรงตำแหน่งเลขาธิการวุฒิสภา

(๗) ประธานสภาผู้แทนราษฎร ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นผู้ดำรงตำแหน่งเลขาธิการ สภาผู้แทนราษฎร

(๘) ผู้ว่าราชการจังหวัด ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นหัวหน้าส่วนราชการประจำจังหวัด นายอำเภอ เจ้าหน้าที่ของส่วนราชการของจังหวัด เจ้าหน้าที่ของส่วนราชการของอำเภอ หรือเจ้าหน้าที่ของสภาตำบล เว้นแต่กรณีที่กำหนดไว้แล้วใน (๑) หรือ (๓)

(๙) ผู้บริหารท้องถิ่นหรือคณะผู้บริหารท้องถิ่น แล้วแต่กรณี ในกรณีที่ผู้ทำคำสั่งทางปกครอง เป็นเจ้าหน้าที่ขององค์การบริหารส่วนท้องถิ่น

(๑๐) ผู้ว่าราชการจังหวัด ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นผู้บริหารท้องถิ่นหรือคณะผู้บริหารท้องถิ่น

(๑๑) รัฐมนตรีว่าการกระทรวงมหาดไทย ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นผู้ว่าราชการกรุงเทพมหานคร หรือผู้ว่าราชการจังหวัดในฐานะผู้บริหารองค์การบริหารส่วนจังหวัด หรือในฐานะราชการในส่วนภูมิภาค

(๑๒) ผู้แทนของรัฐวิสาหกิจหรือหน่วยงานอื่นของรัฐ แล้วแต่กรณี ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นเจ้าหน้าที่ของรัฐวิสาหกิจหรือหน่วยงานอื่นของรัฐ

(๑๓) เจ้าหน้าที่ผู้มีอำนาจสั่งการหรือมอบหมายให้เอกชนปฏิบัติหน้าที่ตามที่กฎหมายกำหนด ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นเอกชนซึ่งได้รับคำสั่งหรือได้รับมอบหมายจากเจ้าหน้าที่ดังกล่าว

(๑๔) ผู้บังคับบัญชา ผู้กำกับดูแล หรือผู้ควบคุมชั้นเหนือขึ้นไปชั้นหนึ่ง แล้วแต่กรณี ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นเจ้าหน้าที่อื่นนอกจากที่กำหนดไว้ข้างต้น

(๑๕) เจ้าหน้าที่ผู้ทำคำสั่งทางปกครองนั้นเอง ในกรณีที่ผู้ทำคำสั่งทางปกครองเป็นผู้ซึ่งไม่มีผู้บังคับบัญชา ผู้กำกับดูแล หรือผู้ควบคุม

ให้ไว้ ณ วันที่ ๒๑ พฤษภาคม พ.ศ. ๒๕๔๐

พลเอก ชวลิต ยงใจยุทธ

นายกรัฐมนตรี

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หมายเหตุ :- เหตุผลในการประกาศใช้กฎกระทรวงฉบับนี้ คือ โดยที่หลักการของพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ ประสงค์ให้มีการอุทธรณ์ในกรณีที่เจ้าหน้าที่ผู้ทำคำสั่งทางปกครองไม่เห็นด้วยกับคำอุทธรณ์ได้เพียงหนึ่งชั้น ก่อนที่จะนำคดีขึ้นวินิจฉัยยังองค์กรที่มีอำนาจพิจารณาวินิจฉัยคดีปกครอง ทั้งนี้ เพื่อให้ผู้มีอำนาจพิจารณาอุทธรณ์ได้พิจารณาแก้ไขหรือทบทวนคำสั่งทางปกครองให้ถูกต้อง และเปิดโอกาสให้ประชาชนได้รับความเป็นธรรม ก่อนที่จะนำคดีขึ้นวินิจฉัยยังองค์กรที่มีอำนาจพิจารณาวินิจฉัยคดีปกครองดังกล่าวด้วย และโดยที่มาตรา ๔๕ วรรคสาม แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ กำหนดให้เจ้าหน้าที่ผู้มีอำนาจพิจารณาอุทธรณ์ดังกล่าว ให้เป็นไปตามที่กำหนดในกฎกระทรวง จึงจำเป็นต้องออกกฎกระทรวงนี้

ภาคผนวก ข.

บันทึกความเห็นคณะกรรมการวิธีปฏิบัติราชการทางปกครอง (เรื่องเสร็จที่ 1476/2558)

เรื่องเสร็จที่ ๑๔๗๖/๒๕๕๘

บันทึกคณะกรรมการวิธีปฏิบัติราชการทางปกครอง
เรื่อง การอุทธรณ์คำสั่งทางปกครองที่ออกโดยประธานรัฐสภา

สำนักงานเลขาธิการสภาผู้แทนราษฎรได้มีหนังสือ ที่ สผ ๐๐๑๕/๒๔๖๐ ลงวันที่ ๓ เมษายน ๒๕๕๘ ขอหารือกรณีการอุทธรณ์คำสั่งทางปกครองตามพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ สรุปความได้ว่า สำนักงานเลขาธิการสภาผู้แทนราษฎรได้ทำสัญญาจ้างให้ บริษัท เดรโก เน็ตเวิร์ค จำกัด ผลิตรายการวิทยุโทรทัศน์รัฐสภา รายการ “ต้นกล้าประชาธิปไตย” จำนวน ๓๒ ตอน ตามสัญญาจ้างโครงการจัดจ้างเอกชนผลิตรายการวิทยุโทรทัศน์รัฐสภา ลงวันที่ ๑๔ มิถุนายน ๒๕๕๕ ในวงเงินค่าจ้างจำนวน ๒,๘๐๐,๐๐๐ บาท (สองล้านแปดแสนบาทถ้วน) มีกำหนดเวลาแล้วเสร็จภายในวันที่ ๑๑ ตุลาคม ๒๕๕๕

ต่อมาเมื่อครบกำหนดระยะเวลาตามสัญญา บริษัทผู้รับจ้างไม่สามารถปฏิบัติงานให้แล้วเสร็จตามกำหนดระยะเวลาตามสัญญาได้ สำนักงานเลขาธิการสภาผู้แทนราษฎรจึงได้มีหนังสือแจ้งบอกเลิกสัญญาพร้อมทั้งแจ้งเรียกค่าปรับไปยังบริษัทผู้รับจ้าง และได้ดำเนินการฟ้องร้องเรียกค่าปรับตามสัญญาต่อศาลปกครองกลาง ขณะนี้อยู่ในระหว่างการพิจารณาคดีของศาลปกครองกลาง

ในส่วนการพิจารณาสั่งให้บริษัทผู้รับจ้างเป็นผู้ทิ้งงาน สำนักงานเลขาธิการสภาผู้แทนราษฎรโดยคณะกรรมการว่าด้วยการพัสดุของส่วนราชการสังกัดรัฐสภา (กวพ.รส.) ได้มีการพิจารณาและมีมติให้ บริษัท เดรโก เน็ตเวิร์ค จำกัด และนายการิน จันทร์แย้ม (ปัจจุบันเปลี่ยนชื่อเป็น ชวัลวัฒน์) กรรมการผู้จัดการ เป็นผู้ไม่ปฏิบัติตามสัญญาจ้างโดยไม่มีเหตุผลอันสมควร และสมควรถูกพิจารณาให้เป็นผู้ทิ้งงาน ซึ่งขณะนี้อยู่ในระหว่างขั้นตอนที่คณะกรรมการว่าด้วยการพัสดุของส่วนราชการสังกัดรัฐสภา (กวพ.รส.) ได้จัดทำรายงานเสนอความเห็นและมติของที่ประชุมเสนอต่อประธานรัฐสภาในฐานะเป็นผู้รักษาการตามระเบียบรัฐสภาว่าด้วยการพัสดุ พ.ศ. ๒๕๕๕ เพื่อพิจารณาสั่งให้บริษัท เดรโก เน็ตเวิร์ค จำกัด และนายการิน หรือชวัลวัฒน์ จันทร์แย้ม กรรมการผู้จัดการ เป็นผู้ทิ้งงาน ทั้งนี้ การออกคำสั่งให้เป็นผู้ทิ้งงานโดยประธานรัฐสภาเป็นการอาศัยอำนาจตามระเบียบรัฐสภาว่าด้วยการพัสดุ พ.ศ. ๒๕๕๕ ข้อ ๑๓ ซึ่งให้นำระเบียบสำนักนายกรัฐมนตรีว่าด้วยการพัสดุ พ.ศ. ๒๕๓๕ และที่แก้ไขเพิ่มเติม มาใช้บังคับโดยอนุโลม

สำนักงานเลขาธิการสภาผู้แทนราษฎรจึงขอหารือกรณีการออกคำสั่งและการอุทธรณ์คำสั่งให้เป็นผู้ทิ้งงาน ซึ่งถือเป็นคำสั่งทางปกครองตามกฎกระทรวง ฉบับที่ ๑๒ (พ.ศ. ๒๕๔๓) ออกตามความในพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ ในกรณีดังต่อไปนี้

๑. หากประธานรัฐสภาออกคำสั่งให้บริษัท เดรโก เน็ตเวิร์ค จำกัด และนายการิน หรือชวัลวัฒน์ จันทร์แย้ม กรรมการผู้จัดการ เป็นผู้ทิ้งงาน ซึ่งถือว่าเป็นคำสั่งทางปกครอง จะถือว่าเป็นกรณีตามมาตรา ๔๔ วรรคหนึ่ง แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ หรือไม่

เนื่องจากตามมาตรา ๔๔ วรรคหนึ่ง ได้วางหลักไว้ว่า “ภายใต้บังคับมาตรา ๔๘ ในกรณีที่คำสั่งทางปกครองใดไม่ได้ออกโดยรัฐมนตรี และไม่มีกฎหมายกำหนดขั้นตอนอุทธรณ์ภายในฝ่ายปกครองไว้เป็นการเฉพาะ ให้คู่กรณีอุทธรณ์คำสั่งทางปกครองนั้นโดยยื่นต่อเจ้าหน้าที่ผู้ทำคำสั่งทางปกครองภายในสิบห้าวันนับแต่วันที่ตนได้รับแจ้งคำสั่งดังกล่าว” ซึ่งเป็นกรณีที่หากเป็นการออกคำสั่งทางปกครองโดยรัฐมนตรี คู่กรณีจะไม่อาจอุทธรณ์ภายในฝ่ายปกครองต่อองค์กรใดได้อีก เนื่องจากรัฐมนตรีเป็นผู้รักษาการตามพระราชบัญญัตินั้นและเป็นผู้มีอำนาจสูงสุดในสายงานนั้น หากจะโต้แย้งคำสั่งทางปกครองที่ออกโดยรัฐมนตรีจะต้องนำคดีขึ้นฟ้องร้องต่อศาล

กรณีจึงมีปัญหาในส่วนการปฏิบัติราชการของสำนักงานเลขาธิการสภาผู้แทนราษฎร ในกรณีที่หากประธานรัฐสภาซึ่งเป็นผู้รักษาการตามระเบียบรัฐสภาว่าด้วยการพัสดุ พ.ศ. ๒๕๕๕ และพระราชบัญญัติระเบียบบริหารราชการฝ่ายรัฐสภา พ.ศ. ๒๕๕๔ เป็นผู้ออกคำสั่งทางปกครองในเรื่องการสั่งให้เป็นผู้ทิ้งงาน จะถือว่าเป็นการออกคำสั่งทางปกครองโดยผู้มีอำนาจสูงสุดตามกฎหมายโดยจะไม่ตกอยู่ภายใต้บังคับให้ต้องมีการอุทธรณ์คำสั่งทางปกครองก่อนนำคดีขึ้นสู่ศาลหรือไม่

๒. หากถือว่าการออกคำสั่งทางปกครองโดยประธานรัฐสภาในเรื่องการสั่งให้เป็นผู้ทิ้งงานเป็นกรณีที่คู่กรณีอาจอุทธรณ์ได้ตามหลักเกณฑ์ทั่วไปตามที่กำหนดไว้ในพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ การออกคำสั่งทางปกครองโดยประธานรัฐสภาจะมีหลักเกณฑ์ วิธีการ ขั้นตอน ระยะเวลาการอุทธรณ์ การแจ้งสิทธิการอุทธรณ์อย่างไร และหากประธานรัฐสภาไม่เห็นด้วยกับคำอุทธรณ์ของคู่กรณี การพิจารณาคำอุทธรณ์จะมีหลักเกณฑ์ ขั้นตอน และระยะเวลาการพิจารณาอุทธรณ์อย่างไร

คณะกรรมการวิธีปฏิบัติราชการทางปกครองได้พิจารณาเรื่องดังกล่าว โดยมีผู้แทนสำนักงานเลขาธิการสภาผู้แทนราษฎรเป็นผู้ชี้แจงรายละเอียดข้อเท็จจริงแล้ว มีความเห็นในแต่ละประเด็น ดังนี้

ประเด็นที่หนึ่ง หากประธานรัฐสภาออกคำสั่งให้บริษัท เดรโก เน็ตเวิร์ค จำกัด และนายการิน หรือชวัลวัฒน์ จันทร์แย้ม กรรมการผู้จัดการ เป็นผู้ทิ้งงาน ซึ่งถือว่าเป็นคำสั่งทางปกครองที่ต้องอยู่ภายใต้บังคับมาตรา ๔๔ วรรคหนึ่ง แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ หรือไม่ นั้น เห็นว่า การออกคำสั่งให้คู่สัญญาของทางราชการที่ไม่ปฏิบัติตามสัญญาหรือข้อตกลงเป็นผู้ทิ้งงาน โดยอาศัยอำนาจตามข้อ ๑๓[1] แห่งระเบียบรัฐสภาว่าด้วยการพัสดุ พ.ศ. ๒๕๕๕ ประกอบข้อ ๑๔๕ ทวิ[2]

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[1] ข้อ ๑๓ การใดที่มิได้กำหนดไว้ในระเบียบนี้ ให้เป็นไปตามที่กำหนดไว้ในระเบียบสำนักนายกรัฐมนตรีว่าด้วยการพัสดุ พ.ศ. ๒๕๓๕ และที่แก้ไขเพิ่มเติม โดยอนุโลม เฉพาะที่ไม่ขัดหรือแย้งกับระเบียบนี้

[2] ข้อ ๑๔๕ ทวิ เมื่อปรากฏกรณีใดกรณีหนึ่ง ดังต่อไปนี้

(๑) ผู้ที่ได้รับการคัดเลือกแล้วไม่ยอมไปทำสัญญา หรือข้อตกลงภายในเวลาที่ทางราชการกำหนด

(๒) เมื่อคู่สัญญาของทางราชการ หรือผู้รับจ้างช่วงที่ทางราชการอนุญาตให้รับช่วงงานได้ไม่ปฏิบัติตามสัญญาหรือข้อตกลงนั้น

(๓) พัสดุที่ซื้อหรือจ้างทำ เกิดข้อบกพร่องขึ้นภายในระยะเวลาที่กำหนดไว้ในสัญญาหรือข้อตกลง และไม่ได้รับการแก้ไขให้ถูกต้องจากผู้จำหน่าย ผู้รับจ้าง หรือคู่สัญญา หรือพัสดุที่ซื้อหรือจ้างไม่ได้มาตรฐาน หรือวัสดุที่ใช้ไม่ได้มาตรฐาน หรือไม่ครบถ้วนตามที่กำหนดไว้ในสัญญาหรือข้อตกลง ทำให้งานบกพร่องเสียหายอย่างร้ายแรง หรือ

(๔) สำหรับงานก่อสร้างสาธารณูปโภค หากปรากฏว่าพัสดุหรือวัสดุที่ซื้อหรือจ้างหรือใช้โดยผู้รับจ้างช่วงที่ทางราชการอนุญาตให้รับช่วงงานได้ มีข้อบกพร่อง หรือไม่ได้มาตรฐานหรือไม่ครบถ้วนตาม (๓)

ให้หัวหน้าส่วนราชการทำรายงานไปยังปลัดกระทรวงโดยเร็ว เพื่อพิจารณาให้บุคคลที่ได้รับการคัดเลือก ผู้จำหน่าย ผู้รับจ้าง คู่สัญญา หรือผู้รับจ้างช่วงที่ทางราชการอนุญาตให้รับช่วงงานได้ เป็นผู้ทิ้งงานแล้วแต่กรณี พร้อมทั้งเสนอความเห็นของตนเพื่อประกอบการพิจารณาของปลัดกระทรวงด้วย

เมื่อปลัดกระทรวงพิจารณาแล้วเห็นว่า การกระทำตาม (๑) (๒) (๓) หรือ (๔) เป็นการกระทำโดยไม่มีเหตุผลอันสมควร และบุคคลดังกล่าวสมควรเป็นผู้ทิ้งงาน ให้ปลัดกระทรวงส่งชื่อบุคคลดังกล่าวไปยังผู้รักษาการตามระเบียบเพื่อพิจารณาสั่งให้เป็นผู้ทิ้งงานโดยเร็ว

ในกรณีที่เป็นโครงการขนาดใหญ่ตามหลักเกณฑ์และวงเงินที่ กวพ. กำหนด หากปลัดกระทรวงพิจารณาแล้วเห็นว่า บุคคลดังกล่าวข้างต้นยังไม่สมควรเป็นผู้ทิ้งงาน ให้ปลัดกระทรวงรายงานไปยัง กวพ. เพื่อทราบด้วย

เมื่อผู้รักษาการตามระเบียบได้พิจารณาหลังจากที่ได้ฟังความเห็นของ กวพ. ตามข้อ ๑๒ (๖) แล้ว และเห็นว่าบุคคลดังกล่าวสมควรเป็นผู้ทิ้งงาน ก็ให้ผู้รักษาการตามระเบียบสั่งให้บุคคลดังกล่าวเป็นผู้ทิ้งงาน โดยระบุชื่อผู้ทิ้งงานไว้ในบัญชีรายชื่อผู้ทิ้งงาน พร้อมทั้งแจ้งเวียนชื่อผู้ทิ้งงานให้ส่วนราชการอื่นทราบ รวมทั้งแจ้งให้ผู้ทิ้งงานรายนั้นทราบทางไปรษณีย์ลงทะเบียนด้วย

ในกรณีผู้รักษาการตามระเบียบเห็นว่าบุคคลดังกล่าวไม่สมควรเป็นผู้ทิ้งงาน ให้แจ้งผลการพิจารณาไปให้ปลัดกระทรวงทราบ

และข้อ ๑๔๕ ฉ[1] แห่งระเบียบสำนักนายกรัฐมนตรีว่าด้วยการพัสดุ พ.ศ. ๒๕๓๕ เป็นคำสั่งทางปกครองตามกฎกระทรวง ฉบับที่ ๑๒ (พ.ศ. ๒๕๔๓) ออกตามความในพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. ๒๕๓๙ [2] ซึ่งผู้รับคำสั่งทางปกครองมีสิทธิที่จะอุทธรณ์ตามส่วนที่ ๕ การอุทธรณ์คำสั่งทางปกครองแห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครองฯ โดยมาตรา ๔๔ [3]วรรคหนึ่ง แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครองฯ บัญญัติในกรณีที่คำสั่งทางปกครองใดไม่ได้ออกโดยรัฐมนตรี และไม่มีกฎหมายกำหนดขั้นตอนอุทธรณ์ภายในฝ่ายปกครองไว้เป็นการเฉพาะ ให้คู่กรณีอุทธรณ์คำสั่งทางปกครองนั้นโดยยื่นต่อเจ้าหน้าที่ผู้ทำคำสั่งทางปกครองภายในสิบห้าวันนับแต่วันที่ตนได้รับแจ้งคำสั่งดังกล่าว ซึ่งบทบัญญัติดังกล่าวได้กำหนดหลักการอุทธรณ์คำสั่งทางปกครองขึ้นเพื่อให้มีการตรวจสอบการใช้อำนาจของเจ้าหน้าที่ของรัฐในการทำคำสั่งทางปกครองโดยผู้บังคับบัญชา

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[1] ข้อ ๑๔๕ ฉ ในกรณีที่นิติบุคคลใดถูกสั่งให้เป็นผู้ทิ้งงานตามข้อ ๑๔๕ ทวิ ข้อ ๑๔๕ ตรี หรือข้อ ๑๔๕ จัตวา ถ้าการกระทำดังกล่าวเกิดจากหุ้นส่วนผู้จัดการ กรรมการผู้จัดการ ผู้บริหาร หรือผู้มีอำนาจในการดำเนินงานในกิจการของนิติบุคคลนั้น ให้ผู้รักษาการตามระเบียบนี้สั่งให้บุคคลดังกล่าวเป็นผู้ทิ้งงานด้วย

ในกรณีที่นิติบุคคลรายใดถูกสั่งให้เป็นผู้ทิ้งงานตามข้อ ๑๔๕ ทวิ ข้อ ๑๔๕ ตรี หรือข้อ ๑๔๕ จัตวา ให้คำสั่งดังกล่าวมีผลไปถึงนิติบุคคลอื่นที่ดำเนินธุรกิจประเภทเดียวกัน ซึ่งมีหุ้นส่วนผู้จัดการ กรรมการผู้จัดการ ผู้บริหาร หรือผู้มีอำนาจในการดำเนินงานในกิจการของนิติบุคคลนั้นเป็นบุคคลเดียวกันกับหุ้นส่วนผู้จัดการ กรรมการผู้จัดการ ผู้บริหาร หรือผู้มีอำนาจในการดำเนินงานในกิจการของนิติบุคคลที่ถูกพิจารณาให้เป็นผู้ทิ้งงานด้วย

ในกรณีที่บุคคลธรรมดารายใดถูกสั่งให้เป็นผู้ทิ้งงานตามข้อ ๑๔๕ ทวิ ข้อ ๑๔๕ ตรี หรือข้อ ๑๔๕ จัตวา ให้คำสั่งดังกล่าวมีผลไปถึงนิติบุคคลอื่นที่เข้าเสนอราคาหรือเสนองาน ซึ่งมีบุคคลดังกล่าวเป็นหุ้นส่วนผู้จัดการ กรรมการผู้จัดการ ผู้บริหาร หรือผู้มีอำนาจในการดำเนินงานในกิจการของนิติบุคคลนั้นด้วย

[2] ให้การดำเนินการของเจ้าหน้าที่ดังต่อไปนี้ เป็นคำสั่งทางปกครอง

๑. การดำเนินการเกี่ยวกับการจัดหาหรือให้สิทธิประโยชน์ในกรณีดังต่อไปนี้

(๑) การสั่งรับหรือไม่รับคำเสนอขาย รับจ้าง แลกเปลี่ยน ให้เช่า ซื้อ เช่า หรือให้สิทธิประโยชน์

(๒) การอนุมัติสั่งซื้อ จ้าง แลกเปลี่ยน เช่า ขาย ให้เช่า หรือให้สิทธิประโยชน์

(๓) การสั่งยกเลิกกระบวนการพิจารณาคำเสนอหรือการดำเนินการอื่นใดในลักษณะเดียวกัน

(๔) การสั่งให้เป็นผู้ทิ้งงาน

๒. การให้หรือไม่ให้ทุนการศึกษา

[3] มาตรา ๔๔ ภายใต้บังคับมาตรา ๔๘ ในกรณีที่คำสั่งทางปกครองใดไม่ได้ออกโดยรัฐมนตรี และไม่มีกฎหมายกำหนดขั้นตอนอุทธรณ์ภายในฝ่ายปกครองไว้เป็นการเฉพาะ ให้คู่กรณีอุทธรณ์คำสั่งทางปกครองนั้นโดยยื่นต่อเจ้าหน้าที่ผู้ทำคำสั่งทางปกครองภายในสิบห้าวันนับแต่วันที่ตนได้รับแจ้งคำสั่งดังกล่าว

คำอุทธรณ์ต้องทำเป็นหนังสือโดยระบุข้อโต้แย้งและข้อเท็จจริงหรือข้อกฎหมายที่อ้างอิงประกอบด้วย

การอุทธรณ์ไม่เป็นเหตุให้ทุเลาการบังคับตามคำสั่งทางปกครอง เว้นแต่จะมีการสั่งให้ทุเลาการบังคับตามมาตรา ๕๖ วรรคหนึ่ง

ของเจ้าหน้าที่ผู้ทำคำสั่งนั้น จึงได้กำหนดให้ในกรณีที่คำสั่งทางปกครองใดไม่ได้ออกโดยรัฐมนตรี และไม่มีกฎหมายกำหนดขั้นตอนอุทธรณ์ภายในฝ่ายปกครองไว้เป็นการเฉพาะ ให้คู่กรณีอุทธรณ์คำสั่งทางปกครองนั้นโดยยื่นต่อเจ้าหน้าที่ผู้ทำคำสั่งทางปกครอง จากบทบัญญัติดังกล่าวแสดงให้เห็นว่าในกรณีที่คำสั่งทางปกครองใดเป็นคำสั่งที่ออกโดยรัฐมนตรี กฎหมายไม่ประสงค์ที่จะให้มีการอุทธรณ์คำสั่งดังกล่าวอีก เนื่องจากรัฐมนตรีเป็นผู้มีอำนาจสูงสุดในการบังคับใช้กฎหมายที่ตนรักษาการ การกำหนดให้มีการอุทธรณ์คำสั่งทางปกครองที่ออกโดยรัฐมนตรีจึงไม่อาจกระทำได้ ดังนั้น ผู้รับคำสั่งทางปกครองย่อมสามารถนำคดีไปสู่ศาลปกครองได้โดยไม่ต้องอุทธรณ์คำสั่งดังกล่าว

เมื่อข้อหารือนี้เป็นกรณีที่ประธานรัฐสภาจะเป็นผู้ใช้อำนาจออกคำสั่งทางปกครองให้คู่สัญญาของทางราชการที่ไม่ปฏิบัติตามสัญญาเป็นผู้ทิ้งงานตามระเบียบสำนักนายกรัฐมนตรีว่าด้วยการพัสดุ พ.ศ. ๒๕๓๕ ประกอบกับระเบียบรัฐสภาว่าด้วยการพัสดุ พ.ศ. ๒๕๕๕ การพิจารณาว่าคำสั่งทางปกครองที่ออกโดยประธานรัฐสภาจะถือว่าเป็นคำสั่งทางปกครองที่ต้องอยู่ภายใต้บังคับมาตรา ๔๔ วรรคหนึ่ง แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครองฯ หรือไม่ จึงต้องตีความตามเจตนารมณ์ของบทบัญญัติมาตราดังกล่าวเป็นสำคัญ ซึ่งเห็นว่า การออกคำสั่งทางปกครองของประธานรัฐสภาในกรณีนี้มีลักษณะเทียบเคียงได้กับการออกคำสั่งทางปกครองของรัฐมนตรี เนื่องจากประธานรัฐสภาเป็นผู้บังคับบัญชาสูงสุดของหน่วยงานและไม่มีผู้บังคับบัญชาชั้นเหนือขึ้นไปที่จะเป็นผู้มีอำนาจพิจารณาคำอุทธรณ์ต่อไปได้อีก การกำหนดให้มีการอุทธรณ์คำสั่งทางปกครองที่ออกโดยประธานรัฐสภาจึงไม่อาจกระทำได้ ดังนั้น หากประธานรัฐสภาออกคำสั่งให้บริษัท เดรโก เน็ตเวิร์ค จำกัด และนายการิน หรือชวัลวัฒน์ จันทร์แย้ม กรรมการผู้จัดการ เป็นผู้ทิ้งงานแล้ว การออกคำสั่งดังกล่าวจึงไม่อยู่ภายใต้บังคับให้ต้องมีการอุทธรณ์คำสั่งทางปกครองตามพระราชบัญญัติวิธีปฏิบัติราชการทางปกครองฯ ผู้ออกคำสั่งทางปกครองจึงไม่จำต้องแจ้งสิทธิอุทธรณ์ให้ผู้รับคำสั่งทราบตามมาตรา ๔๐[1] แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครองฯ แต่ต้องแจ้งสิทธิฟ้องคดีปกครองต่อศาลปกครองตามที่บัญญัติไว้ในมาตรา ๕๐[2] แห่งพระราชบัญญัติจัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง พ.ศ. ๒๕๔๒

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[1] มาตรา ๔๐ คำสั่งทางปกครองที่อาจอุทธรณ์หรือโต้แย้งต่อไปได้ให้ระบุกรณีที่อาจอุทธรณ์ หรือโต้แย้ง การยื่นคำอุทธรณ์หรือคำโต้แย้ง และระยะเวลาสำหรับการอุทธรณ์หรือการโต้แย้งดังกล่าวไว้ด้วย

ในกรณีที่มีการฝ่าฝืนบทบัญญัติตามวรรคหนึ่ง ให้ระยะเวลาสำหรับการอุทธรณ์หรือการโต้แย้งเริ่มนับใหม่ตั้งแต่วันที่ได้รับแจ้งหลักเกณฑ์ตามวรรคหนึ่ง แต่ถ้าไม่มีการแจ้งใหม่และระยะเวลาดังกล่าวมีระยะเวลาสั้นกว่าหนึ่งปี ให้ขยายเป็นหนึ่งปีนับแต่วันที่ได้รับคำสั่งทางปกครอง

[2] มาตรา ๕๐ คำสั่งใดที่อาจฟ้องต่อศาลปกครองได้ ให้ผู้ออกคำสั่งระบุวิธีการยื่นคำฟ้องและระยะเวลาสำหรับยื่นคำฟ้องไว้ในคำสั่งดังกล่าวด้วย

ประเด็นที่สอง การออกคำสั่งทางปกครองโดยประธานรัฐสภาจะมีหลักเกณฑ์ วิธีการ ขั้นตอน ระยะเวลาการอุทธรณ์ การแจ้งสิทธิการอุทธรณ์อย่างไร และหากประธานรัฐสภาไม่เห็นด้วยกับคำอุทธรณ์ของคู่กรณี การพิจารณาคำอุทธรณ์จะมีหลักเกณฑ์ ขั้นตอน และระยะเวลาการพิจารณาอุทธรณ์อย่างไร นั้น เห็นว่า เมื่อได้วินิจฉัยในประเด็นที่หนึ่งแล้วว่า การออกคำสั่งทางปกครองโดยประธานรัฐสภาในกรณีการสั่งให้เป็นผู้ทิ้งงานเป็นคำสั่งทางปกครองที่ไม่อยู่ภายใต้บังคับให้ต้องมีการอุทธรณ์คำสั่งทางปกครองตามมาตรา ๔๔[1] วรรคหนึ่ง แห่งพระราชบัญญัติวิธีปฏิบัติราชการทางปกครองฯ แล้ว กรณีจึงไม่มีปัญหาที่ต้องพิจารณาในประเด็นนี้อีก

(นายดิสทัต โหตระกิตย์)
เลขาธิการคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา
กันยายน ๒๕๕๘

ในกรณีที่ปรากฏต่อผู้ออกคำสั่งใดในภายหลังว่า ตนมิได้ปฏิบัติตามวรรคหนึ่ง ให้ผู้นั้นดำเนินการแจ้งข้อความซึ่งพึงระบุตามวรรคหนึ่งให้ผู้รับคำสั่งทราบโดยไม่ชักช้า ในกรณีนี้ให้ระยะเวลาสำหรับยื่นคำฟ้องเริ่มนับใหม่นับแต่วันที่ผู้รับคำสั่งได้รับแจ้งข้อความดังกล่าว

ถ้าไม่มีการแจ้งใหม่ตามวรรคสองและระยะเวลาสำหรับยื่นคำฟ้องมีกำหนดน้อยกว่าหนึ่งปี ให้ขยายเวลาสำหรับยื่นคำฟ้องเป็นหนึ่งปีนับแต่วันที่ได้รับคำสั่ง

[1] โปรดดูเชิงอรรถที่ ๕, ข้างต้น

ภาคผนวก ค.

CODE OF ADMINISTRATIVE COURT PROCEDURE

(Verwaltungsgerichtsordnung, VwGO)

Code of Administrative Court Procedure

(Verwaltungsgerichtsordnung, VwGO)

Code of Administrative Court Procedure in the version of the promulgation of 19 March 1991 (Federal Law Gazette I page 686), most recently amended by Article 5 of the Act of 10 October 2013 (Federal Law Gazette I page 3786)

Table of Contents

Part I

Courts constitution

1st Chapter

Courts

Section 1

Administrative jurisdiction shall be exercised by independent courts separated from the administrative authorities.

Section 2

Courts of administrative jurisdiction in the *Länder* shall be the Administrative Courts and one Higher Administrative Court each, in the Federation they shall be the Federal Administrative Court, which shall have its seat in Leipzig.

Section 3

(1) The law shall order

1. the establishment and dissolution of an Administrative Court or of a Higher Administrative Court,
2. the relocation of the seat of a court,
3. changes to the boundaries of judicial districts,
4. the allocation of particular areas of work to one administrative court to serve the judicial districts of several administrative courts,

4a) the allocation of sets of proceedings in which territorial jurisdiction is determined in accordance with section 52 No. 2 first, second or fourth sentence, to another administrative court or to several administrative courts of the *Land*,

5. the establishment of individual chambers of the administrative court or of individual senates of the Higher Administrative Court at other locations,
6. the passing to another court of sets of proceedings which are pending in the course of the measures described in Nos. 1, 3, 4 and 4a if jurisdiction is not to be determined in accordance with the previously valid provisions.

(2) A number of *Länder* may agree to establish a joint court or joint adjudication bodies of a court, or may agree to the extension of judicial districts across *Land* borders, including solely for particular areas of work.

Section 4

The provisions of Title II of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) shall apply *mutatis mutandis* to the courts of administrative jurisdiction. The members and three deputies of the panel of judges with jurisdiction for rulings in accordance with section 99, subsection 2, shall be determined by the Presidium, in each case for the duration of four years. The members and their deputies must be judges with life tenure.

Section 5

(1) The administrative court shall be composed of the President and the Presiding Judges and the necessary number of further judges.

(2) Chambers shall be formed at the administrative court.

(3) The chamber of the administrative court shall rule composed of three judges and two honorary judges unless an individual judge adjudicates. The honorary judges shall not be involved in orders outside the oral hearing and with summary decisions (section 84).

Section 6

(1) The chamber should as a rule assign the legal dispute to one of its members as an individual judge for a ruling if

1. the case does not show any particular factual or legal difficulties, and
2. the case has no fundamental significance.

A judge on probation may not sit as an individual judge within the first year of his/her appointment.

(2) The legal dispute may not be assigned to the individual judge if an oral hearing has already taken place before the chamber, unless a judgment subject to reservation, a partial or interim judgment has been handed down in the ensuing period.

(3) The individual judge may remit the dispute to the chamber after hearing those concerned if it emerges from a major alteration to the procedural situation that the case has fundamental significance or the case shows particular factual or legal difficulties. Re-assignment to the individual judge shall be ruled out.

(4) Orders in accordance with subsections 1 and 3 shall not be contestable. An appeal may not be based on failure to assign.

Sections 7 to 8

(repealed)

Section 9

(1) The Higher Administrative Court shall be composed of the President and the Presiding Judges and the necessary number of further judges.

(2) Senates shall be formed at the Higher Administrative Court.

(3) The senates of the Higher Administrative Court shall rule composed of three judges; *Land* legislation may provide that the senates rule composed of five judges, two of whom may also be honorary judges. It may also be provided for cases falling under section 48, subsection 1, that the senates rule composed of five judges and two honorary judges. The second half of the first sentence and the second sentence shall not apply to cases falling under section 99, subsection 2.

(4)

Section 10

(1) The Federal Administrative Court shall be composed of the President and the Presiding Judges and the necessary number of further judges.

(2) Senates shall be formed at the Federal Administrative Court.

(3) The senates of the Federal Administrative Court shall rule composed of five judges; with orders outside the oral hearing, it shall rule composed of three judges.

Section 11

(1) A Grand Senate shall be formed at the Federal Administrative Court.

(2) The Grand Senate shall rule if a senate wishes to derogate in a legal question from the ruling of another senate or of the Grand Senate.

(3) Submission to the Grand Senate shall only be admissible if the senate from whose ruling a derogation is to be made has declared on request from the senate of decision that it adheres to its legal opinion. If the senate from whose ruling a derogation is to be made because of an alteration to the business schedule can no longer be seized with the legal question, the senate shall replace it which according to the business schedule would now have jurisdiction for the case in which a derogating ruling was handed down. The respective senate shall rule on the enquiry and the response by order in the composition required for judgments.

(4) The senate of decision may submit a question of fundamental significance to the Grand Senate for a ruling if this is necessary in its view to refine the law or to ensure uniform case-law.

(5) The Grand Senate shall consist of the President and one judge from each of the senates for appeal on points of law not chaired by the President. If a senate which is not a senate for appeal on points of law makes a submission, or if its ruling is to be derogated from, a member of this senate shall also be represented in the Grand Senate. In the event of the President being unable to attend, he/she shall be substituted by a judge of the senate to which he/she belongs.

(6) The members and the deputies shall be appointed by the Presidium for one business year. This shall also apply to the member of another senate in accordance with subsection 5, second sentence, and to his/her deputy. The Grand Senate shall be chaired by the President, and by the most senior member if he/she is prevented from attending. The Chairman shall have the casting vote in the event of a tie.

(7) The Grand Senate shall rule only on the legal question. It may rule without an oral hearing. Its ruling shall be binding for the senate of decision in the instant case.

Section 12

(1) The provisions of section 11 shall apply *mutatis mutandis* to the Higher Administrative Court insofar as it rules finally on a matter of *Land* law. The senates for appeal on points of fact and law formed in accordance with this Code shall replace the senates for appeal on points of law.

(2) If a Higher Administrative Court consists only of two senates for appeal on points of fact and law, the Grand Senate shall be replaced by the United Senates.

(3) *Land* law may determine a derogating composition of the Grand Senate.

Section 13

A registry shall be established at each court. It shall be occupied with the necessary number of clerks.

Section 14

All courts and administrative authorities shall provide legal and administrative assistance to the courts of administrative jurisdiction.

2nd Chapter

Judges

Section 15

(1) The judges shall be appointed for life unless provided otherwise in sections 16 and 17.

(2) (repealed)

(3) The judges of the Federal Administrative Court must have reached the age of thirty-five.

Section 16

At the Higher Administrative Court and at the administrative courts judges of other courts who have been appointed for life and full professors of law may be appointed as judges in subsidiary office for a fixed period of at least two years, but at most for the duration of their main office.

Section 17

Judges on probation or judges may be deployed at the administrative courts by commission.

Section 18

(repealed)

3rd Chapter

Honorary judges

Section 19

Honorary judges shall take part in oral hearings and in reaching a judgment with equal rights as judges.

Section 20

An honorary judge must be a German. He/she should have reached the age of 25 and have his/her place of residence within the court district.

Section 21

(1) The following shall be excluded from holding the office of honorary judge

1. individuals who as a result of a judicial ruling do not have capacity to exercise public office or have been sentenced to more than six months' imprisonment because of an intentional offence,

2. individuals against whom the charge has been lodged in respect of an offence which may entail loss of capacity to exercise public office,

3. individuals who are not eligible to vote for the legislative bodies of the *Land*.

(2) Individuals who have fallen into financial collapse should not be appointed as honorary judges.

Section 22

The following may not be designated as honorary judges

1. members of the Federal Parliament (*Bundestag*), of the European Parliament, of the legislative bodies of a *Land*, of the Federal Government or of a *Land* Government,

2. judges,

3. civil servants and salaried employees in the public service if they do not act on an honorary basis,

4. professional soldiers and voluntary regular soldiers,

4a. (repealed)

5. lawyers, notaries and individuals who look after third-party legal matters on a commercial basis.

Section 23

(1) The following may reject nomination to the office of honorary judge

1. clergy and church officers,

2. lay judges and other honorary judges,

3. individuals who have served for two terms as honorary judges at courts of general administrative jurisdiction,

4. physicians, nurses, midwives,

5. heads of pharmacies who do not employ another pharmacist,

6. individuals who have reached the standard age limit in accordance with Book Six of the Social Code (*Sozialgesetzbuch*).

(2) It is furthermore possible to be released from acceptance of the office on request in special hardship cases.

Section 24

(1) An honorary judge shall be released from his/her office if he/she

1. could not be nominated in accordance with sections 20 to 22, or can no longer be nominated, or

2. has grossly violated his/her official duties, or

3. asserts a ground for rejection in accordance with section 23, subsection 1, or

4. no longer has the mental or physical capacity required to exercise his/her office, or

5. gives up his/her place of residence in the court district.

(2) It is furthermore possible to be released from the further exercise of the office on request in special hardship cases.

(3) The decision shall be taken by a senate of the Higher Administrative Court in the cases falling under subsection 1, Nos. 1, 2 and 4 on request by the President of the administrative court, and in cases falling under subsection 1, Nos. 3 and 5 and subsection 2 on request by the honorary judge. The decision shall be handed down by order after hearing the honorary judge. It shall not be contestable.

(4) Subsection 3 shall apply *mutatis mutandis* in cases falling under section 23, subsection 2.

(5) On request by the honorary judge, the decision in accordance with subsection 3 shall be rescinded by the senate of the Higher Administrative Court if a charge had been filed in accordance with section 21 No. 2 and the accused has been finally placed outside prosecution or acquitted.

Section 25

Honorary judges shall be elected for five years.

Section 26

(1) A committee shall be established at each administrative court to elect the honorary judges.

(2) The committee shall consist of the President of the administrative court as its chair, an administrative civil servant designated by the *Land* Government and seven trusted third party as associate judges. The trusted third parties, as well as seven deputies, shall be selected from among the residents of the district of the administrative court by the *Land* Parliament or by a *Land* Parliament committee designated by the latter or in accordance with a *Land* statute. They must meet the preconditions for nomination as honorary judges. The *Land* Governments are empowered via a legal ordinance to regulate the competence for the designation of the administrative civil servant in derogation from the first sentence. They may assign this empowerment to supreme *Land* authorities. In the cases coming under section 3, subsection 2, competence for the designation of the administrative civil servant, as well as of the *Land* for the selection of the trusted third parties, shall be determined in accordance with the seat of the court. The *Land* legislature can provide in these cases that each *Land* Government involved seconds an administrative civil servant to the committee and that each *Land* involved nominates at least two trusted third parties.

(3) The committee shall be quorate if at least the Presiding Judge, one administrative civil servant and three trusted third parties are present.

Section 27

The number of honorary judges required for each administrative court shall be determined by the President such that each can be anticipated to be called on to attend a maximum of twelve ordinary session days per year.

Section 28

The districts and cities not associated with a district shall draft a list of proposals for honorary judges every five years. The committee shall determine for each district and for each city not associated with a district the number of individuals to be included in the list of proposals. Here, twice as many as the honorary judges required in accordance with section 27 are to be taken as a basis. The consent of two-thirds of the members of the representative body of the district or of the city not associated with a district present, but at least half the statutory number of members, shall be required for inclusion in the list. The respective regulations governing the passing of resolutions by the representative body shall remain unaffected thereby. In addition to the name, the lists of proposals should also contain the place of birth, the date of birth and the profession of the nominee; they shall be conveyed to the President of the competent administrative court.

Section 29

(1) The committee shall select the requisite number of honorary judges from the lists of proposals with a majority of at least two-thirds of the votes.

(2) The previous honorary judges shall remain in office until the new election takes place.

Section 30

(1) The Presidium of the administrative court shall determine prior to the commencement of the business year the sequence in which the honorary judges are to be called in to the sessions.

(2) For the calling in of deputies in case of unforeseeable inability to attend, an auxiliary list can be made up of honorary judges who live in or close to the seat of the court.

Section 31

(repealed)

Section 32

The honorary judge and the trusted third party (section 26) shall receive compensation in accordance with the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*).

Section 33

(1) An administrative fine may be imposed on an honorary judge who fails to appear at a session on time without a sufficient excuse or who otherwise evades his/her duties. At the same time, he/she may be charged with the costs incurred by virtue of his/her conduct.

(2) The decision shall be taken by the Presiding Judge. If a subsequent excuse is provided, he/she may rescind this in full or in part.

Section 34

Sections 19 to 33 shall apply *mutatis mutandis* to the honorary judges at the Higher Administrative Court if the *Land* legislature has determined that honorary judges are involved at this court.

4th Chapter

Representative of the public interest

Section 35

(1) The Federal Government shall appoint a Representative of the Interests of the Federation at the Federal Administrative Court and shall establish him/her in the Federal Ministry of the Interior. The Representative of the Interests of the Federation at the Federal Administrative Court may attend any proceedings before the Federal Administrative Court; this shall not apply to proceedings before the armed forces senates. He/she shall be bound by the instructions of the Federal Government.

(2) The Federal Administrative Court shall afford to the Representative of the Interests of the Federation at the Federal Administrative Court the opportunity to make a statement.

Section 36

(1) A representative of the public interest may be appointed at the Higher Administrative Court and at the administrative court, in accordance with a legal ordinance of the *Land* Government. Here, he/she can be tasked with representing the *Land* or *Land* authorities in general terms or for certain cases.

(2) Section 35, subsection 2, shall apply *mutatis mutandis*.

Section 37

(1) The Representative of the Interests of the Federation at the Federal Administrative Court and his/her full-time staff of the higher administrative service must have qualification for judicial office

or fulfil the preconditions of section 110, first sentence, of the German Judiciary Act (Deutsches Richtergesetz).

(2) The representative of the public interest at the Higher Administrative Court and at the administrative court must have qualification for judicial office in accordance with the German Judiciary Act; section 174 shall remain unaffected thereby.

5th Chapter

Court administration

Section 38

(1) The President of the court shall exercise service supervision of judges, civil servants, salaried employees and wage-earners.

(2) The superior service supervision authority for the administrative court shall be the President of the Higher Administrative Court.

Section 39

The Court may not be assigned any administrative business outside court administration.

6th Chapter

Recourse to the administrative courts and jurisdiction

Section 40

(1) Recourse to the administrative courts shall be available in all public-law disputes of a non-constitutional nature insofar as the disputes are not explicitly allocated to another court by a federal statute. Public-law disputes in the field of *Land* law may also be assigned to another court by a *Land* statute.

(2) Recourse shall be available to the ordinary courts for property claims from sacrifice for the public good and from public-law deposit, as well as for compensation claims from the violation of public-law obligations which are not based on a public-law contract; this shall not apply to disputes regarding the existence and amount of a compensation claim in the context of Article 14, subsection 1, second sentence, of the Basic Law (*Grundgesetz*). The special provisions of civil service law, as well as those on legal recourse to compensate for property disadvantages for withdrawal of unlawful administrative acts, shall remain unaffected.

Section 41

(repealed)

Section 42

(1) The rescission of an administrative act (rescissory action), as well as sentencing to issue a rejected or omitted administrative act (enforcement action) can be requested by means of an action.
(2) Unless otherwise provided by law, the action shall only be admissible if the plaintiff claims that his/her rights have been violated by the administrative act or its refusal or omission.

Section 43

(1) The establishment of the existence or non-existence of a legal relationship or of the nullity of an administrative act may be requested by means of an action if the plaintiff has a justified interest in the establishment being made soon (action for a declaratory judgment).
(2) The establishment cannot be requested insofar as the plaintiff may pursue or could have pursued his/her rights by reformatory action or application for an injunction. This shall not apply if the establishment of the nullity of an administrative act is requested.

Section 44

Several requests pursued by court action may be pursued by the plaintiff together in one action if they address the same defendant, they are in one context and the same court has jurisdiction for them.

Section 44a

Appeals against procedural acts by authorities may only be asserted at the same time as appeals which are admissible against the factual decision. This shall not apply if official procedural acts may be executed or are handed down against a party which is not involved.

Section 45

The administrative court shall adjudicate at first instance on all disputes for which recourse to the administrative courts is available.

Section 46

The Higher Administrative Court shall adjudicate on the rights of

1. appeal on points of fact and law against judgments of the administrative court,
2. complaint against other decisions of the administrative court, and
3. (repealed).

Section 47

(1) The Higher Administrative Court shall adjudicate on application within the bounds of its jurisdiction on the validity of

1. by-laws issued under the provisions of the Federal Building Code (*Baugesetzbuch*) and of statutory orders issued on the basis of section 246, subsection 2, of the Federal Building Code,

2. other legal provisions ranking below the statutes of a *Land*, to the extent that this is provided in *Land* law.

(2) Applications may be made by any natural person or body corporate claiming to have been aggrieved by the legal provision or its application, or that he/she will be aggrieved within the foreseeable future, or by any public authority within one year of announcement of the legal provision. It shall be directed against the corporation, institution or foundation which issued the legal provision. The Higher Administrative Court may grant to the *Land* and other bodies corporate under public law whose competence is touched by the legal provision an opportunity to be heard on the matter within a specified period of time. Section 65, subsections 1 and 4, and section 66 shall apply *mutatis mutandis*.

(2a) The application by a natural person or body corporate relating to a land-use plan or to statutes in accordance with section 34, subsection 4, first sentence, Nos. 2 and 3 or section 35, subsection 6, of the Federal Building Code shall be inadmissible if the person lodging the application has only made objections which he/she did not make when publicly available for inspection (section 3, subsection 2, of the Federal Building Code) or in the consultation of the interested public (section 13, subsection 2, No. 2 and section 13a, subsection 2, No. 1 of the Federal Building Code) or made late, but could have made, and if notice has been drawn to this legal consequence in the consultation.

(3) The Higher Administrative Court shall not examine the compatibility of a legal provision with *Land* law where it is provided in law that the legal provision is subject to review exclusively by the constitutional court of a *Land*.

(4) Where proceedings to review the validity of a legal provision are pending at a constitutional court, the Higher Administrative Court may order the suspension of the proceedings until such time as the case has been concluded by the constitutional court.

(5) The Higher Administrative Court shall adjudicate by handing down a judgment or, if it does not consider oral proceedings to be necessary, shall hand down an order. Should the Higher Administrative Court come to the conclusion that the legal provision is invalid, it shall declare it to be null and void; in this case, the ruling shall be generally binding, and the respondent shall be required to publish the ruling in exactly the same manner as the legal provision would be required to be made public. Section 183 shall apply *mutatis mutandis* in respect of the effect of the decision.
(6) On application the court may issue a temporary injunction where this is urgently required in order to avert the creation of serious disadvantages or for other compelling reasons.

Section 48

(1) The Higher Administrative Court shall rule at first instance on all disputes concerning

1. the construction, operation, occupation in any other form, changes to and the closure, safe enclosure and demolition of structures within the meaning of sections 7 and 9a, subsection 3, of the Atomic Energy Act (*Atomgesetz*),

2. the treatment, processing and other utilisation of nuclear fuels outside plant of the types described in section 7 of the Atomic Energy Act (section 9 of the Atomic Energy Act) and major deviations or major changes within the meaning of section 9, subsection 1, second sentence, of the Atomic Energy Act and the storage of nuclear fuels outside state custody (section 6 of the Atomic Energy Act),

3. the construction and operation of, and alterations to, power stations utilising furnaces for solid, liquid or gaseous fuels with a furnace heat output of more than 300 megawatts,

4. plan approval procedures for the erection and operation or alteration of high-voltage overhead power cables with a nominal voltage of 110,000 volts or more, earth and marine cables each with a nominal voltage of 110,000 volts or gas supply pipes with a diameter of more than 300 millimetres, as well as the alteration of their routing,

5. procedures for the construction and operation of, and major alterations to, fixed structures for the incineration or thermal decomposition of waste with an annual throughput (effective capacity) in excess of 100,000 tonnes, and of fixed structures which are used partly or wholly for the temporary or permanent storage of waste materials within the meaning of section 48 of the Closed Cycle Management Act (*Kreislaufwirtschaftsgesetz*),

6. the construction, extension or alteration and the operation of commercial airports and of airfields with reduced restrictions on construction in the surrounding area,

7. project approval procedures for the construction or the alteration of new sections of tram, magnetic suspension trains and public railway routes and for the construction or the alteration of shunting yards and container terminals,

8. project approval procedures for the construction of, or changes to federal highways,

9. project approval procedures for the construction or the extension of federal waterways.

The first sentence shall also apply to disputes arising out of permissions which are issued in place of project approval, as well as to disputes regarding all and any approvals and permissions required for the project, including those concerning ancillary facilities which are either spatially or operationally linked to the project. The *Länder* may provide by law that the Higher Administrative Court shall adjudicate at first instance on disputes concerning putting into possession in cases described in the first sentence.

(2) The Higher Administrative Court shall adjudicate additionally at first instance on actions brought against prohibitions of association issued by a supreme *Land* authority under section 3, subsection 2, No. 1 of the Associations Act (*Vereinsgesetz*) and on directions issued under section 8, subsection 2, of the Associations Act.

(3) (repealed)

Section 49

The Federal Administrative Court shall rule on

1. appeals on points of law against judgments of the Higher Administrative Court under section 132,

2. appeals on points of law against judgments of administrative courts under sections 134 and 135,

3. complaints under section 99, subsection 2, and section 133, subsection 1, of this Act, and under section 17a, subsection 4, fourth sentence, of the Courts Constitution Act.

Section 50

(1) The Federal Administrative Court shall rule at first and last instance on

1. public law disputes which are not of a constitutional nature between the Federation and the *Länder* and between individual *Länder*,

2. actions brought against prohibitions of associations made by the Federal Minister of the Interior under section 3, subsection 2, No. 2 of the Associations Act and directions issued under section 8, subsection 2, first sentence, of the Associations Act,

3. regarding disputes against expulsion orders in accordance with section 58a of the Residence Act (*Aufenthaltsgesetz*) and their implementation,

4. actions arising from dossiers within the ambit of the Federal Intelligence Service,

5. on actions against measures and decisions in accordance with section 44a of the Members of the Bundestag Act (*Abgeordnetengesetz*) and the rules of conduct for Members of the German *Bundestag*,

6. with regard to all and any disputes related to project approval procedures and plan approval procedures for projects designated in the General Rail Act (*Allgemeines Eisenbahngesetz*), the Federal Highways Act (*Bundesfernstraßengesetz*), the Federal Waterways Act (*Bundeswasserstraßengesetz*), the Transmission Line Extension Act (*Energieleitungsausbaugesetz*), the Federal Requirement Plan Act (*Bundesbedarfsplangesetz*) or the Magnetic Suspension Train Planning Act (*Magnetschwebebahnplanungsgesetz*).

(2) (repealed)

(3) Where the Federal Administrative Court finds a dispute heard under subsection 1 No. 1 to be of a constitutional nature, it shall refer the matter to the Federal Constitutional Court for adjudication.

Section 51

(1) In cases where the prohibition of an entire association has been ordered under section 5, subsection 2, of the Associations Act rather than prohibition of only one part of the association, any proceeding on an action brought by this part of the association against its prohibition shall be suspended until such time as a decision has been made on an action brought against prohibition of the entire association.

(2) A ruling handed down by the Federal Administrative Court shall be binding upon the Higher Administrative Courts in those cases described in subsection 1.

(3) The Federal Administrative Court shall inform the Higher Administrative Courts of any action brought by an association under section 50, subsection 1, No. 2.

Section 52

The following shall apply to territorial jurisdiction:

1. In disputes regarding immovable property or a local entitlement or legal relationship, territorial jurisdiction shall lie solely with the administrative court within whose district the assets or the site are located or the local entitlement applies.

2. In the case of a rescissory action brought against an administrative act issued by a federal authority or a federally incorporated body, institution or foundation under public law, territorial jurisdiction shall lie with the administrative court within whose district the seat of the federal authority, corporation, institution or foundation is located, subject to Nos. 1 and 4. This shall apply equally in the case of actions for mandatory injunction of an administrative act in those cases covered by the first sentence. In disputes under the Asylum Procedure Act (*Asylverfahrensgesetz*), however, territorial jurisdiction shall lie with the administrative court within whose district the foreigner is obliged to reside under the Asylum Procedure Act; where territorial jurisdiction cannot be established by this criterion, it shall be determined in accordance with No. 3. Territorial jurisdiction for actions brought against the Federation in territories falling under the jurisdiction of the Federal Republic of Germany's diplomatic and consular representations shall lie with the administrative court whose district contains the seat of the Federal Government.

3. In the case of all other rescissory actions, the territorial jurisdiction subject to Nos. 1 and 4 shall lie with the administrative court within whose district the administrative act was issued. Where this act was issued by a public authority whose sphere of competence extends over the judicial districts of a number of administrative courts, or by a joint public authority acting on behalf of several or all of the *Länder*, jurisdiction shall lie with the administrative court within whose district the aggrieved party has its seat or place of residence. In the absence of either of the latter within the province of the public authority, jurisdiction shall be determined in accordance with No. 5. In the case of rescissory actions brought against administrative acts issued by an office for university admissions commissioned by the *Länder*, however, territorial jurisdiction shall lie with the administrative court within whose district this office has its seat. This shall also apply in respect of actions for a mandatory injunction in those cases described in the first, second and fourth sentences.

4. For all actions arising out of continuing or previous terms of employment as a civil servant, as a judge or during compulsory or voluntary military service or civilian service (replacing military service), and for disputes concerning the origin of such terms of employment, territorial jurisdiction shall lie with the administrative court within whose district the plaintiff or respondent has his/her place of residence for purposes of employment, or, failing that, his place of residence. Should the plaintiff or respondent have neither a place of residence for purposes of employment or place of residence within the province of the authority which issued the original administrative act, territorial jurisdiction shall lie with the administrative court within whose district this public authority has its seat. The first and second sentences shall apply *mutatis mutandis* to actions brought under section 79 of the Act on the Regulation of Legal Relationships of Persons Falling under Article 131 of the Basic Law (*Gesetz zur Regelung der Rechtsverhältnisse der unter Artikel 131 des Grundgesetzes fallenden Personen)*.

5. In all other cases, territorial jurisdiction shall lie with the administrative court within whose district the defendant has its seat, his/her place of residence, or failing this his/her place of abode, or previously had his/her place of residence or place of abode.

Section 53

(1) The competent court within the jurisdiction of the administrative courts shall be determined by the next highest court

1. if, in a particular case, the court which would normally have jurisdiction is prevented for reasons either of law or of fact from exercising its jurisdiction,

2. where there is uncertainty with regard to the boundaries of various judicial districts as to which court has jurisdiction to hear the dispute,

3. where the place of jurisdiction is determined in accordance with section 52 and a number of courts are to be considered,

4. where a number of courts have finally and conclusively declared themselves to have jurisdiction,

5. where a number of courts, one of which has jurisdiction to hear the dispute, have finally and conclusively declared themselves not to have jurisdiction.

(2) Where territorial jurisdiction cannot be settled under Section 52, the court with jurisdiction shall be determined by the Federal Administrative Court.

(3) Every party in a legal dispute, and every court involved in the dispute, may appeal to the next highest instance or to the Federal Administrative Court. The court to which appeal has been made may rule without an oral hearing.

Part II

Procedure

7th Chapter

General procedural provisions

Section 54

(1) Sections 41 to 49 of the Code of Civil Procedure (*Zivilprozeßordnung*) shall apply *mutatis mutandis* to the exclusion and rejection of court officials.

(2) Anyone shall also be excluded from exercising the office of judge or honorary judge who was involved in the previous administrative proceedings.

(3) Concern about partiality in accordance with section 42 of the Code of Civil Procedure shall always be well-founded if the judge or honorary judge belongs to the representation of a body whose interests are affected by the proceedings.

Section 55

Sections 169, 171a to 198 of the Courts Constitution Act regarding publicity, court officers, language of the court, deliberations and voting shall apply *mutatis mutandis*.

Section 55a

(1) Those concerned may convey electronic documents to the court insofar as this has been permitted for the respective jurisdiction by legal ordinance of the Federal Government or of the *Land* Governments. The legal ordinance shall determine the time from when documents may be conveyed to a court in electronic form, as well as the nature in which electronic documents are to be submitted. A qualified electronic signature in accordance with section 2 No. 3 of the Signature Act (*Signaturgesetz*) shall be prescribed for documents which are equivalent to a document to be signed in writing. In addition to the qualified electronic signature, another secure procedure may also be permitted which safeguards the authenticity and the integrity of the electronic document conveyed. The *Land* Governments may transfer the empowerment to the supreme *Land* authorities

responsible for administrative jurisdiction. Permission of electronic conveyance may be restricted to individual courts or sets of proceedings. The legal ordinance of the Federal Government shall not require the consent of the *Bundesrat*.

(2) An electronic document shall be deemed to have been received by the court if it has been conveyed in the manner determined by the legal ordinance in accordance with subsection 1, first and second sentences, and if the facility designated for reception has recorded it. The provisions of this Act regarding the enclosure of duplicates for the other persons concerned shall not apply. If the document does not meet the requirements, this shall be notified to the sender without delay, stating the technical conditions applicable to the court.

(3) Insofar as hand signing by the judge or the clerk of the registry is prescribed, this form shall be satisfied by recording as an electronic document if the responsible persons add their name at the end of the document and affix to the document a qualified electronic signature in accordance with section 2 No. 3 of the Signature Act.

Section 55b

(1) The procedural files may be kept in electronic form. The Federal Government and the *Land* Governments shall determine in each case for their remit by legal ordinance the time from when the procedural files are kept in electronic form. The legal ordinance shall establish the organisational and technical conditions for the creation, maintenance and storage of the electronic files. The *Land* Governments may transfer empowerment to the supreme *Land* authorities responsible for administrative jurisdiction. The admission of the electronic file can be restricted to individual courts or sets of proceedings. The legal ordinance of the Federal Government shall not require the approval of the *Bundesrat*.

(2) Documents which do not comply with the form in which the file is kept shall be converted to the corresponding form and included in the file in this form unless the legal ordinance in accordance with subsection 1 provides otherwise.

(3) The original documents shall be retained at least until the final conclusion of the proceedings.

(4) If a document that has been submitted in paper form has been converted into an electronic document, this must contain a note as to when and by whom the conversion was carried out. If an electronic document has been converted into paper form, the printout must contain a note as to the result yielded by the integrity check of the document, the individual who is identified by the

signature check as the owner of the signature and the time the signature check shows for affixing the signature.

(5) Documents which have been drafted in accordance with subsection 2 shall be taken as a basis of the proceedings unless grounds exist to doubt their concurrence with the submitted document.

Section 56

(1) Orders and rulings by which a deadline period is initiated, as well as deadlines and subpoenas, shall be served, in case of a pronouncement however only if it is explicitly prescribed.

(2) Service shall be carried out ex officio in accordance with the provisions of the Code of Civil Procedure.

(3) Whoever does not live in Germany shall, on demand, appoint a proxy-holder for service.

Section 56a

(1) If identical announcements are required to be served to more than fifty individuals, the court may order for the further procedure announcement by public notification. The order must determine in which daily newspapers the announcements are to be published; here, daily newspapers shall be provided for which are disseminated in the area in which the decision is likely to impact. The order shall be served on those concerned. Those concerned shall be notified by what means the further announcements will be made and when the document is deemed to have been served. The order shall not be contestable. The court may rescind the order at any time; it must rescind it if the preconditions of the first sentence did not apply or no longer apply.

(2) The public announcement shall be effected by affixing on the court's notice board, or by posting in an electronic information system which is publicly accessible in the court, and by publication in the Federal Gazette, as well as in the daily newspapers designated in the order in accordance with subsection 1, second sentence. It may additionally be effected in an information and communication system designated by the court for announcements. With regard to rulings, the public announcement of the ruling and the information about the appeal shall be sufficient. Instead of the document to be announced, an announcement may be made public stating where the document may be inspected. A deadline or subpoena must be publicly announced in its full wording.

(3) The document shall be considered to have been served on the day on which two weeks have passed since the day of publication in the Federal Gazette; this shall be indicated in each

publication. After the public announcement of a ruling, those concerned may request a copy in writing; this shall also be indicated in the publication.

Section 57

(1) Unless otherwise determined, a deadline period shall be initiated on service or, if this is not prescribed, on publication or pronouncement.

(2) The provisions contained in sections 222, 224 subsections 2 and 3, sections 225 and 226 the Code of Civil Procedure shall apply to the periods.

Section 58

(1) The deadline period for an appeal or another legal remedy shall only be initiated if the party concerned has been informed in writing or in electronic form of the appeal, the administrative authority or the court at which the appeal is to be lodged, the seat and the deadline to be adhered to.

(2) If the information has not been provided or has been incorrectly provided, the lodging of the appeal shall only be permissible within one year of service, publication or pronouncement, unless submission was impossible prior to expiry of the year's deadline period as a result of force majeure, or a written or electronic notification took place that an appeal was not possible. Section 60, subsection 2, shall apply *mutatis mutandis* to the case of force majeure.

Section 59 (repealed)

Section 60

(1) If someone was unable to adhere to a statutory deadline without fault, he/she shall be granted *restitutio in integrum* on request.

(2) The application shall be filed within two weeks of the cessation of the obstacle; if the deadline for the period granted to provide reasoning for the appeal on points of fact and law, of the application to admit the appeal on points of fact and law, the appeal on points of law, the complaint against non-admission or the complaint is missed, the deadline period shall be one month. The facts for reasoning of the application shall be credibly demonstrated in filing the application or in the proceedings on the application. The omitted legal act shall be subsequently performed within the application deadline. If this has taken place, restitution may also be granted without an application.

(3) After one year since the end of the missed deadline, the application shall be inadmissible unless the application was impossible prior to expiry of the year's deadline as a result of force majeure.

(4) The court which has to rule on the omitted legal act shall rule on restitution.

(5) Restitution shall be incontestable.

Section 61

The following shall be able to take part in the proceedings

1. natural persons and bodies corporate,
2. associations insofar as they can be entitled to a right,
3. authorities insofar as the *Land* law thus provides.

Section 62

(1) The following shall be able to effect procedural acts

1. parties who are capable of contracting in accordance with civil law,
2. parties who are restricted in their legal competence in accordance with civil law insofar as they are recognised by provisions of civil or public law as being capable of contracting for the subject-matter of the proceedings.

(2) If an reservation of consent in accordance with section 1903 of the Civil Code relates to the subject-matter of the proceedings, a person placed under care who is capable of contracting shall only be able to carry out procedural acts insofar as, in accordance with the provisions of civil law, he/she may act without the consent of the custodian or is recognised by provisions of public law as having capacity to act.

(3) For associations, as well as for authorities, their legal representatives and boards shall act.

(4) Sections 53 to 58 the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 63

The following shall be concerned by the proceedings

1. the plaintiff,
2. the defendant,
3. the subpoenaed party (section 65), and
4. the Representative of the Interests of the Federation at the Federal Administrative Court or the representative of the public interest, if he/she avails him/herself of his/her empowerment to participate.

Section 64

The provisions of sections 59 to 63 the Code of Civil Procedure on the joinder of parties shall apply *mutatis mutandis*.

Section 65

(1) As long as the proceedings have not yet been finally concluded or are pending at a higher instance, the court may subpoena others ex officio or on request whose legal interests are affected by the ruling.

(2) If third parties are involved in the contentious legal relationship such that the ruling can also only be imposed on them uniformly, they shall be subpoenaed (necessary subpoena).

(3) If the subpoena of more than fifty persons is considered in accordance with subsection 2, the court may order by issuing an order that only those persons are subpoenaed who so apply within a certain period. The order shall be incontestable. It shall be announced in the Federal Gazette. It must furthermore be published in daily newspapers which are disseminated in the area in which the ruling is likely to exert an impact. The announcement may additionally take place in an information and communication system designated by the court for announcements. The deadline period must be at least three months from publication in the Federal Gazette. The publication in daily newspapers shall state on which date the deadline expires. Section 60 shall apply *mutatis mutandis* to *restitutio in integrum* in the event of the deadline being missed. The court should subpoena persons who are recognisably particularly affected by the ruling, also without request.

(4) The subpoena order shall be served on all concerned. The state of the matter and the reason for the subpoena should be stated here. The subpoena shall be incontestable.

Section 66

The subpoenaed party may independently assert means of attack and defence and implement all procedural acts effectively within the requests of a person concerned. He/she may only lodge derogating factual motions if a necessary subpoena exists.

Section 67

(1) Those concerned may themselves pursue the dispute before the administrative court.

(2) Those concerned may seek representation as a proxy-holder by an attorney or a law teacher at a state or state-recognised institution of higher education of a Member State of the European Union, of another Contracting Party to the Agreement on the European Economic Area or Switzerland who has qualification for judicial office. Over and above this, only the following shall be empowered to represent the person concerned as a proxy-holder before the administrative court

1. employees of the person concerned or of an enterprise affiliated therewith (section 15 of the Companies Act [*Aktiengesetz*]); authorities and bodies corporate under public law, including the associations formed by them to fulfil their public tasks, can also be represented by employees of other authorities or bodies corporate under public law, including the combinations formed by them to implement their public tasks,

2. adult family members (section 15 of the Tax Code [*Abgabenordnung*] and section 11 of the Civil Partnerships Act [*Lebenspartnerschaftsgesetz*]), persons with qualification for judicial office and joint litigants if the representation is not connected to a for-a-fee activity,

3. tax advisers, tax consultants, chartered accountants and sworn public accountants, persons and associations within the meaning of section 3a of the Tax Advice Act (*Steuerberatungsgesetz*), as well as enterprises within the meaning of section 3 Nos. 2 and 3 of the Tax Advice Act acting through persons within the meaning of section 3 No. 1 of the Tax Advice Act, in fiscal matters,

4. agricultural professional associations for their members,

5. trade unions and associations of employers, as well as combinations of such associations for their members or for other associations or combinations with comparable orientations and their members,

6. associations whose tasks according to their statutes largely comprise the joint representation of interests, advice and representation of the beneficiaries in accordance with the law on social compensation or persons with disabilities and which, taking account of the nature and extent of their activities, as well as of their group of members offer an assurance of proper procedural representation for their members in matters related to care for the victims of war and of the law on persons with serious disabilities, as well as the matters related thereto,

7. bodies corporate all of whose shares are in the economic ownership of one of the organisations designated in Nos. 5 and 6 if the body corporate implements exclusively legal advice and court representation of this organisation and of its members or of other associations or combinations with a comparable orientation and their members in accordance with their statutes, and if the organisation is liable for the activity of the proxies.

Proxies who are not natural persons shall act through their organs and representatives empowered to represent in proceedings.

(3) The court shall reject proxies who are not empowered to represent in accordance with subsection 2 by incontestable order. Procedural acts by a proxy-holder not empowered to represent and services on or communications to this proxy-holder shall be effective until the latter is rejected. The court may prohibit the proxy-holder designated in subsection 2, second sentence, Nos. 1 and 2 by a non-contestable order to effect the further representation if he/she is unable to properly present the facts and the dispute.

(4) Those concerned must be represented before the Federal Administrative Court and the Higher Administrative Court by an authorised legal representative, apart from in legal aid proceedings. This shall also apply to procedural acts by means of which proceedings are initiated before the Federal Administrative Court or a Higher Administrative Court. Only the persons designated in subsection 2, first sentence, shall be admitted as proxies. Authorities and bodies corporate under public law, including the combinations formed to carry out their public tasks, may be represented by own employees with qualification for judicial office or by employees with qualification for judicial office of other authorities or bodies corporate under public law, including the combinations formed to carry out their public tasks. The organisations designated in subsection 2, second sentence, No. 5, including the bodies corporate formed by them in accordance with subsection 2, second sentence, No. 7, shall also be admitted as proxies before the Federal Administrative Court, but only in matters relating to the legal circumstances within the meaning of section 52 No. 4, in staff representation matters and in matters which are related to a current or prior employment relationship of employees within the meaning of section 5 of the Labour Court Act (*Arbeitsgerichtsgesetz*), including examination matters. The proxies designated in the fifth sentence must act through persons with qualification for judicial office. The persons and organisations designated in subsection 2, second sentence, Nos. 3 to 7 shall also be admitted as proxies before the Higher Administrative Court. A person concerned who is entitled to represent in accordance with the third, fifth and seventh sentences may represent him/herself.

(5) Judges may not act as proxies before the court to which they belong. Other than in cases falling under subsection 2, second sentence, No. 1, honorary judges may not appear before a panel of judges to which they belong. Subsection 3, first and second sentences, shall apply *mutatis mutandis*.

(6) The proxy shall be submitted in writing for the record on the court records. It can be submitted subsequently; the court may set a deadline for this. The lack of a proxy may be asserted at any stage

of the proceedings. The court shall take account of the lack of a proxy ex officio unless an attorney acts as proxy- holder. If a proxy- holder has been appointed, service of documents or communications of the court shall be addressed to him/her.

(7) Those concerned may appear in the hearing with counsel. Counsel can be who in proceedings in which those concerned may carry on the dispute themselves is empowered to represent as a proxy-holder in the hearing. The court may admit other persons as counsel if this is expedient and a need exists therefor in accordance with the circumstances of the individual case. Subsection 3, first and third sentences, and subsection 5, shall apply *mutatis mutandis*. What is submitted by counsel shall be deemed to have been submitted by those concerned unless it is immediately revoked or corrected by the latter.

Section 67a

(1) If more than twenty persons are involved in a dispute in the same interest without being represented by an authorised legal representative, the court may instruct them by means of an order to appoint a joint proxy-holder within a suitable period if the proper processing of the dispute would otherwise be impaired. If those concerned do not appoint a joint proxy- holder within the deadline set for them, the court may appoint an attorney as a joint representative by order. Those concerned may carry out procedural acts only via the joint proxy-holder or deputy. Orders in accordance with the first and second sentences shall not be contestable.

(2) The power of attorney shall expire as soon as the deputy or the represented party declares such to the court in writing or for the record before the clerk of the registry; the deputy may only submit the declaration with regard to all represented parties. If the represented party submits such a declaration, the power of attorney shall only expire if the appointment of another proxy- holder is notified at the same time.

8th Chapter

Special provisions for rescissory and enforcement actions

Section 68

(1) Prior to lodging a rescissory action, the lawfulness and expedience of the administrative act shall be reviewed in preliminary proceedings. Such a review shall not be required if a statute so determines, or if

1. the administrative act has been handed down by a supreme federal authority or by a supreme *Land* authority, unless a statute prescribes the review, or

2. the remedial notice or the ruling on an objection contains a grievance for the first time.

(2) Subsection 1 shall apply *mutatis mutandis* to the enforcement action if the motion to carry out the administrative act has been rejected.

Section 69

The preliminary shall proceedings begin on the lodging of the objection.

Section 70

(1) The objection shall be lodged in writing within one month after the administrative act has been announced to the aggrieved party, in writing or for the record of the authority which has carried out the administrative act. The deadline shall also be deemed to have been adhered to by virtue of its being lodged with the authority which has to issue the ruling on an objection.

(2) Sections 58 and 60, subsections 1 to 4, shall apply *mutatis mutandis*.

Section 71 Hearing

If the rescission or amendment of an administrative act is linked in the objection proceedings with a grievance for the first time, the person concerned should be heard prior to issuing the remedial notice or the ruling on an objection.

Section 72

If the authority considers the objection to be well-founded, it shall remedy it and rule on the costs.

Section 73

(1) If the authority does not remedy the objection, a ruling on the objection shall be handed down. This shall be issued by

1. the next higher authority unless another higher authority is determined by law,

2. if the next higher authority is a federal or supreme *Land* authority, the authority which has issued the administrative act,

3. in self-administration matters the self-administration authority unless otherwise determined by law.

Derogating from the second sentence, No. 1, it can be determined by law that the authority which has issued the administrative act is also competent for the decision on the objection.

(2) Provisions in accordance with which commissions or advisory boards replace an authority in the preliminary proceedings of subsection 1 shall remain unaffected. In derogation from subsection 1 No. 1, the commissions or advisory boards may also be formed in the authority which has issued the administrative act.

(3) The ruling on an objection shall be reasoned, supplemented with a notice on appeals and served. Service shall be effected ex officio in accordance with the provisions of the Administration Service Act (*Verwaltungszustellungsgesetz*). The ruling on the objection shall also determine who is to pay the costs.

Section 74

(1) The rescissory action must be lodged within one month of service of the ruling on the objection. If in accordance with section 68 a ruling on an objection is not required, the action must be lodged within one month of announcement of the administrative act.

(2) Subsection 1 shall apply *mutatis mutandis* to the enforcement action if the application to carry out the administrative act has been rejected.

Section 75

If with regard to an objection or an application to carry out an administrative act it has not been decided on the merits within a suitable period without sufficient reason, the action shall be admissible in derogation from section 68. The action may not be lodged prior to the expiry of three months after the lodging of the objection or since the filing of the application to carry out the administrative act, unless a shorter period is required because of special circumstances of the case. If an adequate reason applies why the objection has not yet been ruled on or the requested administrative act has not yet been carried out, the court shall suspend the proceedings until expiry of a deadline set by it, which can be extended. If the objection is admitted within the deadline set by the court or the administrative act carried out within this deadline, the main case shall be declared to have been settled.

Section 76

(repealed)

Section 77

(1) All provisions of federal law in other statutes regarding objection or complaint proceedings shall be substituted by the provisions of the present chapter.

(2) The same shall apply to provisions of *Land* law regarding objection or complaint proceedings as a precondition for an action to the administrative courts.

Section 78

(1) The action shall be addressed

1. against the Federation, the *Land* or the body whose authority has issued the impugned administrative act or omitted the requested administrative act; designating the authority shall be sufficient to state the defendant,

2. insofar as *Land* law so determines, against the authority itself which has issued the impugned administrative act or omitted the requested administrative act.

(2) If a ruling has been handed down on an objection which contains a grievance for the first time (section 68, subsection 1, second sentence, No. 2), the authority within the meaning of subsection 1 shall be the objection authority.

Section 79

(1) The subject-matter of the rescissory action shall be

1. the original administrative act in the shape it has assumed through the ruling on an objection,

2. the notice on a remedy or ruling on an objection if this contains a grievance for the first time.

(2) The ruling on an objection can also be the sole subject-matter of the rescissory action if and insofar as it contains an additional separate grievance vis-à-vis the original administrative act. An additional grievance shall also be deemed to be constituted by the violation of a major procedural provision insofar as the ruling on an objection is based on this violation. Section 78, subsection 2, shall apply *mutatis mutandis*.

Section 80

(1) An objection and a rescissory action shall have suspensive effect. This shall also apply to constitutive and declaratory administrative acts, as well as to administrative acts with a double effect (section 80a).

(2) The suspensive effect shall only fail to apply

1. if public charges and costs are called for,

2. with non-postponable orders and measures by police enforcement officers,

3. in other cases prescribed by a federal statute or for *Land* law by *Land* statute, in particular for objections and actions on the part of third parties against administrative acts relating to investments or job creation,

4. in cases in which immediate execution is separately ordered by the authority which has issued the administrative act or has to decide on the objection in the public interest or in the overriding interest of a party concerned.

The *Länder* may also determine that appeals do not have a suspensive effect insofar as they address measures taken in administrative execution by the *Länder* in accordance with federal law.

(3) In cases falling under subsection 2 No. 4, the special interest in immediate execution of the administrative act shall be reasoned in writing. No special reasoning shall be required if the authority takes an emergency measure designated as such in the public interest where a delay is likely to jeopardise the success, in particular with impending disadvantages for life, health or property as a precautionary measure.

(4) The authority which has issued the administrative act or which has to decide on the objection may suspend execution in cases falling under subsection 2 unless otherwise provided by federal law. Where public charges and costs are called for, it may also suspend execution for a security. Suspension should take place with public charges and costs if serious doubts exist with regard to the lawfulness of the impugned administrative act or if implementation would lead to unreasonable hardship for the party obliged to pay the charges or costs not required by overriding public interests.

(5) On request, the court dealing with the main case may completely or partly order the suspensive effect in cases falling under subsection 2 Nos. 1 to 3, and may restitute it completely or partly in cases falling under subsection 2 No. 4. The request shall already be admissible prior to filing of the rescissory action. If the administrative act has already been implemented at the time of the decision, the court may order the rescission of implementation. The restitution of the suspensive effect may be made dependent on the provision of a security or on other instructions. It may also be time-limited.

(6) In cases falling under subsection 2 No. 1, the request in accordance with subsection 5 shall only be admissible if the authority has completely or partly rejected a request to suspend implementation. This shall not apply if

1. the authority has not decided de facto on the request within a reasonable period without stating an adequate reason, or

2. execution is impending.

(7) The court dealing with the main case may amend or rescind orders regarding requests in accordance with subsection 5 at any time. Each party concerned may request an amendment or rescission because of altered circumstances or because of circumstances not asserted in the original proceedings without fault.

(8) The presiding judge may decide in urgent cases.

Section 80a

(1) If a third party submits an appeal against the administrative act addressing another and favouring the latter, the authority may

1. on request by the beneficiary, order immediate implementation in accordance with section 80, subsection 2, No. 4,

2. on request by the third party, in accordance with section 80, subsection 4, suspend implementation and take interim measures to secure the rights of the third party.

(2) If a party concerned submits an appeal against an administrative act which poses a burden on it in favours of a third party, the authority may order immediate execution on request by the third party in accordance with section 80, subsection 2, No. 4.

(3) The court may, on request, alter or rescind measures in accordance with subsections 1 and 2 or take such measures. Section 80, subsections 5 to 8, shall apply *mutatis mutandis*.

Section 80b

(1) The suspensive effect of the objection and of the rescissory action shall end on non-contestability or, if the rescissory action has been rejected at first instance, three months after expiry of the statutory deadline for reasoning of the appeal available against the negative decision. This shall also apply if execution by the authority has been suspended or the suspensive effect has been reinstated or ordered by the court, unless the authority has suspended execution until it becomes incontestable.

(2) The Higher Administrative Court may order on request that the suspensive effect continues.

(3) Section 80, subsections 5 to 8, and section 80a shall apply *mutatis mutandis*.

9th Chapter

Proceedings at first instance

Section 81

(1) The action shall be lodged with the court in writing. It may also be lodged at the administrative court for the record of the clerk of the registry.

(2) Duplicates for the other parties concerned should be enclosed with the action and all written statements on proviso of section 55a, subsection 2, second sentence.

Section 82

(1) The action must designate the plaintiff, the defendant and the subject-matter of what is at stake in the action. It should contain a specific motion. The facts and evidence serving as reasoning should be stated; the original or a duplicate of the impugned order and the ruling on an objection should be enclosed.

(2) If the action does not meet these requirements, the presiding judge or the competent professional judge (reporting judge) in accordance with section 21g of the Courts Constitution Act shall call on the plaintiff to provide the required supplement within a specific period. He/she may set a deadline to the plaintiff for the supplement with exclusive effect if one of the requirements named in subsection 1, first sentence, is not met. Section 60 shall apply *mutatis mutandis* to *restitutio in integrum.*

Section 83

Sections 17 to 17b of the Courts Constitution Act shall apply *mutatis mutandis* to factual and territorial jurisdiction. Orders in accordance with section 17a, subsections 2 and 3, of the Courts Constitution Act shall not be contestable.

Section 84

(1) The court may rule by means of a summary decision without an oral hearing if the case does not show any particular factual or legal difficulties and the facts have been clarified. Those concerned shall be heard in advance. The provisions regarding judgments shall apply *mutatis mutandis*.

(2) Within one month of service of the summary decision, those concerned may

1. submit an appeal on points of fact and law if it has been admitted (section 124a),

2. apply for admission of the appeal on points of fact and law or an oral hearing; if use is made of both appeals, an oral hearing shall take place,

3. submit an appeal on points of law if it has been admitted,

4. submit a complaint against non-admission or request an oral hearing if the appeal on points of law has not been admitted; if use is made of both appeals, an oral hearing shall take place,

5. request an oral hearing if an appeal is not available.

(3) The summary decision shall have the effect of a judgment; if an oral hearing is requested in good time, it shall be deemed not to have been issued.

(4) If an oral hearing is requested, the court may in the judgment refrain from a further rendering of the facts and of the reasoning for the decision insofar as it concurs with the reasoning contained in the summary decision and establishes this in its decision.

Section 85

The presiding judge shall order the action to be served on the defendant. At the same time as service, the defendant shall be called upon to make a written statement; section 81, subsection 1, second sentence, shall apply *mutatis mutandis*. A deadline may be set for this.

Section 86

(1) The court shall investigate the facts ex officio; those concerned shall be consulted in doing so. It shall not be bound to the submissions and to the motions for the taking of evidence of those concerned.

(2) A motion for the taking of evidence made in the oral hearing may only be rejected by a court order, which shall require to be reasoned.

(3) The presiding judge shall endeavour to ensure that formal errors are remedied, unclear requests explained, proper motions made, inadequate factual information supplemented, as well as all declarations submitted which are material to the establishment and judgment of the facts.

(4) Those concerned should submit written statements to prepare the oral hearing. The presiding judge can call on them to do so, setting a deadline. The written statements shall be communicated to those concerned ex officio.

(5) The originals or duplicates of the certificates or electronic documents to which reference is made shall be enclosed in full or in part with the written statements. If the certificates or electronic

documents are already known to the opponent or are very extensive, the precise designation shall be sufficient, coupled with the offer to grant inspection in the court.

Section 86a

(repealed)

Section 87

(1) The presiding judge or the reporting judge shall already issue all orders prior to the oral hearing that are necessary in order to deal with the dispute where possible in one oral hearing. He/she may in particular

1. subpoena those concerned to discuss the facts and the dispute and to reach an amicable settlement of the dispute and accept a settlement;

2. instruct those concerned to supplement or explain their prepared written statements, submit certificates, transmit electronic documents and submit other objects for deposit with the court, in particular set a deadline to explain certain points that are in need of clarification;

3. obtain information;

4. order the submission of certificates or the transmission of electronic documents;

5. order the personal appearance of those concerned; section 95 shall apply *mutatis mutandis*;

6. subpoena witnesses and experts to the oral hearing.

7. (repealed)

(2) Those concerned shall be informed of each order.

(3) The president or the reporting judge may take individual items of evidence. This may only take place insofar as it is expedient to simplify the hearing before the court and it can be presumed from the outset that the court is able to appreciate the result of the evidence properly, even without obtaining a direct impression of the course of the taking of evidence.

Section 87a

(1) The presiding judge shall decide if the decision is taken in the preparatory proceedings

1. on the suspension and the stay of the proceedings;

2. in the case of the withdrawal of the action, waiver of the asserted claim or acknowledgement of the claim, also regarding an application for legal aid;

3. in the case of the dispute being settled in the main case, also on an application for legal aid;

4. regarding the value at dispute;

5. regarding costs;

6. on the subpoena.

(2) With the consent of those concerned, the presiding judge may also rule in place of the chamber or of the senate.

(3) If a reporting judge has been appointed, he/she shall rule in place of the presiding judge.

Section 87b

(1) The presiding judge or the reporting judge may set the plaintiff a deadline to state the facts by whose consideration or non- consideration in the administrative procedure he/ she considers him/herself to have been aggrieved. The deadline set in accordance with the first sentence may be combined with the deadline set in accordance with section 82, subsection 2, second sentence.

(2) The presiding judge or the reporting judge can instruct a party concerned, setting a deadline, with regard to certain events

1. to state facts or designate items of evidence,

2. to submit certificates or other moveables and to transmit electronic documents insofar as the party concerned is obliged to do so.

(3) The court may reject declarations and items of evidence which are not submitted until after expiry of a deadline set in accordance with subsections 1 and 2 and rule without any further investigations if

1. in the freely- formed conviction of the court its admission would delay the conclusion of the dispute, and

2. the party concerned does not provide sufficient excuses for the lateness, and

3. the party concerned has been notified of the consequences of missing the deadline.

The excuse shall be credibly demonstrated on request by the court. The first sentence shall not apply if it is possible with slight effort to ascertain the facts without the cooperation of the party concerned.

Section 88

The court may not go beyond what is requested in the action, but is not bound by the version of the motions.

Section 89

(1) A counteraction can be lodged at the court of the action if the counterclaim is linked with the claim asserted in the action or with the means of defence submitted against it. This shall not apply if another court has jurisdiction in cases coming under section 52 No. 1 for the action because of the counterclaim.

(2) A counteraction shall be ruled out with rescissory and enforcement actions.

Section 90

(1) The matter at dispute shall become pending by the action being lodged.

(2) (repealed)

(3) (repealed)

Section 91

(1) An alteration to the action shall be admissible subject to the consent of the other parties concerned or if the court considers the alteration to be expedient.

(2) The defendant shall be presumed to have consented to the alteration of the action if the defendant, without contradicting it, has commented on the altered action in a written statement or in an oral hearing.

(3) The ruling that an alteration to the action had not been submitted or admitted shall not be separately challengeable.

Section 92

(1) The plaintiff may withdraw his/her action until such a time as the judgment gains legal force. Withdrawal after making the applications in the oral hearing shall be conditional on the consent of the defendant and, if a representative of the public interest has attended the oral hearing, also consent of the latter. Consent shall be deemed to have been given if the withdrawal of the action is not contradicted within two weeks since service of the written statement containing the withdrawal; the court shall indicate this consequence.

(2) The action shall be deemed to have been withdrawn if the plaintiff does not pursue the proceedings for more than two months despite being called on by the court to do so. Subsection 1, second and third sentences, shall apply *mutatis mutandis*. The plaintiff shall be referred in the call to the legal consequences emerging from the first sentence and from section 155, subsection 2. The court shall find by order that the action is deemed to have been withdrawn.

(3) If the action has been withdrawn, or if it is deemed to have been withdrawn, the court shall discontinue the proceedings by order and announce the legal consequences of withdrawal emerging from this Act. The order shall be incontestable.

Section 93

The court may, by order, join several sets of proceedings pending with it regarding the same subject-matter to a joint hearing and decision and separate them once more. It may order that several claims lodged in one set of proceedings are deliberated and ruled on in separate sets of proceedings.

Section 93a

(1) If the lawfulness of an official measure is the subject-matter of more than twenty sets of proceedings, the court may carry out one or several suitable sets of proceedings in advance (model proceedings) and suspend the other sets of proceedings. Those concerned shall be heard in advance. The order shall be incontestable.

(2) If a final ruling has been handed down with regard to the proceedings that have been carried out, the court may after hearing those concerned rule on the suspended proceedings by order if it holds unanimously that the cases do not have any major particularities of a factual or legal nature in comparison with other finally-ruled-on model proceedings and facts have been clarified. The court may introduce evidence in model proceedings that has been taken; it may at its discretion order the repeated questioning of a witness or a new expert report by the same or different expert witnesses. The court may refuse motions for the taking of evidence on facts on which evidence has already been taken in the model proceedings if its admission in its free conviction would not contribute to proof of new facts that are material to the ruling and would delay the settling of the dispute. Rejection may take place in the ruling in accordance with the first sentence. Those concerned shall have recourse to the appeal against the order in accordance with the first sentence that would be permissible if the court had ruled by judgment. Those concerned shall be notified of this appeal.

Section 94

If the ruling on the dispute depends completely or partly on the existence or non-existence of a legal relationship which forms the subject-matter of another pending dispute or is to be established by an administrative authority, the court may order that the hearing is to be suspended until the other dispute has been settled, or until the decision by the administrative authority.

Section 95

(1) The court may order a party concerned to attend in person. In the event of non-attendance, it may threaten an administrative fine just as against a witness who did not appear at the questioning hearing. In the event of culpable non-attendance, the court shall establish the threatened administrative fine by order. Threat and establishment of the administrative fine may be repeated.

(2) If the party concerned is a body corporate or an association, the administrative fine shall be threatened on the party entitled to represent in accordance with the law or statutes, and imposed on him/her.

(3) The court may instruct a public-law corporation or authority concerned to second a civil servant or employee to attend the oral hearing who is to be equipped with written proof of power of attorney and who is sufficiently informed of the factual and legal situation.

Section 96

(1) The court shall take evidence in the oral hearing. It may in particular inspect evidence and question witnesses, expert witnesses and those concerned, and consult certificates.

(2) In suitable cases, the court may already have evidence taken prior to the oral hearing by one of its members acting as a commissioned judge or, by designating the individual evidence questions, request another court to take evidence.

Section 97

Those concerned shall be informed of all evidence-taking dates and can attend the taking of evidence. They may address expedient questions to witnesses and to expert witnesses. If a question is objected to, the court shall decide.

Section 98

Unless this Act contains any derogatory provisions, sections 358 to 444 and 450 to 494 the Code of Civil Procedure shall apply *mutatis mutandis* to the taking of evidence.

Section 99

(1) Authorities shall be obliged to submit certificates or files, to transmit electronic documents and provide information. If the knowledge of the content of these certificates, files, electronic documents or this information would prove disadvantageous to the interests of the Federation or of a *Land*, or if the events must be kept strictly secret in accordance with a statute or due to their

essence, the competent supreme supervisory authority may refuse the submission of certificates or files, the transmission of the electronic documents and the provision of information.

(2) On request by a party concerned, the Higher Administrative Court shall find by order without an oral hearing whether the refusal to submit certificates or files, to transmit the electronic documents or to provide information is lawful. If a supreme federal authority refuses the submission, transmission or information on grounds that the interests of the Federation would be impaired were the content of the certificates or files, of the electronic documents and the information to become known, the Federal Administrative Court shall decide; the same shall apply if the Federal Administrative Court has jurisdiction for the main case in accordance with section 50. The application shall be filed with the court which has jurisdiction for the main case. The latter shall assign the application and the main case files to the adjudication bodies with jurisdiction in accordance with section 189. The supreme supervisory authority shall submit the certificates or files refused in accordance with subsection 1, second sentence on request by this panel of judges, transmit the electronic documents or provide the refused information. It shall be subpoenaed to these proceedings. The proceedings shall be subject to the provisions of substantive classification of information. If these cannot be complied with, or if the competent supervisory authority claims that special reasons of confidentiality or classification of information oppose the submission of the certificates or files or the transmission of the electronic documents to the court, the submission or transmission shall be effected in accordance with the fifth sentence by the certificates, files or electronic documents being made available to the court on premises designated by the supreme supervisory authority. Section 100 shall not apply to the files and electronic documents submitted in accordance with the fifth sentence, and to the special reasons claimed in accordance with the eighth sentence. The members of the court shall be obliged to maintain confidentiality; the grounds for the decision may not provide an indication of the nature and content of the secret certificates, files, documents and information. The regulations of the classification of information for staff shall apply to the non-judicial staff. Unless the Federal Administrative Court has ruled, the order may be independently challenged with a complaint. The Federal Administrative Court shall rule on the complaint against the order of a Higher Administrative Court. The fourth and eleventh sentences shall apply *mutatis mutandis* to the complaint proceedings.

Section 100

(1) Those concerned can inspect the court files and the files submitted to the court.

(2) Those concerned can have themselves issued by the registry duplicates, excerpts, printouts and copies at their expense. At the discretion of the presiding judge, the person holding a proxy in accordance with section 67, subsection 2, first and second sentences, Nos. 3 to 6 may be permitted to take the file with him/her to his/her home or office premises, afforded electronic access to the content of the files, or may receive the content of the files in electronic form. Section 87a, subsection 3, shall apply *mutatis mutandis*. With electronic access to the content of the files it shall be ensured that access only takes place by the person holding a proxy in accordance with section 67, subsection 2, first and second sentences, Nos. 3 to 6. For the transmission of electronic documents, the entirety of the documents shall be equipped with a qualified electronic signature in accordance with section 2 No. 3 of the Signature Act and safeguarded against unauthorised access.

(3) Inspection of the files in accordance with subsections 1 and 2 shall not be granted with regard to draft judgments, orders and decrees, the work related to their preparation and the documents relating to coordination.

Section 101

(1) The court shall rule on the basis of an oral hearing unless otherwise provided.

(2) The court may rule without an oral hearing with the consent of those concerned.

(3) Rulings of the court which are not judgments may be handed down without an oral hearing unless provided otherwise.

Section 102

(1) As soon as the deadline for an oral hearing has been determined, those concerned shall be subpoenaed with a subpoena period of at least two weeks, in the Federal Administrative Court of at least four weeks. The presiding judge may shorten the period in urgent cases.

(2) The subpoena shall indicate that if a party concerned does not attend, it is possible for the hearing to take place and a ruling handed down without him/her.

(3) The courts of administrative jurisdiction may also hold sessions outside the seat of the court if this is necessary in order to conclude them in an appropriate manner.

(4) Section 227, subsection 3, first sentence, of the Code of Civil Procedure shall not apply.

Section 102a

(1) The court may permit those concerned, their proxy-holders and counsel, on request or ex officio, to be in another place during an oral hearing and to implement procedural acts there. The hearing shall be transmitted simultaneously in image and sound form to this place and to the courtroom.

(2) The court may permit on request that a witness, an expert or a concerned party is in another place during questioning. The questioning shall be transmitted simultaneously in image and sound form to this place and to the courtroom. If those concerned, proxy-holders and counsel have been permitted in accordance with subsection 1, first sentence, to be in another place, the questioning shall also be transmitted to that place.

(3) The transmission shall not be recorded. Rulings in accordance with subsection 1, first sentence, and subsection 2, first sentence, shall not be appealable.

(4) Subsections 1 and 3 shall apply mutatis mutandis to discussion hearings (section 87 subsection 1, second sentence, No. 1).

Section 103

(1) The presiding judge shall open and chair the oral hearing.

(2) Once the case has been called, the presiding judge or the reporting judge shall present the essential content of the files.

(3) In response to this, those concerned shall be afforded the opportunity to speak in order to make and reason their applications.

Section 104

(1) The presiding judge shall discuss the dispute with those concerned in factual and legal terms.

(2) The presiding judge shall on request afford each member of the court the opportunity to ask questions. If a question is objected to, the court shall decide.

(3) After the dispute has been discussed, the presiding judge shall declare the oral hearing to be closed. The court may decide on reopening.

Section 105

Sections 159 to 165 of the Code of Civil Procedure shall apply *mutatis mutandis* to the minutes.

Section 106

In order to completely or partly deal with the legal dispute, those concerned may reach a settlement for the record of the court or of the commissioned or requested judge insofar as they are able to

dispose of the subject-matter of the settlement. A judicial settlement may also be concluded by those concerned accepting a proposal of the court, of the presiding judge or of the reporting judge issued in the form of an order, in writing vis-à-vis the court.

10th Chapter

Judgments and other rulings

Section 107

The action shall be ruled on by a judgment unless provided otherwise.

Section 108

(1) The court shall rule in accordance with its free conviction gained from the overall outcome of the proceedings. The judgment shall state the grounds which were decisive for the judicial conviction.

(2) The judgment may only be based on facts and results of evidence on which those concerned have been able to make a statement.

Section 109

An advance ruling may be handed down on the admissibility of the action by interim judgment.

Section 110

If only part of the subject-matter of the dispute is ready for a ruling, the court may hand down a partial judgment.

Section 111

If with an application for an injunction a claim is contentious in terms of its reason and amount, the court may rule in advance on the reason by means of an interim judgment. If the claim has been declared to be well-founded, the court can order that the amount is to be deliberated on.

Section 112

The judgment may only be made by the judges and honorary judges who have attended the hearing on which the judgment is based.

Section 113

(1) Insofar as the administrative act is unlawful and the plaintiff's rights have been violated, the court shall rescind the administrative act and any ruling on an objection. If the administrative act has already been executed, the court may also state on request that and how the administrative

authority has to countermand execution. This statement shall only be permissible if the authority is able to do so and this question is mature for adjudication. If the administrative act has been settled previously by withdrawal or otherwise, the court shall declare on request by judgment that the administrative act was unlawful if the plaintiff has a justified interest in this finding.

(2) If the plaintiff requests an alteration of an administrative act which establishes an amount of money or makes a declaration related thereto, the court may establish a different amount or replace the declaration by another. If the ascertainment of the amount to be established or declared entails a not inconsiderable effort, the court may determine the alteration of the administrative act by stating the factual or legal circumstances which were wrongly considered or not considered such that the authority is able to calculate the amount on the basis of the ruling. The authority shall inform the party concerned of the outcome of the recalculation promptly without requirement as to form; once the ruling has become final, the administrative act shall be newly announced with its altered content.

(3) If the court considers a further factual investigation to be necessary, without itself deciding on the merits, it may rescind the administrative act and the ruling on an objection insofar as due to their nature or scope the investigations which are still required are material and the rescission is expedient, also considering the interests of those concerned. On request, the court may reach an interim regulation until issuance of the new administrative act, and may in particular determine that securities are provided or remain in force entirely or partly and payments initially do not need to be repaid. The order may be amended or rescinded at any time. A ruling in accordance with the first sentence may only be handed down within six months of receipt of the files of the authority by the court.

(4) If payment may be demanded in addition to the rescission of an administrative act, a sentence to effect a payment shall also be permissible in the same proceedings.

(5) Insofar as the rejection or omission of the administrative act is unlawful and the plaintiff's rights are violated thereby, the court shall announce the obligation incumbent on the administrative authority to effect the requested official act if the case is mature for adjudication. Otherwise, it shall hand down the obligation to notify the plaintiff, taking the legal view of the court into consideration.

Section 114

Insofar as the administrative authority is empowered to act in its discretion, the court shall also examine whether the administrative act or the refusal or omission of the administrative act is unlawful because the statutory limits of discretion have been overstepped or discretion has been used in a manner not corresponding to the purpose of the empowerment. The administrative authority may also supplement its discretionary considerations as to the administrative act in the proceedings before the administrative courts.

Section 115

Sections 113 and 114 shall apply *mutatis mutandis* if in accordance with section 79, subsection 1, No. 2 and subsection 2 the ruling on an objection forms the subject-matter of the rescissory action.

Section 116

(1) If an oral hearing has taken place, the judgment shall as a rule be pronounced in the hearing in which the oral hearing is concluded, in special cases in a hearing to be scheduled immediately which should not take place more than two weeks later. The judgment shall be served on those concerned.

(2) In place of the pronouncement, the service of the judgment shall be permissible; in such a case, the judgment shall be communicated to the registry within two weeks after the oral hearing.

(3) If the court rules without an oral hearing, the pronouncement shall be substituted by being served on those concerned.

Section 117

(1) The judgment shall be handed down "In the name of the people". It shall be drawn up in writing and signed by the judges who were involved in the ruling. If a judge is prevented from adding his/her signature, this shall be noted under the judgment with the reason why he/she is prevented from attending by the presiding judge or, if he/she is unable to attend, by the most senior associate judge. The honorary judges shall not be required to sign.

(2) The judgment shall contain

1. the designation of those concerned, of their legal representatives and of the proxy-holders by names, occupation, place of residence and their status in the proceedings,

2. the designation of the court and the names of the members who have contributed towards the ruling,

3. the ruling,
4. the facts,
5. the reasoning for the ruling, and
6. the notification of appeals.

(3) The statement of facts shall contain the essential content of the state of the facts and of the dispute in concise form, emphasising the requests made. In respect of the details, reference should be made to written statements, minutes and other documents insofar as the state of the facts and of the dispute emerges from them sufficiently.

(4) A judgment which on its pronouncement was not yet fully drafted shall be conveyed to the registry in completely drafted form prior to the expiry of two weeks, calculated from the day of the pronouncement. If this cannot take place exceptionally, within these two weeks the judgment signed by the judges shall be conveyed to the registry without facts, reasoning of the ruling and notification of appeals; the facts, reasoning of the ruling and notification of appeals shall be set down subsequently as soon as possible, signed individually by the judges and conveyed to the registry.

(5) The court may refrain from a further portrayal of the reasoning for the ruling insofar as it concurs with the reasoning of the administrative act or of the ruling on an objection and this is established in its ruling.

(6) The clerk of the registry shall note on the judgment the date of service, and in cases falling under section 116, subsection 1, first sentence, the date of the pronouncement, and shall sign this note. If the files are kept in electronic form, the clerk of the registry shall record the note in a separate document. The document shall be inseparably bound together with the judgment.

Section 118

(1) Typing errors, arithmetical errors and similar evident errors in the judgment shall be corrected by the court at any time.

(2) A decision may be taken on the correction without a prior oral hearing. The correction order shall be noted on the judgment and on the duplicates. If the judgment is drafted in electronic form, the order shall also be drafted in electronic form and inseparably linked with the judgment.

Section 119

(1) If the facts of the judgment contain other errors or ambiguities, the correction may be requested within two weeks of service of the judgment.

(2) The court shall rule by order without taking evidence. The order shall be incontestable. The ruling shall only be contributed to by the judges who have worked on the judgment. If a judge is unable to attend, the presiding judge shall have the casting vote. The correction order shall be noted on the judgment and on the duplicates. If the judgment is drafted in electronic form, the order shall also be drafted in electronic form and inseparably linked with the judgment.

Section 120

(1) If a request lodged by a party concerned according to the facts or the costs consequence has been totally or partly overlooked in the ruling, the judgment shall be supplemented by subsequent decision on request.

(2) The ruling must be requested within two weeks of service of the judgment.

(3) The subject-matter of the oral hearing shall only be the part of the legal dispute which has not been dealt with.

Section 121

Final judgments shall be binding insofar as a ruling has been handed down on the subject-matter of the dispute

1. upon those concerned and their legal successors, and
2. in cases falling under section 65, subsection 3, upon those persons who did not make a request for subpoena or did not do so in good time.

Section 122

(1) Sections 88, 108, subsection 1, first sentence, as well as sections 118, 119 and 120, shall apply *mutatis mutandis* to orders.

(2) Orders shall be reasoned if they can be challenged by appeals or if they rule on an appeal. Orders on the suspension of execution (sections 80 and 80a) and on interim orders (section 123), as well as orders after the legal dispute had been settled in the main case (section 161, subsection 2) shall always be reasoned. Orders ruling on an appeal shall not require further reasoning insofar as the court rejects the appeal as ill-founded for the reasons of the impugned ruling.

11th Chapter

Interim order

Section 123

(1) On request, the court may, even prior to the lodging of an action, make an interim order in relation to the subject-matter of the dispute if the danger exists that the enforcement of a right of the plaintiff could be prevented or considerably impeded by means of an alteration of the existing state. Interim orders shall also be admissible to settle an interim condition in relation to a contentious legal relationship if this regulation appears necessary, above all with ongoing legal relationships, in order to avert major disadvantages or prevent immanent force or for other reasons.

(2) The court dealing with the main case shall have jurisdiction for the issuance of interim orders. This shall be the court of first instance and, if the main case is pending in the proceedings for an appeal on points of fact and law, the court of appeal on points of fact and law. Section 80, subsection 8, shall apply *mutatis mutandis*.

(3) Sections 920, 921, 923, 926, 928 to 932, 938, 939, 941 and 945 the Code of Civil Procedure shall apply *mutatis mutandis* to the issuance of interim orders.

(4) The court shall decide by means of an order.

(5) The provisions contained in subsections 1 to 3 shall not apply to cases falling under sections 80 and 80a.

Part III

Appeals and resumption of the proceedings

12th Chapter

Appeal on points of fact and law

Section 124

(1) Those concerned shall be entitled to an appeal on points of fact and law against final judgments, including the partial judgments in accordance with section 110, and against interim judgments in accordance with sections 109 and 111, if such appeal is admitted by the administrative court or the Higher Administrative Court.

(2) The appeal on points of fact and law shall only be admitted

1. if serious doubts exist as to the correctness of the judgment,

2. if the case has special factual or legal difficulties,

3. if the case is of fundamental significance,

4. if the judgment derogates from a ruling of the Higher Administrative Court, of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court, and is based on this derogation, or

5. if a procedural shortcoming subject to the judgment of the court of appeal on points of fact and law is claimed and applies on which the ruling can be based.

Section 124a

(1) The administrative court shall admit the appeal on points of fact and law in the judgment if the grounds of section 124, subsection 2, No. 3 or No. 4 apply. The Higher Administrative Court shall be bound by the admission. The administrative court shall not be empowered to not admit the appeal on points of fact and law.

(2) The appeal on points of fact and law shall be lodged with the administrative court, if it has been admitted by the administrative court, within one month after service of the complete judgment. The appeal on points of fact and law must designate the impugned judgment.

(3) The appeal on points of fact and law shall be reasoned in cases falling under subsection 2 within two months after service of the complete judgment. Unless it takes place at the same time as the lodging of the appeal on points of fact and law, the reasoning shall be lodged with the Higher Administrative Court. The deadline for the reasoning may be extended in response to a request made prior to its expiry by the presiding judge of the senate. The reasoning must contain a specific motion, as well as the reasoning for the challenge (reasoning for the appeal on points of fact and law) to be listed in detail.* If one of these requirements is not met, the appeal on points of fact and law shall be inadmissible.

(4) If the appeal on points of fact and law is not admitted in the judgment of the administrative court, admission shall be applied for within one month after service of the complete judgment. The application shall be lodged with the administrative court. It must designate the impugned judgment. Within two months after service of the complete judgment, the reasoning shall be explained for which the appeal on points of fact and law is to be admitted. Insofar as it has not already been submitted with the application, the reasoning shall be submitted to the Higher Administrative Court. The lodging of the application shall stay the legal force of the judgment.

(5) The Higher Administrative Court shall rule on the application by means of an order. The appeal on points of fact and law shall be admitted if one of the reasons of section 124, subsection 2, is explained and applies. The order should be briefly reasoned. The judgment shall become final on rejection of the application. If the Higher Administrative Court admits the appeal on points of fact and law, the application proceedings shall be continued as proceedings for an appeal on points of fact and law; the lodging of an appeal on points of fact and law shall not be required.

(6) The appeal on points of fact and law shall be reasoned in cases falling under subsection 5 within one month after service of the order on the admission of the appeal on points of fact and law. The reasoning shall be submitted to the Higher Administrative Court. Subsection 3, third to fifth sentences, shall apply *mutatis mutandis*.

Section 125

(1) The provisions of Part II shall apply *mutatis mutandis* to the proceedings for an appeal on points of fact and law unless this chapter provides otherwise. Section 84 shall not apply.

(2) If the appeal on points of fact and law is inadmissible, it shall be rejected. The ruling may be handed down by means of an order. Those concerned shall be heard in advance. Those concerned shall be entitled to such appeal against the order which would be admissible if the court had ruled by judgment. Those concerned shall be notified of this appeal.

Section 126

(1) The appeal on points of fact and law can be withdrawn until the judgment becomes final. Withdrawal subsequent to the lodging of the requests in the oral hearing shall be contingent on the consent of the defendant and, if a representative of the public interest has attended the oral hearing, also on his/her consent.

(2) The appeal on points of fact and law shall be deemed to have been withdrawn if the plaintiff of the appeal on points of fact and law fails to pursue the proceedings for more than three months despite being called on by the court to do so. Subsection 1, second sentence, shall apply *mutatis mutandis*. The plaintiff of the appeal on points of fact and law shall be informed in the call of the legal consequences emerging from the first sentence and section 155, subsection 2. The court shall find by an order that the appeal on points of fact and law is deemed to have been withdrawn.

(3) Withdrawal shall lead to the loss of the appeal lodged. The court shall rule by order on the costs consequence.

Section 127

(1) The defendant of the appeal on points of fact and law and the other parties concerned may accede to the appeal on points of fact and law. The subsequent appeal on points of fact and law shall be lodged with the Higher Administrative Court.

(2) Accession shall also be permissible if the party concerned has foregone the appeal on points of fact and law or the deadline for the appeal on points of fact and law or for the request to admit the appeal on points of fact and law has passed. It shall be admissible after one month has passed since the written reasoning for the appeal on points of fact and law has been served.

(3) The subsequent appeal on points of fact and law must be reasoned in the accession document. Section 124a, subsection 3, second, fourth and fifth sentences, shall apply *mutatis mutandis*.

(4) The subsequent appeal on points of fact and law shall not require to be admitted.

(5) Accession shall lose its effect if the appeal on points of fact and law is withdrawn or rejected as inadmissible.

Section 128

The Higher Administrative Court shall review the dispute within the appeal on points of fact and law application to the same degree as the administrative court. It shall also consider newly-submitted facts and items of evidence.

Section 128a

(1) New declarations and items of evidence which have not been submitted at first instance despite a deadline set therefor (section 87b, subsections 1 and 2) shall only be admitted if in the free conviction of the court its admission would not delay the settlement of the legal dispute, or if the party concerned provides sufficient excuses for the delay. The excuse shall be credibly demonstrated at the request of the court. The first sentence shall not apply if the party concerned at first instance has not been informed of the consequences of missing a deadline in accordance with section 87b, subsection 3 No. 3, or if it is also possible to ascertain the facts with a slight effort without the participation of the party concerned.

(2) Declarations and items of evidence which the administrative court has rightly rejected shall also remain ruled out in the proceedings for an appeal on points of fact and law.

Section 129

The judgment of the administrative court may only be altered insofar as an alteration has been applied for.

Section 130

(1) The Higher Administrative Court shall take the necessary evidence and shall rule on the merits itself.

(2) The Higher Administrative Court may only remit the case to the administrative court, insofar as a further hearing on the case is necessary, by rescinding the judgment and the proceedings

1. insofar as the proceedings before the administrative court suffer from a major shortcoming and because of this shortcoming a comprehensive or laborious taking of evidence is necessary, or
2. if the administrative court has not yet ruled on the merits themselves

and a party concerned applies for remittal.

(3) The administrative court shall be bound by the legal assessment of the ruling on the appeal on points of fact and law.

Section 130a

The Higher Administrative Court may rule on the appeal on points of fact and law by means of an order if it unanimously considers it to be well-founded or ill-founded and does not consider an oral hearing to be necessary. Section 125, subsection 2, third to fifth sentences, shall apply *mutatis mutandis*.

Section 130b

The Higher Administrative Court may refer to the elements of the impugned ruling in the judgment on the appeal on points of fact and law if it fully adopts the findings of the administrative court. It may refrain from a further depiction of the reasoning for the ruling insofar as it rejects the appeal on points of fact and law as ill-founded for the reasons of the impugned ruling.

Section 131

(repealed)

13th Chapter

Appeal on points of law

Section 132

(1) Those concerned shall have recourse to an appeal on points of law to the Federal Administrative Court against the judgment of the Higher Administrative Court (section 49 No. 1), and against orders in accordance with section 47, subsection 5, first sentence, if the Higher Administrative Court, or the Federal Administrative Court in response to a complaint against non-admission, has admitted it.

(2) The appeal on points of law shall only be admitted if

1. the legal case is of fundamental significance,
2. the judgment deviates from a ruling of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court and is based on this deviation, or
3. a procedural shortcoming is asserted and applies on which the ruling can be based.

(3) The Federal Administrative Court shall be bound by admission.

Section 133

(1) The non-admission of the appeal on points of law may be challenged by a complaint.

(2) The complaint shall be lodged with the court against whose judgment an appeal on points of law it is to be lodged within one month after service of the complete judgment. The complaint must designate the impugned judgment.

(3) The complaint shall be reasoned within two months after service of the complete judgment. The reasoning shall be submitted to the court against whose judgment an appeal on points of law is to be lodged. In the reasoning, the fundamental significance of the case must be explained or the ruling from which the judgment deviates, or the procedural shortcoming, must be designated.

(4) The submission of the complaint shall stay the legal force of the judgment.

(5) If the complaint is not remedied, the Federal Administrative Court shall rule by order. The order should be briefly reasoned; it shall be possible to dispense with reasoning if it is not suited to help clarify the prerequisites under which an appeal on points of law is to be admitted. The judgment shall become final when the complaint is rejected by the Federal Administrative Court.

(6) If the prerequisites of section 132, subsection 2, No. 3 apply, the Federal Administrative Court may rescind the impugned judgment in the order and remit the legal dispute for a hearing and a ruling in other respects.

Section 134

(1) Against the judgment of an administrative court (section 49 No. 2) those concerned shall have recourse to an appeal on points of law, circumventing the appeal on points of fact and law instance, if the plaintiff and the defendant agree in writing to the submission of the appeal on points of law in lieu of an appeal on fact and law, and if it is admitted by the administrative court in the judgment or on request by order. The request shall be made in writing within one month of service of the complete judgment. Consent to the submission of the appeal on points of law in lieu of an appeal on fact and law shall be enclosed with the application or, if the appeal on points of law is admitted in the judgment, with the written appeal on points of law.

(2) The appeal on points of law shall only be admitted if the prerequisites of section 132, subsection 2, Nos. 1 or 2 apply. The Federal Administrative Court shall be bound by admission. The rejection of admission shall be incontestable.

(3) If the administrative court rejects the application for admission of the appeal on points of law by order, on service of this ruling the deadline period shall begin to run for the application to admit the appeal on points of fact and law from the beginning insofar as the application was lodged within the statutory deadline and form and the declaration of consent was enclosed. If the administrative court admits the appeal on points of law by an order, the period for the appeal on points of law shall be initiated on service of this ruling.

(4) The appeal on points of law may not be based on shortcomings in the proceedings.

(5) The submission of the appeal on points of law and the consent shall be deemed to constitute dispensation with the appeal on points of fact and law if the administrative court has admitted the appeal on points of law.

Section 135

Those concerned shall have recourse to an appeal on points of law to the Federal Administrative Court against the judgment of an administrative court (section 49 No. 2) if the appeal on points of fact and law is ruled out by federal law. The appeal on points of law can only be lodged if the administrative court has admitted it, or if the Federal Administrative Court has admitted it in

response to a complaint against non- admission. Sections 132 and 133 shall apply *mutatis mutandis* to admission.

Section 136

(repealed)

Section 137

(1) The appeal on points of law may only be based on the impugned judgment being based on a violation

1. of federal law, or

2. of a provision of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) of a *Land* the wording of which concurs with the Administrative Procedure Act of the Federation.

(2) The Federal Administrative Court shall be bound by the factual findings handed down in the impugned judgment unless admissible, well- founded grounds for the appeal on points of law have been submitted in relation to these findings.

(3) If the appeal on points of law is based on procedural shortcomings, and unless at the same time one of the prerequisites of section 132, subsection 2, Nos. 1 and 2 applies, only a ruling shall be handed down on the asserted procedural shortcomings. In other respects, the Federal Administrative Court shall not be bound by the asserted grounds for the appeal on points of law.

Section 138

A judgment shall always be regarded as being based on the violation of federal law if

1. the court of decision was not composed according to the regulations,

2. a judge was involved in the ruling who had been excluded from the exercise of judicial office by force of law or had been successfully rejected for concern about partiality,

3. a party concerned had been refused a legal hearing,

4. a party concerned in the proceedings was not represented in accordance with the provisions of the law, unless he/ she explicitly or tacitly consented to the pursuance of the proceedings,

5. the judgment was handed down on the basis of an oral hearing in which the provisions on the public nature of the proceedings were violated, or

6. the ruling is not reasoned.

Section 139

(1) The appeal on points of law shall be lodged in writing to the court whose judgment is impugned within one month of service of the complete judgment or of the order on the admission of the appeal on points of law in accordance with section 134, subsection 3, second sentence. The deadline period for the appeal on points of law shall also be deemed to have been complied with if the appeal on points of law is lodged within the deadline to the Federal Administrative Court. The appeal on points of law must designate the impugned judgment.

(2) If the complaint against the non-admission of the appeal on points of law is remedied, or if the Federal Administrative Court admits the appeal on points of law, the complaint proceedings shall be continued as proceedings on appeal on points of law unless the Federal Administrative Court rescinds the impugned judgment in accordance with section 133, subsection 6; the lodging of an appeal on points of law by the complainant shall not be required. This shall be referred to in the order.

(3) The appeal on points of law shall be reasoned within two months after service of the complete judgment or of the order on the admission of the appeal on points of law in accordance with section 134, subsection 3, second sentence; in the event of subsection 2, the deadline for reasoning shall be one month after service of the order on the admission of the appeal on points of law. The reasoning shall be submitted to the Federal Administrative Court. The reasoning deadline may be extended by the presiding judge in response to an application lodged prior to its expiry. The reasoning must contain a definite motion, the violated legal provision and, insofar as the complaint relates to procedural shortcomings, must state the facts from which the shortcomings emerge.

Section 140

(1) The appeal on points of law may be withdrawn until the judgment becomes final. Withdrawal after filing the motions in the oral hearing shall be contingent on the consent of the defendant of the appeal on points of law and, if the Representative of the Interests of the Federation at the Federal Administrative Court has attended the oral hearing, also on his/her consent.

(2) Withdrawal shall effect the loss of the appeal submitted. The Court shall rule by order on the costs consequence.

Section 141

The provisions on the appeal on points of fact and law shall apply *mutatis mutandis* to the appeal on points of law unless this chapter states otherwise. Sections 87a, 130a and 130b shall not apply.

Section 142

(1) Alterations to the action and subpoenas shall not be permissible in the proceedings on appeal on points of law. This shall not apply to subpoenas in accordance with section 65, subsection 2.

(2) A party subpoenaed in the proceedings on appeal on points of law in accordance with section 65, subsection 2, may only complain of procedural shortcomings within two months of service of the subpoena. The deadline may be extended by the presiding judge in response to an application made before its expiry.

Section 143

The Federal Administrative Court shall examine whether the appeal on points of law is admissible and whether it has been submitted and reasoned within the statutory form and deadline. If one of these requirements has not been met, the appeal on points of law shall be inadmissible.

Section 144

(1) If the appeal on points of law is inadmissible, the Federal Administrative Court shall dismiss it by order.

(2) If the appeal on points of law is ill-founded, the Federal Administrative Court shall reject the appeal on points of law.

(3) If the appeal on points of law is well-founded, the Federal Administrative Court may

1. rule on the on the case itself,
2. quash the impugned judgment and remit the case for settlement and a ruling in other respects.

The Federal Administrative Court shall remit the dispute if the party subpoenaed in the proceedings on appeal on points of law in accordance with section 142, subsection 1, second sentence, has a justified interest in this.

(4) If the reasoning for the decision reveals a violation of the existing right, but the ruling itself proves to be correct for other reasons, the appeal on points of law shall be dismissed.

(5) If the Federal Administrative Court remits the case on appeal on points of law in lieu of an appeal on fact and law in accordance with section 49 No. 2 and section 134 for settlement and

ruling in other respects, it may at its discretion also remit it to the Higher Administrative Court which would have had jurisdiction for the appeal on points of fact and law. The same principles shall then apply to the proceedings before the Higher Administrative Court as if the dispute had become pending on a properly-lodged appeal on points of fact and law at the Higher Administrative Court.

(6) The Court to which the case has been remitted for settlement and a ruling in other respects shall base its ruling on the legal assessment of the court of appeal on points of law.

(7) The ruling on the appeal on points of law shall not require reasoning insofar as the Federal Administrative Court considers complaints of procedural shortcomings not to be significant. This shall not apply to complaints in accordance with section 138 and, if the appeal on points of law exclusively asserts procedural shortcomings, to complaints on which the admission of the appeal on points of law is based.

Section 145

(repealed)

14th Chapter

Complaint, reminder, complaint regarding a hearing

Section 146

(1) Unless this Act provides otherwise, those concerned and those otherwise affected by the ruling may take recourse to a complaint to the Higher Administrative Court against rulings of the administrative court, of the presiding judge or of the reporting judge which are not judgments or summary decisions.

(2) Procedural directions, elucidation orders, orders regarding postponement or the setting of a deadline, orders for the taking of evidence, orders regarding rejection of motions for the taking of evidence, on joindering and separation of proceedings and claims and on the rejection of court officials, as well as orders on the rejection of legal aid applications if the court exclusively states that the personal or economic preconditions for legal aid do not apply, cannot be impugned with a complaint.

(3) Furthermore, on reserve of a statutorily-provided complaint against the non-admission of the appeal on points of law, a complaint is not available in disputes regarding costs, fees and expenses if the value of the subject-matter of the complaint does not exceed two hundred Euros.

(4) The complaint against orders of the administrative court in injunction proceedings (sections 80, 80a and 123) shall be reasoned within one month of announcement of the ruling. Unless already submitted with the complaint, the reasoning shall be submitted to the Higher Administrative Court. It must contain a definite motion, set out the reasoning from which the ruling is to be altered or rescinded, and deal with the impugned ruling. If one of these requirements is not met, the complaint shall be dismissed as inadmissible. The administrative court shall submit the complaint without delay; section 148, subsection 1, shall not apply. The Higher Administrative Court shall only review the reasoning submitted.

(5) & (6) (repealed)

Section 147

(1) The complaint shall be lodged with the court whose ruling is impugned in writing or for the record of the clerk of the registry within two weeks after announcement of the ruling. Section 67, subsection 4, shall remain unaffected.

(2) The complaint deadline shall also be deemed to have been met if the complaint is received by the complaint court within the deadline.

Section 148

(1) If the administrative court, the presiding judge or the reporting judge whose ruling is being impugned considers the complaint to be well-founded, it shall be remedied; otherwise, it shall be submitted to the Higher Administrative Court without delay.

(2) The administrative court should inform those concerned of the lodging of the complaint with the Higher Administrative Court.

Section 149

(1) The complaint shall only have a suspensive effect if its subject-matter is the imposition of an administrative measure or a means of coercion. The court, the presiding judge or the reporting judge whose ruling is being impugned may also otherwise determine that the execution of the impugned ruling is to be temporarily suspended.

(2) Sections 178 and 181, subsection 2, of the Courts Constitution Act shall remain unaffected.

Section 150

The Higher Administrative Court shall rule on the complaint by an order.

Section 151

The ruling of the court against the decisions of the commissioned or requested judge or of the clerk can be applied for within two weeks after announcement,. The application shall be lodged in writing or for the record of the clerk of the court registry. Sections 147 to 149 shall apply *mutatis mutandis*.

Section 152

(1) On proviso of section 99, subsection 2, and of section 133, subsection 1, of the present Act, as well as of section 17a, subsection 4, fourth sentence, of the Courts Constitution Act, rulings of the Higher Administrative Court may not be impugned with a complaint to the Federal Administrative Court.

(2) Section 151 shall apply *mutatis mutandis* in the proceedings before the Federal Administrative Court to rulings of the commissioned or requested judge or of the clerk of the registry.

Section 152a

(1) In response to the complaint of a party concerned impaired by a court ruling, the proceedings shall be continued if

1. an appeal or another remedy against the ruling is not available, and
2. the court has violated this party concerned' s right to a legal hearing in a manner that is material to the ruling.

No complaint is available against a ruling preceding the final ruling.

(2) The complaint shall be lodged within two weeks after of the violation of the right to a legal hearing becoming known; the time of becoming aware shall be credibly demonstrated. After one year after announcement of the impugned ruling, the complaint may no longer be lodged. Rulings announced without requirement as to form shall be deemed to have been communicated on the third day after being taken to the post. The complaint shall be made in writing or for the record of the clerk of the registry at the court whose ruling is being impugned. Section 67, subsection 4, shall remain unaffected. The complaint must designate the impugned ruling and document that the prerequisites named in subsection 1, first sentence, No. 2 apply.

(3) The other parties concerned shall be afforded the opportunity to make a statement where necessary.

(4) If the complaint is not admissible or has not been lodged within the statutory form or deadline, it shall be dismissed as inadmissible. If the complaint is ill-founded, the court shall reject it. The ruling shall be handed down by incontestable order. The order should contain brief reasoning.

(5) If the complaint is well-founded, the court shall remedy it by continuing the proceedings insofar as this is necessary on the basis of the complaint. The proceedings shall be restored to the state in which they were prior to the conclusion of the oral hearing. In written proceedings, the time until when the written pleadings may be submitted shall replace the conclusion of the oral hearing. Section 343 the Code of Civil Procedure shall apply *mutatis mutandis* to the pronouncement of the court.

(6) Section 149, subsection 1, second sentence, shall apply *mutatis mutandis*.

15th Chapter

Resumption of the proceedings

Section 153

(1) Proceedings ended by force of law may be resumed in accordance with the provisions of Book Four of the Code of Civil Procedure.

(2) The power to lodge a nullity action and a restitution action shall also be held by the representative of the public interest, in the proceedings before the Federal Administrative Court at first and final instance also by the Representative of the Interests of the Federation at the Federal Administrative Court.

Part IV

Costs and execution

16th Chapter

Costs

Section 154

(1) The losing party shall pay the costs of the proceedings.

(2) The costs of an appeal lodged unsuccessfully shall be imposed on the party who lodged the appeal.

(3) Costs may only be imposed on the subpoenaed party if he/she lodged motions or appeals; section 155, subsection 4, shall remain unaffected.

(4) The costs of the successful resumption proceedings may be imposed on the state budget insofar as they have not arisen as a result of the fault of a party concerned.

Section 155

(1) If a party concerned is partly successful and partly unsuccessful, the costs shall be offset against one another or shared proportionately. If the costs are offset against one another, the court costs shall be imposed on each in halves. A party may be burdened with the entire costs if the other only lost to a small part.

(2) Anyone who withdraws a motion, an action, an appeal or another remedy shall bear the costs.

(3) Costs which arise by virtue of a motion for *restitutio in integrum* shall be imposed on the applicant.

(4) Costs arising by the fault of a party concerned may be imposed on the latter.

Section 156

If the defendant has not given rise to the lodging of the action by means of his/her conduct, the legal costs shall be imposed on the plaintiff if the defendant immediately acknowledges the claim.

Section 157

(repealed)

Section 158

(1) Challenging of the ruling on the costs shall be inadmissible unless an appeal is lodged against the ruling in the main case.

(2) If no ruling has been handed down in the main case, the ruling on the costs shall be incontestable.

Section 159

Section 100 of the Code of Civil Procedure shall apply *mutatis mutandis* if the party obliged to pay the costs consists of several persons. If the contentious legal relationship can only be decided on in a uniform manner vis-à-vis the party obliged to meet the costs, the costs may be imposed on several persons as joint-and-several debtors.

Section 160

If the dispute is dealt with by means of a settlement, and if those concerned have not determined the costs, the court costs shall be imposed in halves on each party. Each party concerned shall bear their own out-of-court costs.

Section 161

(1) The court shall rule on the costs in the judgment or, if the proceedings are concluded by other means, by order.

(2) If the dispute is settled in the main case, other than in cases falling under section 113, subsection 1, fourth sentence, the Court shall rule by order on the costs of the proceedings at its reasonably exercised discretion; the previous status of the case and of the dispute shall be taken into account. The legal dispute shall also be deemed to have been settled in the main case if the defendant has not objected to the declaration of settlement by the plaintiff within two weeks of service of the written pleading containing the declaration of conclusion and he/she has been informed of this consequence by the court.

(3) In cases falling under section 75, the defendant shall always bear the costs if the plaintiff could anticipate his/her decision prior to lodging the action.

Section 162

(1) Costs shall be constituted by the court costs (fees and expenses) and the expenditure of those concerned necessary to properly pursue or defend rights, including the costs of the preliminary proceedings.

(2) The fees and expenses of an attorney or legal counsel, in tax matters also of one of the persons named in section 67, subsection 2, second sentence, No. 3, shall always be refundable. Insofar as preliminary proceedings were pending, fees and expenses shall be refundable if the court declares it necessary to consult a proxy-holder for the preliminary proceedings. Legal entities under public law and authorities may demand the maximum flat-rate determined in No. 7002 of Annex 1 to the Lawyers' Remuneration Act (*Rechtsanwaltsvergütungsgesetz*) in place of their expenditure actually necessary for post and telecommunication services.

(3) The out-of-court costs of the subpoenaed party shall only be refundable if the court imposes them on the losing party or the state budget for reasons of equitableness.

Section 163

(repealed)

Section 164

The clerk of the first-instance court shall determine on application the amount of the costs to be refunded.

Section 165

Those concerned may challenge the determination of the costs to be refunded. Section 151 shall apply *mutatis mutandis*.

Section 165a

Section 110 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 166

(1) The provisions of the Code of Civil Procedure on legal aid, as well as section 569, subsection 3, No. 2 the Code of Civil Procedure shall apply *mutatis mutandis*. A tax adviser, tax consultant, chartered accountant or sworn public accountant may also be appointed to assist a person concerned to whom legal aid has been granted. The remuneration shall be in line with the provisions of the Lawyers' Remuneration Act (*Rechtsanwaltsvergütungsgesetz*) that are applicable to appointed lawyers.

(2) The examination of the personal and economic circumstances in accordance with sections 114 and 115 of the Code of Civil Procedure, including the measures designated in section 118 subsections 2 and 4 of the Code of Civil Procedure, the certification of settlements in accordance with section 118 subsection 1, third sentence, of the Code of Civil Procedure and the decisions in accordance with section 118 subsection 3 of the Code of Civil Procedure shall be incumbent on the clerk of the registry of the respective legal instance if the presiding judge assigns the proceedings to him in this regard in accordance with *Land* law; if the preconditions for the approval of legal aid do not accordingly apply, the clerk shall take the decision rejecting the application; otherwise, the clerk shall note in the procedural files that the applicant can be granted legal aid according to his

personal and economic circumstances and in what amount monthly instalments or amounts from the assets are to be paid, where appropriate.

(3) The determination of the point in time for the interruption and resumption of payments in accordance with section 120 subsection 3 of the Code of Civil Procedure, as well as the amendment and rescission of the granting of legal aid in accordance with sections 120a and 124 subsection 1 Nos. 2 to 5 of the Code of Civil Procedure shall furthermore be incumbent on the clerk in the legal aid proceedings .

(4) The presiding judge may reserve for himself tasks in accordance with subsections 2 and 3 at any time. Section 5 subsection 1 No. 1, sections 6, 7 and 8 subsections 1 to 4 and section 9 of the Act on Senior Judicial Officers (*Rechtspflegergesetz*) shall apply mutatis mutandis subject to the proviso that the clerk of the registry shall substitute the senior judicial officer.

(5) Section 87a subsection 3 shall apply mutatis mutandis.

(6) A court ruling may be applied for against decisions of the clerk in accordance with subsection 2 and 3 within two weeks of its announcement.

(7) A *Land* law may provide that subsections 2 to 6 are not to be applied to the courts of the respective *Land*.

17th Chapter

Execution

Section 167

(1) Unless the present Act provides otherwise, Book Eight of the Code of Civil Procedure shall apply *mutatis mutandis* to execution. The execution court shall be the court of first instance.

(2) Judgments for rescissory and enforcement actions may be declared provisionally executable in respect of the costs only.

Section 168

(1) Execution shall be effected on the basis of

1. final and provisionally-executable court rulings,
2. provisional injunctions,
3. court settlements,
4. cost-setting orders,

5. the arbitration rulings of public- law arbitration tribunals that have been declared executable insofar as the ruling on the declaration of executability has been declared final or provisionally final.

(2) For execution, those concerned may be granted copies of the judgment at their request without the facts and without reasoning for the ruling, the effect of service of which shall be equivalent to the service of a complete judgment.

Section 169

(1) If execution is to be effected in favour of the Federation, of a *Land*, of an association of municipal corporations, of a municipal corporation or of a corporation, institution or foundation under public law, execution shall be effected in accordance with the Administrative Execution Act (*Verwaltungsvollstreckungsgesetz*). The execution authority within the meaning of the Administrative Execution Act shall be the presiding judge of the court of first instance; he/she may avail him/herself of the services of another execution authority or of a bailiff for effecting execution.

(2) If execution is effected to enforce acts, toleration and desistance by means of administrative assistance by bodies of the *Länder*, it shall be implemented in accordance with provisions of *Land* law.

Section 170

(1) If execution is to be effected against the Federation, a *Land*, an association of municipal corporations, a municipal corporation, a corporation, institution or foundation under public law in respect of a monetary claim, the court of first instance shall order the execution on request by the creditor. It shall determine the execution measures to be implemented and request the competent agency to carry them out. The requested agency shall be obliged to comply with the request in accordance with the execution provisions applicable thereto.

(2) Prior to the issuance of the execution order, the court shall notify the authority, or in case of corporations, institutions or foundations under public law against which execution is to be effected, the statutory representatives, of the envisioned execution, calling on it to avert the execution within a period to be set by the court. The period may not exceed one month.

(3) Execution shall not be permissible with regard to items which are indispensable for the implementation of public tasks, or the sale of which is opposed by a public interest. The court shall

rule on objections after hearing the competent supervisory authority or, in case of supreme federal or *Land* authorities, the competent minister.

(4) Subsections 1 to 3 shall not apply to financial institutions under public-law.

(5) The announcement of execution and of compliance with a waiting period shall not be required if it is a matter of executing an injunction.

Section 171

No execution clause shall be required in cases falling under sections 169 and 170, subsections 1 to 3.

Section 172

If in cases covered by section 113, subsection 1, second sentence, and subsection 5 and by section 123 the authority fails to comply with the obligation imposed on it in the judgment or in the injunction, the court of first instance may, in response to a motion, by order including the setting of a deadline, threaten, determine after unsuccessful expiry of the deadline, and execute ex officio, a coercive fine of up to ten thousand Euros against it. The coercive fine may be repeatedly threatened, determined and executed.

Part V : Final and transitional provisions

Section 173

Unless this Act contains provisions with regard to the proceedings, the Courts Constitution Act and the Code of Civil Procedure, including section 278 subsection 5 and section 278a, shall apply *mutatis mutandis* if the fundamental differences between the two types of procedure do not rule this out. The provisions of the Seventeenth Title of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) shall be applied mutatis mutandis subject to the proviso that the Higher Regional Court shall be substituted by the Higher Administrative Court, the Federal Court of Justice shall be substituted by the Federal Administrative Court and the Code of Civil Procedure shall be substituted by the Code of Administrative Court Procedure. The court within the meaning of section 1062 of the Code of Civil Procedure shall be the administrative court with jurisdiction; the court within the meaning of section 1065 of the Code of Civil Procedure shall be the Higher Administrative Court with jurisdiction.

Section 174

(1) For the representative of the public interest at the Higher Administrative Court and at the administrative court, qualification for the higher administrative service shall be deemed equivalent

to qualification for judicial office in accordance with the German Judiciary Act (*Deutsches Richtergesetz*) if the former has been acquired by sitting the statutorily prescribed examinations after at least three years' law studies at a University and three-years' training in the public service. (2) With war participants, the precondition of subsection 1 shall be deemed to have been met if they have complied with the special provisions applying to them.

Sections 175 to 177

(repealed)

Sections 178 and 179

(amendment provisions)

Section 180

If the questioning or swearing in of witnesses and expert witnesses in accordance with the Administrative Procedure Act or in accordance with the Tenth Book of the Social Code is effected by the administrative court, it shall take place before the judge determined for this in the business schedule. The administrative court shall rule by order with regard to the lawfulness of refusal to provide testimony or an expert report or to give an oath in accordance with the Administrative Procedure Act or in accordance with the Tenth Book of the Social Code.

Sections 181 and 182

(amendment provisions)

Section 183

If the Constitutional Court of a *Land* has found that *Land* law is null and void or has declared provisions of *Land* law to be null and void, rulings of the courts of administrative jurisdiction which are no longer contestable based on the provision which has been declared null and void shall remain unaffected. Execution from such a ruling shall be inadmissible on proviso of a special statutory arrangement by the *Land*. Section 767 of the Code of Civil Procedure shall apply *mutatis mutandis*.

Section 184

The *Land* may determine that the Higher Administrative Court is to continue the previous designation of "Administrative Court" (*Verwaltungsgerichtshof*).

Section 185

(1) The districts (*Kreise*) within the meaning of section 28 shall be substituted in the *Länder* Berlin and Hamburg by the areas (*Bezirke*).

(2) The *Länder* Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg- Western Pomerania, Saarland and Schleswig- Holstein may admit derogations from the provisions of section 73, subsection 1, second sentence.

Section 186

Section 22 No. 3 shall also apply in the *Länder* Berlin, Bremen and Hamburg on proviso that persons working on an honorary basis in the public administration may not be nominated as honorary judges. Section 6 of the Introductory Act to the Courts Constitution Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*) shall apply *mutatis mutandis*.

Section 187

(1) The *Länder* may assign to the courts of administrative jurisdiction tasks of disciplinary jurisdiction and arbitration jurisdiction in property disputes of public- law associations, assign professional courts to these courts, and regulate their composition and proceedings.

(2) For the field of staff representation law, the *Länder* may furthermore issue provisions derogating from the present Act relating to the composition and procedure of the administrative courts and of the Higher Administrative Court.

(3) (repealed)

Section 188

The fields in matters of welfare, with the exception of matters of social assistance and of the Asylum- Seekers Benefits Act (*Asylbewerberleistungsgesetz*), youth assistance, welfare of war victims, welfare of persons with serious disabilities, as well as training promotion, should be combined in one chamber or in one senate. Court costs (fees and expenses) shall not be levied in proceedings of this nature; this shall not apply to disputes on refunds between social benefits institutions.

Section 189

Specialist senates shall be formed at the Higher Administrative Courts and the Federal Administrative Court for the decisions to be taken in accordance with section 99, subsection 2.

Section 190

(1) The following Acts which derogate from the present Act shall remain unaffected:

1. the Burdens Equalisation Act (*Lastenausgleichsgesetz*) of 14 August 1952 (Federal Law Gazette Part I p. 446) in the version of the amending statutes enacted thereon,

2. the Act on the Establishment of a Federal Supervisory Office for Insurance and Savings Banks (*Gesetz über die Errichtung eines Bundesaufsichtsamtes für das Versicherungs- und Bausparwesen*) of 31 July 1951 (Federal Law Gazette Part I p. 480) in the version of the Act Supplementing the Act on the Establishment of a Federal Supervisory Office for Insurance and Savings Banks (*Gesetz zur Ergänzung des Gesetzes über die Errichtung eines Bundesaufsichtsamtes für das Versicherungs- und Bausparwesen*) of 22 December 1954 (Federal Law Gazette I p. 501),

3. (repealed)

4. the Land Reallocation Act (*Flurbereinigungsgesetz*) of 14 July 1953 (Federal Law Gazette Part I p. 591),

5. the Staff Representation Act (*Personalvertretungsgesetz*) of 5 August 1955 (Federal Law Gazette Part I p. 477),

6. the Military Complaints Code (*Wehrbeschwerdeordnung - WBO*) of 23 December 1956 (Federal Law Gazette Part I p. 1066),

7. the Prisoners of War Compensation Act (*Kriegsgefangenenentschädigungsgesetz - KgfEG*) in the version of 8 December 1956 (Federal Law Gazette I p. 908),

8. section 13, subsection 2, of the Patent Act (*Patentgesetz*) and the provisions on proceedings before the German Patent Office.

(2) (repealed)

(3) (repealed)

Section 191

(1) (amendment provision)

(2) Section 127 of the Civil Service Law Framework Act (*Beamtenrechtsrahmengesetz*) and section 54 of the Civil Service Status Act (*Beamtenstatusgesetz*) shall remain unaffected.

Section 192

(amendment provision)

Section 193

In a *Land* in which there is no Constitutional Court, jurisdiction assigned to the Higher Administrative Court to rule on constitutional disputes within the *Land* shall remain unaffected until the establishment of a Constitutional Court.

Section 194

(1) The admissibility of appeals on points of fact and law shall be in line with the law applicable until 31 December 2001 if prior to 1 January 2002

1. the oral hearing at which the judgment to be impugned is handed down was closed,

2. in proceedings with no oral hearing, the registry has handed out the ruling to be impugned for the purposes of service on the parties.

(2) Moreover, the admissibility of an appeal against a court ruling shall be in accordance with the law applicable up to 31 December 2001 if prior to 1 January 2002 the court ruling was made known or pronounced, or was served ex officio in place of pronouncement.

(3) Appeals against orders in legal aid proceedings lodged in good time before 1 January 2002 shall be deemed to have been admitted by the Higher Administrative Court.

(4) In proceedings which became pending prior to 1 January 2002, or for which the deadline period for filing an action started to run prior to this date, as well as in proceedings regarding appeals against court rulings which were published or pronounced prior to 1 January 2002 or were served ex officio in place of pronouncement, the provisions applicable until such that time shall apply to representation of those concerned in proceedings.

(5) Section 40, subsection 2, first sentence, section 154, subsection 3, section 162, subsection 2, third sentence, and section 188, second sentence, shall be applicable to proceedings becoming pending in the court from 1 January 2002 in the version applicable at this time.

Section 195

(1) (Entry into force)

(2) to (6) (rescission, amendment and time-obsolete provisions)

(7) The deadline contained in section 47, subsection 2, shall apply to legal provisions within the meaning of section 47, in the version applicable until expiry of 31 December 2006, which were made known prior to 1 January 2007.

ภาคผนวก ง.

รวม คำสั่งศาลปกครองสูงสุดที่เกี่ยวข้อง